Commissioner of Central Excise Vs. Shah Textiles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-24-2004

Reported in : (2004)(97)ECC79

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Shah Textiles Ltd.

Judgement :
1. This appeal is filed against the order of the Commissioner (Appeals), Ahmedabad by the Revenue. The issue pertains to classification of "dyed D/C book binding cloth" manufactured by the respondent company - under heading 52.06 or under 5901.10 of CETA.Commissioner (Appeals) in the impugned order confirmed the finding of the Assistant Commissioner who held that the said goods are classifiable under heading 52.06. Revenue disagrees. Wants it under heading 5901.10. Cross objections have been filed by the respondents.

3. The respondent company manufactures dyed D/C book binding cloth and clears it under heading 52.06 as cotton fabric. Show cause notices were issued to them for its classification under 5901.10 as the product was coated with gum or amylaceous substance (starch) and other chemicals and is sold in the market as book binding cloth. It is used for book binding and for similar purposes. The Assistant Commissioner confirmed the classification under 5901.10 and demanded the differential duty.

The Commissioner (Appeals) upheld the Assistant Commissioner's order.

4. As this was on the assessee filed another classification list classifying the product again under 52.06 which was then approved provisionally. Subsequently the Assistant Commissioner finally approved the classification list classifying it under 52.06. This was challenged by the department before the Collector (Appeals) who reversed the said order holding that the product falls under 5901.10.

5. These orders were challenged by the assessee before the CEGAT. The Tribunal in its order dated 22.11.2000 observed that for want of requisite material or evidence before it, it was difficult to decide proper classification of the fabric in question. The matter was sent back to the adjudicating authority for getting the fabric retested and for deciding its classification afresh on the basis of the test report and other material which either side may like to produce before him.

That is how the first round of litigation ended.

6. Consequently, fresh samples were drawn. These samples along with the old ones were sent to CRCL, New Delhi for test. The test report says that the fabric is not impervious to water and loses its stiffness when it comes into contact with water. The full text of the report is annexed to this order.

7. After examining the matter, the Assistant Commissioner decided the classification under 52.06 and dropped the demands vide his order dated 7.9.2001. This order was again challenged by the department before the Commissioner (Appeals) who rejected the department's appeal and confirmed the classification of the goods under 52.06. Hence the present appeal by the Revenue.

8. On remand, the adjudicating authority, after going through the test report of CRCL and after a lot of introspection, this time decided that the goods are correctly classifiable under 52.06. Inter alia he held that the fabrics which are not coated but only backfilled are to be classified under 52.06. The Assistant Commissioner referred to the meaning of coating and stated that coated fabrics

are those which have permanent stiffness and are impervious to water. He relied on the following decisions of the Tribunal.MR Textile Mills v.CCE, Jaipur 1999 (108) ELT 297 wherein book binding cloth is held to be classifiable under 5901.10 on the ground that in this case the CEGAT has not gone into the issue as to whether the material was impervious to water and whether the stiffness was permanent. He further observed that the CEGAT while remanding the case directed him to have the goods tested only to find out whether the goods have permanent stiffness and are impervious to water. Since the CRCL's report is categorical about these characteristics, he held that the goods are classifiable under 52.06 as per notification 253/82-CE.9. The department challenged this order before the Commissioner (Appeals) inter alia on the ground that the decisions of the Tribunal relied upon by the adjudicating authority have been challenged in the Supreme Court and that the CRCL's report confirms that the fabric was heavily coated with gum, amylaceous substances; that the AC erred in holding that coated fabrics are those which have permanent stiffness and are impervious to water; that there is no doubt that the goods are book binding cloth and that the lower authority erred in not following the decision of the Tribunal in MR Textile's, case cited supra.

10. The Commissioner (Appeals) in the impugned order confirmed the findings of the adjudicating authority. He held that the Tribunal vide its order dated 22.11.2000 has remanded the matter for retest of the sample and if the test results showed that there was no permanent stiffness and the fabrics are not impervious to water, the Assistant Commissioner was bound to classify the goods under 52.06. The Commissioner (Appeals) also observed that since the department has not filed any appeal against the Tribunal's remand order. It is his contention that the adjudicating authority has merely followed the directions of the Tribunal. According to the Commissioner, notification 253/82-CE covers cotton fabrics, which are subjected to a process of backfilling, fall under Chapter 52.06. The Commissioner also found mat the Tribunal's decision in CCE v. Swastik Coalers Pvt. Ltd. 1997 (107) ELT 533 is relevant, which held that the cotton fabrics dyed and merely coated with starch and China clay is classifiable under heading 52.06.

He held that this decision was relied upon in the case of Carborandum Universal Ltd. v. CCE 2001 (133) ELT 124 (T) and the Department's appeal against this decision had been dismissed by the Hon'ble Supreme Court (2002 [142] ELT A181). Accordingly, the Commissioner upheld the order of the AC and rejected the department's appeal before him.

11. The present appeal is against the above order of the Commissioner.

This time by the Revenue. Before us the Revenue contended that the Commissioner erred in holding that the CEGAT's remand order is a direction to the original authority to classify the goods in question under 52.06 if the test results indicate a particular position.

According to the Revenue, every issue was left open by the CEGAT when it remanded the case. The Revenue relied on the following decisions which held that book binding cloth is classifiable under 5901.10.Bhor Industries v. CCE, Pune 12. We have heard Shri Hitesh Shall, SDR for the Revenue and Shri Pankaj Shah for the respondent company.

13. The learned SDR reiterated the submissions made in the appeal memorandum. He strongly contended that the issue of classification of book binding cloth is well settled and is covered by the decisions cited supra. In all these cases the Tribunal specifically held that book binding cloth is classifiable under 5901.10. He also argued that the decision of the Tribunal in Bhor Industries case is affirmed by the Hon'ble Supreme Court. He contended that the product in question is admittedly book binding cloth and the correct classification is under Chapter 59 only. The ratio of the decision in Sunita Textiles, Sushma Textiles, Siddheshwar Textiles etc. and the guidelines contained therein are not applicable for deciding the classification of book binding cloth as in all these cases the product to be classified was different. Therefore the criterion of permanent stiffness and imperviousness to water etc. are not applicable for deciding classification of book binding cloth.

14. Shri Pankaj Shah, the director of the respondent company, defended the classification of the product under 52.06 and pleaded for a dismissal of the department's appeal.

15. We have carefully considered submissions made by both sides. We notice that both the authorities below have proceeded on the assumption that as per CEGAT's remand order they were to determine the classification only on the basis as to whether the goods have permanent stiffness and are impervious to water. This assumption in our view is not correct and is not based on the findings of the Bench in the remand order. While remanding--the matter before it, the bench had in fact set at large the whole issue of classification to be decided in accordance with law after getting the samples retested. There were no directions and / or stipulations in the remand order to classify the goods under a particular heading of the tariff. The reference to certain decisions and discussion about permanent stiffness of the fabric in the remand order cannot be taken to mean that the classification has to be decided merely on this basis.

16. That a specific description overrules a general description in the cardinal principle of classification of goods. In the instant case, the goods are described as "dyed D/C binding cloth". The heading 59.01 at the relevant time read as under- 59.01 - Textile fabrics coated with gum or amylaceous substances of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvass; buckram and similar stiffen textile fabrics.5901.10- Of cotton.

17. The above description clearly shows that book binding cloth is covered under 59.01. The other requirement of heading 59.01 is that the fabric should be coated with gum and amylaceous substances. This requirement is confirmed by the test report of CRCL. The test report says that the samples consist of plain woven fabric heavily coated with gum, amylaceous (starch substances) and inorganic mineral metals etc.

No other criteria for classification is stipulated or laid down for book binding cloth in chapter heading 59.01 other than the one cited in the CRCL's report. This view gets support from the HSN Explanatory Notes of Chapter 59.01. The criterion of stiffness etc. is applicable for classification of other types of fabrics, viz. buckram and the like, stiffen fabrics covered under 59.01, Thus the impugned goods both by its characteristics and use are covered under 5901.10. The lower authority's attempt to say that the fabric is not coated on the basis of some definition of coating is unsustainable.

18. It is seen that in the cases of Sunita Textiles, Sushma Textiles, Siddheshwar Textiles etc. cited supra, the Tribunal was not concerned with book binding cloth. The fabric involved in those cases was different. In the cases of Swastik Coaters and Carborandum Universal relied upon by the Commissioner the fabric was again different. In Swastik Coaters, the fabric was not used as outer cover of books and in the other case the fabric was meant and used as backing material for coated abrasives. It is therefore clear that all these decisions are distinguishable on facts and do not help in deciding the classification of the impugned goods. In our view, the reliance on these decisions to decide the classification of book binding cloth is misplaced. The Revenue relied upon the cases cited supra which have a direct ratio on the subject of classification of book binding cloth. The Tribunal in para 14 of its decision in Bhor Industries ease has given a detailed reasoning as to why book binding cloth has to be classified under 501.10. This decision has been affirmed by the Hon'ble Supreme Court as well as reported 1997 (96) ELT A153.

19. In view of what has been discussed above, we conclude that the Commissioner's decision to classify the impugned goods under chapter heading 52.06 is incorrect. Accordingly, we set aside the impugned orders and allow the Revenue's appeal. Cross objections are also disposed of.