

Commissioner of Central Excise Vs. Shah Textile Ltd.

Commissioner of Central Excise Vs. Shah Textile Ltd.

SooperKanoon Citation : sooperkanoon.com/39991

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-2005

Reported in : (2006)(197)ELT369Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Shah Textile Ltd.

Judgement :

1.1 These appeals were heard together as the issue herein pertain to classification of "dyed D/C book binding cloth" manufactured i.e.

whether it will fall under chapter 52.00 as found by Commissioner appeals, while confirming the finding of Assistant Commissioner or should be classified under heading 5901.10 of Central Excise Tariff 1985 (herein after referred to as CETA 1985 for short) 1.2 The findings of this Tribunal vide order no A/291 to 300 (WZB/12004-CII dtd 24/5/04) in this very appeals was challenged in the Hon. Gujarat High Court in Special Civil Application no 9428 of 2004 vide order dtd 3//8/2004, after considering the plea of appellants as regards apex court, decision in case of CCE v. Sushma Textiles Pvt Ltd (2004 (167) ELT 487 SC) & it to govern the issue herein which are mixed question of law & fact disposed the application with the direction- "Since that decision was not available when the matter was heard before the Tribunal, it would be in the faintness of thing if the petitioner Company makes an application for review before the Tribunal & the Tribunal, after

hearing both the sides would go into the question whether the petitioner's case would be governed by the decision of the Apex Court in CCE v. Sushma Textiles Pvt. Ltd (supra) and any other decision which the petitioners caused may like to cite began the Tribunal" 1.3 The order dtd 24/5/04 of the Tribunal was recalled & the matter was reheard. CCE v. Sushma Textile Pvt. Ltd. (2004 (167) ELT 487 SC) while disposing off the Civil appeals filed in case of 1998 (97) ELT 65; 1998 (98) ELT 522, 1993 (67) ELT 932, 2002 (146) ELT 368 & has held - "10. The department in order to succeed in classifying the product of the respondents to fall under heading 59.01 of the Act will have to fulfill the following conditions: 1. that the fabric in question is a stiffened textile 2. that the stiffness has to be durable and permanent in nature 3. That the fabric is heavily sifted" These tests laid down by the Apex Court to resolve this issue when considered in light of the test report which has been recorded and relied in extension in the order of the Assistant Commissioner on a perusal reveals that the samples are not impervious to water and loose the stiffness in contact with it leaves no doubt that test at sr. no 2 of para 10 of the Apex Court decision in Sushma Textiles Pvt. Ltd. (2004 (167) ELT 487 SC) is not satisfied for the department to call for classification under heading 59 of CETA 1985.

b) the book binding cloth mentioned under heading 5901 will mean only such book binding cloth which will pass the tests & not to any material understood/or named as laid down by the Apex Court as book binding cloth. The tests laid down by the Apex Court have to be read to apply strictly, in placing an entity under a heading. Common understanding test will stand ruled out.

4. In view of the finding herein, we find no reason to upset the concurrent findings of the two lower authorities on facts & in law to disturb the classification as arrived under heading 52.06. Appeals of Revenue rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com