Collector of C. Ex. Vs. Kohinoor Proofing Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1999

Reported in : (2000)LC562Tri(Delhi)

Appellant : Collector of C. Ex.

Respondent : Kohinoor Proofing Industries

Judgement :
1. In this appeal filed by the Revenue, the matter relates to the classification of fabrics described as Tarpaulin (Gold Colour), which the respondents, M/s. Kohinoor Proofing Industries had claimed that they were classifiable under Heading No. 52.07 of the Central Excise Tariff, which covered woven fabrics of cotton containing 80% or more by weight of cotton. Investigations were conducted by the Revenue and the samples were drawn of the fabric in dispute. It was proposed that the said fabrics were classifiable under Heading No. 59.06 of the Tariff, which covered textile fabrics other than tyre cord fabric classifiable under Heading No. 59.02. On appeal, the Collector of Central Excise (Appeals) had held that the fabric in question was classifiable under Heading No. 52.07 of the Central Excise Tariff.

3. We have heard Shri A.K. Prasad, SDR, who submitted that the report of the Chemical Examiner was categorical that the fabric in question was impregnated for the purposes of Central Excise Tariff and a copy of the Chemical Examiner's Report was sent to the assessee along with the show cause notice. The show cause notice was issued in September, 1991 and the Chemical Examiner's Report

is of August, 1991. The matter was adjudicated by the Dy. Collector of Central Excise in April, 1992 and after taking note of the submissions made by the assessee, he classified the same under sub-heading No. 5906.90 of the Tariff. It was his submission that the Collector of Central Excise (Appeals) while disposing of the matter in the year 1993 had based his conclusion, on the basis of his own opinion after seeing the samples produced by the appellants before him. He submitted that on the basis of the categorical opinion of the Dy. Chief Chemist, it was not justified on the part of the appellate authority to substitute his own opinion to set aside the Order-in-Original.

4. We have carefully considered the matter. We find that the respondents had not obtained excise licence and a visit was paid by Central Excise officers in February, 1991 and samples were drawn of the product in dispute and were sent to the Dy. Chief Chemist, Bombay. In his report, the Dy. Chief Chemist recorded as under :- "The sample is in the form of pale yellow thick sheet. It is composed of base cotton fabric henvily impregnated with paraffin wax, earthy matter and inorganic compounds. It may be considered as textile fabric otherwise impregnated percentage of impregnating material is 37.4% by weight. Impregnation can be seen with naked eye." 5. The show cause notice was issued on 12-1-1991 and copies of the reports were enclosed as relied upon documents. In reply, the assessee submitted that the waterproofing of the cotton Canvas cloth was done by treatment with wax. They also argued that for the goods being classifiable under Heading No. 59.06, they should be only for technical use. They have also referred to the Chapter Note 5 (A) under Chapter 59 and had argued that as the necessary conditions for classification under Heading No. 59.06 was that the coating impregnation or covering could be seen with naked eye. Their goods did not satisfy these criteria. The matter was adjudicated by Dy. Collector of Central Excise after taking into account the reply of the assessee and after discussing the report of the Dy. Chief Chemist and also perusing the Ministry letter dated 11-4-1991. There was heavy use of wax and the goods had gone beyond the scopes of the goods, which was classifiable under Chapter 52 of the Tariff. He confirmed the classification under sub-heading No. 5906.90 of the Tariff. We find that the ld. Collector of Central Excise (Appeals) had disposed of the Dy. Chief Chemist opinion in the following manner :- "As regards the Dy. Chief Chemist's opinion, it

has merely stated that impregnation is visible with the naked eye. It has not stated that there is a visible layer formation. From a look at the sample, I find that there is no visible layer formation as the base fabric is clearly visible with the naked eye." We find that this argument that while the impregnation was visible with the naked eye but there is no visible formation is far from clear.

There is a clear opinion by the Dy. Chief Chemist that there was a heavy wax coating on the base cotton fabric as classifiable under Chapter 52 of the Central Excise Tariff. The respondents as per record were not the manufacturers of base cotton fabric and they were purchasing the fabric from outside. As we consider that the order recorded by the ld. Collector of Central Excise (Appeals) is not clear when he refers that while the impregnation can be seen with the naked eye there was no visible layer formation, this matter has to go back for re-examination.

6. Reference has been made to the Board's Circular No. 59/4/90, dated 11-4-1991 wherein the Board has clarified that for classification under Heading No. 59.06, there should be a visible formation of layer on the surface of the fabrics if the manufacturing process of water proofing was such that there was formation of visible layer on the surface of the fabric then the classification would be in sub-heading No. 59.06 despite the mention of water proofing as one of the processes in Chapter 52. It is, thus clear that the expression used in Chapter Note 5 (a) with regard to seeing of the impregnation by the naked eye was the same as the expression used in the Board's Circular i.e. visible layer formation and there does not appear to be any further addition in the Board's Circular.

7. In the light of our above discussion and after taking note of the submissions made by the respondents/ we consider that this matter needs re-examination and we set aside the impugned Order-in-Appeal and remand the matter to the jurisdictional Commissioner of Central Excise (Appeals) for de novo consideration, who after providing an opportunity to both the sides should pass a speaking appealable order as per law.

The appeal is thus allowed by way of remand. Ordered accordingly.