Cce Vs. Reliance Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-03-2003

Reported in : (2004)(92)ECC45

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

Appellant : Cce

Respondent : Reliance Industries Ltd.

Judgement :

1. When this appeal at the instance of the Revenue was taken up for hearing an application for adjournment on the side of the Respondent was brought to our notice. Since the appeal is of the year 1998 we are not inclined to adjourn this case. We therefore proceeded to hear the Departmental Representative and perused the records of the case.

2. In this appeal at the instance of the Revenue the issue arising for consideration is whether woven pile fabric of man-made staple fibre manufactured by the respondent are eligible for exemption under Notification 109/86 dated 27.1.86. Both the adjudicating authority as well as the appellate authority took the view that Respondents are entitled to such exemption. Aggrieved by the above the Revenue has come up in appeal.

3. The original authority accepted the classification claimed by the respondent-assessee and classified the product under Chapter 5801.30 equivalent to sub-

heading 55.07 and found eligible for exemption under Notification No. 109/86-CE. According to the Revenue the product has to be classified under 5508.00 since the fabric is subjected to process.

Relevant portion of 5507.00 and 5508.00 are quoted below :5507.00 Fabrics of man-made staple fibres,- NIL (a) woven, and 4. It is the case of the Revenue that fabric is undergoing a process which would come under 'any other process' under Clause (b). If that be so, it is not entitled to exemption in terms of the provisions contained under Notification No. 109/86. The process undergone by the fabric is not in dispute. Sandwich fabrics are woven on Gusken weaving machine. Thereafter the fabric is cut in the middle to ensure that both inner side fabrics are having piles. These are then rolled through guide roll into separate cloth rolls. They are then subjected to uniform pile cutting. Bottom roll is put through back scrapping machine for the removal of the extra wrap threads present at the back of the fabric. The rolls are then taken on velour finishing machine for level cutting of pile. The fabric is then subjected to application of temperature from both the sides and rotary brush cleans fabrics as well as open the piles and then it is cut to the required level. Fabrics are then sent to brushing unit where it is heated at 80 degree and pile is opened with rotating brush. Thereafter fabrics are finally subjected to electrically heated cylinder known as Glazing Cylinder before being batched for folding. According to the Revenue, the above process would amount to manufacturing process. The authorities below while accepting the claim put forward by the assessee had relied on two decisions of the Supreme Court, namely, Siddeshwari Cotton Mills (P) Ltd. v. Union of India(SC) and Mafatlal Fine Spinning & Mfg. Co.

Ltd. v. CCE 5. In Siddeshwari Cotton Mills, Supreme Court while considering the meaning of the term "any other process" in Section 2(f)(v) of the Central Excises and Salt Act, 1944 took the view that the term "any other process" should be a process which impart a change of a lasting character to the fabrics either by the addition of some chemical in the fabrics or otherwise. In Mafatlal Fine Spinning & Mfg. The Supreme Court took the view that both calendering and shearing are finishing processes, yet the unprocessed fabric (grey) after calendering and shearing do not cease to be unprocessed fabric for the purpose of Rule 49A of the

Central Excise Rules, 1944. It was observed that calendering process employed was such as to give temporary finish by pressing the fabric which has not brought out any lasting change on the fabric.

Likewise, shearing was done only to trim, protruding, stray fibres from the fabric. According to the Apex Court 'grey' fabric because of these observations does not become new and commercially different commodity and ceases to be grey cloth.

6. On going through the nature of the process undergone by the product of the respondent, we find that the authorities below are fully justified in following the ratio of the above-mentioned decision of the Supreme Court and holding that the fabric woven by the Gusken Weaving Machine does not undergo any process which would justify the product to be classified under Chapter 55.08 denying the benefit of exemption under Notification No. 109/86-CE.