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C.A.No. 6291 OF 1997

ITEM NO. 103

COURT No.2

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6291/1997

M/s Premier Tyres Ltd.

Appellant(s)

Versus

Collector of Cenr. Excise

Respondent(s)

(With office report)

DATE : 12/11/2003

This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s)Mr. A.R. Madhav Rao, Adv.

Mr. Vishwanath Shukla, Adv.

Mr. V Balachandran, Adv.

For Respondent(s)Mr. Raju Ramachandran, ASG

Mr. Hemant Sharma, Adv.

Mr. B.K. Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 6291 OF 1997

M/s Premier Tyres Ltd.

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Appellant (s)

Versus

Collector of Cent. Excise

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Respondent (s)

O R D E R

The appellant before us is engaged in a manufacture of tyres and in the course of their business they purchased tyre cord warp sheets which are dipped in Resorcinol Formal Dehyde Latex Solution and then dried. The question is whether this item will fall within tariff item 22 (1)(b) or whether it falls under entry 16 A(2).

Entry 22 reads as follows :

" Man-made fabrics" means all varieties of fabrics manufactured either wholly or partly from man-made fibres or yarn and includes embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, in each of which man-made (i) cellulosic fibre or yarn, or (ii) non-cellulosic fibre or yarn, predominates in weight

Entry 16 A (2) reads as follows :

"Plates, sheets and strips unhardened, whether vulcanised or not, and whether combined with any textile material or otherwise."

The assessing authority found that all the classified goods are classifiable under tariff Item 22(1)(b) of the Central Excise Tariff. On appeal to the Collector of Central Excise, he held that tyre cord warpsheets which are dipped in Resorcinol Solution are classifiable under tariff Item 16 A (2) of the erstwhile Central Excise tariff as rubber product and not under item 22 (1)(b) of the Central Excise tariff as it existed prior to 28.2.1986.

The Tribunal after adverting to the decision of this Court in Delhi Cloth & General Mills Col Ltd. vs. State of Rajasthan and Ors.- 1980 ELT 383 and the decision in C.C.E., Hyderabad vs. Fenoplast (P) Ltd 1994 (72) ELT 513 took the view that the predominance of the percentage of the materials has to be ascertained; that the fabric predominates and Collector has not clearly stated that after dipping in resorcinol solution the rubber cord warpsheet is more or less in comparison to the other materials, and took the view that in Fenoplast (P) Ltd. (supra) this Court held that predominance is only in relation to the base fabrics which are impregnated coated or laminated coated or laminated as the case may be and on that basis allowed the appeal filed by the revenue. Hence, this appeal.

It is contended before us that interpretation placed by the Tribunal on the decision in Fenoplast (P) Ltd. is not correctly applied. It is also brought to our notice that the expression "man-made fabric" has been elaborated in tariff item 22 itself. It covers only in situations such as fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks such as flock printed fabrics and flock coated fabrics. It cannot be disputed that the goods in question are not of that nature which can be termed as a preparation of cellulose derivatives or other artificial plastic material or fabrics covered partially or fully with textile flocks.

Hence, tariff item 22 may not be attracted at all. Therefore, the Tribunal could not have entirely relied upon only tariff item 22 and adverted to a proviso made in that provision and interpreted the whole matter. The decision in Fenoplast (P) Ltd. should not have been understood in that light. In that view of the matter, we set aside the order made by the Tribunal and remit the matter for fresh consideration in accordance with law. The appeal is allowed accordingly.

.....J[S. RAJENDRA BABU]

.....J [G.P. MATHUR]

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NEW DELHI,
NOVEMBER 12, 2003.