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S. Kumars Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-27-2003

Reported in : (2003)(87)ECC293

Judge : S Kang, a T V.K.

Appellant : S. Kumars Ltd.

Respondent : Cce

Judgement :

1. In these appeals the controversy relates to the classification of the processed knitted pile fabrics in running length at the hands of the appellants who are the processors.

2. Brief facts of the case are that the appellants are processors of various Textiles Fabrics and also undertake the job work pertaining to the processing of knitted pile fabrics. They were receiving knitted pile fabrics in grey form from M/s. Dhvani Terefab Exports Pvt. Ltd. in running length of 300 Mtrs. which is being cut into convenient lengths according to the size of their machine. The appellants undertake the process of washing, dyeing and bleaching, hydro-extraction, tumble dyeing and drying. Before 23.7.96, both grey and processed fabrics were classified by the Revenue Department under Heading 60.01 of the Schedule to the Central Excise Tariff of the Act. After 23.7.96, the goods falling under Heading 60.01 of the Central Excise Tariff were granted exemption. The Revenue Department issued 3 show cause notices to the appellants for classifying the

processed fabrics under Heading 63.07 of the Central Excise Tariff as "other made-up textile articles".

The adjudicating authority confirmed the demand and imposed penalty.

The appeals filed by the appellants were dismissed by the Commissioner (Appeals).

3. The Divisional Bench of the Tribunal referred the matter to the Larger Bench for considering the following issue: "Whether the processed knitted pile fabric at the hands of the processor would be classifiable under Chapter 63 as "made-up article" i.e. towels or as processed fabric, under Chapter 60 of the Central Excise Tariff Act." 4. The Larger Bench of the Tribunal vide Misc. Order dated 5.11.2002 returned the Reference to the original Bench with the following observations: "that only if it comes to the conclusion that the finding of the Commissioner (Appeals) is based on Chapter Note 5(f) of the Section XI of Central Excise Tariff Act, 1985, the issue referred would arise for consideration. On the other hand, the Bench comes to the conclusion that the Commissioner (Appeals) has relied on Chapter 5(h), then the contention of the assessee that Commissioner has gone beyond the show cause notice will be material and relevant." 6. The contention of the appellants is that the show cause notice was issued to the appellants classifying the fabrics as made-up articles by invoking the provisions of Section Note 5 (f) of Section XI of the CETA. The adjudicating authority confirmed the demand on this ground only. Whereas the Commissioner (Appeals) in the impugned orders after relying upon the Section Note 5(b) of the Section XI of CETA upheld the adjudication order. In this view the contention of the appellants is that the impugned order is beyond the scope of the show cause notice.

7. The contention of the Revenue is that the Commissioner (Appeals) in the impugned order only considered the provisions of Section 5(b) of Section XI of CETA as raised by the appellants.

8. As per the observation of the Larger Bench, we are taking up the issue. Whether the Commissioner (Appeals) in the impugned orders confirmed the adjudication order after taking into consideration the provisions of Chapter Note

5(b) of the Section XI of CETA or 5(f) of Section XI of CETA and order is beyond the scope of Show Cause Notice.

9. For ready reference the provisions of Section Note 5(f) of Section XI of the CETA are reproduced below: "Knitted or croched to shape, whether presented as separate items or in the form of a number of items in the length" "Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table clothes, scarf squares, blankets)".

10. In both the cases the show cause notices were issued to the appellants specifically undertaking the provisions of Section Note 5 (f) of Section XI to conclude that the fabrics in question is to be classified under Chapter 63 is made-up article. The adjudicating authority confirmed the classification after taking into consideration this Chapter Note. The Commissioner (Appeals) in the impugned orders while considering the contention of the appellants taken into consideration the provisions of Section Note 5 (b) of Section XI of the CETA and held that the goods in form in which they merged at appellants hands ready for use as made-up article in terms of Section Note 5(b) of Section XI of the CETA. By invoking the provisions of Chapter Note 5 (b) of Section XI of the CETA, Learned Commissioner made a new case which is beyond the allegations contained in the Show Cause Notice which is not permissible.

11. In view of the above discussions, we find merit in the arguments of the appellants that impugned order is beyond the scope of Show Cause Notice. The impugned orders are set aside and the appeals are allowed.

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