

Dora Processors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-07-2003

Reported in : (2005)(182)ELT255Tri(Mum.)bai

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

Appellant : Dora Processors

Respondent : Commissioner of Central Excise

Judgement :

1. The basic issue raised in these appeals is the same i.e. durability of processed embroidery. Accordingly, they are considered and disposed of together under this common order.

2. The assessees undertake processing of embroidery. The question arose as to whether such processing would be liable to duty under heading 5805 of Central Excise Tariff in view of Note 8 in Chapter 58. That Note reads as under :- "In relation to fabrics of this Chapter bleaching, mercerizing, dyeing, printing, water proofing, shrink proofing, tentering, heat-setting, crease resistant, organdie processing or any other process or any one or more of these processes shall amount to manufacture." In appeal No. E-603-R/99-Mum, in the case of M/s. Eencee Dyeing & Printing Works, Revenue is in appeal against the decision of the Commissioner (Appeals) that embroidery is not fabric and consequently Note 8 which is in relation to fabrics, has no application to embroidery. In appeals E/1145-1146/2000-Mum, M/s. Dora Processors are in appeal against a contrary finding by

the Commissioner (Appeals).

3. The contention on behalf of the assesseees is that embroidery by itself is not fabrics though embroidery may be carried out on fabrics.

It has been submitted that Chapter 58 of the Central Excise Tariff covered "Special woven fabrics; Tufted Fabrics; Lace; Embroidery" and not all these items mentioned under the chapter heading are fabrics.

During the hearing of the appeals, learned Counsel for the assesseees pointed out that Tariff Headings under Chapter 58 themselves bear this out, e.g. Tariff Heading 5801 mentions woven fabrics and chenille fabrics other than fabrics of Heading 5802 or 5806, Heading 5802 mentions Terry toweling and similar woven terry fabrics, other than narrow fabrics, Heading 5803 mentions Gauze, other than narrow fabrics etc., while 5805 does not mention the word fabric at all (emphasis supplied). It mentions embroidery in the piece, in strips or in motifs.

The learned Counsel also referred to the definition of the word 'embroidery' in Sarkar on Words and Phrases of Excise and Customs. The learned Counsel pointed out that according to Sarkar "Embroidery" is the art or process of forming decorative designs in plain or fancy strips by hand or by machine or any such design or decoration. The learned Counsel has emphasized that embroidery is the art or process of forming decorative designs on fabrics and not a process of manufacturing fabrics. The learned Counsel further submitted that it is of significance that Chapter Note 8 in terms states that it is "in relation to fabrics of this chapter". According to the Counsel, these words clearly indicate that this Note applies only to 'fabrics, falling under Chapter 58 and not to other goods of that chapter. According to the learned Counsel the words used in the Note are of particular significance and have been chosen deliberately and this is clear would reveal itself when the expressions in the Note are compared with the expressions used in other tariff Notes like "goods of this Chapter", "Article of Chapter 71" etc. (Chapter Notes under Chapter 71). The Id.

Counsel submitted that if the legislative intention was to cover all goods of Chapter 58 under Note 8, the wording of the Note would have been akin to the words used

in other Chapter Notes like "goods of this Chapter", rather than the restrictive term 'fabrics' of the Chapter.

The learned Counsel also pointed out that it is settled law that entries relating to taxing statute are required to be interpreted strictly, and in the event of doubt, in favour of the assessee, unlike exemption notifications. The learned Counsel submitted that for these reasons the order of the Commissioner (Appeals) in the case of M/s.

Encee Dyeing & Printing Works constitutes the correct understanding of the scope of Chapter Note 8 and the same is required to be upheld.⁴ In the case of M/s. Encee Dyeing & Printing Works, the learned Counsel appearing for the respondent assessee has also submitted that the processing carried out by them would not attract duty even if it is held that Note 8 of Chapter 58 covered embroidery. This submission is on the ground, that only embroidery "manufactured with the aid of automatic shuttle embroidery machines operated with power" was liable to duty under 5805. The learned Counsel submitted in the appellants' case; it is not in dispute that they did not use vertical type automatic shuttle embroidery machines operated with power.

5. Learned DR has submitted that in the present case, the embroidery in question had been carried out on fabrics. He also pointed out that it is clear from the scheme of Chapter Heading 58 as well as HSN Notes that embroidery can be carried out only on a base and in the present case, the base is fabric. Therefore, it would fall for classification under Heading 5805. The learned DR, therefore, submitted that the Revenue was right in their contention that the goods were correctly classifiable and liable to duty under Tariff Item 5805. The learned DR referred to the decision of the Kerala High Court in the case of Radha's Fancy Piece Goods Merchants v. State of Kerala, Sales Tax Cases (Vol. 48) 1981 361 wherein the Kerala High Court held that embroidered cotton sarees are cotton fabrics falling within entry 7 in the Third Schedule to the Kerala General Sales Tax Act, 1963.

6. It is to be noted at the outset that the issue in dispute in the present appeals is not whether fabrics retain their identity as fabrics after undergoing the process of

embroidery, but whether embroidery as such is to be treated as fabric in order to attract Note 8 to Chapter 58. It is also clear from the records of the present case that the proposal of the Revenue is not to classify embroidered fabrics under the headings relevant to individual fabrics such as cotton fabrics, woollen fabrics, silk fabrics etc. Instead, Revenue proposes to levy tax on processed embroidery itself treating it as fabrics. During the relevant period the Chapter Heading read as under :-5805 Embroidery in the piece, in strips or in motifs manufactured with the aid of vertical type automatic shuttle embroidery machine operated with power.5805.11 Embroidery on base fabrics of silk, of chapter 505805.12 Embroidery on base fabrics of wool, of chapter 315805.13 Embroidery on base fabrics of cotton, of chapter 525805.14 Embroidery on base fabrics of man made filament yarn of chapter 54 or fabrics of man made staple fibres of chapter 55.5805.19 Other It is clear from the above Headings that the scheme of Central Excise Tariff is to treat embroidery as a separate manufacturing activity and to levy a tax on it and not to tax an embroidered fabric under the respective heading such as embroidered cotton fabrics, embroidered woollen fabrics, embroidered silk fabrics etc. or plainly as cotton fabrics, woollen fabrics. This becomes clear from a perusal of the other related Chapter Headings of the Central Excise Tariff. The Tariff contains separate Headings for various varieties of fabrics such as Chapter 54 for Silk Fabrics, Chapter 51 for Woollen Fabrics, and so on.

Chapter 58 is for certain fabrics as well as some other items. Thus, the scheme of taxation of fabrics and embroidery under Central Excise Tariff is quite different from the scheme under the Kerala Sales Tax Act. The Central Excise Tariff treats fabric and embroidery separately and as different manufacturing activities. Therefore, the decision of the Hon'ble High Court of Kerala in relation to entries in Sales Tax Tariff are not applicable to classification under Central Excise Law.

7. The order impugned before us notes that there is no definition of fabrics under the Central Excise Tariff. Therefore, its scope is to be understood in terms of general parlance understanding. It is clear that fabric and embroidery are understood as separate. In the case of embroidery of fabric, fabric constitutes the base and embroidery the art work on it. This is the understanding noted in Sarkar on Words and Phrases of Excise and Customs. The HSN Notes also mention that

embroidery is carried out on a pre-existing ground of fabric. Note under Chapter 5810 makes this position clear which is reproduced below :- "The ground fabric usually forms part of the completed embroidery, but in certain cases it is removed (e.g. chemically or by cutting) after being embroidered and only the design remains. Certain embroidery is not made with embroidery threads but with strips or braids." 8. The wording of Tariff Headings under Chapter 58 also makes this position clear. While Headings 5801, 5802, 5803, 5804, 5806 and 5809 refer to the goods as "fabrics", Headings 5805, 5807, 5808 and 5810 at the relevant time did not use the word "fabrics" to describe the goods under them. Instead, the Headings were as under :-58.05 Embroidery in the piece, in strips or in motifs.58.07 Labels, Badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered.58.08 Braids i n the piece; ornamental trimmings in the piece, without embroidery, other than knitted- or crocheted; tassels, pompons58.10 Quilted textile products in the piece, composed of one or more layers of textile materials assembled with padding by stitchingor The language of these sub-headings suggest that the items covered under them are not fabrics as commonly understood in the commercial parlance.

Note 8 starts with the expression "in relation to fabrics in this Chapter". This would seem to indicate that the Note is applicable only to fabrics of the chapter and if any items, which are not fabrics, are covered under the Chapter, the Note would not apply to them. Embroidery in the common parlance is understood as decoration of a fabric with art work and not as manufacture of fabric or processing of fabrics. Such an art work on a base ground fabric normally would not be treated as the base fabric itself, unless that is the scheme of the statute. As already pointed out, the scheme of Central Excise Tariff is to treat embroidery as manufacture, separate from fabric manufacture. The submission of the learned Counsel that the language "in relation to fabrics of this Chapter" occurring in Note 8 is suggestive of restricted scope appears to be correct, because the tariff also uses expressions like "goods of this chapter". If the intention was to bring all the goods of Chapter 58 under Note 8, the Note could have used suitable expression like "goods of this Chapter". The Commissioner (Appeals) has rightly drawn the distinction between fabrics and, embroidery, as the latter being article of textiles used for ornamentation or decoration purposes. The Commissioner has also noted that

HSN Explanatory Notes are silent on the question as to whether embroidery are fabrics or not. Instead, Notes describe various types of embroidery i.e. embroidery without visible ground and other. Thus, the scheme of Central Excise Tariff and HSN is to treat embroidery as separate from fabrics.

9. In view of the aforesaid scheme of Central Excise Tariff the words used in Tariff headings under Chapter 58, the language of Chapter Note 8 itself and the general parlance understanding of embroidery as separate from fabrics, the assessee's contention that note 8 does not apply to embroidery merits acceptance.

10. For the reasons stated above, the appeals of the assessee succeed and the appeal of the Revenue fails. Accordingly, appeal numbers E/1145-1146/2000-Mum of M/s; Dora Processors are allowed and appeal number E/603-R/97-Mum. of the Revenue is rejected.

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