Commissioner of Customs, Vs. Hari Om Textiles

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-19-2001

Reported in : (2002)(149)ELT236Tri(Mum.)bai

Appellant : Commissioner of Customs,

Respondent : Hari Om Textiles

Judgement :

1. The single appeal filed by the Commissioner names as respondent Hari Om Textiles and two others. Notice had been issued to the department asking to file two more appeals. This has not been done. This one appeal therefore deemed to be against Hari Om Textiles, the respondent first named in the appeal.

2. The question before the Commissioner (Appeals) in the order impugned before him was whether viscose filament yarn would come within the term "synthetic yarn" occurring in notification 12/98, which specified the goods to which the provisions of chapter IVA of the Customs Act, 1962 should apply. The Collector has held that viscose yarn is classified in the tariff as artificial filament yarn and not a synthetic yarn and therefore it is not synthetic yarn for the purpose of chapter IVA of the Act. He has therefore set aside the confiscation of the goods yarn under Section 11B of the Act as also the penalty imposed of Rs. 1,000/-.

3. The appeal contends that the object of the provisions was to prevent the smuggling of the yarn. The department Representative emphasizes that strict classification contained in the tariff should not apply to the provisions which is in a

vary different object.

4. Fairchild's Dictionary of Textiles says, in the entry related to synthetic textiles that "Although it generally is regarded as no applicable to rayon or acetate, the former being regenerated cellulose and the latter being a cellulose compound, cellulose acetate." The Dictionary explains that the viscose process is one of the methods of producing rayon.

5. The classification of fibres and fabrics in the Customs and Central Excise Tariff should not, in my applied in the context of chapter IVA of the Customs Act, 1962. The provisions of the chapter were introduced for preventing large scale of smuggling of various goods which the country has faced at the relevant time. Among these is yarn other than that obtained from natural textile raw materials. It would be simplistic in that situation to apply the strict criteria for classification of yarn contained in the tariff. It would be more appropriate to consider the rather looser and broader term so as to include all man made fibres.

6. In these circumstances, therefore, I allow the appeal and set aside the Collector(Appeals)'s order, restoring the Assistant Collector's order.