

A COLLECTOR OF CUSTOMS
v
M/S. MODI RUBBER LTD.

DECEMBER 1, 1999

B [S.P. BHARUCHA, R.C. LAHOTI AND N. SANTOSH HEGDE, JJ.]

C *Customs Tariff Act, 1975—Import of styrene butadiene latex—Notification No. 82/86 (as amended on 2.4.1986) exempting payment of customs duty on raw rubber, natural or synthetic, latex, natural or synthetic—Clause 1A of the notification excluding styrene butadiene rubber and oil extended styrene butadiene rubber from the benefit of notification—Assessee's claim for exemption—Allowed by Tribunal—On appeal—Held, principal clause of notification makes a distinction between 'rubber', natural or synthetic and 'latex' natural or synthetic—Exclusion Clause 1A must be*
D *construed with regard to principal clause—The Tribunal justified in holding that the exclusion Clause 1A was only of styrene butadiene rubber and oil extended styrene butadiene rubber and does not cover other forms of styrene butadiene.*

E The respondents imported styrene butadiene latex. Government by a notification No. 82/86 (as amended on 2.4.1986) exempted from payment of customs duty raw rubber, natural or synthetic, latex, natural or synthetic, and certain other items falling within Chapter 40 of the First Schedule to the Customs Tariff Act, 1975. Clause 1A of the said notification excluded styrene butadiene rubber and oil extended styrene butadiene rubber from the benefit
F of the notification. The respondents claim for exemption was denied under Clause 1A. However, the Customs, Excise and Gold (Control) Appellate Tribunal decided in favour of respondent assessee holding that the exclusion in clause 1A was only of styrene butadiene rubber and oil extended styrene butadiene rubber and did not cover other form of styrene butadiene. Hence, the present appeal.

G Dismissing the appeal, the Court

HELD : 1.1. The Tribunal was right in holding that the exclusion in Clause 1A was only of styrene butadiene rubber and oil extended styrene rubber and not cover other forms of styrene butadiene. [126-F-G]

1.2. Clause 1A of the notification is in the nature of an exception to the principal clause thereof and must be construed with regard to that principal clause. The principal clause of the exemption notification “exempts raw rubber, natural or synthetic rubber, latex, natural or synthetic.....”. The principal clause of the said notification therefore, make a distinction between rubber, natural or synthetic, and latex, natural or synthetic. Bearing this in mind, one has to read clause 1A of the said notification. It says that the said notification shall not apply to “Styrene butadiene rubber and oil extend styrene butadiene rubber.” It covers, therefore, the rubber but not the latex. Thus the contention of Revenue that under item 40.02 of the Schedule contained in Customs Tariff Act, 1975, styrene butadiene rubber is shown under two sub-heads ‘latex’ and ‘others’ and, therefore, Clause 1A should, also be read as covering ‘latex’ is rejected. [126-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 451 of 1991.

From the Judgment and Order dated 16.7.90 of the Central Excise, Customs and Gold (Control), Appellate Tribunal, New Delhi in A. No. C/3643/88-C Order No. 754 of 1990-C.

T.L.V. Iyer, Dilip Tandon and P. Parmeswaran for the Appellant.

V. Laxmi Kumaran, Ravinder Narain, Sanjiv Sen, Amit Bhagat and A.P. Arora for M/s. J.B.D. & Co., for the Respondent.

The Judgment of the Court was delivered by

S.P. BHARUCHA, J. The respondents imported styrene butadiene latex. They claimed for the purposes of payment of Customs duty thereon the benefit of an exemption notification (No. 82/86), as amended on 2nd April, 1986. So amended, this is how the said notification read:

“in exercise of the powers, conferred by Sub-section (1), of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts raw rubber, natural or synthetic rubber, latex, natural or synthetic (including mixtures thereof) whether or not prevulcanised; balata, guttepercha and similar natural gums, factice derived from oils, reclaimed rubber, waster and scrap of unhardened rubber, falling within Chapter 40 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate of

A 40% ad valorem.

1A. Nothing contained in this notification shall apply to styrene butadiene rubber and oil extended styrene butadiene rubber.”

B The exemption was denied to the respondents on the ground that under
clause 1A of the said notification styrene butadiene latex was not entitled to
it. This was the view taken all the way upto the Customs, Excise and Gold
(Control) Appellate Tribunal, whose order is under challenge before us. The
Tribunal decided in favour of the assessee, agreeing with the argument of its
C counsel that the exclusion in clause 1A was only of styrene butadiene rubber
and oil extended styrene butadiene rubber and did not cover other forms of
styrene butadiene.

It will be seen that the principal clause of the said exemption notification
“exempts raw rubber, natural or synthetic rubber, latex, natural or synthetic
.....”. The principal clause of the said notification, therefore, makes a distinction
D between rubber, natural or synthetic, and latex, natural or synthetic. Bearing
this in mind, one has to read clause 1A of the said notification. It says that
the said notification shall not apply to “styrene butadiene rubber and oil
extended styrene butadiene rubber.” It covers, therefore, the rubber but not
the latex.

E Our attention was drawn by learned counsel for the appellant to item
40.02 of the Schedule contained in Customs Tariff Act, 1975 where styrene
butadiene rubber is shown under two sub-heads, ‘Latex’ and ‘Others’, and
it was submitted that the styrene butadiene rubber referred to in clause 1A
of the said notification should, therefore, also be read as covering latex. For
F the reason that we have already stated, we cannot agree. Clause 1A of the
said notification is in the nature of an exception to the principal clause thereof
and must be construed with regard to that principal clause. Secondly, as has
been rightly pointed out by learned counsel for the assessee, clause 1A is
applicable not to styrene butadiene generally but to two categories of styrene
butadiene, namely, styrene butadiene rubber and oil extended styrene butadiene
G rubber.

For these reasons, we are of the opinion that the Tribunal is right in the
view that it took.

The appeal is dismissed. No order as to costs.

H SVK.

Appeal dismissed.