

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1884-1885 OF 2002

COMMNR. OF CENTRAL EXCISE, CALCUTTA

Appellant (s)

VERSUS

M/S. CALCUTTA SPRINGS LTD. & ANR.

Respondent(s)

(With office report)

WITH Civil Appeal Nos. 5743-5744 of 2002
(With appln. for stay and with office report)

Date: 14/11/2007 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) Dr. R.G. Padia, Sr.Adv.

Mr. P. Narasimha, Adv.

Mr. Lalit Srivastava, Adv.

Mr. B. Krishna Prasad, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. S.K. Bagaria, Sr.Adv.

Mr. Kumar Rajesh Singh, Adv.

Mr. Praveen Kumar, Adv.

Mr. Rajesh Kumar, Adv.

Mr. Nitin Mehta, Adv.

UPON hearing counsel the Court made the following
ORDER

Appeals are dismissed in terms of the signed order.

No order as to costs.

(N. Annapurna)
Court Master

(Madhu Saxena)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.1884-1885 OF 2002

Commnr. of Central Excise, Calcutta

...Appellant

Versus

M/s. Calcutta Springs Ltd. & Anr.

...Respondent

WITH
CIVIL APPEAL NOS.5743-5744 OF 2002

ORDER

The short question which arises for determination in this batch of civil appeals is: Whether Glass Filled Nylon Insulating Liners (GFNIL) are classifiable under Tariff Heading 85.46 as 'Electrical Insulators of any material' as contended by the Department or whether such Liners are covered by Entry 39.26 which refers to 'Other Articles of Plastics' as contended by the assessee.

In order to answer the above question, we quote hereinbelow the two

Entries:

"85.46	8546.00 Electrical Insulators of any material	16%"
"39.26	Other Articles of Plastics and articles of other materials of Heading Nos. 39.01 to 39.14	
	3926.10 -Of polyurethane foam	16%
	3926.90 -Other	16%"

Having heard learned counsel for the parties and

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...2/-

having gone through the Circulars issued by the Railways, which is the sole buyer of these liners, we are satisfied that there is a difference between Insulating Liners and GFNIL. Basically, the record indicates that the liners in question are used in the railway tracks so as to prevent the rails from getting displaced on account of weight of such rails. Primarily, such liners are used to prevent such displacement. Incidentally, the said liners do possess some properties of insulation. However, the circulars themselves indicate the difference between the Insulating Liners and the liners in question. We are also satisfied that a minimum voltage passes through these tracks for signaling purposes so that earthing does not take place if human body comes in contact with the railway tracks. However, such minimal voltage will not convert the liners in question into Electrical Insulators.

Lastly, in the present case, the Commissioner has himself stated that on interpretation of the above two Entries, that it is quite possible that the liner in question is capable of falling simultaneously under both the Entries quoted above. If that be the case, then, in a classification dispute, the benefit should go to the

assessee. Further, in his order, the Commissioner has this to say:

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"From the evidence before me, I am inclined to hold that the liner function is as important a function, if not the primary function, of the goods; the insulation function is not only a later improvement, but is also not universal. The liner is used in fastening the railway line with the railway sleepers; this is an absolutely essential function and that was being done by steel liners earlier and now by nylon liners, but nylon liners are more lasting and they have a better grip."

For the afore-stated reasons, we see no reason to interfere with the impugned judgment of the Tribunal. Hence, Civil Appeals filed by the Department stand dismissed with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
November 14, 2007.