Collector of C. Ex. Vs. Super Fabrics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-1988

Reported in : (1989)(43)ELT284TriDel

Appellant : Collector of C. Ex.

Respondent : Super Fabrics

Judgement :

1. The appeal was orignally a review show cause notice issued by the Central Government proposing to set aside the order of the Appellant Collector of Central Excise, and to restore the Assistant Collector's order or pass such orders as deemed fit after considering the submissions of the assessee.

2. The matter originated in an order passed by the Asstt. Collector of Central Excise whereby he imposed a penalty of Rs. 5,000/- upon the respondents and ordered the confiscation of seized goods comprising tufted cotton fabrics with the option to redeem the same on payment of a fine. The respondents filed an appeal before the Appellate Collector who in the impugned order accepted their contention and held that the subject goods were correctly classifiable under Tariff Item 68 since in the production of tufted bed cover there was neither any processing of fabrics nor weaving knitting nor stitching. The Appellate authority in his order observed that even the primary sheet was not made or woven with stape yarn and hence the goods in question need no circumstances could be classified under Tariff Item 19(1) (b) or Tariff Item 22. The Appellate Collector further recorded that it was only a specific type of setting of viscose of staple yarn with the

help of tufting machine and that the subject goods were therefore classifiable under Tariff Item 68. The Appellate Collector, therefore, set aside the Assitt.

Collector's order.

3. The Central Government took up the matter for review and issued a notice on 31.8.1982 which is being treated as an appeal before us. The tentative view of the Government as recorded in the said notice was as follows :- "(i) Tufting is a process of manufacture inasmuch as goods of a new description distinctly known as such in commercial parlance comes into existence as a result of the process and the subject goods (tufted bed covers) had been manufactured from handloom casement cloth and staple yarn with the help of tufting machines operated by power.

(ii) The classification of such tufted fabric will depend on the composition of the finished goods i.e the nature of the case fabric on which tufting is done and also the nature of fibre which is tufted.

(iii) In the instant case handloom casement cloth and staple yarn were used in the manufacture of the tufted bed covers. Hence it should be either cotton fabrics Tariff Item 19 or manmade fabrics Tariff Item 22 or other fabrics as the case may be depending on the percentage of the yarn contained in the finished fabrics." 4. Shri L.C. Chakraborty, the learned JDR submitted that the fabrics used for the manufacture of the impugned goods were handloom cotton fabrics which with the use of acrylic or viscose yarn and with the help of a tufting machine makes the goods. He submitted that the composition of the finished product as recorded in the impugned order was 60% to 70% viscose/staple and 30% to 40% cotton. Referring to the Assistant Collector's order the learned representative pointed out that the respondents themselves accepted the pre-dominance of viscose. Shri Chakraborty also argued that the Appellate Collector was wrong in holding that there was neither processing the fabrics holding that the goods were classifiable under Tariff Item 68 and emphasised that the respondents admitted before the Assistant Collector that tufting is a process of manufacture and not merely a process on the fabric and that tufting was not embroidery. He submitted that heat setting was admittedly involved in the process and therefore the correct classification was Tariff Item 22(1) (b).

5. Shri Mookherjee, the Learned Advocate for the respondents submitted that revenue cannot at this stage seek to expand the scope of the proceedings as this is not an appeal filed but a review proceeding which was transferred by the Central Government to the Tribunal under the law. The Assistant Collector classified the goods under Tariff Item 19 and the Appellate Collector order reclassification under Item 68.

There cannot be a new case made out now for classification under Tariff Item 22. Shri Mookherjee further submitted that as the learned JDR did not support classification under Item 19, and Item 22 was not considered by the Assistant Collector, the only order that can be passed was to confirm the classification under Tariff Item 68. The Learned Advocate also argued that the respondents do not manufacture man-made fabrics and the impugned order was correct. He further argued that manmade fabric is liable to clasifica-tion under Tariff Item 22 only if it is woven. In this case there is only tufting and therefore Tariff Item 22 is not applicable. Shri Mookherjee also submitted that the review proposal was vague and that not having taken up the Assistant Collector's order for review there cannot now be a proposal to alter the classification. Shri Mookherjee also argued that in similar cases the Appellate Collector took similar views which were not reviewed; but asked to give details of such orders the Learned Advocate could not do 6. Shri Chakraborty countered the arguments and submitted that the Tribunal can give alternate classification different from either of the classifications ordered by the Assistant Collector and the Appellate Collector. He argued with reference to the Heading of Items 19 & 22 CET that weaving was not a condition for classification under these items.

7. We have considered the arguments of both sides. The factual position seems to be, as recorded in the impugned order, that after the process of tufting is complete, the original handloom sheet containing cotton yarn loses its predominant ratio in comparison with the man-made fabrics and in the final product viscose/staple yarn varies from 60% to 70% and cotton yarn becomes a minor contained of 30% to 40% only.

Having taken note of this the impugned order held that the goods were not classifiable under Item 19(1) (b) or under Item 22.

8. As pointed out by Shri Mookherjee, the Learned Advocate, the revenue did not at all support classification under Item 19 which was the original classification ordered by the Asstt. Collector. The arguments advanced by the learned JDR were for classification under Item 22 which was not the department's case earlier. The Assistant Collector's order was not reviewed though according to law it could have been reviewed at that stage. Therefore for reasons of legality, both the Item namely 19 & 22 cannot be considered by us at this stage. Besides, this being originally a proceeding in review the scope is somewhat limited. We cannot go beyond the facts on record and beyond the Assistant Collector's and Collector (Appeals) orders. During arguments before us, the learned DR ruled out Tariff Item 19 and it will not be legal for us to thrust a classification which neither side stands for. Item 22 is a fresh introduction at review stage, at the time of notice. Therefore, there is an impasse here. Besides, it is not as if the Revenue has succeeded in demolishing the impugned order on facts and law. The benefit of the tangled situation has to go in favour of the assesse, the Respondent. We order accordingly, and drop the proceedings.