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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Mar-31-2003

Reported in : (2003)(159)ELT826Tri(Bang.)

Judge : G B Deva, S T S.S.

Appellant : Navele Rayons

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is an SSI engaged in the manufacture of embroidery yarn. They were issued certain notices alleging that they have cleared sewing thread in the guise of embroidery yarn without payment of duty and without observing Central Excise formalities.

2. The process of manufacture of the impugned goods as claimed by the appellant is as follows : "The basic raw material is Viscos filament yam (VFY) popularly called artificial silk or rayon. The yarn is wound from a big cone to a smaller bobbin using a winding machine. It is then twisted by fixing into a twisting spindle and taken on to the twisting rolls. At this stage, a twist is inserted to single rayon. The next operation is doubling of two such twisted yarns by twisting them to a doubling spindle. The yarn which emerges at the stage is known as cabled yarn.

The cabled yarn is then wound on a doubling PIRN and taken to the reeling machine to produce hanks. These hanks are then dyed by dipping them in open

VATS containing vats or napthols or reactives to get the desired shades. These are basically colouring elements. They are then washed. Further dressing involving the use of Silicon, Paraffin or wax to impart any sort of anti-frictional properties, thermal resistance, preventing the formation of static elasticity, etc., is not done as the above properties are not required for the Embroidery yarn. It may be stated that it is not necessary to give wax treatment to get the essential characteristic of the Embroidery Yarn. The tenacity of Embroidery Yarn manufactured by the appellant is 1.3 gpd whereas the Sewing Thread has a tenacity of 3.5 gpd. The viscose rayon cannot be used as a raw material for manufacture of Sewing Thread.

3. In the proceedings before the Commissioner, the appellant has said to have furnished the fundamental difference between 'embroidery thread', 'sewing thread' and had reservations about the Chemical examination report relied upon by the Department and requested the Commissioner to permit the cross-examination of the said chemical examiners. They also had produced representations made by the Rayon Processors Association of India to Central Board of Excise and Customs wherein it was alleged that only in Bangalore Collectorate rayon 'embroidery thread' was being classified as 'sewing thread' They had also produced evidence of the trade understanding of the entity in question and claimed exemption based on Notification 8/96 (Sl. No.55.7), 4/97 (Sl. No. 5) and 35/95 (Sl. No. 7).

"4. The Commissioner dis-regarding the request for cross-examination and without arriving at any finding on the applicability of the above notifications under which the exemption had been claimed, concluded vide his impugned order that the appellants had cleared 'sewing thread' classifiable under sub-heading 5401.20 and had ordered the confiscation of the alleged sewing thread valued at Rs. 1,90,200/- and Rs. 10,33,450/-. Since the same had been provisionally released, he appropriated Bank Guarantee of Rs. 2,58,363/- furnished by the appellants. He also confirmed a demand of Rs. 18,54,077/- being excess duty on 'sewing thread' manufactured and cleared without duty during the period 95-96 to 97-98 and ordered an appropriation of Rs. 50,000/- paid by TR 6 challan dated 31-3-98 towards duty confirmed by him. He imposed a penalty of Rs. 2 lakhs on the appellant under Rule 173Q and a penalty of Rs. 18,54,077/- under 11AC on the appellant. He also ordered recovery of interest under Section 11AC of the Central Excise Act.

(a) Before classifying any entity, it is imperative that the identity of the goods is established, beyond all reasonable doubt.

In this case, whether the goods were 'sewing thread' or 'embroidery thread' is to be established. In establishing the entity, the relevance of the test reports and also how the goods are understood by the people dealing with them has to be considered and a conclusion thereafter arrived at. Once the identity of the entity under clearance is established, only thereafter one has to proceed for its classification by applying the Section notes, rules of interpretation and HSN notes if any. In the present case, nature of the goods and chemical testing and opinion of Chemical Examiners relied by the adjudicator is being contested inasmuch as the appellants sought for a cross-examination of the Chemical Examiners.

The same should have been granted so that the chemical test reports could be placed on record without any ambiguity and doubt. It is found that the appellants contention, that chemical examiners are not competent to determine the classification of the product or/and its classification has force. The classification has to be arrived at de hors such a recommendation which has not been tested in cross-examination, The order is also silent on the evidence produced of 'understanding of the people dealing with the entity' such classification are required to be set aside.

(b) The present order is bad in law also inasmuch as the claim of the appellant for exemption under Notification No. 35/95, dated 16-5-95 for the year 95-96, 8/96, dated 27-7-1996 for the year 96-97, 4/97, dated 1-3-1997 for the year 97-98, should have been considered and a finding arrived at.

(c) This order therefore establishing classification of the entity as 'sewing thread' is required to be set aside and the matter remanded back to the original authority to redetermine the classification of the goods actually cleared. The eligibility to the notification as claimed thereafter has to be considered. In this remand proceedings, the other issues of limitation and application of the liability for penalty under Section 11AC and interest under 11AB, should be redetermined along with the liability for confiscation under Central Excise Law.

6. In view of our findings, the order is set aside and the appeal allowed as remand.