Commissioner of Central Excise Vs. Arcee Nettings

Commissioner of Central Excise Vs. Arcee Nettings

SooperKanoon Citation : sooperkanoon.com/11011

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-03-1997

Reported in : (1999)(110)ELT680Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Arcee Nettings

Judgement :
1. The respondents herein manufacture Round Mesh Mosquito Nettings which were being classified under sub-heading 5804.90 of the Central Excise Tariff Act, 1985. In the budget 1995, the sub-headings under Heading 58.04 CETA were amended, and when the respondents filed classification list on 22-3-1995 following the budget, continuing the classification of the goods under sub-heading 5804.90, the Asstt.

Commissioner Central Excise, Division III, Ahmedabad did not approve it as claimed. The Asstt. Commissioner took the view that with the amendment of the Heading 58.04 the round mesh mosquito nettings of cotton would be classifiable under sub-heading 5804.11 of CETA and issued show cause notices for changing the classification on 4-7-1995 and also issued four other show cause notices for demanding duty totalling Rs. 14,65,999.71. On considering the reply thereto the Asstt.

Commissioner changed the classification as proposed and confirmed the demand by an order dated 23-4-1996. The appeal against the Asstt.

Commissioner's order was allowed by the Commissioner of Central Excise (Appeals), Ahmedabad by the impugned order, against which the Commissioner of Central Excise, Ahmedabad has filed the present appeal.

The Commissioner (Appeals) held that the amendment to the Heading 58.04 of CETA in the 1995 budget did not warrant a change in the classification of the goods.

2. Ld. SDR, Shri V.K. Puri contended that the Tribunal has already held that round mesh mosquito netting is classifiable under Heading 58.04 CETA in its decision in the case of Mehta Nettings v. Collector -1990 (50) E.L.T. 316 and the present issue is only to determine the sub-heading appropriate to the goods. In doing so, the ld. SDR urged that the Commissioner (Appeals) has not properly appreciated the amendment to Heading 58.04 in the 1995 budget. The amendment has broadened the scope of the sub-heading to cover not only lace (as earlier) but also other products of Heading 58.04 which are manufactured with the aid of power or steam. Such products prior to the amendment were covered by the residual sub-heading 5804.90. After the amendment, articles of Heading 58.04, other than lace manufactured with the aid of power or steam, which were classified earlier under sub-heading 5804.90, will also get classified under sub-heading 5804.11 or 5804.12 or 5804.19 depending on their material. Round mesh mosquito nettings in the present case, being of cotton and manufactured with the aid of power, the ld. SDR contended, will no longer fall under sub-heading 5804.90, but become classifiable under sub-heading 5804.11 of CETA as correctly held by the Asstt. Commissioner.

3. Shri Uday Joshi, the ld. Counsel appearing for the respondents submitted that the goods in question are admittedly woven fabrics.

Heading 58.04 does not include woven fabrics. The learned Counsel pointed out that in the 1995 Budget there were also amendments to Heading 52.07 which was amended to cover woven fabrics of cotton.

Before amendment, the description under Heading 52.06 was different and it referred to cotton fabrics woven on looms other than handlooms. Thus according to the respondents Heading 52.07 after the amendment would be specific for the products in question and should be preferred. The ld.Counsel also pleaded that in case the classification of the goods is upheld under sub-heading 5804.11 of CETA, the respondents should be extended the benefit of Modvat credit on input for which the ld.Counsel relied upon the Tribunal's decision in the case of Roche Products v. Collector 4. We have carefully considered the submission. The Heading 58.04 as it existed prior to the amendment in 1995 and thereafter is as follows :58.04.

Tulles and other net fabrics, not including woven, knitted or crocheted fabrics; lace in the piece, in strips or in motifs.

- Lace in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or steam.5804.11 - - of cotton 10% 5%5804.12 - - of man-made textile materials.

Nil 10%+Rs. 2.10 per sq58.04 Tulles & other net fabrics, not including woven, knitted or crocheted fabrics; lace in the piece, in strips or in motifs.

any process is ordinarily carried on with the aid of power or steam :5804.11 -- of cotton 20% 20%5804.12 - of man-made fibres 20% 20%5804.19 - of other textile material 15% where in column (3) of the Schedule, the description of an article or group of articles under a heading is preceded by "-" (single dash) the said article of group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading, where, however, the description of an article or group of articles is preceded by " - -" (double dash), the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has"-" (single dash).

5. Reading the Heading 58.04 prior to its amendment accordingly, it then follows that when the description "lace ... power or steam" was preceded by "-" (single dash) and sub-headings 5804.11, 5804.12 and 5804.19 occurring thereafter were preceded by" - -" (double dash) it would mean that these three were sub-classification of immediately preceding description, "lace". In that context, Tulles and net fabrics would only be covered by the residuary subheading 5804.90. But

after the amendment the description "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or steam" is preceded by "-" a single dash, and therefore, when the sub-headings 5804.11, 5804.12 and 5804.19 which follow and which are preceded by double dash " - " have to be read as sub-classification of the description in the main Heading 58.04. Hence, the Asstt.

Commissioner is right when he held that with the amendment in the Heading 58.04, items other than lace manufactured with the aid of power which were earlier classified under sub-heading 5804.90 will also now fall for classification under sub-heading 5804.11 or 5804.12 or 5804.19 depending on the material of which they are made. In the present case, the round mesh mosquito nets being made of cotton have rightly been classified under sub-heading 5804.11 CETA. The conclusion of the Commissioner (Appeals) that they will continue to be classifiable under the residual sub-heading 5804.90 is unsustainable because that sub-heading after the amendment would cover only Tulles, net fabrics and lace other than those in the manufacture of which power or steam is used, and in respect of the goods in question that admittedly is not the case.

6. It has been argued by the respondents that with the simultaneous amendment to Heading 52.07 CETA the round mesh mosquito netting as woven fabrics are specifically covered thereunder. However, this aspect stands settled by the Tribunal decision in the case of Mehta Nettings (supra) wherein the Tribunal repelled the claim for classification of the goods as woven fabrics under Chapter 52 CETA and held that under the textile tariff scheme, special woven fabrics have been specifically mentioned in Chapter 58 CETA, and that net fabric is to be classified under Heading 58.04 irrespective of the machine used for weaving such fabric. Therefore, the fact that the words "woven on looms other than handlooms" is deleted in the Heading 52.07 introduced in 1995 budget to cover woven fabrics of cotton, will not advance the respondents' case.

7. Further, in the same decision the Tribunal has also held that in specific description of net fabrics under Heading 58.04 is to be preferred over the general entries in Chapter 52 which cover all types of woven cotton fabrics. Therefore, the

claim for classification of the goods under Heading 52.07 CETA has to be rejected.

8. The respondents' other plea that in case classification of the product is confirmed under Heading 58.04, they should be extended the benefit of Modvat credit on the inputs under Rule 57A of Central Excise Rules, deserves to be considered in view of the decision of this Bench in the case of Roche Products (supra). There also the product was held dutiable as per the order of the Asstt. Collector. The Tribunal held that Modvat benefit could be extended. Here also since the respondents had all along been contesting the classification and had also succeeded before the Commissioner (Appeals), hence at this stage when the Commissioner (Appeals) order is upset and Asstt. Commissioner's classification is upheld, the peculiar circumstances of the case would warrant acceding to their plea for Modvat credit. It is therefore, directed that the Asstt. Commissioner may consider extending Modvat credit subject to his being satisfied about the use of inputs concerned in the manufacture of the final product and of their duty paid character.

9. The appeal is accordingly disposed of. The impugned order is set aside with the direction to the Asstt. Commissioner to consider whether Modvat credit could be extended to the respondents.