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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2000

Reported in : (2000)(68)ECC330

Judge : R T Lajja, P Bajaj

Appellant : Ducksole (i) Ltd. and anr.

Respondent : Commissioner of Central Excise

Judgement :

1. In these appeals the issue relates to the classification of Tarpaulin cloth/water proof canvass cloth.

2. The appellants are engaged in the manufacture of Tarpaulin cloth/wax coated water-proofed canvass. They procure grey cloth of required quality from various mills and powerloom units. That cloth is dipped by them in the tanks in which the mixture of wax, china clay, yellow chlorine etc. is transferred after heating the same in the hearing pans. Thereafter, the cloth is passed through rollers, which are operated manually and sequeezed to required thickness. After drying the cloth, it is cut and stitched also by them according to the required size with the help of manually operated stitching machines.

3. According to the appellants, their product falls under Chapter 52 (Heading 52.06) whereas the stand taken up by the Revenue is that the product of the appellants is not covered by that chapter but by Chapter 59 (Heading 59.06) as

held by the Collector in the impugned order.

5. The learned Counsel for the appellants has contended that the Tarpaulin cloth manufactured by the appellants squarely falls under Chapter 52 (Heading 52.06) having been prepared from the cotton fabric subjected to water-proofing." On the other hand, the learned JDR while refuting this contention of the counsel, has argued that the product of the appellants falls under Chapter 59 (Heading 59.06) being impregnated, coated/laminated textile fabric and that Collector has rightly so classified.

6. In order to ascertain the proper classification of the product in question, it would be beneficial to refer to Chapter 52 (Heading 52.06) and Chapter 59 (Heading 59.06) of the CETA, 1985. Chapter 52 relates to the cotton fabrics classification and its Heading 52.06.00 reads as under: 52.06 Cotton fabrics (excluding fabrics covered under Heading Nos.

52.09, 52.10 and 52.11, (b) subjected to the process of bleaching, mercerising, dyeing, printing, water proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes with the aid of power or steam.

7. The Chapter 59 deals with the classification of impregnated, coated, covered or laminated textile fabrics and textile articles of a kind suitable for industrial use. Its Heading 59.06 reads as under: 59.06-Textile fabrics, otherwise impregnated coated or covered (including fabrics covered partially or fully with textile flocks or with preparations containing textile flocks). Fabrics covered partially or fully with textile flocks or with preparation containing textile flocks; However, Section Note 5 (earlier it was Section Note 4 till 1989-90) excludes the applicability of Heading 59.06 to certain fabrics as detailed therein. Its para (a) with which we are concerned, reads as under: (a) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55,58 or 60); for the purpose of this provision, no account should be taken of by resulting change of colour; Therefore, it is quite evident that the fabric in which the impregnation, coating or covering cannot be seen with the naked eyes would not stand covered by Heading 59.06 for the purpose of classification. It is only when the impregnation, coating or covering can be seen with the naked eyes on the

fabric, the product would be classifiable under this Heading.

8. In the Hand Book on Glossary of Textile Terms the expression "Impregnated" and "Coated Fabric" have been defined. The "impregnated fabric" is a fabric in which interstiches between the yarn are completely filled with the impregnating compound throughout the thickness of the material, as distinguished from sized or coated materials, where these interstiches are not completely filled.

Similarly, "coated fabric" is a textile fabric on which there had been formed in situ on one or both surfaces, a layer, or layers, of firmly adherent coating material.

9. The Central Board of Excise & Customs (CBEC) had also issued instructions regarding the applicability of Chapter 59 to the impregnated or coated fabric vide Circular No. 6/91 dated 11.4.91 to the effect that if the manufacturing process of water-proofing is such that there is a formation of a visible layer on the surface of the fabric only then the wax-proofed/Tarpaulin cloth would be classifiable under Heading 59.06 and otherwise it would be classifiable under Heading 52.06 as water proofed cloth, provided the base fabrics are cotton fabrics.

10. Therefore, the classification of the product in question (Tarpaulin cloth/wax proofed has to be examined in the light of what has been referred to above. The process of manufacture of this product by the appellants is not in dispute. The bare perusal of the order in original of the Collector shows that the appellants purchase the grey cloth from the various mills and powerloom units. They dip that cloth in the mixture of wax, china clay, yellow chlorine etc. which they prepare in the heating pan. Thereafter the cloth is passed through the manually operated rollers for obtaining the required thickness. That is how the coated fabric is prepared by them. After drawing the fabric they also cut and stitch the same according to the requisite size with the help of manually operated stitched (six) machines. No doubt the sample was drawn of the fabric and got tested from the Chemical Examiner who opined that it was yellow colour woven fabric composed of cotton base fabrics coated/impregnated with the preparation of waxy matter and the coating/ impregnation could be seen with the naked eyes. But his report was admittedly not accepted by the appellants and retesting of the samples drawn was got made from the Chief Chemist, Central Revenues, Delhi. He examined three

samples and opined that each of the three samples, was treated by impregnation with the preparation of waxy matter and aluminium stearate but interstitches between the yarn were not completely filled, light could pass through interstitches warp and weft yarns of the fabrics in each of the samples were visible with naked eyes. He did not endorse the opinion of the Chemical Examiner that the coating or impregnation could be seen with naked eyes. His report thus superseded the report of the Chemical Examiner and the Revenue could not doubt its correctness having been given by the Head of the Central Revenue Control Laboratory, Government of India.

Therefore, in view of his report and the process adopted by the appellants referred to above, their product Tarpaulin cloth did not fall within the ambit of Heading 59.06 of the Tariff in view of Section Note 5 appended to this Heading and the Board's circular issued thereunder referred to above. It is covered only by Chapter 52 (Heading 52.06).

11. The classification of this very product (tarpaulin cloth) came up for adjudication before another Bench of the Tribunal in E/3055/93-D [CCE v. Ratan Tarpaulin Water Industries] and that Bench vide Final Order No. 980/99-D dated 10.9.99 had held that tarpaulin cloth is classifiable under Chapter 52 (Heading 52.06) and not under Chapter 59 (Heading 59.06). There exists no cogent and sufficient reason for this Bench to differ with the view taken in that case by that Bench. The present case is fully covered by the ratio of that order of that Bench.

12. The learned JDR has, no doubt, referred to the decision rendered by South Zonal Bench at Madras in Appeal No.E/R/781 to 785/95 (Bharat Textiles & Proofing and Ors. v. CCE, Madras) wherein that Bench had classified the tarpaulin under Chapter 59(Heading 59.06) vide Order No.1402/1996 dated 28.8.96 but that order is still subjudice as the assessees therein had filed appeal before the Supreme Court and that Court had directed the Revenue not to adopt any coercive step in connection with the impugned judgment as is clear from the copy of the Apex Court placed on file by the counsel for the appellants. Moreover, that order of the Tribunal, on facts, is distinguishable. In that case, the Bench applied Heading 59.06 to the product on the ground that the coating and impregnation was visible

to the naked eyes as per the evidence adduced by th'e Revenue as discussed in para 13 on pages 25 & 26 of the order and on that account it was held by the Bench that the product did not fall within the ambit of Para (a) of Section Note 5 appended to Heading 59.06 which excludes the applicability of this Heading in a case where the impregnation/ coating and covering of the fabric could not be seen with naked eyes. But in the case in hand, the impregnation, coating or covering could not be seen with the naked eyes in the cotton fabric, as per report of Chief Chemist, referred to above. Therefore, no assistance can be taken by the Revenue from the order of the South Zonal Bench of the Tribunal referred to above, in the case in hand.

13. Even under the erstwhile Tariff, the product tarpaulin cloth was classifiable under TI19 (b) which corresponds to Chapter Heading 52.06 being a cotton fabric subjected to water-proofing. This view was taken by the Three Member Bench of the Tribunal in Appeal No.E/SB/A/2800/85-D (Binny Ltd. v. CCE Madras). That Bench while arriving at the conclusion that the product was classifiable under TI 19 drew support from the ratio of the law laid down by the Bombay High Court in Satyavijaya Commercial Co. v. Commissioner of Sales Tax, Maharashtra State 55 STC186 and by the Apex Court in Porritts & Spencer (Asia) Ltd. v. State of Haryana 42 STC 433. The classification of product in question (tarpaulin) also came up for consideration before the Karnataka High Court in Writ Petition No. 11213 to 11221 of 1987 filed by the appellants alongwith other Tarpaulin Manufacturing Industries, challenging the imposition of the sales tax, the Honourable High Court of Karnataka equated the wording of erstwhile Tariff Item 19(b) with the provisions of Sales Tax Law of the State and opined that the tarpaulin was covered by Item 19 of the old Tariff and as such was exempt from sales tax. The observations made in that case by the Honourable High Court can certainly be read with advantage in this case.

14. In view of the discussion made above, the product tarpaulin cloth/wax coated fabric is classifiable under Chapter Heading 52.06 and not under Heading 59.06 of CETA, 1985. Consequently the appellants are entitled to the benefit of the exemption Notifications No. 86/87 dated 1.3.87, 177/86 and 217/86 dated 2.4.86. Therefore, impugned order of the Collector deserves to be set aside.

15. Resultantly, all the three appeals of the appellants are accepted and the impugned order of the Collector in all the appeals, is set aside with consequential relief, if any, permissible to the appellants under the law.