

Dossa Harjee and Co. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-16-2000

Reported in : (2000)(92)LC622Tri(Mum.)bai

Judge : R T Lajja, P Chacko

Appellant : Dossa Harjee and Co. and ors.

Respondent : Cce

Judgement :

1. These four appeals are directed against Order-in-Original dated 22.1.1993 of the Collector of Central Excise.

2. The appellants in Appeal No. E/4413/93-D are manufacturers of cotton yarn, man-made yarn and cotton/man-made fabrics falling under Chapters 52, 54 and 55 of the Schedule to the Central Excise Tariff Act, 1985.

The appellant in Appeal No. E/4425/93-D is the Executive Director of the above company. The appellants in Appeal Nos. E/4374 & 4375/93-D are purchasers of the goods in question from the above manufacturing company.

3. The principal issue involved in these appeals is whether the product of M/s. Simplex Mills Company Limited (Appellants in E/4413/93-D), which was described by them as "filter cloth" prior to May, 1989 and as "grey coarse canvas" thereafter, is classifiable under Chapter Heading 59.09 as claimed by the Department or under Chapter Heading 52.05 as claimed by the assesseees.

4. M/s. Simplex Mills cleared certain quantity of the product during the period 1.9.1989 to 30.11.1991 without payment of Central Excise duty, after filing classification list declaring the product as "grey coarse canvas" and classifying the same under Chapter Heading No.52.05. Department, after physical verification of stock of finished product and scrutiny of records in the factory of M/s. Simplex Mills and after enquiries connected therewith, issued show-cause notice to M/s. Simplex Mills classifying the product under Chapter Heading 59.09 and raising demand of duty on the goods cleared during the aforesaid period. They also proposed to impose penalties on M/s. Simplex Mills and their Executive Director. Show-cause notices were also issued to M/s. Dossa Harjee & Company (Appellants in E/4374/93-D) and M/s. Pet Coverings (Appellants in E/4375/93-D), who were the authorised dealers of M/s. Simplex Mills in respect of the product, proposing to confiscate the filter fabrics seized from their premises. The parties, by their respective responses to the show-cause notices contested the proposed action of the Department.

5. In adjudication proceedings, learned Collector of Central Excise framed 3 issues for determination and the main issue was whether filter fabric manufactured by M/s. Simplex Mills was classifiable under Chapter Heading 59.09 and chargeable to duty. The Collector decided this issue in favour of the Revenue and confirmed demand of duty of over Rs. 12 lacs on M/s. Simplex Mills and imposed on them a penalty of Rs. 1 lac. He also imposed a personal penalty of Rs. 50,000/- on the Executive Director of the Company under Rule 209 A of the Central Excise Rules. The adjudicating authority also confiscated the goods seized from M/s. Simplex Mills with option for redemption of the goods on payment of a fine of Rs. 40,000/-. Similarly the goods seized from the premises of M/s. Dossa Harjee & Company and M/s. Pet Coverings were also confiscated with option for redemption on payment of Rs. 4 lacs.

Duty was also charged on all the seized goods. Hence the present appeals by the aggrieved parties.

7. Learned Advocate, Shri M.H. Patil for the appellants relied on the decision rendered by a Two-Member Bench of the Tribunal in a case of one of these

appellants, viz. M/s. Simplex Mills Company Limited. In that case (Simplex Mills Company Limited v. CCE, Bombay) reported in 1998 (103) ELT 568 (Tribunal) : 1998 (78) ECR 729 (T), the dispute was on the classification of cotton fabric grey (filter cloth) and the Bench held the item to be classifiable under Chapter Heading 52.05 of the Central Excise Tariff Act, 1985, by following an earlier decision of the same Bench rendered in Appeal No. E/2621/89-D in the case of Madura Coats Limited v. CCE, Madras. In the said case of Madura Coats Limited since , the classification dispute was in respect of Leno Fabric. The Bench had accepted the item as grey cotton fabric (unprocessed) and held the same to be classifiable under Chapter Heading 52.05 as claimed by the assesseees and not under Chapter Heading 59.09 as claimed by the Department.

8. Learned CDR, Shri M.C. Sharma contested learned Counsel's arguments by relying on an earlier decision of the Tribunal (Two-Member Bench) which was also given in a case of M/s. Simplex Mills. In that case reported in 1993 (49) ECR 147 (Tribunal), the dispute was on the classification of various products of M/s. Simplex Mills, which included grey cotton, belting duck and grey canvas cloth. The Bench held that the said textile fabrics were classifiable as "fabrics for industrial use" under Chapter Heading 59.09 and not under Chapter 52 or Chapter 54. The Tribunal reached such a conclusion after elaborate consideration of the relevant entries of the Central Excise Tariff as well as scientific literature on Textile Industry and also after reference to HSN Explanatory Notes. Further, as rightly pointed out by learned CDR, the party accepted the Tribunal's decision by not pressing the Civil Appeal filed against such decision before the Supreme Court vide which is a report to the effect that Civil Appeal No. 9310 of 1995 filed by Simplex Mills Company Limited against the CEGAT order reported in 1993 (49) ECR 147 (T) was dismissed by the Supreme Court as not pressed on 3.11.1995.

9. Apart from the rival submissions noted above, we have also noticed Trade Notice No. 12/91 dated 13.2.1991 of Madurai Collectorate published in 1991 (52) ELT T30. The Trade Notice clarified that 'filter fabrics' would be appropriately classifiable under Tariff Sub-Heading 5909.00.

10. It appears that neither the above Trade Notice nor the decision reported in 1993 (49) ECR 147 (T) was brought to the notice of the Tribunal Bench which decided M/s. Simplex Mills' case reported in 1998 (103) ELT 568 (T). Nevertheless, the fact remains that two different Benches of the Tribunal have rendered conflicting decisions on the classification of the product in question, and that too, in appeals of the same assessee.

11. We have noted that the product in question in the present appeals is one which was described at an earlier point of time as "filter cloth" and is presently described as "grey coarse canvas". The goods considered in the case of M/s. Simplex Mills 1998 (103) ELT 568 : 1998 (78) ECR 729 (T) was "Filter cloth". One of the goods considered in their own case reported in 1993 (49) ECR 147 was "grey canvas cloth".

We have also noted that the latter decision was relied on by learned Collector of Central Excise in passing the order under challenge in these appeals.

12. In view of the conflict of views taken by different Two-Member Benches of the Tribunal on the classification of the product in question, we direct the Registry to place the matter before the Hon'ble President for constituting a Larger Bench to decide the following issue: Whether the product of M/s. Simplex Mills Private Limited (Appellants in E/4413/93-D) viz. "filter cloth/grey coarse canvas" is classifiable under Chapter Heading 52.05 of the Schedule to the Central Excise Tariff Act, 1985 as claimed by the assessees or under Chapter Heading 59.09 of the said Schedule as claimed by the Revenue in relation to the period of dispute (1.9.1989 to 30.11.1991).

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