Collector of C. Ex. Vs. Bedrock Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1988

Reported in : (1989)(42)ELT595TriDel

Appellant : Collector of C. Ex.

Respondent : Bedrock Ltd.

Judgement :

1. This is an appeal filed by the Revenue against the order of Collector of Central Excise (Appeals), Bombay. Brief facts of the case are that the respondents manufacture a product stated to be rubberised tyre cord fabric. On the tyre cord a rubber layer is laid by them on either side of it by passing the same through the calendering. The process was described by them before the Collector (Appeals) as topping and not as rubberisation. The composition of the same is stated to be 40% cotton and 60% rubber, as seen in the impugned order. The fabrics were held to be assessable under T.I.16A (2) by the Collector of Appeals and exempted under Notification SO/67 as amended from time to time as against T.I. 19(1)(b) as claimed by the Revenue.

2. The learned JDR for the department, Shri Chakraborthy, pleaded that the fabric manufactured was a cotton fabric sandwiched between two layers of the rubber. He pleaded that two orders had been passed by the Assistant Collector and in one order, the same was held to be assessable under T.I.16(A)(2) and by the second order under which the demand was raised under T.I.19(1)(b) of CET. He reiterated the findings of the Assistant Collector given in order No. F.No. V(16)4-32/83/8207

dated 12-10-1983. His findings in this regard are reproduced below: "Having taken this view it would be necessary to mention what is the discovery now made. When the then Assistant Collector made the Order which is obviously on a mis-statement of facts as was pointed out to the party during the hearing. It was made to appear to the then Assistant Collector that the tyre cord warp sheet was an intermediate product predominantly comprising of rubber and unvulcanised and should be classified as rubber product. It is however found that the tyre cord warp sheet is made of cotton yarn and used as a base and both sides of it rubber sheeting is coated.

Amendments of Rules 9 and 49 have done away with the notion of non-chargeability as intermediate product. Non-vulcanising does not mean that a new product like rubberised tyre cord warp' sheet has not come into existence. Even such unvulcanised rubberised fabric can find use like those for insulation, etc." "While I hold that the product rubberised tyre cord warp sheet 'manufactured by the assessee as classifiable under Item No. 19(1)(b) C.E.T. I also hold that the demand is correctly worked out and liable to confirmation and Order accordingly the classification of the product and confirmation of the demand." 3. He pleaded that so long as the cotton fabric is there, the fabric manufactured by the respondents will have to be treated as cotton fabrics for the purpose of assessment.

4. The learned Advocate for the respondents, Shri D.B. Engineer, referred to the T.I.19(1)(b) and drew our attention to the main heading wherein the definition of cotton fabrics has been set out. The same is reproduced below for convenience of reference: " 'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bedspreads, counter-panes, table-cloths, embroidery in the piece, in strips or in motifs, fabrics impregnated, coated or laminated with preparations cellulose derivatives or of other artificial plastic materials and fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both." 5. He pointed out that unless the cotton in the fabrics

predominates by weight, the same could not be considered as cotton fabric for the purpose of assessment under T.1.19(1)(b). In this connection, he drew our attention to the case of Falcon Tyres Ltd., Mysore v. C.C.E., Bangalore 6. He pleaded that in that case the cloth described as friction cloth, a product identical to that of the respondents, has been held to be falling under T.I. 16A(2).

7. He pleaded that this ratio was followed by this Tribunal, in their Order No. 373/87. He pleaded that the Hon'ble Bombay High Court in the case of M.R.F. Ltd. v. Union of India and Ors. 1985 (22) ELT 5 (Bombay), have also held that the rubberised tyre cord is assessable under T.I. 16A(2). He pleaded that the Hon'ble High Court has stated that rubberised tyre cord warp sheets having a predominant rubber content are considered as rubber products. He pleaded that the judgment of the Hon'ble High Court is binding on the Tribunal and cited in this regard two judgments of that Tribunal in the case of - (i) Hindustan Petrolium Corporation Limited v. C.C., Bombay -1984 (18) ELT 358 (Tri.) andAmritlal Lalubhai v. Collector of Central Excise, Allahabad -1985 (21) ELT 908 (Tri.).

8. We observe that the Collector has set out the following grounds of appeal: "Appellate Collector has erred in deciding the classification of the "sandwitched rubberised tyre cord fabncs" Tmder T.I.16A(2) on the basis of the predominance of rubber contents over the cotton fabrics.

Tariff Item 19(1)(b) of CET includes "cotton fabrics" subjected to the process of rubberising. Thus the cotton fabrics is the base material which is subjected to the process of rubberising. On the other hand T.1.16A(2) which reads rubber products viz. plates, sheets and strips, unhardened, combined with any textile material i.e. the base material is rubber and it is combined with textile.

The description of the aforesaid two tariff items, evidently shows that the classification of the product is to be determined with reference to the base material used. Since cotton fabrics is rubberised and not the rubber sheet is combined with other textile material, the cotton fabrics rubberised would fall within the purview of Item 19(1)(b) of CET. The definition of manufacture under Section 2(f)(v) in relation to goods comprised in Item No. 19(1) includes rubberising. Thus even according to definition of manufacture rubberised cotton fabrics fall within the scope of T.I. 19(1)(b) of CET." 9. We observe that neither the Collector in the grounds of appeal nor the learned JDR in his pleas before us has shown us as to how where there is predominance of robber content to the extent of 60% in the fabric, the fabric can fall under T.1.19(1)(b) in terms of the criteria set out in the definition of cotton fabrics given under Tariff heading 19. In view of this, and following judgment of the Bombay High Court supra, we hold that there are no merits in the appeal and dismiss the same.

10. We observe that the Collector has filed a supplementary appeal which is registered under No. A15 (82)/88D in the main appeal. Inasmuch as the Collector (Appeals) disposed of two orders of lower authority by a single order, the delay in filing the same, as per the procedure and practice of the Tribunal, is condoned. This appeal is also dismissed for the reasons set out in our order on the main appeal.