

DELHI CLOTH AND GENERAL MILLS CO. LTD. AND ANR.

v.

UNION OF INDIA AND ANR.

SEPTEMBER 19, 1996

[S.P. BHARUCHA AND K. VENKATASWAMI, JJ.]

*Customs Tariff Act :*

*S. 3—Assessee importing tyre cord grade wood plup from USA—Called upon to pay additional duty thereon—Challenged before the Assistant Collector and thereafter before the High Court, but without success—On appeal, held, where a like article is not produced or manufactured in India additional duty is required to be levied on the imported article on the basis of the excise duty leviable on the class or description of articles to which the imported article belongs—Articles not elsewhere described under the residuary entry 68 form a class by themselves—Hence if a like article is not described in the Tariff, additional duty is leviable on the imported article upon the basis of the levy of excise duty under the provisions of Entry 68.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3400 of 1984.

From the Judgment and Order dated 27.5.82 of the Rajasthan High Court in D.B.C.W.P. No. 1381 of 1990.

H.K. Puri for the Appellants.

Joseph Vallappally and C.V. Subba Rao for the Respondents.

The following Order of the Court was delivered :

A limited argument is addressed in this appeal that impugns the judgment and order of a Division Bench of the High Court of Rajasthan.

The appellants manufacture tyre yarn cord and fabric for which purpose they import tyre cord grade woodpulp from the United States of America. The appellants were called upon to pay additional duty thereon under the provisions of Sections 3 of the Customs Tariff Act.

Among other contentions raised by the appellants was this : The said

- A woodpulp was not produced or manufactured in India. Under the terms of Section 3 additional duty had, therefore, to be calculated on the basis of the excise duty that would be leviable on the class or description of article to which the said woodpulp belonged. There was no entry in the Tariff that related to an article of the like of the said woodpulp. Entry 68, being a residuary entry relating to no class or description of goods, did not apply.
- B No additional duty was, therefore, leviable on the said woodpulp.

The said contention was rejected by the Assistant Collector and by the High Court in the writ petition filed by the appellants.

- C It is the only contention raised before us.

Section 3 of the Customs Tariff Act, so far as it is relevant, reads thus :

"S. 3.- Levy of Additional Duty equal to Excise Duty :

- D (1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall so
- E liable shall be calculated at that percentage of the value of the imported article.

- F *Explanation* : In this Section, the expression 'the excise duty for the time being leviable on a like article if produced or manufactured in india' means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty
- G is leviable at different rates, the highest duty,"

- H It is the Explanation which is important. The expression "the excise duty for the time being leviable on the like article if produced or manufactured in India used in the body of sub-section (1) is explained to mean the excise duty for the time being in force (a) which would be leviable on a like article if produced or manufactured in Indian, or (b) if a like article

is not produced or manufactured in India, the excise duty that would be leviable on the class or description or articles to which the imported article belongs. A

Where a like article is not produced or manufactured in India additional duty is required to be levied on the imported article upon the basis of the excise duty that is leviable on the class or description of articles to which the imported article belongs. Articles which are not elsewhere described, falling under the residuary Entry 68, form a class by themselves. Hence, if a like article is not described in the Tariff, additional duty is leviable on imported article upon the basis of the levy of excise duty under the provisions of Entry 68. B C

The only contention raised before us is rejected.

The appeal is dismissed, with no order as to costs.

G.N.

Appeal dismissed.