

Peico Electronics and Vs. Collector of Central Excise and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1983

Reported in : (1983)(14)ELT2512TriDel

Appellant : Peico Electronics and

Respondent : Collector of Central Excise and

Judgement :

1. This is an appeal from Messrs Peico Electronics & Electricals Ltd., (hereinafter called the appellants) against the Order-in-Revision dated 24-8-82 passed by the Collector of Central Excise and Customs, Pune.

The matter arises from the Order No. V (Ex) 11-39/77/69 dated the 31st December, 1980, passed by the Assistant Collector of Central Excise, Pune II Division. It relates to a material called "spider cloth". The appellants had been served with notice to show cause why this spider cloth should not be assessed to duty under sub-item III of Item 19 of the Central Excise Tariff Schedule. The description of this sub-item reads as follows:- "Cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials." After considering the reply given by the appellants, the Assistant Collector in his order under reference observed that the spider cloth was obtained at an intermediate stage and was not marketable nor marketed and therefore was not excisable. He accordingly ruled out the classification of the fabric under either Item 19 or Item 68 of the Central Excise Tariff Schedule, and vacated the show cause notices issued in this regard.

2. Thereafter the Collector of Central Excise initiated proceedings under Section 35A (2) of the Central Excises and Salt Act, as it then stood, against the Assistant Collector's order. He observed that Central Excise duty was levied on manufacture and since the goods were manufactured duty was legally leviable and that the question of the goods being actually marketed was not relevant. He held that this spider cloth manufactured by impregnating cotton fabric with artificial plastic material was clearly excisable under Tariff Item 19 III of the Central Excise Tariff. It is against this -order that the appellants have come up to the Tribunal.

3. The appeal originally came up for hearing on 8-9-83 before a Bench which differed slightly in composition from the present one. On that occasion Shri D.R. Kohli, for the appellants, stated that the appellants desired to adduce as evidence in their favour certain test reports of Messrs Italab Private Limited, a well-known industrial testing and analytical laboratory, on samples drawn in 1983 of the spider cloth produced by the appellants. Shri Tayal., for the Department, opposed the introduction of such reports at this stage. The Bench directed Shri Kohli to make a specific application in this regard by 15-9-83.

4. Shri Kohli also submitted to the Bench a sealed envelope certified by the Central Excise authorities as containing samples of the spider cloth drawn from the appellants on 3-11-1982. The envelope was opened and was found to contain three samples of the "spider cloth", two of them superscribed as "Thick" (one 21 cm. in width and the other 15 cm.

in width) and the third superscribed as "Thin" (21 cm. in width). These samples were retained in the custody of the Senior Vice-President, pending the further hearing of the case, which was adjourned to 24-10-83.

5. The Bench also gave a direction to the learned SDR, Shri Tayal, to check whether any test had been carried out by the Customs laboratories on samples drawn on 3-11-82, and if so, to file copies of the test report by 10-10-83.

6. The matter came up again before the present Bench on 24-10-83, but could not be heard at length for lack of time. It was, therefore, taken up today. In view of the change in the constitution of the Bench, Shri Kohli presented his arguments afresh

on behalf of the appellants.

7. With reference to the directions given on the previous occasion we observed that the appellants had filed an application, along with two test report Nos. 4923 and 4924 of Messrs Italab Private Limited, as well as an extract from "Fairchild's Dictionary of Textiles". No communication had been received from the SDR regarding the test carried out by the Customs laboratory. Shri Tayal explained that the respondent Collector had sent him copies of the test report, but with the submission that it might not be relevant to the present case, as the test had been carried out in a different context. Shri Tayal, however, stated that if the Tribunal so directed he would submit the copies of the test report. As we felt that the test report was quite material for arriving at a decision on the classification of the spider cloth, we directed Shri Tayal to make copies available to the Bench as well as to the appellants, which he duly did. Although the test report did not in terms state that it was on the samples drawn on 3-11-82, the contents of the report indicated that it was in fact with reference to those samples, and Shri Kohli, for the appellants, accepted that it could be considered as with reference to those samples. Further, in the light of the contents of the test report, Shri Kohli did not press for admission of the two test reports furnished by Messrs Italab Private Ltd.

8. The question before us is whether the spider cloth is classifiable as a cotton fabric impregnated with artificial plastic materials, within the scope of Item 19 III CET. It may be stated that the samples shown to us were in the nature of light brown coloured fabric, with a stiffness approaching that of thick paper. It would be relevant in this connection to set out the process by which this spider cloth is produced, as given by the Assistant Collector in paragraph 8 of his order :- "The issue relates to the classification of Cotton Fabrics subjected to resin treatment and obtained as an intermediary product in the manufacture of spiders used in the part of wireless receiving sets (Loudspeakers). Duty-paid bleached or grey Cotton Fabrics is brought in the factory premises. This Cotton Fabrics is cut into required size in the running length and width of the Fabrics is exceeding 15 cms. The Cotton Fabrics so cut in the required sizes and which is in the running length is then wound and the rolls are prepared. The roll of the Cotton Fabrics (of the required width and in running length) is then put on the impregnating machine. The solution of P. F. Resin is kept in this machine. The Cotton Fabrics from the roll

passes through the solution and gets impregnated. The impregnation of the resin is controlled by pressure arrangement and the movement of the rolls. The cotton fabrics impregnated with the resin solution is then passed through oven and heated to a temperature of about 80 C. The heating process makes the fabrics stiff in appearance and also there is a slight change in colour. The fabrics so heated is then again wound in the roll form and these rolls are in an identifiable form and also isolated. The processing of the cotton fabrics in the impregnation section is over. The aforesaid impregnated fabrics wound in the roll form thereafter becomes a raw material for manufacturing the spiders. The spiders are manufactured in the adjacent section in this factory. The aforesaid fabrics i.e.

impregnated with resin and wound in the rolled form is then cut into square or rectangular pieces. These pieces are then fed to the spider manufacturing machine. In this machine, there is a die and heating arrangement. On account of the heating and the pressing on the die the aforesaid square pieces are converted into spiders. On this machine, the shape of a spider and also the complete curing of the resin portion takes place." It may be added that what is called a "spider" is a circular disc with a hole in the centre. It is not flat but has been given wrinkled shape and also a considerable degree of stiffness. We understand that the "spider" is used as a component part of a loudspeaker.

9. The main argument advanced by Shri Kohli was that the spider cloth did not conform to the concept of "impregnated fabric". In this connection he strongly relied on the definition of "impregnated fabric" as contained in "Fairchild's Dictionary of Textiles". This definition is extracted below :- "IMPREGNATED FABRIC : (According to A.S.T.M.) A fabric in which the interstices between the yarn are completely filled with an impregnating compound throughout the thickness of the material, as distinguished from sized or coated materials where the material is applied to the surface and these interstices are not completely filled." Shri Kohli pointed out that the report of the Customs laboratory itself made it clear that none of the samples conformed to the above definition. In each case it has been stated, with reference to "appearance and characteristics" that "interstices between the yarns are open". Again, in respect of "cone test for waterproofness", it has been stated in each case "water passes freely". Shri Kohli

urged that in the light of these findings the spider cloth could clearly not be termed as "impregnated fabric".

10. Shri Kohli also referred us to circular letter No. CF/1/80-CX. 2 dated 19-4-1980, as reproduced at page 487 of "Central Excise Tariff of India, 1983-84" by R.K. Jain. In this letter, which deals with "interlining cloth", it has inter alia been stated as follows :- "The fabric even after the above processing continues to be porous it would not hence be liable for classification as a coated or an impregnated fabric." It is considered that "interlining cloth" of the variety in question will be classifiable under Item 19 I and not under Item 19 III of the C.E.T.11. Shri Kohli pointed out that the test report filed by Shri Tayal also referred to a sample of interlining cloth of another assessee.

Shri Kohli stated that, although that was not the subject matter of the present proceedings, the test report on that sample lent support to his case regard to the sample of interlining cloth also the test report stated the "interstices between the yarns are open" and "water passes freely". Sh. Kohli contended that since even according to the CBEC interlining cloth did not fall under Item 19 III, the spider cloth which had similar characterised would also not fall, under that Item.

12. Shri Kohli also argued that the spider cloth was not "goods" : explained in the judgment of the Supreme Court in the case of Union of Ind. v. Delhi Cloth and General Mills Ltd. & Others, reported in 1977 E.L. (J 199) S.C. According to him, the shelf life of the product was to be short and it could only be used for captive consumption and not marketed.

13. Shri Kohli further pointed out that the appellants had been making the spider cloth right from 1958. In 1970 the question of its being assessed duty was taken up. The then Assistant Collector had held that it was classifiable under Item 191(2) CET. However, his order was set aside in apply by the Collector of Central Excise, Pune. Shri Kohli contended that they were no cogent reasons for re-opening the question of assessment in 1980, 14. For the Department, Shri Tayal submitted that the Assistant Collector had ruled out classification under Item 19 III on two grounds: Firstly, that the spider cloth was an intermediate product and secondly that it was not marketable nor marketed. He contended that both these reasons

were wrong. The spider cloth could not be said to be an intermediate product because it was not something which was used up in a continuous process as soon as it was made. The Assistant Collector's order as well as the appellants' own statement showed that it could lie for 3 to 5 days before being further processed for manufacturing the "spiders". Thus, during that period at least there was evidently no deterioration. Even thereafter it had not been shown that there was any perceptible deterioration. The argument that the product had a short shelf life and could not be marketed was therefore, according to him, not correct.

15. Shri Tayal also pointed out that in order to be excisable it was not necessary that the product should actually be marketed. It was, however, pointed out to him that the Supreme Court had held that the goods should be "marketable", in the sense that they could come to the market to be bought and sold. The Assistant Collector had held that the product was neither marketable nor marketed.

16. On the question of classification, Shri Tayal submitted that there was authority of the Supreme Court to say that one should go by the ordinary meaning of an expression and not by definitions in dictionaries. He accordingly submitted that the term "impregnated" should not be interpreted in the light of the definition in Fairchild's Dictionary of Textiles but in accordance with the ordinary understanding. In the present case, the cotton fabric was soaked in a solution of plastic and came out covered with plastic material.

According to him this would in ordinary parlance be considered as impregnation, and the question whether it was impermeable to water or not was not relevant.

17. With reference to the Board's letter regarding interlining cloth, Shri Tayal quoted the test report of the Customs laboratory which showed that the content of resin in the sample of interlining cloth was about 8.3% whereas in the three samples of spider cloth it was about 45%. In view of his considerably higher percentage of resin, he contended that the spider cloth could not be treated as on par with interlining cloth and therefore would not be covered by the Board's letter.

18. Shri Tayal also submitted that if the spider cloth was held as not covered by the definition of "impregnated fabrics", it could be considered as 'coated fabrics',

which were also covered by Item 19 III.19. On Shri Kohli's argument that the tariff classification of the same product should not be changed from time to time, Shri Tayal submitted that there had been only one change which was in 1982, by the order-in-revision of the Collector which is now before us. He submitted that the Excise officers did have authority to revise a classification if relevant facts which warranted a change came to their notice.

20. We have given our careful consideration to the arguments advanced by both sides. The short question before us is whether the spider cloth can be considered as "fabrics impregnated...with...artificial plastic materials". In this context the definition of "impregnated fabric" contained in Fairchild's Dictionary of Textiles, on which the appellants have relied, is by relevant. We are unable to agree with Shri Tayal that this definition (sic) should be disregarded on the basis that dictionary meanings are not conclusive. In the present case, we are dealing with a textile material and the Dictionary is one which specifically relates to textiles. We can also take judicial notice of the fact that it is one of the authoritative works in this field. But quite apart from this, as we pointed out to Shri Tayal, the definition is not simply one given by the compilers of the Dictionary, but is taken from the definition of the A.S.T.M. (American Society for Testing and Materials), which, like our Indian Standards Institution, is an organisation commanding very high authority. The Central Excise Tariff itself does not contain any definition of "impregnated fabrics". If the I.S.I. has published any definition in this regard, it has not been cited before us ; but we have no reason to think that any definition adopted by the I.S.I. would be markedly different from that adopted by an authority of the standing of the A.S.T.M. We have therefore to take it that the definition as relied upon by the appellants is applicable for interpreting Item 19 III. In the light of this definition and the test report of the Customs laboratory, the spider cloth, which is found to have open interstices between the yarns and through which water passes freely, obviously cannot be considered as "impregnated fabric".

21. Shri Tayal had faintly argued that if the spider cloth was not "impregnated fabric" it can be considered as "coated fabric". In reply, the appellants submitted that the common understanding of a coated fabric was of one which was covered with plastic material on one side while the other side remained untreated. In

contrast, the spider cloth was covered with plastic material on both sides. In the absence of any specific authority we are unable to say how far this submission is correct. We, however, observe that the entire case before the lower authorities was whether the spider cloth was an "impregnated fabric" and the question of its being a "coated fabric" has not been raised at all. Such a contention, for which no factual foundation has been laid, therefore, cannot be gone into at this stage.

22. We accordingly hold that the finding of the Collector of Central Excise, Pune, that the spider cloth was an impregnated fabric falling under Item 19 III was not correct. We accordingly allow the appeal and direct that consequential relief as due be given to the appellants.

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