

Arvind Mills Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-15-1983

Reported in : (1983)(14)ELT2020TriDel

Appellant : Arvind Mills Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The Appellants M/s. Arvind Mills Ltd., Ahmedabad manufacture handkerchiefs out of cotton fabrics manufactured by them. The Superintendent of Central Excise who examined the issue of classification and assessment of handkerchiefs decided that handkerchiefs should be classified under item No. 68 and assessed at the rate of 1% with effect from 1-3-1975. He accordingly issued demand for payment of Central Excise duty from 1-3-1975 to 31-12-1975 for Rs. 9,790.25 P. and another demand for the period 1-2-1976 to 23-6-1977 amounting to Rs. 20,294.81 P. under Rule 10-A of the Central Excise Rules, 1944. The Appellants contended that item 68 of the GET is for 'all other goods not elsewhere specified' and accordingly this item should continue to be assessed under item 19 of the CET which was more specific for the purpose of classification. The Assistant Collector however was of the opinion that handkerchiefs are known and sold in the market as such and not as cotton fabrics. Handkerchiefs are not included under the description 'Cotton fabrics' and, therefore, should more appropriately fall under item 68 of the Tariff. The Appellate Collector of Customs likewise ruled that handkerchiefs are an identifiable commodity by its name and by its use and

accordingly rejected the appeal.

2. In their appeal to the Tribunal, the advocate for the Appellants has forcefully argued that handkerchiefs are covered by item 19 of the GET. The trade and the manufacturers have treated and considered handkerchiefs as cotton fabrics for over 30 years. In this connection, he referred to instructions No. 38/58 and 54/50 respectively issued by the Collector of Central Excise, Baroda according to which handkerchiefs are classifiable as cotton fabrics. He also referred to Rule 96-B of Central Excise Rules, 1944 which includes handkerchiefs within the meaning of cotton fabrics for the purpose of markings on the fabrics. Under the Cotton Textiles (Control) Order, 1948 dated 2nd August, 1948 issued by the Ministry of Commerce and Industry, 'Cloth' means "any fabric made either wholly or from cotton or partly from cotton and partly from any other material and includes dhotis, saris, lungis, chaddars, bed-sheets, towels, handkerchiefs and other similar articles made from cloth specified by the Textile Commissioner from time to time..." 3. The advocate for the appellants in this connection also made a reference to Tariff Item 22 and Notification No. 109/75, dated 20-4-1975 according to which art-silk fabrics specified in the schedule to the Notification have been exempted from the whole of the additional duty of excise leviable thereon. The entry No. 3(c) specifically mentions the item handkerchiefs as one of the items having been so exempted. Later, under the Notification No. 165/83 dated 28-5-1983 the exemption from additional duty of excise on handkerchiefs falling under tariff item No. 22 was withdrawn and the said entry No. 3(c) of the Schedule to the aforesaid Notification No. 109 was omitted. The advocate cited several authorities in support of his contention that Item 19 of the CET includes not Only chaddars, bed-sheets, bed spreads, etc. but also handkerchiefs. He also referred to the case of Delhi Cloth and General Mills Co. Ltd. v. Commercial Tax Officer, West Bengal, 1975 Tax Law Report 1841. Another case cited was Deputy Commissioner of Sales Tax v. M.M. Mohd. Abdul Khader 1980 ELT Page 778.

He referred to the Supreme Court judgment reported in 131 ITR 597 pages 612 to 614 to say that the circulars of the Central Board of Direct Taxes are legally binding on the revenue even if they are found to be not in accordance with the correct interpretation of the statute and they clash or deviate from such

construction. The Hon'ble Supreme Court has also relied on the decision in Navnit Lal Zaveri reported in 1956 ITR 198 and the decision of Ellerman Lines Ltd. 1982 ITR 913. He, therefore, submitted that handkerchiefs manufactured by the appellants are cotton fabrics. The mere fact that as part of the process of manufacture, the edges of the handkerchiefs have been stitched will not in any way affect their character as cotton fabrics and cannot take the article out of the scope of Entry 19 because such process of stitching is essentially involved in the manufacture of several of the items enumerated in the inclusive portion of the definition of 'Cotton Fabrics' contained in the Item 19 of the CET. The SDR conceded that the Central Board of Excise and Customs has also recently accepted this condition and issued Tariff Advice F. No. 54/1/80-Cx. 2, dated 8-6-1983 to the effect that cotton handkerchiefs would more appropriately fall under item 19 as cotton fabrics. He, however, contended that since the handkerchiefs have been stitched at the end, they have undergone further manufacture and accordingly should more appropriately fall under item 68. He stated that he has been authorised by the Central Board of Excise and Customs to take this stand even though it is in direct contradiction of the Tariff Advice issued by the Board.

4. The Bench has carefully considered the points made by both the parties and agrees with the submissions made by the Advocate for the appellants. The item Handkerchiefs would more appropriately fall under Item 19 of C.E.T. This Entry does not specify that the items like Bed-sheets, Bedspreads etc. whose ends have been stitched shall be excluded. The Appeal is accordingly allowed.

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