Valson Dyeing, Bleaching and Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1983

Reported in : (1983)LC1756DTri(Mum.)bai

Judge : S Grover, Vice-, S T G., S Duggal

Appellant : Valson Dyeing, Bleaching and

Respondent : Collector of Central Excise

Judgement :
1. The dispute giving rise to the present appeal may be briefly stated.

The Supdt. of Central Excise, Bombay, by a Show Cause Notice dated 26.12.74, alleged that the appellants had declared a certain variety of fabric as viscose x staple lining dyed fabric with tariff value of Rs. 3/- per sq, metre, whereas test of a sample of the fabric showed its composition as of viscose filament yarn, attracting tariff value of Rs. 4 20 per sq. metre in terms of Central Excise Notification No. 90/73 dated 5.3.1973. On this basis, the appellants were served with a demand for Rs. 4,103 93 representing the differential amount of duty. At the instance of the appellants, a sample was sent for re-test by the Chief Chemist, Central Revenues, New Delhi who reported that the sample was composed mainly of filament yarn of cellulosic origin with 0.15% of staple, fibre yarn of cellulosic origin (only four, 2-ply staple yarn present) about 0.5 cm. from the selvedges. On adjudication, the Asstt.

Collector held that the presence of 0.15% staple yarn near the two selvedges would not detract from the position that the fabric was viscose x viscose and on this reasoning he confirmed the notice of demand. The appellants filed an appeal against the order to the Appellate Collector, contending that the Notification No. 90/73 did not fix any percentage of staple fibre for the fabric to qualify for the tariff value of Rs. 3/- per sq. metre and that, therefore the presence of even 0.15% of staple fibre would attract the said tariff value. They also contended that the notice of demand dated 26.12.1974 was partially time-barred as it was issued for the period from 1.10.1973 to 31.3.74, that is to say, the demand was time-barred in so far as the period prior to 26.12.1973 was concerned. The Appellate Collector, relying on explanation No. (ii) to Notification No. 2/78 dated 6.1.78, held that the presence of staple fibre in the selvedges was not material for the classification and valuation of the fabric in terms of Notification No, 90/73. He. however, accepted the appellants' plea that part of the demand was time-barred. Aggrieved with the Appellate Collector's order on the first issue, the appellants filed a Revision Application before the Central Government (hereinafter referred to as appeal, which has been transferred to this Tribunal under the provisions of Section 35-P of the Central Excises & Salt Act, 1944, for disposal as if it were an appeal presented before it.

2. In the appeal, it has been contended that the Appellate Collector erred in relying on an explanation to Notification No. 2/78 of 6.1.78 in deciding the present case which pertained to the period 1973 74, considerably before the issue of the 1978 Notification, that the subject fabric was made of a combination of cellulosic filament yarn and synthetic staple fibre yarn, that it could not be considered as wholly made of cellulosic filament yarn and that there was nothing in Notification No. 90/73 to suggest that the yarn in the selvedges of the fabric should not be taken into account.

3. The appeal was posted for hearing on 12.4.1973. When the case was called on, we found that there was no arrangement for representation of the appellants. However, a communication dated 31.3.83 was placed before us in which the appellants had stated that it would not be financially economical for them to go to New Delhi for the hearing which might, therefore, be fixed at Bombay. Rejecting

the request and exercising our discretion under Rule 20 of the Customs, Excise & Gold (Control) Appellate Tribunal (Procedure) Rules, 1982, we have considered it proper to dispose of the appeal oh merits with the assistance of Shri Hem Prakash, JDR, for the Respondent.

4. Shri Hem Prakash submitted that it is the body of the fabric that determines the composition of the fabric and, for this purpose, the selvedges are not relevant and that, in this view of the matter, the subject fabric was composed wholly of viscose filament yarn covered by sl. No. 4 and not sl. No. 5 of Notification 90/73. On this basis, he defended the orders of the lower authorities.

5. We have carefully considered the submissions contained in the memorandum of appeal and those advanced by the learned Depth Representative. Notification No. 90/73 dated 5.3.73, as the appellants have contended, did not have an explanation on the lines of the one appearing in Notfn. 2/78 of 6.1.1978 to the effect that in determining the composition of the fabrics, such yarn in the selvedges as is different from the composition of the yarn in the body of the fabrics should not be taken into account. Given this position, it is not permissible, in our view, to read into Notfn. 90/73 an explanation on the lines of the one in Notfn. 2/78. The subject fabrics admittedly were composed of filament yarn of cellulosic origin and staple fibre yarn of cellulosic origin, though the latter was present only to the extent of 0.15% and near the selvedges. The fabric could not, therefore be said to be "made wholly of filament yarn of cellulosic origin", as stipulated in sl. No. 4 of Notfn, No. 90/73. On the other hand, it fell within the classification against sl. No. 5 viz. "fabrics made of a combination of filament yarn of cellulosic origin and yarn spun from synthetic staple fibre of cellulosic origin". In the circumstances, the appeal succeeds and is allowed. The Asstt. Collector of Central Excise, Bombay shall grant the consequential relief to the appellants within 2 months from the date of communication of this order.