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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-1991

Reported in : (1991)LC558Tri(Delhi)

Appellant : Vikrant Tyres Ltd.

Respondent : Collector of Customs

Judgement :
1. The short question for consideration in this appeal is the classification of Polypropylene Liner Cloth imported by the appellants from Japan in July, 1981. The cloth had a width of 160 cms. and was imported in 30 bales measuring 8400 metres. It was declared and assessed to duty under Heading 51.04 of the Customs Tariff.

Subsequently, a refund claim was submitted on the ground that the goods were classifiable as a component part of 4 roll Calender Machinery Unit - the Fabric Bias Cutter Machinery Unit as a liner fabric for treated tyre fabric under Chapter 84.40(1) read with Note 2 of Notes to Section XVI of the Customs Tariff. An alternative classification as fabric suited specially for industrial use under Heading 59.16/17 was also claimed. On rejection of the refund claim; and the appeal, the appellants have come upto the Tribunal in this appeal.

2. Among the grounds of appeal taken is that Polypropylene liner cloth is a closely woven fabric and it is used as separator (Processed Tool) to avoid sticking of different layers of rubber compound coated fabrics, while storing. The same fabric

is used repeatedly till it is torn off into small pieces. It cannot bond to rubber compound under any normal processed conditions followed in tyre industry/rubber industry.

This ground has been taken to counter the argument taken by the Assistant Collector that classification of the goods in question under Heading 59.16/17 is not permissible in terms of Explanatory Notes appearing at page 820 of the Customs Co-operation Council Nomenclature.

It is also claimed that Polypropylene liner is a warp made up of multifilament and definitely fits under Heading 59.16/17 and not under Chapter 51 as it refers to mono-filament. Reliance has been placed on a write-up of the suppliers in support of the appellants' plea. The claim for assessment under Chapter 84 was not pressed.

3. The appellants' further claim is that Polypropylene liner cloth falls under Heading 59.17(A)(4) which reads as under:- "Woven textile fabrics, whether or not felted, impregnated or coated, of a kind commonly used in paper-making or other machinery, tubular or endless with single or multiple warp and or weft, or flat woven with multiple warp and/or weft."

4. Since appellants are mainly relying on the supplier's write-up, it is necessary to see how it is described there. The relevant portions from this write-up are reproduced below:- "Liner cloths in rubber industries are meant for the purpose of separating rubber coated tyre cord fabric kept in rolls not to stick to each other. We developed the captioned PLFM 300-3 taking up Polypropylene filament yarn as a material in view of its excellent suitability for liner cloth, and started supplying to various world leading tyre companies.(2) Yarn : Warp: Multi Filament 300 deniers/10 filaments

5. Among the qualities of the subject goods described in the write-up are light weight, easy handling and excellent strength displaying in good service, especially in big and heavy rolls such as tyre and steel belt marking. It has good peeling off from unvulcanised rubber. Among the qualities of absorption, the following description is significant:- "Liner cloth of the past has been easy to absorb

moisture due to the material use, and the moisture contained sometimes shift to the base cord fabrics in the process of vulcanisation, a little moisture content in the base cord fabric will cause a radical decline in strength due to the effect of heat. Polypropylene has little absorption of moisture, so Polypropylene cloth will have no such trouble."

6. During the hearing, Shri A.N. Haksar, the learned Counsel for the appellants, referred to the Explanatory Notes to Heading 59.17 which is incorporated fully as Note 4 to Chapter 59 of the Customs Tariff and begins thus:- "In Heading No. 59.16/17, the expression "Textile fabrics and textile articles of a kind commonly used in machinery or plant" is to be taken to apply to the following goods which are to be taken as not falling within any other Heading of Section XI:- (a) textile products (other than those having the character of the products of Chapter 59), the following only:- (emphasis supplied) (iv) woven textile fabrics whether or not felted, impregnated or coated, of a kind commonly used in paper-making or other machinery tubular or endless with single or multiple warp and or weft or flat woven multiple warp and/or weft." Shri Haksar submitted that Collector (Appeals) had not considered the aspect of the use of liner cloth in calendering machine and had merely reproduced certain portions from the order of the Assistant Collector.

He, therefore, submitted that it would be appropriate to remand the matter to the lower authorities for fresh consideration.

7. Arguing for the Department, Shri L.C. Chakrabarti, the learned SDR, submitted that in order to qualify for classification under Heading 59.16/17, which covers "textile fabric and textile articles, of a kind commonly used in machinery or plant", (emphasis laid by him), it is necessary to examine whether the goods are of a kind commonly used in machinery or plant. He submitted that it did not appear from the write-up of the suppliers, relied upon by the appellants, that the goods were commonly used in machinery or plant. In fact, it appears from the grounds of appeal as well as from the write-up that liner cloth is adopted for the purpose of separating rubber cord tyre fabric kept in rolls not to stick each other. (Emphasis laid by him). He also submitted that the other qualities mentioned in the write-up nowhere refer to the use of the liner cloth in the machinery or plant, but to its use

as a liner between two layers of rubber coated tyre cord fabrics which are stored in the form of rolls so that such layers do not stick to each other. The qualities of light weight, easy handling, absorption of moisture etc., which have been mentioned in the write-up only highlight how it facilitates the storage of rubber fabrics between two layers of which the liner cloth is used.

8. Referring to Note 4(a)(iv) to Chapter 59, reproduced in para 6, Shri Chakrabarti submitted that although this Note has exhaustive coverage, the use of the word "only" at the end of sub-clause (a) is significant and makes it clear that the scope of the expression 'textile products' etc. has been specified in Note 4 itself by exhaustive enumeration of the items which would be covered by it. Since the impugned goods were neither felted, impregnated or coated, nor of a kind commonly used in machinery, they neither fall in Clause (a) nor in Clause (b) of Note 4, and were, therefore, not covered by Heading 59.16/17.

9. With regard to the additional ground of appeal, which was earlier allowed to be included in the appeal, Shri Chakrabarti questioned the applicability of Notification 242/79-C.E., dated 9-8-1979 and Notification 147/80-C.E., dated 26-9-1980 and submitted that Shri Haksar's only ground in the appeal is that he is entitled to exemption under Notification 110/75-C.E., dated 30-4-1975 which exempts processed man-made fabrics from duty. He submitted that Shri Haksar had not shown that what were imported were processed man-made fabrics which alone were entitled to exemption from excise duty under this notification. He also submitted that Notification 242/79, of which the appellants were claiming benefit exempts polypropylene mono-filament yarn of 60 deniers and above, whereas the construction of the yarn imported excludes such yarn because it is not mono-filament yarn of 60 deniers. Notification 147/80 was also not applicable because it could not be shown that the goods imported in this case were made from polypropylene spun yarn.

10. Continuing his arguments on this point, Shri Chakrabarti cited the judgment of the Tribunal in the case of Falcon Tyres Ltd., Mysore v.Collector of Central Excise, Mysore [1985 (21) E.L.T. 786] and the judgment of the Andhra Pradesh High Court in BMF Beltings Ltd. v. Union of India [1990 (50) E.L.T. 10]. It was decided

in the latter case that friction cloth was not an excisable commodity because of being an intermediate product with short shelf life. He submitted that liner cloth is not needed for manufacture of rubberized tyre cloth and therefore, the question of exemption from countervailing duty would not arise.

11. Replying, Shri Haksar once again highlighted the qualities of liner cloth as given in the supplier's write-up and reiterated that it was entitled to classification under Heading 59.16/17. He distinguished the cases cited by Shri Chakrabarti and submitted that rubberised friction cloth is not identical to liner cloth, and therefore, the judgments cited have no application to the facts of this case.

12. We have carefully considered the matter and perused the case records. Polypropylene Liner Cloth was imported in July, 1981 in running length in 30 bales measuring 8400 Metres of 160 cms. width. It was assessed under Heading 51.04 as "woven fabrics of man-made fibres (continuous) including woven fabrics of monofil or strip of Heading 51.01/03" on which additional (countervailing) duty was paid under Items 18 and 22 of erstwhile Central Excise Tariff. The notifications mentioned in column (12) of the Bill of Entry are 356/76-Cus., dated 2-8-1976, 242/79-C.E., dated 9-8-1979 and 147/80-C.E., dated 26-9-1980.

The initial claim for re-assessment made in the appeal was that: (a) the subject goods should be classified under Heading 59.16/17 as "textile fabrics and textile articles, of a kind commonly used in machinery or plant" since they are used in the calendering machine for separating two layers of Rubber coated tyre cord fabric to be stored in rolls so that they do not stick to each other; (b) by Way of additional ground, raised before us with our permission, is that countervailing duty is not leviable because Polypropylene liner cloth was not manufactured in India at the relevant time and hence countervailing duty in terms of duty of excise leviable for the time being on a like product, if manufactured or produced in India being leviable did not arise. The further claim is that, assuming without admitting that the goods are manufactured in India, they were exempt under Item 22(1)(b) of the erstwhile Central Excise Tariff read with Notification 110/75-C.E., dated 30-4-1975.

13. The claim for classification under Heading 59.16/17 of the Customs Tariff is based on the supplier's write-up for Polypropylene Liner Cloth "PLFM 300-3.

Although the write-up mentions the advantages of using the subject goods as liner cloth in tyre cord fabrics kept in rolls, it does not indicate anywhere its use in calendering machines.

During the hearing, Shri Haksar, had invited our attention to the letter dated 19th October, 1986 addressed to the Assistant Collector of Customs, Appraising (Refunds) (at pp. 22-23) in which it was mentioned that the liner cloth is used as a separator in the machine while calendering rubber fabrics. No evidence in support of this claim has been furnished before us and the only technical literature - the supplier's write-up-also does not confirm such use. It does not indicate how liner cloth can be placed in a calendering machine and used to separate layers of rubber fabrics.

14. Since Heading 59.16/17 is very specific - "textile fabrics and textile articles of a kind commonly used in machinery or plant", it is necessary that such use should be demonstrated in order to fall under this Heading. It is significant that the requirement being "of a kind commonly used in machinery or plant", it should have been possible for the appellants to explain how it is of a kind commonly used in calendering machine. All that the write-up says is that the liner cloth is suitable for separating two layers of rubber. If the material was used in calendering machine in the form of industrial fabrics, the supplier's write-up would have mentioned about it and, in the absence of any other authentic supporting evidence, we do not think that the claim can be accepted merely on the basis of what has been stated in a letter of the appellants.

15. As for the claim that countervailing duty was not leviable on Polypropylene Liner Cloth because it was not manufactured in India at the material time, a reference to Section 3 of the Customs Tariff Act, 1975 will make it clear that although such a condition does figure in the notification for the purpose of levy of such duty, even in the event of its not being fulfilled, countervailing duty is still leviable. We reproduce Section 3 ibid for a proper understanding of the matter:- "3. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and

if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation. - In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purpose of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force." The Explanation makes it clear that if a like article is not so produced or, manufactured in India, the duty which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest rate. Thus, the Explanation leaves no doubt that even if the goods are not manufactured in India, the additional duty is to be levied at the rate applicable to the class or description of articles to which it belongs, and, in case

there are several different rates, the duty is to be charged at the highest rate.

16. Sub-section (3) of Section 3 goes one step further and provides for levy of duty even on the raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article. The Central Government has been empowered to frame rules for this purpose and, it is in exercise of this power that they have framed the Additional Duty Rules, 1976 and it is under Notification 356-Cus., dated 2-8-1976 that the fabrics containing more than 10 per cent by weight of Synthetic fibre or yarn are liable to additional duty equal to the excise duty leviable on synthetic fibre and yarn on their imports into India.

17. The appellants have stated that the subject goods were exempt under Central Excise Tariff 22(1)(b) read with Notification 110/75 dated 30-4-1975 at the relevant time. We observe that Notification 110/75 was as under:- "Processed man-made fabrics and fents and rags of such fabrics, falling under sub-item (i) of Item 22 are exempt from the whole of the duty of excise leviable thereon." 18. There is nothing on record to show the nature of Polypropylene Liner Cloth as being a processed man-made fabric which would qualify for exemption from duty under Notification 110/75. The only description available about it is in the write-up of the suppliers which gives details of the yarn from which it is made, the construction of fabric, weight in gram/Sq. Metre, thickness, tensile strength, elongation at break, boiled water shrinkage and dry heat shrinkage. There is no indication whatsoever in this writeup that the subject goods were processed man-made fabrics. Further, the definition of processed man-made fabrics given in Notification 108/75-C.E., dated 30-4-1975, is as under:- (i) "processed" means any process which is ordinarily conducted with the aid of machines whether operated with or without the aid of power or steam, other than- (b) singeing, that is to say, burning away of knots and loose ends in the fabric; (c) padding, that is to say, application of natural starch to one or both sides of the fabric; (d) black-filling, that is to say, application of starch to one side of the fabric; (e) cropping, that is to say, cutting away mechanically of loose ends from the fabric; and (f) hydro-extraction, that is to say, mechanically extracting or mechanically squeezing out water from the fabric;" 19. It will, thus, be seen that in the absence of any evidence to show that Polypropylene Liner Cloth

imported by the appellants answers to the description of processed fabrics as indicated hereinabove, the subject goods are not eligible for exemption from additional duty (countervailing duty). Therefore, the plea taken in the additional ground of appeal also fails.

20. After detailed consideration of all aspects of the matter, we find that both on the question of classification as well as on the liability to countervailing duty, the appellants' case merits rejection. The appeal is, therefore, rejected.