

PETITIONER:
COLLECTOR OF CUSTOMS

Vs.

RESPONDENT:
M/S. MODI RUBBER LTD.

DATE OF JUDGMENT: 01/12/1999

BENCH:
S.P.Bharucha, R.C.Lahoti, N.Santosh Hegde,

JUDGMENT:

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 40% ad valorem.

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

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 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 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. 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 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 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.