

PH

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(s). 4477-4478 OF 2005

COMMR.CUSTOMS & CENTRAL EXCISE INDORE

Appellant (s)

VERSUS

M/S J.K.INDUSTRIES LTD.

Respondent(s)

(With appln(s) for stay, amendment of cause title and office report))

Date: 08/05/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. Vikas Singh, ASG.

Dr .

A.E.Challiah, Sr. Adv.

Mr .

T.V.Ratnam, Adv.

Mr .

R.Kaushik, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Ravinder Narain, Adv.

Mr. Rajan Narain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Application for
amendment of cause title is allowed.

The Appeals are allowed
with no order as to costs.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed

order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4477-4478 OF 2005

COMMNR. CUSTOMS & CENTRAL .. APPELLANT
EXCISE, INDORE

vs.

M/S. J.K. TYRE &
INDUSTRIES LTD. ...RESPONDENT

O R D E R

Application for amendment of cause title is allowed.

These civil appeals are filed under Sec.35-L(b) of Central
Excise Act against the judgment dated 25.1.2005 passed by the

Customs, Excise and Services Tax Appellate Tribunal, New Delhi in Appeal No.E/2731-32/04. In these civil appeals we are concerned with four show cause notices dated 3.3.1997, 29.9.1997, 3.2.1998 and 31.8.1998. These four show cause notices covered the period August 1996 to May 1998.

M/s. J.K.Tyre and Industries Ltd. (assessee) are engaged in the manufacture of vehicle tyres as also calendered fabric by using dipped rubberised tyre cord fabric of high tenacity yarn of nylon. Since the product was used captively it was exempted from payment of excise

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duty under Notification No.67/95 dated 16.3.1995. However, additional duty of excise was leviable on dipped rubberised tyre cord fabric, according to the Department, under additional duties of Excise Act 1957. Therefore, show cause notices were issued on the assessee (respondent No.1 herein) in which it was alleged by the Department that "dipped rubberised tyre cord fabric manufactured and used captively by the assessee has been wrongly classified under Chapter Heading 59.05 (now CH 59.06) of CETA instead of Chapter Heading No.59.02. It is important to note that in the show cause notices issued by the Department, in the present case, the Department had specifically alleged that dipped tyre cord fabrics fell under Chapter Heading 59.02 and not under Chapter Heading 59.05 particularly in view of the fact that the item in question was tyre cord fabric of high tenacity yarn. According to the assessee, the product in question was dipped rubberised textile fabric which came under Chapter Heading 59.06. According to the assessee dipping was the process earlier in point of time to rubberisation of the product and therefore in the present case the item in question was "dipped rubberised tyre cord fabric" and not merely "dipped tyre cord fabric" so as to fall under

Chapter Heading 59.06 and not under 59.02.

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We quote herein below Chapter Heading 59.02 and Chapter Heading 59.06 of the 1985 tariff which reads as under:

"I. Headings 59.02 and 59.06 of 1985 Act:

Heading No.	Description of Goods	He
59.02	Tyre cord fabric of high tenacity yarn of nylon of other polyamides polyesters or viscose rayon.	___-
59.06	Rubberised textile fabrics, other than those of Heading No.59.02	

II. Heading 59.02 of HSN:

Heading No.	Description of Goods
59.02	Tyre Cord Fabric of High Tenacity Yarn of Nylon or other Polyamides Polyesters or Viscose Rayon.

It is not necessary to go into further facts of the present case, since we are of the view that in the present matter the adjudication took place at the time when there were two judgments of the Tribunal in Falcon Tyres Ltd. vs.

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Collector of Central Excise, Bangalore, 1996 (88) ELT 450 and Vikrant Tyres Ltd. Vs. Collector of Central Excise, Bangalore 1997 90 (ELT) 178. The aforesaid two judgments of the Tribunal

have been discussed in the judgment of this Court in the case of Commissioner of Central Excise, Goa and Chennai vs. MRF Ltd. reported in 2005 (180) ELT 145 (S.C.) in which this Court has drawn a distinction between rubberised tyre cord fabric classifiably under Chapter Heading 59.05 and dipped tyre cord fabric classifiable under Heading 59.02 or 59.05, depending on the rubber content, vis a vis, the fabric content of the product. In our view since the entire earlier round of litigation has proceeded on the basis of the applicability of the above two judgments in the case of Falcon Tyre Ltd. and Vikrant Tyres Ltd. and since we have drawn a distinction between dipped tyre cord fabric and rubberised tyre cord fabric in the case of MRF Ltd. which judgment came subsequent to the judgment impugned herein (in fact it has been given on the same date i.e. 25.1.2005) the matter needs to be reconsidered by the adjudication Commissioner after examining the process and the procedure followed by the assessee in the manufacture of the product which the assessee calls as Dipped rubberised

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tyre cord fabric. We make it clear that if the Department comes to the conclusion after examining the process that the product is a rubberised tyre cord fabric then the same shall be classifiable under Chapter Heading 59.05 as held by this Court in the case of MRF Ltd. However, if the product remains dipped tyre cord fabric then the Department has to give a finding both on marketability as well as on the manufacture of the product and decide the matter accordingly in the light of the judgment of this Court in MRF Ltd. Lastly the Department will consider also as to whether in the present case the assessee has made use of the fabric of high tenacity yarn and also proceed to decide the points raised expressly in the show cause notice. In this connection the Department will

keep in mind the contention of the assessee that even after rubberisation, the fabric remains of high tenacity yarn of nylon and according to the assessee the effect of rubberisation has nothing to do with the high tenacity yarn and that once the product becomes a rubberised tyre cord fabric then it will fall under Heading 59.05 and not in 59.02. We have reproduced some of the arguments advanced before us in the matter of

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classification. However, we make it clear that it would be open to the assessee as well as the Department to examine every aspect of the matter and all arguments on merits on both sides are accordingly kept open.

We also make it clear that we do not wish to express any opinion on the merits of the case.

Accordingly the appeals are allowed with no order as to costs.

.....J.

(S.H. KAPADIA)

.....J.

(B.SUDERSHAN REDDY)

NEW DELHI;

MAY 8, 2007.