

In Re: Jalan Dyeing and Bleaching

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-11-1998

Reported in : (1999)(80)LC827Tri(Mum.)bai

Appellant : In Re: Jalan Dyeing and Bleaching

Judgement :

1. This is a review appeal filed by the Assistant Commissioner of Central Excise, Division G-I, Mumbai-I, (hereinafter referred to as the appellant) in pursuance of the order passed by the Commissioner-II of Central Excise, Mumbai-I, against the Order-in-Original No. G-I/131/95 dated 20.6.1995 passed by the Assistant Commissioner of Central Excise, Division G-I, in respect of M/s. Jalan Dyeing & Bleaching Mills, Mumbai-400 013 (hereinafter referred to as the respondent).
2. The brief facts of the case is that the respondent had filed a Classification List No. 2/94-95 dated 7.12.1994 classifying their product processed embroidery fabrics under Chapter Sub-heading 5805.13, claiming Nil rate of duty on the basis of Board's Letter No.25/12/69-CX-2 dated 18.1.1974. A show cause notice was issued for denial of exemption claimed and approval of Classification List accordingly, which was adjudicated in Respondent's favour. Hence the department filed the appeal for review.
3. Shri Sujay N. Kantawala, Advocate, appeared before me for personal hearing on 2.12.1998. Learned advocate stated what is mentioned in their appeal petition and submitted additional submissions which was taken on record.

4. This is a departmental appeal against the -decision of the Assistant Commissioner holding that processed embroidery fabrics chargeable to nil rate of duty, as claimed by the assessee. It is seen that the assessee received fabrics already embroidered and duty paid under compounder (sic) levy scheme for further processing at their factory premises. The impugned order also states department's clarification to the effect that embroidery fabrics even subjected to processing will not again fall under the tariff sub-item for base fabrics. It has, therefore, been held that no further processing duty is leviable on base fabrics which has subjected to processing after being embroidered.

The appellant Commissioner has not given any convincing explanation or ground for questioning the correctness of the decision of the lower authority.

5. At the time of personal hearing, the respondent assessee .stated that the matter regarding dutiability of embroidered fabrics has been considered by the Ministry of Finance in the past and following clarifications have been issued vide Circular F. No. 25/12/69-CX.2 dated 18.1.1974, which is reproduced below: The question has been examined in consultation with the Ministry of Law and the Comptroller & Auditor General. The Board has been advised that since the base fabrics and the embroidery fall under two different tariff sub-items, once the base fabric has been converted into embroidery, it goes out of the tariff sub-item for the base fabric and becomes classifiable under the tariff sub-item for the embroidered fabric. Such embroidered fabric, even if subjected to processing, will not again fall under the tariff sub-item for base fabrics. Therefore, no further processing duty is leviable on base fabric which has been subjected again to processing after being embroidered.

6. Moreover, I have also been told that this question has been decided in the past by Commissioner (Appeal) in this Order dated 10.7.1996 in the case of Encee Dyeing and Printing Works, which are excerpted as follows: The question for the consideration is whether the Note 8 to Chapter 58 applies to the embroidery processed by the appellants. It is the contention of the appellants that the embroidery of heading 58.05 are not fabrics but are articles of Textiles. The Assistant Commissioner has held the same to be fabrics on the ground that

nowhere the same is excluded from the category of fabrics and the same is enumerated with the special fabrics. On a careful reading of Chapter 58, it is observed that the Assistant Commissioner's reasons for considering the embroidery as fabrics are not sustainable. The fact that the goods have not been expressly excluded from the category of fabrics is not a valid ground. In order to apply the said note to embroidery it has to be positively establish that the goods under consideration are fabrics. As a matter of fact the expression fabric is not defined under the CET and hence there is no question that the embroidery should be specifically excluded from the category of fabrics. The Assistant Commissioner's observation that HSN explanatory notes has also not viewed the embroidery as non-fabrics is also untenable for the simple reasons that the HSN Explanatory notes has also not viewed the same as fabrics or for that matter HSN explanatory notes are silent on the question whether the embroidery are fabrics or not since the said question is not discussed in these notes.

On the other hand on going through the descriptions of the heading of Chapter 58, it is observed that in case of the fabric the headings clearly describes the same as fabrics. For example in the case of the goods of Heading 58.01 the goods are described 'Woven File fabrics and chenille fabrics', in heading No. 58.02 goods are described as "Terry Towelling and similar woven terry fabrics', in heading no. 58.04 the goods are described as "Tulles and other net fabrics", etc. In contrast to the above, in case of heading no.

58.05, the goods are described as "embroidery in the piece, in strips or in motifs". This clearly indicate the legislative intention that the embroidery is not treated as fabrics or else in case of heading no. 58.05 also the heading description would have used the works as "embroidered fabrics" rather than the word 'embroidery' alone. Thus in my opinion the Note 8 is to be applied only in those cases where the goods are described in the heading description of the Chapter 58 as fabrics and accordingly the same would not apply to the embroidery of heading 58.05.

7. The instructions of the Ministry relied upon by the respondent assessee and the detailed reasoning given by the Commissioner (Appeals) in his order reproduced above has sufficient force to rebut the appeal filed by the Department. In fact the

department has not produced any evidence or indicated any ground for holding that the impugned order is bad in law. The impugned order is consistent with the decision of the Government and also the decision given by the Commissioner (Appeals).

8. In view of the above discussion, I do not find any reason to interfere with the impugned order. The appeal is therefore rejected.

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