

Commissioner of Central Excise Vs. Dhan Laxmi Mills

Commissioner of Central Excise Vs. Dhan Laxmi Mills

SooperKanoon Citation : sooperkanoon.com/19921

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-04-2000

Reported in : (2001)(74)ECC351

Appellant : Commissioner of Central Excise

Respondent : Dhan Laxmi Mills

Judgement :

1. Laxmi Mills, Pali. They were engaged in the processing of man-made textile materials and other textile fabrics without the aid of power.

During the course of manufacture of carbonised processed fabric the base fabric in which the polyster content was less than 70% came into existence and the department wanted to assess the fabrics at that stage when the polyster contents was less than 70%. The processed fabrics with 100% polyster content at that time enjoyed exemption from the payment of Central Excise duty. As a result of carbonisation process the cotton content gets burnt out and what was left was 100% polyster fabric. The contention of the Revenue is that as the final fabrics were exempted and as at the earlier stage duty was chargeable on bleached/dyed fabric with less than 70% polyster contents, the respondents should have paid duty at that earlier stage before subjecting such fabrics to the process of carbonisation. The Commissioner, Central Excise (Appeals) in his Order-in-Appeal had taken a view that as in the fabric cleared the polyster content was 100% no duty was chargeable and as such fabric was exempted under Notification No. 4/97-C.E., dated 1-3-1997. Operative part of his Order is extracted below : - "I

have gone through the case record. The effective rates of duty have been prescribed under Notification 4/97-C.E., dated 1-3-1997.

The appellants have claimed the benefit of exemption notification vide Serial No. 121 (a) which exempts "Fabrics of man-made staple fibres woven on looms other than hand-loom and processed without the aid of power or steam, with or without the use of machines other than the following namely, (a) Fabrics containing only polyster and cotton in which the proportion of polyster staple fibre is less than 70% by weight of total fibre content.

The impugned order seeks to deny the benefit on the ground that at the grey stage the polyster content is less than 70% by weight of total fibre content. It is an admitted fact that in the present case after carbonising the cotton content is burnt out and the resultant fabric is comprised of 100% polyster. The notification nowhere envisages that the fibre content for the purposes of exemption notification has to be based on that prevailing at the grey stage.

Apart from this, it is an accepted principle that the goods have to be assessed to duty in the form in which they exist at the time of clearances and not in the form in which they might have existed at an intermediate stage. Consequently, I do not find any legal authority for charging duty on the fibre content prevailing at the grey stage and which no longer exists at the time of actual clearances. Accordingly, the impugned order is set aside." 2. We have heard Shri S.N. Singh, SDR and Shri A.K. Mehta, SDR for the appellants. Shri K.K. Anand is present for the respondents. We have carefully considered the matter. While there is no denying of the fact that the process of bleaching/dyeing/printing, etc., are dutiable processes, no duty was being charged at every stage and duty was charged in fact on the finished fabric as cleared from the factory after processing be it bleaching/dyeing/ printing or any other dutiable process. In the process of carbonising it is a technical necessity that the woven fabric has to have the cotton content as during the process of carbonisation the cotton content gets burnt out and what is left is the fine polyster yarn fabric. In the facts and circumstances of this case, it could not be said that the fabric with cotton content was the raw material or the component part for the finished carbonised fabrics.

As we consider that it was a continuous process and the fabric with cotton content was fully captively consumed and not cleared for outside consumption, a correct view has been taken by the Appellate Authority and we do not consider that any interference in the view taken is called for. As a result, we do not find any merit in the appeal filed by the Revenue and same is rejected.

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