
(2004) 05 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No's. 8559/97, 1052, 1081 and 5010 of 1998, 3649, 3707 and 4223/99, 5557 and 6976 of 2001 and 8973 of 2003

Commissioner of Central Excise

APPELLANT

Vs

Susma Textile Pvt. Ltd.

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Citation : AIR 2004 SC 3549 : (2004) AIRSCW 3422 : (2004) 94 ECC 177 : (2004) 167 ELT 487 : (2004) 5 SCALE 768 : (2004) 5 SCC 746 : (2004) 2 SCR 168 Supp : (2004) 4 Supreme 220

Hon'ble Judges : S. Rajendra Babu, C.J.;G. P. Mathur, J

Bench : Division Bench

Advocate : R.P. Bhatt and Nisha Bagchi, Smeeta Inna, B. Krishna Prasad, K.C. Kaushik, M.N. Shroff, C.M. Shroff, V. Lakshmi Kumaran, Alok Yadav, Madhav Rao, Vishwanath Shukla, V. Balachandran, Darpan Wadhwa, Sandeep Mittal, Ruby Singh Ahuja, Ramesh Singh, Bina Gupta, Vanita Bhargava, Nina Gupta, Rajendra Singhvi, Ashok Kumar Singh and Rajesh Kumar, for appering partie, for the Appellant;

Final Decision : Allowed

Judgement

S. Rajendra Babu, C.J.—The question that falls for consideration in this batch of cases is as to the classification of the bleached sheeting which is heavily sized and manufactured by each of the respondents and whether the same falls under Heading 52.06 of the Central Excise Tariff Act, 1985 [for short 'the Act'] or under Heading 59.01 as sought by them.

2. The respondents are engaged in the manufacture of cotton fabrics which is stiff and heavily sized with starch gum and inorganic fillers. The respondents classified this product under Heading 52.06 by declaring their product as subjected to the process of bleaching and finishing. However, later on, when the Department inspected the unit of the respondents, they thought that the product in question will have to be classified under Heading 59.01. Sample of the product was taken for testing and the report thereto is that the sample is in the form of

open weave cotton fabrics heavily sized and stiff with starch gum and inorganic fillers on treatment with hot water the fabrics loses all its stiffness. On this material, a show cause notice was issued to the respondents demanding differential duty for different periods. The Assistant Commissioner, Central Excise, by his order made on 16.8.1989, dropped the demand raised in the show cause notice by holding that the said cotton fabrics were correctly classifiable under Heading 52.06 and approved two classification lists accordingly.

3. The matter was carried in appeal to the Collector [Appeals] who allowed the appeal and affirmed the demand of duty by holding that the product in question is specifically covered under Heading 59.01 which provides a specific tariff entry for stiffened textile fabrics. The matter was further carried to CEGAT. The Tribunal held that the cotton fabrics though heavily sized do not have permanent stiffness to be treated as similar to 'Buckram' and accordingly classifiable under Heading 52.06 and not under Heading 59.01 of the Act. Hence these appeals.

4. We may, however, notice that in 1998 (104) ELT 402 the tribunal held that stiffened fabrics generally used in the interior of garments having been processed into bleached and grey sheeting by applying tapioca starch, maize starch, french chalk power and delemits which render the fabrics stiffening effect, are classifiable under Heading 52.06 of the Act and not under Heading 59.01 thereof. The matter was carried in appeal to this Court in civil Appeal No.3965 of 1998 and this Court, on 22.2.1999, dismissed the same, both on the ground of delay and on merits.

5. The Revenue contended:

1. that specific description of Heading 59.01, viz., textile fabrics coated with gum of amylaceous substances of a kind used for the outer cover of book or the like is satisfied in this case;

2. Explanatory Note to HSN made it clear that not only cloth, plain weave woven fabrics, usually of cotton, linen or man-made heavily coated with gum or amylaceous substances which is used for book binding, but also such cloth with other end-uses, would get cover under this heading.

6. The tribunal held that the Board by their instructions issued on 2.9.1988 had clarified that for classifying such products under Heading 59.03, the textile fabrics should have a continuous and adherent films or layer on one side of the fabric surface and the fabric should be impervious and should satisfy the conditions prescribed in Note 2 of Chapter 59. They also adverted to letter issued by the Ministry of Finance, Department of Revenue dated 7.12.1989 wherein it had been confirmed that bleached and sized cotton fabrics manufactured by them merit classification under Chapter 52 as these fabrics were neither coated nor impregnated but only sized with starch. On behalf of the Revenue, the contention put forth before the tribunal is that the scope of expression 'Buckram and similar stiffened textile fabrics' could not be restricted by reference to first half of the heading relating to coating and should be interpreted in its ordinary

manner and that if the stiffened fabrics is similar to Buckram, tracing cloth, book binding cloth, etc., it would be appropriately regarded as stiffened fabrics covered by sub-heading 5901 since the general heading of processed fabrics falling under sub-heading 5206. Further, the book binding cloth would be covered by the expression 'Buckram' and similar textile fabrics of sub-heading 5901. Several text books and dictionaries were also referred before the tribunal. All the contentions advanced on behalf of the Revenue were refuted by the learned counsel appearing for the assessee and elaborate arguments were submitted before the tribunal that the product in question is not a 'Buckram' or something akin to 'Buckram' inasmuch as 'Buckram' referred to permanently stiffened fabric and once the interstices of cotton fabrics were filled and treated with gum, then alone it would come under Chapter 59 and in the present cases the item is porous padded and the interstices are not filled and, therefore, the product cannot go under Chapter 59 at all. The tribunal noticed firstly as to the maintainability of the appeal and thereafter on merits of the matter. The tribunal proceeded on the basis that the burden of classification is on the Department and no evidence had been placed by the Department to show that the product is a 'Buckram' and it requires to be classified under Chapter 59 and Explanatory Note IV to Heading 59.01 indicates that 'Buckram' and similar stiffened textile fabric of a kind used for that foundations would fall under this heading. There is also an indication that certain varieties of 'Buckram' and are similar fabrics made by pasting together to such stiffened fabrics and used mainly in the manufacture of hat foundations of Heading 65.07 would also be fall under this heading and that the textile fabrics coated with gum and amylaceous substances of a kind used for paper coverings of books or the like, tracing cloth, prepared binding 'Buckram' and similar stiffened textile fabric of a kind used for hat foundation would be covered under this heading. After advertent to certain definitions in the Dictionary of Textiles held that an impregnated fabric is one in which interstices between the yarn are to be completely filled with impregnating compound throughout the thickness of the material. The definition of 'Buckram' and Library Buckram also indicates that it is heavily sized. The definition of sizing indicates that it is a generic term for compounds when applied to yarn or fabric form a more or less continuous solid film around the yarn and individual fibres. The chemical examiner in his report had stated that each of the eight samples are in the form of open woven bleached cotton fabrics sized with starch and each is somewhat showdy. On treatment with hot water, each loses of stiffness. The interstices between the yarn were not closed. The overall count is less than 51 as determined on the basis of yarns taken out from the fabrics in each case. therefore, the test result indicates that the interstices are not filled in these cases and there is no permanent stiffness. The requirement of heading 59 clearly shows that the textile fabric has to be stiffened and the definitions which are relied by the Revenue indicates that the sizing have to be heavy and the interstices have to be filled and the stiffness has to be permanent; that the test results do not support the department's case and also there is no specific finding that the material is a 'Buckram'. They also adverted to the tariff advice No. 36.84

dated 27.7.1984 issued to all the Collectors indicating that the object of exemption is to cover such fabrics which are treated only to achieve a temporary effect of sizing [stiffening] and gloss and addition of wetting agents, optical whitener, fatty matter and fillers are meant only to help padding process so as to give a temporary brightness to sized fabrics, to soften the starchy film left on the fabric and to give a better and fuller appearance. However, these additives get removed from the fabric when the starch is washed up. Based on this material, the appeal filed before the tribunal was rejected.

7. The learned counsel for the appellants contended that the tribunal has gone on the basis of issue of permanent stiffness and not dealt with other aspect whether the fabric in question is heavily sized or not.

8. Heading 59.01 reads as follows:

"Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics."

9. In Fairchild's Dictionary of Textiles, which is an authority to the text book on the matter, sets out what 'Buckram' means :

"A plain weave, coarse, open fabric heavily sized and used principally as stiffener which is placed between the lining and surface cloth of the garment to give it shape or form. Also used for hat shapes, book binding, etc. Made with cotton, linen, hemp, hair etc. Also made by gluing two openweave, sized cotton fabrics together. Usually white or plain colors. Also see Library Buckram. 2. Originally a costly material from Bokhara, Southern Russia. Later, a rich 16th Century English woollen fabric used for church vestments."

"A heavy flat duck or Osnaburg, stiff and durable starch filled or pyroxylin treated and given a vellum, linen-like finish. Used especially on library and reference books."

10. The Department in order to succeed in classifying the products of the respondents to fall under heading 59.01 of the Act will have to fulfil the following conditions:

1. That the fabric in question is a stiffened textile.
2. That the stiffness has to be durable and permanent in nature.
3. That the fabric is heavily sized.

11. It is the stand of the respondents that the stiffness as contemplated under Chapter 59 has to be of permanent or durable nature as 'Buckram' is a fabric which has a permanent stiffness. A fabric, which has undergone a process of padding by applying natural starch on the side of the fabric, cannot be classified as 'Buckram'. The tribunal has found that the fabric of the respondents do not have permanent or durable stiffness which is essential for a fabric to be classified

as 'Buckram' in view of definition as understood ordinarily and as is referred to in the authoritative text books. The report given by the Chemical Examiner on which the Department has placed reliance itself indicates the process undergone by the respondents' fabric is only that of padding and does not show any stiffness of permanent nature.

12. When the several ingredients have to be satisfied, even if one ingredient is not satisfied, namely, that the stiffness has to be of permanent and durable nature, we do not think that the view taken by the tribunal calls for any interference on our hands. In addition, we may notice that in none of the cases presently involved, we have any heavily sized fabric. therefore, that aspect need not detain us.

13. In the circumstances, we do not think that these are fit cases where we should remand the matter for fresh consideration on the question of heavily sized fabric. We affirm the view taken by the tribunal and dismiss these appeals.