

Raymond Woollen Mills Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-31-1995

Reported in : (1996)(81)ELT565TriDel

Appellant : Raymond Woollen Mills Ltd.

Respondent : Collector of Customs

Judgement :

1. This is an appeal against order dated 23-4-1993 passed by the Collector of Customs (Appeals), Bombay. The appellants imported 'endless felt' and 'endless synthetic sleeves' for Hemmer Continuous Decasting Machine (Textile Machine) as spares and claimed clearance of the said goods under sub-heading 5911.90 of CTA, 1975 and sub-heading 5909.00 of the Central Excise Tariff, 1985 vide Bill of Entry No. 10280, dated 31-10-1992 and Bill of Entry No. 10278, dated 31-10-1992. The Assistant Collector accepted the importers claim as regards the classification of synthetic sleeves but he held that 'endless felt' in question was classifiable under sub-heading 59.10 of the Customs Tariff Act, 1975 and sub-heading 59.08 of the Central Excise Tariff, 1985 on the grounds that 'endless felt' in question was more than 3 mm in thickness and was used in decasting machine to convey the fabric in addition to holding the fabric in hot humid condition. He arrived at the finding that sub-heading 59.10 of the Customs Tariff Act, 1975 read with sub-heading 59.08 of the Central Excise Tariff Act, 1985 was more specific for the 'endless felt' in question by virtue of Note 7(a) of Chapter 75 of the Customs Tariff Act, 1975 and it was excluded from the purview of heading 59.11 of the Customs

Tariff Act. Aggrieved by the order passed by the Assistant Collector the appellants preferred an appeal before the Collector (Appeals) who confirmed the finding of the A.C. They challenged the finding of the Assistant Collector on the grounds that the imported endless felt could not be deemed as a conveyor belt. In support of their contention they made the following submissions: "Transmission Belt is always meant to transmit power and the Conveyor Belt is always for conveying of goods. Neither is involved here and therefore the goods cannot be classified as Transmission or Conveyor Belt as the Asstt. Collector has done.

The Asstt. Collector has mis-directed himself by the way in which he has interpreted Chapter Note 6A of Chapter 59. This note will not apply to the impugned materials at all because these are not Transmission or Conveyor Belts. Secondly the note only excludes Transmission or Conveyor belting of textile material of a thickness of less than 3 mm from the heading 59.10. It does not follow that such material of more than 3 mm will automatically go under the Chapter 59.10. The Asstt. Collector on the other hand appears to have taken that when the thickness exceeds 3 mm, it will fall under 59.10.

Endless Felts falls under Customs Tariff Heading 5911.90 and also under Chapter Note 7(b). Since this is a specific entry this will prevail over the other entry." 2. On behalf of the appellants Shri R. Santhanam, Advocate appeared before us. He submitted that the Collector (Appeals) had erred in holding that the endless felt in question was a Conveyor Belt specifically covered by Customs Tariff Heading 59.10. He contended that the endless felt in question was an essential component of the decastising machine. He took us through the details of the decastising process in respect of woollen textiles as explained in the Encyclopedia of Textiles and the Standard Handbook of Textiles by A.J. Hall. He submitted that endless felt is not the decastising machine for obtaining a better finish on the fabric. He added that in the decastising machine there is a steaming chest and a perforated cylinder in the centre of which there is a suction zone. He pointed out that steam is blown and is sucked into a perforated cylinder through the perforated holes and if the endless felt is not over the fabric an indentation mark of the perforated holes will be made on the fabric. By virtue of the endless felt giving a protection cover this indentation mark does not take place on the fabric and due to the pressure of the

endless felt the fabric is imparted a good finish and handle. He contended that being a textile article the endless felt in question was correctly be classifiable under Heading 59.11 of the Customs Tariff Act, 1975 by virtue of Chapter Note 7(a) of Chapter 59. On being asked to produce the relevant catalogue and the operating manual relating to the decatizing machine on which the imported endless felt was to be used, he referred to the photocopy of Page No. MD-60790 from the relevant catalogue and despite being given an opportunity he was unable to produce the relevant catalogue and operating manual in respect of the machine in question.

3. On behalf of the respondent Shri Mohan Lal, JDR took us through the impugned order passed by the Collector (Appeals) and reiterated the finding of the Collector (Appeals). He pleaded for the rejection of the appeal.

4. We have gone through the records of the case and considered the submissions made on behalf of both sides. It is seen that the Collector (Appeals) had arrived at the finding that the disputed endless felt had to be deemed as a Conveyor Belt since it was meant to carry out both the functions of conveying and also keeping the positive pressure on the fabric during decatizing process. He extracted in his order the details of the decatizing method as given in the Standard Handbook of Textiles by A.J. Hall and therefrom drew the conclusion that while applying a moderate pressure on the fabric during its decatization under hot and humid pressurised condition, the endless felt as it moves also takes along with it the fabric. The relevant extract from the impugned order is reproduced below: "The 'endless felt' in dispute is used in Decatizing Machine.

Decatizing method is explained in 'The Standard Handbook of Textiles by A.J. Hall as follows: "A popular method for giving wool fabric a lustrous soft finish is that known as decatizing. In this the fabric is wound around a perforated hollow metal cylinder the surface of which has been covered with a few layers of wrapping fabric to protect the wool fabric from stains. Steam is then blown from inside the cylinder through the perforations and thence through the fabric.

Alternatively the cylinder, with many layers of wool fabric wound upon it, can be enclosed within a chamber, the steam being blown in the opposite direction,' that

is, from the outside through the fabric and perforations and into the cylinder. This steaming treatment softens the wool fibres and, owing to the moderate pressure resulting from the tightness of winding, sets them to give smoothness and lustre." It becomes clear from the above explanation and the schematic diagram of flow of the cloth explained during personal hearing that the fabric whose hand, drape, appearance and lustre to be improved are made to pass on to a perforated drum equipped with a steaming and vacuum system. The cloth as it winds, is laid between layers of a decatizing blanket immediately over the drum is the 'sleeve' over which fabric to be worked upon and covered by the 'endless felt' from the other side. The basic phenomenon is the outside felt keeps the fabric under positive pressure over drum, while rotating and steam is passed. Under the hot, humid, pressurised condition the fabric gets decatized and on the drum is rotating, the worked upon fabric comes out at the other end and when gets stretched on the rollers at the outward end gets its finish and lustre.

One thing which becomes clear from the operation sequence is that, moderate pressure is applied on the fabric by the 'endless felt' by squeezing the fabric onto the 'sleeve'. Added with steaming and positive pressure the endless felt as it moves ahead has to make the fabric move along with it as otherwise under hot pressurised condition fabric cannot be pulled under tensile force as it gets teared. This 'taking along' is nothing but 'conveying' of fabric by the 'endless felt' wherein 'endless felt' is doing both 'conveyor job' and at the same time keeping the positive pressure.

Conveyor Belts are specifically covered by CTH 59.10. the appellants claim of CTH 59.11 will be not agreeable as by virtue of statement 7(a) in chapter notes that "Other than those having the character of the products if the Headings Nos. 59.08 to 59.10." By virtue of the item as such being 'Conveyor Belt' (of thickness more than 3 mm), being covered as at CTH 59.10, CTH 59.11 becomes inapplicable.

Similarly in the case of CET '1985, by virtue of Chapter Note 7(a) the item gets excluded from CET 59.09 and gets classified as at CET 59.08." 5. On perusal of these extracts from the impugned order we find that the finding by the Collector

(Appeals) that the disputed 'endless felt' was to be deemed as a 'Conveyor Belt', (Sic.) was arrived at mainly on the basis of his own understanding of the decatising process in respect of woolen textile and not on the basis of any technical literature such as the catalogue relating to the machine in question or the operating manual of the machine. Neither the importers nor the appellates authority have referred to any technical literature or opinion of an expert in regard to the exact function performed by the 'endless felt' when used in Decastising Machine. As observed by us earlier inspite of opportunities having been given to the appellants they, for reasons best known to them, did not file the detailed catalogue or working manual in respect of the decastising machine before us. In the case of Collector of Central Excise, Chandigarh v. Steel Strips Ltd. reported in 1995 (77) E.L.T. 248, the Hon'ble Supreme Court has observed that technical knowledge is important in Excise cases and technical.

evidence and authoritative publications should be placed at the first instance before the adjudicating authority and the Tribunal. Since in this case the appellants have not placed the detailed catalogue in respect of the decastising machine and its operating manual, we are unable to give any finding on the question whether the disputed 'endless felt' could be deemed as 'Conveyor Belt' as held in the impugned order. For these reasons the impugned order passed by the Collector (Appeals) entirely on the basis of his own understanding about the function of the disputed "endless felt" in the decatising machine and not on the basis of any technical literature or that relevant catalogue/operating manual of the machine in question, has to be held as having been passed without proper application of mind.

6. In view of the foregoing, we set aside the impugned order and remand the matter to the Collector (Appeals) for de now consideration in accordance with law after giving suitable opportunity for personal hearing to the appellants. The appellants are directed to file the relevant catalogue/ operating manual in respect of the decatising machine and other literature/ technical write-ups to facilitate finding in regard to the proper classification of the disputed goods.