

Youngman Woollen Mills Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-21-2003

Reported in : (2004)(92)ECC31

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

Appellant : Youngman Woollen Mills Ltd.

Respondent : Cce

Judgement :

1. This is an appeal of the assessee challenging the order passed by the Commissioner (Appeals) dt. 23.4.03. The issue raised in this appeal is whether Acrylic Knitted Fabrics came into existence during the manufacture of mink blanket from acrylic yarn or not. The Department took the view that the acrylic fabrics came into existence during the manufacture of the mink acrylic blanket which were further captively consumed for the manufacture of mink acrylic blanket on the above basis duty was demanded. The assessee contended that its case is covered by the decision of this Tribunal in the case of Shital Fibres Ltd. v. CCE, 2001 (129) ELT 489 and that the unfinished knitted fabrics during the process of manufacturing blanket has no marketability. It was also pointed out that the above decision of the Tribunal was affirmed by the Supreme Court in 2001 (133) ELT A90.

2. The Commissioner (Appeals) noted the above submission made on behalf of the assessee. He also referred to paragraph 15 of the decision of the Tribunal

referred above which read as follows: "15. There is no material to suggest that the unfinished knitted fabrics has got any marketability or is known in the market as distinct saleable commodity. Nobody would purchase the same for being of no use for having nor acquired the shape of complete blankets. The process adopted by the appellants for manufacturing the blankets in continuous and uninterrupted keeping in view the technology and the machinery used by them. The in-process material having transient character and no independent identity of its own and not shown by the Revenue on whom the initial burden rests, to be marketable, cannot be treated as 'goods' just because it could be used in further manufacture of an end-product".

3. The Commissioner thereafter proceeded to refer to a SCN issued to another processor M/s. Kochar Sung-up Acrylic Ltd., Amritsar where the assessee had filed declaration under Rule 173B declaring Acrylic Mink Blanket Fabric as description of the goods manufactured/produced by them. The Commissioner, therefore, took the view that the appellants cannot now rely on the decision of this Tribunal in the case of Shital Fibres Ltd. Even though the appellant pointed out that the SCN issued to M/s. Kochar Sung-up Acrylic Ltd. was later dropped by the Additional Commissioner, the Commissioner was not inclined to accept the contention raised by the appellant. He took his view that the Addl.

Commissioner had not taken into consideration all the relevant materials before dropping the demand.

4. Ld. Counsel appearing on behalf of the appellant brought to our notice the order passed by the Additional Commissioner referred above, he pointed out that Additional Commissioner dropped demand after taking into consideration the process undergone and having entered that specific finding that he had not come across any such stage throughout the manufacturing operation, where manufactured goods, bought and sold as Processed Knitted Pile Fabric has come into existence. He also referred to the opinion given by the experts.

5. Taking into consideration the above facts and circumstances, we find no reason to take a different view from the ratio of the decision of this Tribunal in Shital Fibres Ltd. later affirmed by the Supreme Court. In this case also, there is no

material whatsoever made available by the Revenue to show that a distinct saleable commodity had come into existence during the process of manufacture of Acrylic Knitted Blanket. In the result, we set aside the order impugned and allow the appeal.

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