(2011) 03 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal No''s. 7440-7442 of 2003

Commissioner of C. Ex., Mumbai-II APPELLANT

Vs

Dore Processors RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 266 ELT 417

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In these appeals the Assessees carried out embroidery and such grey textile fabrics after embroidery are subjected to further processes, such as, bleaching, mercerising, dyeing, printing, etc. The contention that is urged on behalf of the Appellant is that the work carried out by the Respondent is nothing but embroidery work and, therefore, is leviable/liable to duty under Chapter 58 of Central Excise Tariff Act, 1985 [for short "the Act"] and more appropriately under sub-heading 5805.19.

2. The contention raised on behalf of the Respondent is that the aforesaid embroidery cannot be classified under sub-heading 5805.19, as it is actually classifiable under sub-heading 5805.90 and, therefore, the Customs, Excise & Service Tax Appellate Tribunal [for short "the Tribunal'] is justified in classifying the work carried out by the Respondent under the said sub-heading.

3. In order to appreciate the aforesaid contention of the counsel appearing for the parties, we feel it appropriate to extract the entire Heading 5805, which reads as follows:

58.05 Embroidery in the piece, in strips or in motifs

- Manufactured with the aid of vertical type automatic shuttle embroidery machines operated with power.

5805.11

Embroidery without visible ground

10%

Nil

5805.19

Other

10%

Nil

5805.90

Other

Nil

Reference was also made to Note Nos. 5 and 8 of Chapter 58 of the Act, which reads as follows: -

5. In Heading No. 58.05, the expression 'embroidery' means inter alia embroidery with metal or glass thread on a visible ground of textile fabric, and sewn applique work of sequins, beads or ornamental motifs of textile or other materials. The heading does not apply to needlework tapestry.

8. In relation to fabrics of this Chapter, bleaching, mercerising, dyeing, printing, water proofing, shrink proofing, tentering, heat-setting, crease resistant, organdie processing or any other process or any one or more of these processes shall amount to 'manufacture.

4. Counsel appearing for the Appellant submits that the Respondents herein were carrying on embroidery work and also manufacturing work by dyeing and heat-setting. Counsel appearing for the Respondent, however, refutes the aforesaid submission and contends that in the present case sub-heading 5805.19 is not attracted and what is attracted is sub-heading 5805.90, which is the residuary entry for heading 5805. It was also contended by the counsel appearing for the Respondent that he has not carried out any embroidery work with the aid of vertical type automatic shuttle embroidery machine operated with power. The Appellant on the other hand takes a specific plea that the Respondents carried out embroidery with the aid of such machines operated with power.

5. In none of the orders passed by the Tribunal as also the orders passed by the Appellate Authority and by the Assistant Commissioner the aforesaid issue, as to whether the Respondents carried out the embroidery work with the aid of vertical type automatic shuttle embroidery machine operated with power, is considered and decided.

6. The aforesaid issue as to whether or not embroidery work is carried out by the Respondents by using machines operated with power relates to basic facts and is an issue going to the root of the dispute. If such machine(s) are not used, whether heading 5805 would at all apply is one of the issues and, even if such machine(s) is/are used, whether or not the Respondents were carrying out manufacturing activity and, therefore, could be classified under sub-heading 5805.19 would be the other issue which is required to be decided.

7. All these issues having not been considered and decided by the Tribunal, we set aside the impugned judgment and order [2005 (182) ELT 255] and remit the matter back to the Tribunal for de novo consideration of all the issues that arise for consideration afresh.

8. We must also specifically state that while remitting back the matter to the Tribunal we have expressed no final opinion at all on merit in respect of any of the issues which are urged before us.

