(2006) 03 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 10545 of 1997

Coats Viyella India Ltd.	APPELLANT
Vs	
Central Board of Ex. and Cus.	RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:
Central Excise Tariff Act, 1985 — Section 2
Central Excises and Salt Act, 1944 — Section 11, 37B, 37B

Citation : (2006) 204 ELT 213

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : R. Senthilkumar, for the Appellant; K. Veeraraghavan, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been filed to quash Board Order, Circular No. 48-2-97-CX. dated 17-4-1997.

2. The petitioner manufactures, inter alia, cotton canvas fabrics which are either grey or processed, cotton belting duck fabric etc. These fabrics

were classified under Chapter 52 of the Central Excise Tariff Act, 1985. Necessary classification lists were duly approved from time to time by the

Madurai Collectorate from 1986 onwards.

3. On 20-9-1990, the Assistant Commissioner issued a fresh show cause notice and proposed to re-classify cotton canvas, cotton belting duck

fabrics etc., under Chapter 59 on the ground that these were used for industrial purposes. Further show cause notices were issued for the

subsequent periods upto February, 1992. The Assistant Commissioner confirmed the revised classification under Chapter 59 and also the differential duty demand by his Order No. 52/92 dated 20-8-1992.

4. By a Board Circular addressed to all Collectors of Central Excise dated 10-8-1988 clarification was issued that the goods were classified under

Chapter 52. Subsequently by Order No. 10/93 dated 5-11-1993 the Central Board of Excise & Customs classified the goods under Chapter 52.

Based on this Circular, the goods have been allowed to be cleared. In the above circular/order No. 10/93, dated 5-11-1993, reference is made to

proceeding initiated by Simplex Mills Co. Limited v. Union of India, wherein the Tribunal held that grey cotton, grey cotton canvas, belts and duck

were classified under heading 59.09 as industrial products. As the matter went against the assessees it was taken up to the Supreme Court. In the

mean while, Circular No. 10/93 which was in favour of the assessee, came into force. The appeal filed by the assessee before the Supreme Court

was withdrawn based on the circular. Subsequently, the present impugned order/ circular dated 17-4-1997 came to be passed u/s 37B of the

Central Excise Act, the classification was sought to be once again revised. The relevant portion of the circular is extract here under:

7. Now, therefore, in exercise of the powers conferred u/s 37-B of the Central Excise Act, 1944 and for the purpose of ensuring uniformity in the

classification of the said goods, the Central Board of Excise & Customs hereby orders that:

A. grey cotton tyre cord fabrics, grey bolting cloth, grey filter cloth/straining cloth and grey belting cloth and belting duck, generally having technical

uses and generally not used for making clothing, household linen, bed spreads, curtains, other furnishing articles, etc., shall henceforth be classified

under heading No. 59.11 of the GET.

B. the grey cotton canvas and grey cotton duck, not having technical uses, shall henceforth be classified under chapter 52, of CET; and

C. the grey cotton belting shall henceforth be classified under heading 59.10 subject to note 6 to Chapter 59.

8. The Board''s F. No. 59/5/87-CX.l (Cir. No. 5/Textiles/88) dated 16-2-88, F.No. 52/19/87-CX-1 [Cir. No. 22/Cotton/88-CX-I) dated 10-

8-88 and 37-B Order No. 10/93 dated 5-11-93 stand rescinded.

9. This Order shall not change the position for the past closed assessments.

5. The petitioner-company is therefore aggrieved by the change of the

classification once again without any basis whatsoever. The contention of the

petitioner is that there was no justification for the change in the classification that has been sought to be done by the Board. The Department is

relying on Section XI of Harmonised System of Nomenclature (HSN) which would state that woven fabrics falling under Chapter 52 will not

include fabrics for technical uses coming under heading 59.11. The Board has further held that since Chapter 59 refers to technical use, the end use

becomes a relevant criteria for deciding the classification. The Board has relied on the expression ""technical uses"" to be a determinative factor to

decide the classification under Chapter 59 departing from the earlier position.

6. The learned Counsel for the petitioner would contend that any Circular if at all, would be only prospective and in any event it is based on the

decision of the Tribunal in Simplex Mills-I case that the Department has sought to change the classification. It was also stated that the Department

has been periodically changing the classification and this is also causing confusion in the matter of assessment and clearance of goods.

7. Learned Counsel for the petitioner would draw the attention of this Court to a decision reported in 2001 (130) E.L.T. 446 (Tri.-LB) Jyoti

Overseas Ltd v. Commissioner of Central Excise, Indore wherein a similar issue regarding the classification of the goods, which all the subject

matter of the present petition, was considered.

11. In Simplex Mills Co. v. Collector of Central Excise, Nagpur 1993 (49) ECR 147, this Tribunal interpreted the scope and ambit of Chapter

Heading 59.09 as it stood at the relevant time. While analysing that Chapter Heading, this Tribunal lost sight of Note 7 to Chapter 59. Had the

sub-heading 5909.00 been examined in the light of Note 7 to Chapter 59, the conclusion would have been entirely different. When the Chapter

Heading 59.11 is examined in the light of Note 7 to Chapter 59 as has been done in the earlier paragraph, we are clear in our mind that the

conclusion reached by the Bench in 1993 (49) ECR 147 is unsustainable. We accordingly hold that the said decision can never be treated as one

laying down correct law. Two coordinate Benches of this Tribunal in 1999 (106) ELT 213 (decided on 1-7-1998) and Simplex Mills Co. Ltd. v.

Collector of Central Excise, Mumbai 1998 (103) E.L.T. 568 (decided on 6-7-1998) took the view that grey cotton fabric is classifiable under the then Chapter Heading 52.05 and not under Heading 59.09.

12. Tarpaulins manufactured by processing cotton fabrics were sought to be classified under Chapter 59 of the Central Excise Tariff Act. That was

challenged by the manufacturer of tarpaulins. That issue came up before this Tribunal in 1986 (9) ECR 440 . The Tribunal took the view that

tarpaulin made from cotton fabrics continued to be classifiable as cotton fabric under Item 19 of the then existing Central Excise Tariff Act. Same

view was taken in Collector of Central Excise and Customs, Aurangabad v. Ratan Tarpaulin Water Proof Industries 1999 (35) RLT 821 and

2000 (68) ECC 330 . When tarpaulin, processed out of grey fabric has been classified under Chapter Heading 52.07, we fail to understand the

logic adopted by the adjudicating authority in classifying the grey cotton fabric manufactured by the appellants as items falling under Heading

59.11.

14. The grey cotton fabrics manufactured by the appellants, which were cleared in running length, can never be classified as an item falling under

Heading 59.11. The adjudicating authorities were clearly in error in classifying them as item falling under Heading 59.11. The goods cleared by the

appellants were classifiable under Heading 52.07. Goods falling under that Chapter Heading were not liable to any duty.

Following the said Larger Bench decision of the Tribunal in the case of Jyoti Overseas Ltd., another Tribunal, in the case reported in 2002 (140)

ELT 127 , held that Canvas belting duck, filter cloth, industrial fabrics and C.T.C. fabrics manufactured and cleared by the appellants therein, will

be rightly classified under Chapter 52 and not under Chapter 59 and set aside the demand made thereunder. As against the said order, the

Department went on appeal to the Supreme Court. In the said case of Commissioner of Central Excise, Nagpur Vs. Simplex Mills Co. Ltd., and

the Supreme Court went into merits of the case. The Supreme Court considered the classification of goods under question. In para 5 of the said

order, the very same Circular of the year 1997 issued by the Department which contended that the classification should be under Chapter 59 was

negatived by the Supreme Court, in the following manner.

5. In the meanwhile, not only had the respondent challenged the decision of CEGAT in Simplex I before this Court but also on 5th November,

1993, an order was issued by the Central Board of Excise and Customs u/s 37-B of the Central Excises and Salt Act, 1944 (as it stood then)

clarifying that grey cotton canvas, cotton ducks, cotton tyre cord fabrics and cotton belting fabrics would thenceforth be classified under TH No.

52.05. According to the respondent: in view of this circular it did not press its appeal before this Court which was accordingly dismissed for non-

procecution on 3rd November, 1995. This prompted the Central Board of Excise and Customs to examine the matter afresh issue an order on

30th June, 1997 in supersession of the 37B Circular dated 5-12-1993 that:

A. grey cotton tyre cord fabrics, grey, belting cloth, grey filter cloth/straining cloth and grey belting cloth and belting ducks, generally having

technical uses and generally not used for making clothing, household linen, bedspreads, curtains, other furnishing articles, etc., shall henceforth be

classified under Heading No. 59.11 of the CET;

B. the grey cotton canvas and grey cotton duck, not having technical uses, shall henceforth be classified under Chapter 52 of CET; and

C. the grey cotton belting shall henceforth be classified under heading 59.10 subject to note 6 to Chapter 59.

The 1997 Circular virtually reproduced the decision in Simplex-I which had held that the respondents'' goods were correctly classifiable under TH

59.09 (subsequently numbered as 59.11).

The Apex Court, by considering the rival submissions, confirmed the findings of the Larger Bench of CEGAT in Jyoti Overseas Limited v.

Commissioner of Central Excise, Indore reported in 2001 (130) E.L.T. 446 (Tri.-LB) which over-ruled the decision of the Tribunal in Simplex

Mills case I.

The Supreme Court held as follows:

10. This paragraph on CN-6 also indicates that it refers to ''made up'' or processed goods and therefore running lengths or bolts of unprocessed

fabric are not covered by TH 59.09. ""Endless felts"" contrary to what was assumed in Simplex I is not a running length of fabric, but a product with

no end such as a completed circular length which being without an end or beginning would be endless. TH 59.09 deals with textile ''articles'' and

not textile fabrics as wrongly assumed in Simplex I. Examples of textile articles may be found in TH 59.07 and 59.08 such as textile hose-piping, transmission or conveyor belts or belting. The language of TH 59.09 itself shows that it refers to articles and products other than articles referred to

in the Chapter. There is a distinction between articles and products on the one hand and textile fabrics on the other hand as held in Jyoti Overseas.

11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers u/s 2 of that

Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes,

classification ""shall be determined according to the terms of the headings and any relevant section or Chapter Notes"". If neither the heading nor the

notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I

gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then

only can one resort to the subsequent rules. The appellants have relled upon Rule 3. Rule 3 must be understood only in the context of Sub-rule (b)

of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles

contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to

Sub-rules (a), (b) and (c) of Rule 3 and in that order. The Sub-rule 3 are quoted:

(a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However when

two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a

set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise

description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be

classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar

as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

12. Applying the Rules of Interpretation particularly Rule 1, we are of the opinion that the reasoning of the Tribunal in Jyoti Overseas is

unexceptionable and in our opinion the decision in Simplex-I was correctly overruled.

13. Finally it appears that in respect of other years, the Tribunal had taken the same view as has been taken by it in the order impugned in these

appeals and classified the respondent''s products under Chapter 52 and 54. No appeals has been preferred from those decisions by the Revenue

and the finding for those years remain unchallenged.

In other words, the classification issue had been finally put to rest by the Supreme Court.

8. The administrative order or instructions or direction issued u/s 37B is to achieve uniformity in classification of the goods, levy of duty of excise

on such goods. In this matter, however, the Board has proceeded to classify the goods under Chapter 59 after the decision of the Tribunal in the

case relating to Simplex Mills-I. It is apparent that consequent thereupon, several assessees had approached the appropriate forum challenging the

change in classification. However, after the decision of the Larger Bench of the Tribunal in Jyoti Overseas Lid., which has been confirmed by the

Apex Court, there is no scope for the order of the Board which is impugned, having any force in the eye of law. The circular which is impugned in

the writ petition has been interpreted by the Apex Court to say that the classification of the goods manufactured by the petitioner will be only under

Chapter 52 and not under Chapter 59. Since such order will be binding on the officers of the Excise Department for the purpose of classification,

the same cannot be allowed to stand in the light of the judicial pronouncement set out above. In such view of the matter, the said circular cannot be

binding on the assessee and cannot override judicial pronouncement. The impugned circular therefore is liable to be quashed.

9. Taking into consideration the facts and circumstances of the case, the writ petition succeeds. The impugned order/circular dated 17-4-1997 is

quashed. The writ petition is allowed as prayed for. No order as to costs.

