Natson Laminates Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-13-1999

Reported in : (2000)LC116Tri(Delhi)

Appellant : Natson Laminates

Respondent : Collector of Central Excise

Judgement :

1. The issue involved in this appeal filed by M/s. Natson Laminates is whether the benefit of Notification No. 82/88-C.E., dated 1-3-1988 is available to laminated fabrics manufactured by them.

2. Briefly stated the facts are that the appellants manufacture laminated fabrics falling under sub-heading 5903.19 and 5903.29 of the Schedule to the Central Excise Tariff Act and claimed exemption under Notification No. 82/88. Sl x show cause notices were issued to them for denying the benefit of the notification on the ground that they were using base fabrics other than the fabrics falling under Chapter 52, 54 or 55 of C.E.T.A. The Assistant Collector, under order dated 17-5-1991, approved the classification lists allowing the benefit of notification, holding that the intention of the Government was to recover duty if not already paid on base fabrics used for lamination purposes and not that the base fabrics should be of specific Chapter; that the Notification did not carry any condition that the base fabrics should be of Chapter 52.54 or 55.

3. On appeal, the Collector (Appeals) held that it appears from the Notification that the base fabrics would be classifiable under Chapter 52,54 or 55 of C.E.T.A.; that the fact that notification was amended subsequently by Notification No. 150/89, dated 12-6-1989 and 57/90 deleting the reference to Chapter 52,54 or 55, did not lead to conclusion that the intention of the Government was only to recover duty on the base fabrics if not already paid irrespective of the Chapter in which it falls; that if that was the case, the amending notifications would have been given retrospective effect.

4. Appearing on behalf of the appellants, Shri R. Swaminathan, learned Advocate, submitted that the appellant is engaged in the manufacture of cotton fabrics laminated with P.U. Foam; that the base fabric used by them is a knitted cotton fabric falling under Heading 60.01 of C.E.T.A.; that under Notification No. 82/88, the effective rate of duty for sub-heading 5903.19 "textile fabrics, impregnated, coated, covered or laminated with plastics, of base fabrics of cotton" was Rs. 4.50 per square metre plus the duty for the time being leviable on the base fabrics under Chapter 52, if not already paid. He, further, submitted that if Revenue's interpretation is correct, it is evidently a case of accidental slip or omission in the Notification; that in the old Tariff, woven fabrics as well as knitted fabrics fell under Item 19(1); the laminated and coated fabrics fell under Item 19(III); that the purpose of new Tariff was to maintain the same rate of duty and not to bring any change in the rate of duty; that, therefore, Notification No.141/86, dated 1-3-1986 was issued; that reference should have been made to base fabric of Chapter 52 or 60; that, however, reference was made only to base fabric of Chapter 52. He also mentioned that effective rate of basic excise duty on fabrics falling under sub-heading 5903.19, 5903.29 and 5903.99 were kept at Rs. 6/-, Rs. 8.50 and Rs. 9 per sq.

meter respectively under Notification No. 63/87; In the Budget 88, these rates were reduced by 0.50 p. each; that it is thus clear that Notification No. 63/87 was intended to have effective rate of duty for Headings 5903.19, 5903.29 and 5903.99. The Collector himself had written a letter dated 15-2-1989 to Board to delete references to Chapter 52 and the Govt. had done that in Notification No. 150/89, dated 12-6-1989 and 57/90 dated 20-3-1990. He further submitted that it

is not open to the Revenue to infer from the column relating to the rate of duty in Notification to change the description of the product in the description column of the Notification; that the Revenue is virtually saying that the description of the goods should be "fabrics laminated with plastics when the base fabric is of Chapter 52". He contended that old Tariff Item 19(1) was not confined to only woven fabrics which now fall under Chapter 52 but covered knitted or croacheted fabrics falling under Heading 60.01; that consequently Notification No. 109/86, dated 27-2-1986 was issued effective from 28-2-1986; that in view of this Notification, it is not open to Revenue to infer that because the reference in last column of the Notification, is to base fabric falling under Chapter 52, description would also cover laminated fabric made of such base fabric falling under Chapter 52. The formula mentioned in column 4 (Rate of duty) is only a measure for computing the rate of duty and the formula does not require one to look at the duty actually payable on the fabric actually used; that in any case, the measure for computing the rate of duty would not change the description of the product. He referred to the judgment in J.K.Steel Ltd. v. U.O.I. -1978 (2) E.L.T. (J 355) (S.C.) - 1969 (2) SCR 481. He also pleaded that as they are not manufacturer of any base fabric, the second part of the formula relating to rate of duty is inapplicable and reliance was placed on the decision in Decent Dyeing Co. v. C.C.E.5. Regarding duty paid nature of base fabric, the learned Advocate contended that this was not mentioned in any of the show cause notices issued to them; they had furnished the required details including invoice No. and GP-1 in the classification list itself; that it is for the revenue to prove that base fabric is not duty paid. He relied upon the decision in Decent Dyeing Co., supra, and decision in the case of Capital Dyeing Co. v. C.C.E., Chandigarh -1984 (17) E.L.T. 544 (T) wherein it was held that plain yarn available in the market had to be regarded as having paid the base duty on its removal from the spinning mill. In the alternative, he submitted that duty can be levied only under serial No. 3 of Notification No. 82/88 and not at the Tariff rate. Reliance was placed on the decision in Bhor Industries Ltd. v.C.C.E., Pune 6. Countering the arguments, Shri R.S. Sangia, learned D.R., submitted that an exemption notification will not be applicable if the product concerned is not mentioned therein; that the exemption notification has to be construed strictly. He drew our attention to the findings contained in para 4 of the impugned order

wherein the Collector (Appeals) had mentioned that "In view of the plain language of the notification and the reference to Chapter 52, 54 or 55 as those in which the base fabric would fall, the effect of the notification, in my view, is, therefore, only to cover those fabric specified in column 2 of the notification which are manufactured from the base fabrics falling under Chapter 52, 54 or 55." He relied upon the judgment of the Apex Court in the case of Liberty Oil Mills P. Ltd. v. C.C.E., Bombay -1995 (75) E.L.T. 13 (S.C.) wherein it has been held that "in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee." He, further, submitted that the Government, by issuing amending Notification No. 150/89, dated 12-6-1989, deleted reference to Chapter 52 occurring in column No. 4 against Sl . No. 1 of Notification No. 82/88; that this clearly meant that an ambiguity existed in the said notification whether the serial No. 1 would cover textiles fabrics the impregnated, coated, covered or laminated with plastic of base fabric of cotton of Chapter 60 or not.

He also referred to the decision in Novopan India Ltd. v. C.C.E., Hyderabad -1994 (73) E.L.T. 769 (S.C.) in which the Apex Court held that Exemption being in the nature of exception is to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State. The learned DR also relied upon the decision in the case of U.O.I, v. Wood Papers Ltd. -1990 (47) E.L.T. 500 (S.C.) in which it was held that an exemption provision is like an exception and on normal principle of interpretation of statute it is construed stricly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. He also referred to the decision in Kirloskar Cummins Ltd. v. U.O.I. - 1982 (10) E.L.T. 29 (Bom.).

7. In reply, the learned Advocate, appearing for the appellants, submitted that the department is extending the rate of duty mentioned in column 4 of the table appended to the notification to the description on the goods which cannot be done; that if something is to be extended in the notification, it can be done only by legislature; that Chapter 52 cannot be read to column 2 of the Notification as it is not mentioned therein. Finally he mentioned that rules governing the classification

of goods under Tariff entry would also apply for working out the exemption under Notification as held in Western Refrigeration Pvt. Ltd. v. Collector of Customs, 1995 (77) E.L.T. 673 (T), the appeal against which has been dismissed by the Supreme Court as reported in 1996 (83) E.L.T. (Page A175).

8.1 We have considered the submissions of both the Sl des. The Notification No. 82/88-C.E., dated 1-3-1988 is reproduced below :- "Plastic coated/laminated fabrics - Exemption of Small Scale. - In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 273/86-Central Excise, dated the 24th April, 1986, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed and falling under the sub-heading Nos. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table (hereinafter referred to as the "said fabrics"), from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table : Provided that the aggregate quantity of first clearances of the said fabrics for home consumption at the effective rate of duty leviable under this notification or the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 273/86-Central Excise, dated 24th April, 1986, by a manufacturers, shall not exceed, in either case, 3 lakhs square metres in any financial year.

Provided further that the exemption contained in this notification shall not apply, if the aggregate value of clearances of the said fabrics for home consumption, by a manufacturer from one or more factories, or from any factory by one or more manufacturers, had exceeded rupees one hundred and fifty lakhs in the preceding financial year.----------Sl.

Sub-heading Description of goods RateNo.----------1 2 3 4----------01. 5903.19 Textile fabrics,impregnated, Rs.4.50 per square metre plus coated, covered or laminated

the duty for the time being with plastics,of base fabrics of leviable on the base cotton.

fabrics under Chapter 52, if not already paid.02. 5903.29 Textile fabrics,impregnated, Rs. 5.25 per square metre coated, covered or laminated plus the duty for the time with plastics, of base fabrics being leviable on base of man-made textile materials.

fabrics under03. 5903.99 Other textile fabrics impreg- Rs. 5.50 per square metre.

nated, coated, covered or 8.2 The following amendment was made in Notification No. 82/88 by Notification No. 150/89-CE., dated 12-6-1989 :- "In the Table annexed to the said notification, against Sl . No. 01, in column (4), the words "under Chapter 52" shall be omitted." 8.3 The Notification No. 82/88 was further amended by Notification No. 57/90-C.E., dated 20-3-1990 as under :- "For the entry against S. No. 02, the entry "Rs. 8.84 per square metre plus the duty for the time being leviable on the base fabrics if not already paid" shall be substituted." 9. The issue involved in the present matter is whether the words 'of base fabrics of cotton' mentioned in column 3 against Serial No. 1 of the Table annexed to Notification No. 82/88 refers to base fabrics of cotton falling under Chapter 52 alone or will it cover the fabrics falling under Chapter 60 of the Tariff also. The Appellants have referred to the old Central Excise Tariff, scheme of present Tariff and Notifications for contending that the interpretation put forth by Revenue is not correct. They have also contended that words 'Chapter 52' mentioned in column 4 against Sl . No. 1 of the Table cannot qualify the words of base fabrics of cotton mentioned in column (2) relating to 'Description of goods'. We find substantial force in the submissions made by the learned DR that a Notification has to be read in its entirety and construed as a whole for the purpose of extending the benefit of the same to a product. It is seen from the Notification No. 82/88, that under serial No. 1 of Table annexed to Notification textile fabrics impregnated, etc., with plastics, of base fabrics of cotton is chargeable to a concessional rate of duty @ Rs. 4.50 per square metre plus the duty for the time being leviable on the base fabrics under Chapter 52, if not already paid. It is thus clearly evident from the Notification that the base fabrics of cotton should be falling under Chapter 52 of

the Tariff. This was the clear finding of Collector (Appeals) in the impugned order on the basis of the plain language of the notification. Further the Sl milar issue was involved in the case of Bhor Industries Ltd. v. C.C.E., Pune, supra, with reference to Notification No. 141/86 and 63/87. The Appellate Tribunal held as under :- "While deleting the reference to Chapter 52 in the Tariff Heading 59.03 with effect from 13-5-1986, no change was made in the applicable exemption Notification No. 141/86-C.E., which prescribed the concessional effective rates of Central Excise duty. It is further seen that reference to Chapter 52 continued in succeeding exemption Notification No. 63/87-C.E., dated 1-3-1987. As a consequence while coated fabrics with cotton base, irrespective of the fact whether the cotton base did or did not fall under Chapter 52, (was whether woven or knitted), with effect from 13-5-1986 could be classified under sub-heading No. 5903.19, the provisions of Notification No. 141/86-C.E. and -Notification No. 63/87-C.E. did not cover such fabrics (with base of knitted fabric). This position remained so till 12-6-1989, when Notification No. 63/87-C.E. was further amended by Notification No. 150/89-C.E., dated 12-6-1989." The Notification No. 82/88-C.E., dated 1-3-1988 was issued to provide concessional rate of duty to the small scale manufacturer. Thus following the ratio of the Tribunal's decision in Bhor Industries case, we hold that there was no infirmity in the impugned order passed by the Collector (Appeals) to the effect that Sl . No. 1 and 2 of the Table annexed to Notification No. 82/88 covers those fabrics which are manufactured from the base fabrics falling under Chapters 52, 54 or 55.

However, we agree with the learned Advocate for the appellants that Collector (Appeals) cannot go into the question of duty paying nature of the base fabric as the same was not raised in any of the Sl x show cause notices. Further, it has been a settled law that the burden is on the department to prove the non-duty paid character of the base fabric.

Moreover, the goods purchased from the market are presumed to be duty paid unless otherwise proved. The appellants have also mentioned, as an alternative plea, that the duty can be levied only under serial No. 3 of Notification No. 82/88 and not at the Tariff rate relying upon the decision in Bhor Industries, supra. In Bhor Industries case the Tribunal observed that alternative classification at the

Tribunal's stage is claimable as in that case at no stage the applicability of exemption with regard to residuary sub-heading, which is Sl milar to serial No. 3 in Notification No. 82/88 was canvassed in the earlier proceedings, the Tribunal remanded the matter to the original authority for de novo decision. In the present matter, we observe the appellants had sought classification under sub-heading 5903.99 before the Collector (Appeals) who considered the matter outside the scope of the proceedings before him as the same was not an issue before the Assistant Collector. We also, therefore, following the decision in Bhor Industries case, remand the matter to jurisdictional Assistant Commissioner for de novo decision regarding classification of the products under sub-heading 5903.99.