

Cce Vs. Ashima Denims

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-27-2002

Reported in : (2003)(88)ECC416

Judge : K Usha, N T C.N.B.

Appellant : Cce

Respondent : Ashima Denims

Judgement :

1. This appeal of the Revenue is directed against Order-in-Appeal Nos.

30 to 38/97 (19 to 27-AHD) Commr. (A) AHD dated 10.2.97. The respondent are processors of denim fabrics. The issue in dispute was whether the respondents were entitled to exemption under Notification No. 253/82.

The impugned order held in favour of the assessee. Hence the present appeal.

2. The facts material for determining the dispute are that Notification No. 253/82 exempted "cotton fabrics, falling under Chapter 52 of the schedule to Central Excise Tariff Act, 1985 (5 of 1986) when subjected to any process or processes specified in the Table hereto annexed, from the whole of the duty of excise leviable thereon.

3. The table to the Notification listed 12 processes. Sl. Nos. 1 and 10 of the list which are relevant to the present dispute were as under.

10. Padding, that is to say, applying natural starch on one or both sides of the fabric," The exemption notification had the following proviso. "Provided that no such exemption shall apply, (ii) If cotton fabrics, falling under Chapter 52 of the said Schedule, are subjected to any process or processes specified in the said Table within the same factory in which they have been subjected to any process other than the processes specified in the said Table." 4. The respondent is a processor of cotton fabrics. Therefore, the above proviso applied to them. As a result, if they carried out any process other than the 12 processes enumerated in the notification, they would become ineligible to the exemption. The issue raised in this appeal is that the respondent carried out other processes.

5. This notification was further amended under Notification No.213/88-CE. The amendment had the effect of adding the following explanation to the notification: "Explanation -- For the purpose of this notification, calendaring shall include processing of cotton fabrics with the aid of zero-zero machine without a stenter attachment." 6. The present appeal contends that the respondents were ineligible for the exemption as they carried out the process of shrink proofing (which is not a process specified in the exemption notification) contrary to their claim that the process carried out by them was "processing with the aid of zero-zero machine without a splenter attachment" specifically mentioned in the explanation to the notification. It is further stated that the respondent had carried out coating which was beyond the scope of padding mentioned at Sl. No. 10 of the notification.

7. It is the submission of the respondent assessee that the contention raised by the Revenue with regard to shrink proofing is not tenable and this issue remains settled in favour of assessees by the decision of the CEGAT in the case of Omkar Textile Mills Pvt. Ltd. v. Collector of Central Excise, 1993 (63) ELT 580 which decision has been upheld by the Apex Court [1994 ELT A 195].

8. With regard to the objection regarding coating, it has been submitted that the process carried out by the respondent does not impart any lasting characteristic to the fabric and such processes which are temporary in character do not fall in the category of textile processing. The respondents have relied on the decision of the Apex Court in the case of Siddeshwari Cotton Mills (P) Ltd. v. Union of India, and

Anr., 1989 (20) ECC 1 (SC) : 1989 (39) ELT 498 (SC) in support of this submission.

9. The charge of carrying out the additional process of shrink proofing is made on the basis that during the calendaring process the fabrics also become shrink proofed. The respondents have pointed out that the shrink proofing that takes place in their factory is the incidental shrinkage of fabrics, when calendaring process is carried out. They have pointed out that the processing carried out by them falls in the category of zero zero processing and that incidental shrink proofing takes place during zero zero process. It is their submission that, in textile parlance, such incidental shrink proofing is not treated as process of shrink proofing. They have pointed out that shrink proofed fabrics, according to the clarification of the Central Board of Excise & Customs, would not have more than 1.5% residual shrinkage (Circular F. No. 15/110/64 CXI dated 27.4.1964), while test carried out by the department had shown that fabrics processed by the respondent had a residual shrinkage of 4% on the warp side and 3% on the weft side.

During the hearing of the case, learned Counsel for the appellant pointed out that this Tribunal took note of the circular while rendering its decision in the case of Omkar Textile Mills Pvt. Ltd. and held that "the process of shrinkage taking place as incidental to the main process of calendaring" with the aid of zero zero machine does not amount to shrink proofing.

10. With regard to the charge of coating, the learned Counsel for the respondent assessee has pointed out that the respondent only carried out the process of 'Foam Finish' which is similar to "padding" mentioned under Sl. No. 10 of the table to the notification. It was also pointed out that according to the test report, the coating material has surface active properties. The finish rendered by such coating is purely temporary and imparts no permanent character to the fabric. The Ld. Counsel explained that the words "any other processes" came for consideration before the Apex Court in Siddeshwari Cotton Mills (P) Ltd. and it was held by the Apex Court that the processes covered by the phrase are processes which impart a change of lasting character to the fabric and not change of a temporary

character.

11. From a perusal of the records and the detailed order recorded by the Commissioner (Appeals), it is clear that the processes carried out by the respondent were in the nature of processing with the aid of zero zero machine mentioned in the explanation to the notification. There is no evidence that the machinery used by the respondent included stenter.

During the processing, fabrics underwent some shrinkage. This was incidental to the process of calendaring. The shrinkage carried out did not bring the fabrics within the specifications of shrink proofed fabrics. Shrink proof fabrics, according to Board's clarification, are fabrics with less than 1.5% residual shrinkage. In the present case, the shrinkage has been found to be of a much higher percentage. The assessee's case is covered by the decision of this Tribunal in the case of Omkar Textile Mills Pvt. Ltd. This Tribunal held in that case that incidental shrinkage taking place during the process of calendaring would not fall within the category of shrink proofing. That decision has been upheld by the Apex Court. The impugned order has followed this Tribunal's decision in Omkar Textiles case. Therefore, we find no merit in the Revenue's contention in the present appeal that the respondents carried out the process of shrink proofing in addition to calendaring or that the processing carried out by them was not undertaken with the aid of zero zero machine. The question whether zero zero machine was used is also immaterial, once it is found that the process undertaken was the process of calendaring and, shrink proofing process was not carried out additionally.

12. There is also no merit in the second contention that the respondents carries out the process of coating which goes beyond the scope of padding mentioned under Sl. No. 10 of the Notification. The process carried out by the respondent was foam coating. That process did not impart change of a lasting character to the fabric. Therefore, that process also cannot be called any other processes carried out on the fabric. This issue remains covered in favour of the respondent assessee under the decision of the Apex Court in the case of Siddeshwari Cotton Mills (P) Ltd., 1989 (20) ECC 1 (SC) : 1989 (39) ELT 13. In view of what has been stated above, the appeal of the Revenue is rejected.

