F.G.P. Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-1991

Reported in : (2004)(168)ELT93TriDel

Judge : J T P.C., G B Deva

Appellant : F.G.P. Limited

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal preferred against the Order-in-Appeal No. KVV 351/90/B-III, dated 17-5-90 passed by the Collector of Central Excise (Appeals) Bombay.

2. The point to be considered in the present appeal is whether the product namely, Glass Wool Mat/Felt manufactured by the appellants would be covered by sub-heading 7014,00 read with serial number 10 of Notification No, 52/86, dated 10-2-86 as claimed by the appellants or would fall under serial number 11 of the said notification as held by the Department.

3. Originally, the classification list was filed by the appellants classifying Glass Wool Mat under Heading 7014 and claiming assessment under Notification No. 52/86 under serial number 11 of the said notification. This was approved by the Assistant Collector.

Subsequently, the appellants filed a revised classification list on 15-12-87 claiming exemption under Serial Number 10 of the notification on the ground that woven glass fabrics are also eligible to exemption under Serial Number 10 of the aforesaid notification, and the original classification list was filed by them under a mistaken belief that duty exemption granted to glass fabrics under Serial Number 10 was applicable only to certain types of glass fabrics. This claim, was rejected by the Assistant Collector as per order dated 7-4-88. In appeal, the Collector set aside the order of the Assistant Collector and remanded the matter for de novo adjudication after observing the principles of natural justice. The Asst. Collector accordingly heard the appellants and passed an order holding that the earlier order dated 7-4-88 was proper and correct on the ground that the product described in the original classification list and the one described in the classification list filed on 15-12-87 was one and the same, namely, glass wool and not glass wool fabrics. Again the matter was taken in appeal before the Collector (Appeals) and the Collector (Appeals) has rejected the appeal as per impugned order on the ground that the exemption under notification No. 52/86-C.E. was not available to the products of the appellants as the said goods are not woven products as Serial Number 10 will cover only woven fabrics and not non-woven fabrics. Aggrieved by this order, the appellants have come before us by way of his appeal.

4. Shri M.P. Baxi, learned Advocate, appearing for the appellants submitted that the issue in the present case has been considerably narrowed down in view of the finding given by the Collector as per the impugned order that the goods in question are non-woven fabrics. Since the goods in question are non-woven fabrics and having admitted the products of the appellants as non-woven bonded fabrics, the benefit of exemption cannot be denied under Notification No. 52/86 as Serial Number 10 of the notification does not differentiate between woven and non-woven fabrics and exemption granted under Serial Number 10 will be applicable equally to non-woven bonded fabrics.

5. To a query from the Bench will it not be an issue in the present case whether the goods in question are glass wool or glass wool fabrics in view of the finding given by the Assistant Collector that they are glass wool and not glass wool fabrics, he said, that this issue is no longer before the Tribunal as it was resolved by the Collector. He said that sufficient material evidence was produced before the

authorities below i.e., manufacturing process, technical literature and other evidences and based on that evidences the Collector (Appeals) has arrived at the proper conclusion holding that goods are non-woven fabrics whereas the Asst. Collector has not considered the evidences adduced by the appellants but concluded on different ground holding that the product described in the previous classification list and in the revised classification list was one and the same. Manufacturing process of the product was explained thus : From the forehearth of the 'tank' a relatively thick stream of glass is allowed to flow by gravity from a bushing into a rapidly rotating Steel alloy dish which has many hundreds of fine apertures round its periphery. Glass is thrown out through these apertures by centrifugal force to form filaments which are further extended into fine fibres by a high velocity blast of hot gas. After being sprayed with a suitable bonding agent, the fibres are drawn by suction on to a horizontally moving conveyor positioned below the rotating dish.

The mat of fibres formed on the conveyor is carried to curing ovens which cure the bonding agent, then to trimmers and guillotines which shape the final product - normally either a flexible mat or rigid board. The wool produced by the Crown Process is of a very fine texture, the individual fibres having an average diameter of approximately 61/2 microns." He drew our attention to the test reports from Bombay Textile Research Association, Bombay, The Silk & Art Silk Mills Research Association, Bombay and Shriram Institute for Industrial Research, New Delhi, wherein it was indicated that the goods in question are 'Non-Woven Glass Fabrics' and the same were produced before the authorities below for their consideration. Further he said this mat could be considered as 'fabric' and for what is 'fabric' he drew our attention to para 9 in the case of Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and Ors., "9. What is fabric? The "Mercury" Dictionary of Textile Terms defines "fabric" as a term which covers "all textiles no matter how constructed, how manufactured, or the nature of the material from which made", and the expression "Textile" is described as "any product manufactured from Fibres through twisting, interlacing, bonding, looping, or any other means, in such a manner that the flexibility, strength, and other characteristic properties of the individual fibres are not suppressed". The Man-Made Textile Encyclopedia (1959) defines fabric as "a collective term applied to cloth no matter how constructed or manufactured and regardless of the kind of fibre from which made. In structure it is planner produced by interlacing yarns, fibres or filaments. Textile fabrics include the following varieties, bonding felted, knitted, braided and woven". The Fairchild's Dictionary of Textiles (1959) says that fabric is "a cloth that is woven or knit, braided, netted, with any textile fibre...." and "textile" is said to refer to "a broad classification of any material that can be worked into fabric, such as fibres and yarns including woven and knitted fabric, felt, netted fabric, lace and crouched goods". In "Textile Terms and Definitions" (1960) the word cloth is defined as "a generic term embracing all textile fabrics and laminar felts" and "Textile" is applied in its modern sense "to any manufacture from fibres, filaments, or yarns, natural or artificial, obtained by interlacing". The 1967 Annual Book of ASTM Standards defines cloth as "any textile fabric but specially one designed for approval domestic or industrial use," and textile fabric as "a planer structure consisting of interlaced yarns or fibres". The 1973 Annual Book of ASTM Standards reproduced those definitions." Further he said since the goods fall within Notification 52/86, the notification has to be read in its entirety and should be construed liberally while allowing exemption relying upon the ratio of the decision in the case of Union of India v. Wood Papers Ltd., 1990 (47) E.L.T. 500 (S.C.).

6. On the other hand, Shri J.N. Nair, JDR, appearing for the Revenue while justifying the action of the Department in denying the benefit of exemption under Notification 52/86 said that the product in question cannot be said to be glass wool fabrics. Since the Assistant Collector has not given a finding on this issue, he requested that the matter may be remanded to the Asst. Collector for de novo adjudication as it was done by the Tribunal in the case of U.P. Twiga Fiber Glass Ltd. v.Collector of Central Excise, Delhi in Appeal No. E/2203/89-D (date of order 19-2-90) [1990 (47) E.L.T. 455 (T)] on similar facts and circumstances.

7. In reply, Shri Baxi, learned Advocate submitted that there is no justification for remanding the case in view of the fact that the Assistant Collector has not arrived at the conclusion in spite of material evidence placed before him and on similar evidences the Collector has arrived at the proper conclusion holding that the goods are non-woven fabrics. Further, even in the remanded case which was referred to by the Departmental Representative, on remand, the Collector

(Appeals) has taken a similar view holding that the goods are glass fabrics other than fabrics impregnated, coated, covered or laminated with plastics or varnish and hence would appropriately be covered by Serial Number 10 of Notification 52/86, dated 10-2-86 under tariff sub-heading 7014. He produced a copy of the said order for ready reference.

8. On a careful consideration of the arguments advanced by both sides and on perusal of the records, we find that there is sufficient force in the arguments advanced by the learned Counsel for the appellants. We do not agree with the Departmental Representative to remand the matter to the Assistant Collector for de novo adjudication in view of the fact that once it was already remanded by the Collector (Appeals) and further he has not considered evidences adduced by the appellants to arrive at the conclusion whether the goods are glass wool or fabric. On the other hand, the Collector has given a clear finding based on the details of manufacturing process, technical literature, test reports and other evidences adduced by the appellants. In view of his clear finding based on such evidences that the goods are non-woven fabrics the only question left open to decide whether the goods are covered by Serial Number 10 of Notification 52/86 to claim the benefit of exemption. Since Serial Number 10 does not differentiate between woven and non-woven fabrics, the exemption granted under the said notification will be applicable equally to non-woven fabrics also as it was rightly argued by the appellants' Counsel. All goods other than glass fabrics impregnated, coated, covered or laminated with plastics or varnish under Serial Number 11 of the said notification which attracts 20% ad valorem may be applicable to yarn and other goods with which we are not concerned for the present. In view of the clear finding that the goods are non-woven fabrics and in the absence of mention of woven or non-woven fabrics in Serial Number 10 of the said notification, we hold the goods in question are covered by Serial Number 10 of the Notification and accordingly the appellants are entitled to the benefit of exemption.

9. In the result, we set aside the impugned order and the appeal is allowed accordingly.