

Cce Vs. Navrang Dyeing and Rajendra

Cce Vs. Navrang Dyeing and Rajendra

SooperKanoon Citation : sooperkanoon.com/15622

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-13-1999

Reported in : (1999)(84)LC150Tri(Mum.)bai

Judge : P Jain, Vice-, S Kang

Appellant : Cce

Respondent : Navrang Dyeing and Rajendra

Judgement :

1. These appeals are filed against the common order-in-original.

Therefore, these are being taken up together. The Revenue filed these appeals against the order-in-original passed by the Collector of Central Excise, Bombay.

2. Brief facts of the case are that the respondents are processors of cotton fabrics and were engaged in the processes like mercerising, bleaching and stentering without the aid of power. The respondents were availing exemption under notification no. 130/82-CE dated 20.4.1982.

The officers of the Revenue visited the premises of the respondents and found that respondents were using kiers for boiling the chemicals for treating the cotton fabrics. Show cause notices were issued to the respondents stating therein that the bleaching process was carried out in the kiers. Therefore, they are not entitled for the benefit of notification no. 130/82-CE. After adjudication, the impugned order was passed and in the impugned order, the Id. Collector held that the respondents

merely used the large vessels of kier for boiling of water and adding soap or other organic surface active agents and no fabric was either dipped in the kier nor treated with bleaching chemicals in the kier. In these circumstances, Id. Collector dropped the proceedings.

3. Ld. J.D.R. appearing on behalf of the Revenue submits that the notification no. 130/82-CE dated 20.4.1982 provides exemption to various textile fabrics, which are processed without the aid of power or steam provided that process of bleaching shall be without the aid of machine. He, further, submits that the notification provides that bleaching with the aid of machine includes kieriing operation. In the present case, the process of cotton fabric in the kier is deemed to be a process of bleaching with the aid of machine. He, further, submits that the notification provides that the bleaching with the aid of machine shall include kieriing operation. Therefore, any operation undertaken in kier incidentally to bleaching of the fabric will constitute kieriing operation. He, further, submits that kiers were installed in the respondents' premises and the solution is found to be boiled in these kiers. He, therefore, submits that this would amount to process incidental or ancillary of bleaching with the aid of machine which include kieriing operation. He, therefore, prays that the appeals be allowed.

4. Ld. Counsel appearing on behalf of the respondents submits that the respondents are using the vessels of kiers for boiling of chemicals and the boiled chemicals were, thereafter, transferred to open cement tanks where the cotton fabrics were treated with bleaching chemicals. He submits that the Id. Collector in the impugned order explained the kieriing process and gave a specific finding that the respondents did not carry out any bleaching of fabric with the aid of kieriing operation. Ld. Counsel, further, submits that at the time of visit of the Revenue officers on different dates, they did not find any fabric in the kier. The Id. Counsel, therefore, submits that the appeals be dismissed.

6. In these appeals the contention of the Revenue is that the respondents are not entitled for the benefit of notification 130/82-CE dated 20.4.1982 as amended, as the respondents are carrying out the process of bleaching with the kieriing operation. For ready reference, Notification 132/82-CE (sic), as amended, is

reproduced below: Exemption to Cotton fabrics processed without power or steam. In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), and in supersession of the notification of the Government of India in the Department of Revenue and Banking No. 137/77-Central Excises, dated the 18th June, 1977, the Central Government hereby exempts cotton fabrics, falling under sub-item I of Item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), processed without the aid of power or steam, from the whole of the duty of excise leviable thereon both under the Central Excises and Salt Act, 1944 (1 of 1944) and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

Provided that nothing contained in this notification shall apply in respect of clearances of cotton fabrics, (a) which are subjected to the process of bleaching with the aid of machines, effected during a financial year (i) if the quantity of such bleached cotton fabrics cleared, if any, for home consumption during the preceding financial year by or on behalf of a manufacturer from one or more factories, or from any factory by or on behalf of one or more manufacturers, had exceeded thirty-six lakh square metres, or (ii) if the quantity of such bleached cotton fabrics cleared for home consumption on any day in the financial year by or on behalf of a manufacturer from one or more factories, or from any factory by or on behalf of one or more manufacturers, exceeds fifteen thousand square metres; (b) which are subjected to the process of printing with the aid of machines (a) bleaching with the aid of machines shall include kiering operation; (b) printing shall not include the process of colour fixation on fabrics; (c) cotton fabrics subjected to the process of colour fixation by passing steam over such fabrics, shall be deemed to have been processed without the aid of steam; (d) printing with the aid of machines shall not include screen printing on fixed tables with the aid of heated oil circulated by pump operated by manual or animal labour.

Explanation II: In this notification, the quantity of cotton fabrics subjected to the process of bleaching and used within the factory in which such fabrics are so bleached, for the process of printing (either after such bleaching or after subjecting

them to any further process) shall not be taken into account for determining the limits on thirty-six lakh square metres or, as the case may be, fifteen thousand square metres of such fabrics.

Notification No. HO/82-C.E., dated 20.4.1982 as amended by Notification No. 194/82-C.E., dated 18.6.1982 and No. 218/82-C.E., dated 5.10.1982.

7. Ld. Collector, in the impugned order, held that kiering operation means as under: that the kiers are large vessels having a circular cross section and in which the fabrics can be boiled. For the purpose of achieving proper circulation a pump is used which is connected to the top and bottom by means of tubes so that the contents of the kier can be transferred from bottom to the top to ensure regular circulation.

The kier has an inlet for receiving steam from the boiler. The process of bleaching can be carried out in a kier by filling it up with fabrics and a solution containing the required chemicals. The chemicals required for bleaching are different from those required for scouring. When steam is passed, pressure is developed and which activates the solution, and proper circulation is ensured with the help of the pump. In this process the fabric in kier are then uniformly processed. 8. For this finding, the Ld. Collector relied upon the definition of kiering operation as given in the Fairchild's Dictionary of Textiles, Comprehensive Dictionary of Textile Terms Englewood Cliff N.D. Third Edition and some other dictionaries.

9. The contention of the respondents is that they were simply boiling the chemicals in the vessels of the kiers and neither fabric was dipped in the kier nor treated with the bleaching chemicals in the kiers. This contention of the respondent was accepted by the adjudicating authority in the impugned order. The Revenue had not produced any evidence to contradict these findings. Even in the appeal memo., the Revenue admitted this fact that the respondents are using the kiers for boiling the chemicals. Thereafter, the boiled chemical was transferred to open cement tank where cotton fabrics were treated with bleaching chemical.

The Revenue had not produced any evidence to prove that the process of bleaching was carried out by the respondents in the kier.

10. In view of the above discussion, we do not find any infirmity in the impugned order. The appeals filed by the Revenue are rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com