

Collector of Central Excise Vs. New Vinod Silk Mills P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-1987

Reported in : (1988)(17)LC436Tri(Delhi)

Judge : G Sankaran, M Santhanam

Appellant : Collector of Central Excise

Respondent : New Vinod Silk Mills P. Ltd.

Judgement :

1. One of the disputes involved in the present appeals is with reference to a variety of fabric manufactured by the respondents composed of polyamide (nylon) filament yarn in the body and yarn spun from staple fibre of cellulosic origin in the selvages. The respondent's contention is that the said fabrics fell within the description of S. No. 4(a) of Central Excise Notification No. 138/70 dated 13.6.1970 attracting the tariff value specified therein while the department's contention is that they fell within the description of S.No. 1(a)(i) of the notification attracting the higher tariff value specified therein.

1. Fabrics made wholly of polyamide (nylon) filament yarn but excluding: 4. Fabrics made of a combination of polyamide (nylon) filament yarn, and yarn spun from staple fibre of cellulosic origin but excluding laces and brocco (including knitted brocco).

The Assistant Collector who originally adjudicated the matters held that the yarn which was contained in the body of the fabric was relevant and to be considered and the yarn in the selvedges was, apart from being negligible, irrelevant. The Collector (Appeals), however, held that, on a plain reading of the entries, without importing any supposed intention into them, there was no restriction as regards usage of the combination of nylon filament yarn and cellulosic staple fibre yarn in the body of the fabric or its selvedges. He allowed the appeals to this extent, modifying the Assistant Collector's orders and setting aside the demands for differential duty, confiscation of goods and appropriation of money deposited against their provisional release. It is this order that is now challenged by the Collector of Central Excise, Bombay in the present appeals before us.

3. We have heard Shri K.C. Sachar, D.R. for the Appellate Collector and Shri D.D. Gwalani, Advocate for the respondent.

4. The learned departmental representative contends that the combination of yarns referred to in S. No. 4 of the notification No.138/70 should be in body of the fabric and not merely in the selvedges.

In other words, the combination of nylon filament yarn and cellulose staple fibre yarn must be at the yarn stage.

5. The learned Counsel for the respondent submits that the persons whose statements were relied upon by the Assistant Collector were, in spite of specific requests, not produced for cross-examination and there has been, therefore, breach of the principles of natural justice.

He further contends that the subject fabrics were not wholly made of nylon filament yarn as required by serial No. 1 of the notification, and S. No. 4 did not prescribe any percentage specification as to the composition of the fabric. The revenue takes into account the selvedges for determining the weight and square meterage of the fabric and its assessable value but, without any justification, excludes the selvedges for determining which serial number of the notification applies to the fabric. The counsel seeks to support his stand by reference to the later Notification No. 37/77. He also cites the Tribunal's decision in the case of Valson Dyeing,

Bleaching and Printing Works, Bombay v. Collector of Central Excise, Bombay 6. We have carefully considered the submissions of both sides. We inclined to agree with the respondent's contention, which has been upheld by the Collector (Appeals), that the fabric containing, as it does, apart from nylon filament yarn in its body, cellulosic fibre spun yarn (and twinkle nylon filament yarn) in the selvages, falls more appropriately under section Serial No. 4(a) rather than under Serial No. 1(a)(i) of the Notification No. 138/70. For one thing, S. No. 1 requires the fabrics to be made wholly of nylon filament yarn.

Obviously, it must be made of such yarn to the extent of 100 per cent.

On the other hand, S. No. 4, while it speaks of a combination of nylon filament yarn and cellulosic staple fibre spun yarn, does not say whether such combination should be in the body of the fabric, or it could, as in the instant case, be confined to its selvages. May be Government's intention, as the appellant submits in the memo of appeal, was that only the body part of the fabric was to be considered. While it is not for us to speculate and it is well settled that intentions cannot be read into notifications if they are not expressed, explicitly or by necessary implication, the fact that S. No. 1 uses the word "wholly" without any qualification or restriction vitiates against the Collector's plea. Government's intention became explicit only with the issue of Notification No. 37/77 dated 18.3.1977 when the explanation on the following lines was made part of the notification: Explanation II--In determining the composition of fabrics, such yarn in the selvages as is different from the composition of the yarn in the body of the fabrics shall not be taken into account, but in determining the weight of the fabrics, yarn contained in selvages, whether such yarn is same as in the body of the fabrics or not, shall be taken into account.

This explanation forms part of the Notification No. 37/77 dated 18.3.1977. Such an explanation is absent in the predecessor notifications including Notification No. 138/70. There is no question, therefore, of the explanation being, as submitted by the learned departmental representative, of a clarificatory nature with reference to Notification No. 138/70 and its being therefore, retrospective in effect.

7. In the case of Valson Dyeing, Bleaching and Printing Works (Supra), the fabric was composed mainly of filament yarn of cellulosic origin with 0.15% of staple fibre yarn of cellulosic origin (only four, 2-ply staple yarn present) about 0.5 c.m. from the selvedge. The dispute was with reference to Notification No. 90/73 dated 5.3.1973, the successor to Notification No. 138/70 dated 13.6.1970. More or less similar arguments were advanced on both sides. The Tribunal held that in the absence of an explanation on the lines of explanation II to the Notification No 37/77 dated 18.3.1977 (the actual reference in the case being to a later Notification No. 2/78 dated 6.1.1978 having a similar explanation), it was not" permissible to read such an explanation into Notification No. 90/73. On this reasoning, it was held that the said fabric could not be said to be "made wholly of filament yam of cellulosic origin" as stipulated in S. No 4 of the Notification No.90/73 but that it fell under S. No. 5, viz. "fabrics made of a combination of filament yarn of cellulosic origin and yarn spun from synthetic staple fibre of cellulosic origin". Though Shri Sachar submitted that the said decision is of no application to the instant case because both yarns were of cellulosic origin unlike in the present case, we fail to see why the principle of the decision would not apply since the expressions being interpreted are similar.

8. The department has contended in the appeal memo that the subject fabrics are known in the trade as knitted fabrics and, therefore S. No.1 is applicable in preference to S. No. 4. We do not accept this contention for the reason that even if the subject fabric is a knitted fabric it does not conform to the requirements in S. No. 1 of being wholly made of nylon filament yarn.

9. In the above view of the matter, it is unnecessary for us to go into the other contentions put forth by the respondent.

10. In the result, we uphold the impugned order and dismiss both the appeals.

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