Simplex Mills Co. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2003

Reported in : (2003)(154)ELT725Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Simplex Mills Co. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants, M/s. Simplex Mills Co. Ltd., are manufactures, among other goods, of man-made fabrics from Viscose Rayon Yarn obtained from outside on payment of duty. They are also manufacturing Square Woven Fabrics and return such fabrics to the parties. The fabrics are not subjected to any process. They are claimed to be falling under Chapter Heading No. 54 of the Central Excise Tariff Act, 1985 (earlier Tariff Item No. 22), They filed a classification list dated 3-9-1986 and started paying duty under Heading 5902.30 under protest as per the earlier approved classification list since they could not abate the approval of revised lists. The Assistant Collector, vide his Order dated 23-7-1986 held that the goods covered under classification list dated 3-5-86 correctly fall under Heading 5902.30 of the Central Excise Tariff Act, 1985 as Tyre Cord Fabrics of Viscose Rayon and additional duty was payable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 at Rs. 2/- per kg. as prescribed. Against this Order, the appellants preferred an appeal to the Collector of Central Excise (Appeals) who vide his order dated 27-10-1987 held as follows - "3. I have carefully gone

through the order appealed against, the submissions made in the appeal petition and those made at the time of personal hearing. I am convinced that the appellants have no case at all. It is observed that the impugned order dated 25th July, 1986 is in respect of classification No. MMF/86/8, dated 3-5-1986. A perusal of the classification list clearly indicates that the appellants had themselves described "Square Woven Rayon Fabrics grey unprocessed" under the description "Tyre Cord Fabrics". They classified the said fabrics under Heading No. 5902.30 of the Central Excise Tariff Act, 1985. Claiming exemption from basic excise duty and handloom cess but paying additional duty of Rs. 2/- per kg.

under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 though under protest. The Tariff applicable and the rate of duty leviable in respect of the said goods was approved by the Assistant Collector. I, therefore, find that the Assistant Collector had classified the said goods under Item No. 5902.30 of the Central Excise Tariff Act, 1985 on the basis of the description of the said goods as declared by the appellants themselves therefore there is no merit in their contention now urged in appeal. It is true that the appellants paid additional duty under protest as indicated in the remarks column in the classification list that there was on the basis of an earlier order dated 29-8-1985 of the Assistant Collector of Central Excise Div. 'E' issued under his letter No. V (Gen. II) 3072/85/424, dated 29-8-85 and can have no hearing as the question of classification of the products under reference as neither the classification list dated 3rd May, 1986 has been filed under protest nor has the description of the goods been modified by the Assistant Collector in any manner. Moreover an enquiry during the course of personal hearing before me, it was clarified that no appeal was filed against the order dated 29-8-1985 and as such became final." 2. After hearing both sides and considering the submissions, it is found - (a) The entity under classification is not 'Tyre Cord Fabrics'. As submitted by the appellants the entity is closely Woven Fabrics, out of single Rayon filament yarn in the warp and weft. It consists of Warp with widely spaced weft threads. The appellants have submitted that 'Tyre Cord Fabrics' are used in the manufacture of pneumatic auto tyres. It is constructed predominantly of warp cord (cabled yarns) while the fabrics under classification dispute in this case were made out of single filament yarn. The 'Tyre Cord Fabrics' which is "Cloth made with strong corded sheets for the warp with as little weft as possible" are different from the goods which are subject matter of classification in this case. They claim the entity to 'Chafer Fabrics'. The ld. Advocate for the appellants submitted that Tyre Cord Fabrics' and 'Chafer Fabrics' are two different species of fabric used in the manufacture of tyres. He led us through the various definitions in the Textile Dictionary which reads as follows - (i) "Tyre Cord : A textile material used to give flex resistance required for tyre reinforcement. Tyre yarns are made of nylon, polyester, rayon glass or steel. Two or more of these yarns are twisted together, 5 to 12 turns to the inch. Two or more of these yarns are then twisted together in the opposite direction to form a cabled tyre cord." (ii) "Tyre Fabrics : A light weight constructed cloth woven so as to make it easy to do large scale dipping, treating and calendaring of tyre cords. Generally, 15 to 35 cords per inch of warp are woven into a fabric with 2 to 5 light weight fillings per inch. These fabrics have their strength in their warps. Fillings only hold the cords during processing. During tyre molding, fillings are generally broken. See Tyre Cord." (iii) "Chafer Fabric : A coarse, plain weave fabric running about 7 1/2 to 14 ounces (210 to 392 grams) in weight. Basically square woven with equal tensile strength both ways. Two types, one with single yarns, the other with piled yarns. Originally used in auto tyres but now also being used for light weight belt ducks and as belt covers. Some spun-rayon chafers have been made. Also see Flat Chafer Fabric." The ld. Advocate fairly conceded that samples were drawn on 27-10-1983 for test by the Deputy Chief Chemist, Bombay and result of this testing had not been communicated to the appellants. He submitted that the Department had enquired into the process of manufacture and processes if any being conducted on such fabrics, before their removal from the factory. The appellants had promptly intimated the Department about these facts.

(b) From the impugned order, it appears that the entity under classification was described as "Square Woven Rayon Fabrics grey unprocessed under description Tyre Cord Fabrics". Now in the issue before us, it has been claimed, that the goods were such fabrics as are known in the industry and described in the Fair Child Dictionary of Textiles as 'Chafer Fabrics' and not Tyre Cord Fabrics'. From the definitions as extracted from the Fair Child Dictionary (supra), it is evident that Tyre Cord Fabrics' and 'Chafer Fabrics' are two different species of Tyre fabrics used in manufacture of automobile tyres. If the appellants want to get the entity

'Chafer Fabrics' classified, they have to established the same and declare them. They have not declared as "Chafer Cord Fabrics".

(c) On examining the scope of Heading 5902 for Tyre Cord Fabrics', it is found that the HSN notes under that Heading read as under- "This heading covers tyre cord fabric, whether or not dipped or impregnated with rubber or plastics.

These fabrics are used in the manufacture of tyres and consist of a warp of parallel filament yarns, held in place, at specific distances, by weft yarn. The warp always consists of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon, while the weft, widely spaced and intended solely to hold the warp in place, may consist of other yarns. For the description of high tenacity yarn, see Note 6 to Section XL The heading does not cover other woven fabrics used in the manufacture of tyres nor fabrics of yarn which do not meet the specification of Note 6 to Section XI (Chapter 54 or heading 59.03 or 59.06, as the case may be)." From the explanation clause of this notes itself, it is apparent that specification of note 6 to Section XI would have to be applied to determine the entity under classification to be placed under Heading 5902 or Chapter 54. This HSN notes 6 to Section XI reads as under -Single yarn of nylon or other polyamides, or of ...

60 cN/texpolyestersMultiple (folded) or cabled yarn of nylon or other ...

53 cN/texPolyamides, or of polyestersSingle, multiple (foled) or cables yarn of viscose ...

27 cN/texrayon Since they were using single yarn of viscose rayon, the test to meet that the tenacity of the yarn so used should not be 27 cN/tex.

Therefore, we find that to be disqualified, being classified as 'Tyre Cord Fabric' under Chapter 59, the parameters of the tenacity strength of yarn used has to be proved. On a question from the Bench, the ld. Advocate produced Certificate to prove that the yarn tenacity is 23.15. He fairly submitted thatsince the Test Report was not supplied by the party to the department, he was not in a position as to say what was the tenacity result on sample which was tested by Dy. Chief Chemist. We find that it was the duty of the Assistant Commissioner to enquire into the tenacity specifications.

From the records it appears that samples were drawn for test further no test report record has been relied upon by the Departmental Officers. When the HSN classification on test parameters, which Central Excise Tariff Act, 1985 Schedule is based prescribed certain, then we cannot upheld the classification, if any declared and approved to be correct until and unless, the test specification confirm the same.

(d) It is also not known whether the appellants has manufactured 'Tyre Cord Fabrics' in addition to 'Chafer Fabrics' or only 'Chafer Fabrics' since they have declared the same. Since 'Tyre Cord Fabrics' which are declared, which meet the specification would be classified under Heading 5902, we cannot set aside the classification for the same, as approved, by the Lower Authorities.

However for 'Chafer Fabrics', if any manufactured and cleared, the classification under Heading 5902 cannot be approved until and unless their tenacity strength of yarn is established. The appellant has produced material that the tenacity strength of the yarn used of the 'Chafer Fabrics' manufactured by them is less than 27 cN/tex. We would find in this case the 'Chafer Fabrics' in that case to be classifiable under Chapter 54 of the Central Excise Tariff Act, 1985 Schedule. To determine what was the exact nature of 'Chafer Fabrics' which was cleared, since this test report was not before the Lower Authority, the matter would have to be remitted back to the Original Authority, before whom the appellants should produce such evidence as they may have and the authority also should utilise the result of the Test Report of sample drawn as available to determine the classification and quantum of duty of 'Chafer Fabrics' manufactured and cleared which would fall under Heading Chapter 54 if test on yarn is less than 27cN/tex or under Heading 5902 if such Test Reports do not confirm the tenacity to be less than 27 cN/tex.

3. In view of our above findings, this appeal is disposed of in the above terms.