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Court : Chennai

Decided On : Aug-20-1985

Reported in : 1986(24)ELT281(Mad)

Judge : M.N. Chandurkar and ;Venkataswami, JJ.

Acts : Central Excise Rules, 1944 - Rule 10

Appeal No. : Writ Appeal No. 115 of 1980

Appellant : Assistant Collector of Central Excise, Erode and anr.

Respondent : Yarn and Cloth Processing Centre, Erode

Advocate for Def. : K. Ramamurthi, Adv.

Advocate for Pet/Ap. : T. Somasundaram, Senior Central Government Standing Counsel

Judgement :

ORDER

Chief Justice

1. The question which arises in this appeal is whether the cotton fabric which is woven out of yarn which has been bleached and/or dyed qualify for excise duty under

3. The Superintendent of Central Excise, Erode, taking the view that excise duty was leviable under Items 5(a) and (b) and not under Items 10(a) and 10(b), issued a notice to the respondent to show cause as to why the respondent should not be re-assessed and the differential duty recovered under Rule 10 of the Central Excise Rules, 1944. The respondent herein raised the contention before the Assistant Collector that since cotton fabrics were woven out of bleached and/or dyed yarn, the fabric was also bleached and/or dyed fabric, and, therefore, the correct rate of duty applicable was the one provided in Item 10(a) and (b) of the notification. This contention was negated by the Assistant Collector who took the view that 'merely because the fabrics were woven out of bleached and/or dyed yarn, it cannot be treated as bleached and/or dyed fabric, as the fabric itself is not subjected to such processes and as such it can be treated only as unprocessed, in other words 'grey' fabric at the time of entry into the factory.' The Assistant Collector therefore found that there was a short levy of Rs. 48,812.27 which the directed should be recovered from the respondent herein.

4. The respondent challenged this order by a writ petition under Art. 226 of the Constitution of India. The learned Single Judge took the view that fabrics woven out of bleached and/or dyed yarn would fall more aptly in the category of processed fabrics rather than grey fabrics. For arriving at this conclusion, the learned Judge referred to some text books dealing with the manufacture of textiles and held that on account of the developments and progress of textile science and technology, cotton yarn can be subjected to the processes of bleaching and/or dyeing and then woven into fabrics and the process of bleaching and/or dyeing need not wait for the fabric being woven. The learned Judge in this view of the matter allowed the writ petition and quashed the demand made from the respondent. This order is challenged on behalf of the Revenue in this writ appeal.

5. Mr. T. Somasundaram, appearing on behalf of the Revenue, has contended before us that before the respondent is held entitled to claim that the duty was payable under Item 10(a) and (b) of the Notification which admittedly is less than the duty leviable under Item 5(a) and (b), the respondent must show that the variety of fabric on entry into the factory was bleached and/or dyed. In other words, according to the learned counsel, the respondent must show that it was

bleached and/or dyed fabrics which had entered into the factory. The contention is that what has gone into the factory for processing is not a fabric which is bleached and/or dyed though it may be a fabric which is made out of bleached and/or dyed yarn. Consequently, according to the learned counsel for the Revenue, the fabrics which are subjected to processing by the respondent will not fall under Item 10(a) or (b), but must necessarily fall under Item 5(a) and (b) which refer to grey fabrics. Learned counsel also invited our attention to the definition of 'grey goods' appearing in the Encyclopedia of Textiles by the editors of American fabrics magazine Prentice Hall. The definition reads as follows :-

Grey goods : Also spelled grey, grieger. They are cloths, irrespective of colour, that have been woven in a loom, but have received no dry or wet finishing operations. Grey goods are taken to the perch for the chalk-marking of all defects, no matter how small. These blemishes must be remedied in finishing of the cloth. Material is converted from the grey goods condition to the finishing state.

Dry finishing operations may include : perching, measuring, burling, specking, mending, sewing, experienced sewing, shearing, napping, gigging, pressing.

Wet finishing operations may include : Dyeing, printing, washing, fulling, milling, scouring, scaping, shrinking, crabbing, tentering, sponging, decatizing. London shrinking, water-proofing, mercerizing, gassing or singeing; beetling; chasing, schreinerizing, embossing, bleaching, sizing, calendering, friction calendering, sanforised, etc.'

6. Learned counsel for the Revenue contends that the criteria for determining whether the fabrics are grey or not, it must be shown that they have been subjected to dry or wet finishing operation. The nature of the dry and the wet finishing operation is set out in the definition itself. Therefore, the learned counsel contends that since it is not shown by the respondent that the fabric which came into the factory for the purpose of processing was subjected to either dry or wet finishing operation, the fabric must be considered as grey fabric.

7. Another limb of the same argument is that merely because the fabric is woven out of bleached or dyed yarn, the fabric itself does not become bleached or dyed

fabric.

8. Having considered the argument of the learned counsel for the Revenue, it is difficult for us to accept the argument that a fabric which is made out of bleached and/or dyed yarn must be treated as grey fabric merely for the reason that after the fabric is made, it is not subjected to either dry finishing operation or wet finishing operation. The argument of the learned counsel for the Revenue assumes that a fabric which is woven out of bleached and/or dyed yarn must necessarily be subjected to dry finishing operation or wet finishing operation. There is no evidence before us to the effect that a fabric which is made out of bleached and/or dyed yarn has necessarily to be subjected once again to either dry finishing operation or wet finishing operation. Merely because a fabric has not been subjected to dry finishing operation or wet finishing operation, that fabric will not become grey fabric. It has to be shown that it must necessarily be subjected to dry finishing operation or wet finishing operation. On this short ground, in our view, the fabric in question must fall out of the purview of grey fabric.

9. Now an affidavit has been filed before us on behalf of the respondent sworn to by the processing Manager in the Tamil Nadu Co-operative Textile Processing Mills Ltd., Erode, Paragraph 2 of the affidavit reads as follows :-

'The grey yarn once it is bleached and dyed, it becomes fit to be used as fabrics without the fabrics being further bleached and/or dyed. It is a matter of common knowledge in the Textile field that grey yarn is directly woven in the fabrics depending upon the requirements. Now having regard to the modern technology and availability of advance of know-how in the textile technology, yarn is bleached and/or dyed and fabrics are made out of it. Once we get such fabrics, it is not necessary to further bleached or dye the fabrics. Therefore, the fabrics woven out of bleached and/or dyed yarn are as understood in the textile field is fabrics bleached and/or dyed.'

This affidavit therefore shows that a fabric which is woven out of yarn which is bleached and/or dyed is not required to be further bleached or dyed. The affidavit also shows that in the textile field such a fabric is recognised as fabric bleached and/or dyed. The averments in the affidavit have not been controverted on behalf

of the Revenue.

10. While considering the nature of the goods for the purpose of levy of excise duty, it is now well settled that the description by which the goods are known in the commercial world will be relevant for deciding whether they fall in one category of goods or another. Apart from the fact that fabrics woven out of bleached and/or dyed yarn need not necessarily be subjected to bleaching or dyeing process and must therefore be treated on the same footing as fabrics which have been bleached or dyed, there is the statement made before us by a person who appears to be qualified as the Processing Manager in a Processing Mill, that such fabrics are known as fabrics bleached and/or dyed. We are, therefore, not inclined to accept the contention raised on behalf of the Revenue that the goods which are processed by the respondent fall under Items 5(a) and (b) of the Notification. In this view of the matter we do not see any reason to interfere with the order of the learned Single Judge. The writ appeal fails and is dismissed with costs. Counsel's fee Rs. 500.

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