Collector of Central Excise Vs. Katare Cotton Waste Spinning

Collector of Central Excise Vs. Katare Cotton Waste Spinning

SooperKanoon Citation : sooperkanoon.com/3159

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1987

Reported in : (1987)(31)ELT733TriDel

Appellant : Collector of Central Excise

Respondent : Katare Cotton Waste Spinning

Judgement :

1. These three proceedings were initiated by the Central Government by issue of the three respondents of a show cause notice F. No.198/8/19/31-34/81 CXV dated 27th March, 1981 under Section 36(2) of the Central Excises and Salt Act, 1944. By this notice, the Government proposed to set aside the Order-in-Appeal No. 150-153 of 1980 dated 3.10.1980 passed by the Central Board of Excise and Customs allowing the appeals filed by the respondents before the Central Board of Excise and Customs. The notice also proposed to restore the orders of the Collector of Central Excise, Aurangabad which had been set aside by the Board by the aforementioned order-in-appeal.

2. The issue involved in these three cases is similar. The Collector had held that the yarn manufactured by the respondents using yellow pickings could not be accepted as yarn manufactured out of cotton waste and that exemption from excise duty in terms of notification No. 95/61 dated 1.4.1961 was not admissible. The Board had held that yellow pickings appeared to be covered by the expression "cotton waste" used in notification No. 95/61. Accordingly, the Board set aside the Collector's orders and directed that the benefit of exemption from

duty in terms of the notification be extended to yarn of less than 10 counts when made out of cotton waste including yellow pickings. It is this order which is impugned in these proceedings.

3. When the matter was taken up, Shri B.B. Gujaral, Advocate for the respondents submitted at the outset that the very same issue had come up for consideration before this Bench in Appeal No. ED(SB)(T) A.No.1480/81-D, Collector of Central Excise, Pune v. Shree Vyankateshwar Waste Cotton Spinning Mills, disposed of by Order No. 1013/86-D dated 26.12.1986. By this Order, the Tribunal upheld the view taken by the Board that yellow pickings merited to be treated as cotton waste.

Accordingly, the show cause notice issued by the Government was discharged and the Collector's (deemed) appeal dismissed. Shri Gujarat urged that the said decision may be followed in the present cases also.

4. After going through the said order, Shri K.C. Sachar, Departmental Representative, for the appellants submitted that in respect of the case relating to Mohan Waste Cotton Spinning Mills, in addition to yellow pickings, gada and jaydhar cotton had also been used. It had been the contention of the respondents that yellow pickings was added to improve the quality of yarn. If yellow pickings was cotton waste, it would not have served to improve the quality of yarn. Therefore, it was only cotton but of an inferior quality.

5. We do not see how Shri Sachar's contention makes for any difference to the conclusion in the Tribunal's order in the Shree Vyankatesh-war Mills case. The point to be considered was in that case, and to be considered in the present cases also is, whether yellow pickings is cotton waste as defined in any statute or as understood in the trade.

The question is not for what purpose yellow pickings had been added to the other ingredients out of which yarn is manufactured. The earlier order has discussed the question in detail and come to the conclusion that yellow pickings would merit classification as cotton waste.

6. Shri Gujaral submitted before us extracts from the Revised Indian Trade Classification (1965 Revision amended upto 1.4.1970) published by the Department of Commercial Intelligence and Statistics, Calcutta, Government of India in support of his contentions. The classification groups several cotton items under Group 263.

263.1 Raw cotton, other than (inters, sweepings, yellow pickings and other unspinnable fibres - Under the above sub-heading are several minor sub-headings of which 263.32 reads : Cotton, Sweepings, yellow pickings and other unspinnable fibres excluding linters - It will be seen from the above extracts that the Revised Indian Trade Classification lists yellow pickings under the broad category of cotton waste (263.3). This piece of evidence goes to show that in trade parlance yellow pickings are considered as cotton waste.

7. In the light of the foregoing discussion we do not see any reason to differ from the conclusion in Order No. 1013/86-D passed in the Shree Vyankateshwar case. Accordingly, we discharge the show cause notice by the Government of India against the present three respondents and dismiss the appeals.