

(2015) 09 SC CK 0170

In the Supreme Court Of India

Case No : Civil Appeal No. 1480 of 2007

Commissioner of Cus. and C. Ex., U.P.

APPELLANT

Vs

S.P.L. Siddhartha Ltd.

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Citation : (2015) 325 ELT 458 : (2015) 52 GST 770

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Yashank Adhyaru, Sr. Advocate, Pranab Kumar Mullick, T.M. Singh, Aruna Gupta and B. Krishna Prasad, Advocates, for the Appellant; V. Sridharan, Senior Advocate, M.P. Devanath, S. Vasudevan, L. Charanaya, T.D. Satish, Hemant Bajaj, Anandh K. and Aditya Bha

Final Decision : Dismissed

Judgement

1. In this appeal the questions that arise for consideration are formulated as under:

"Whether the floor covering with plastic laminated on both side manufactured and cleared by M/s. SPL Siddhartha Limited [for the period from 31-5-2000 to 17-1-2005] should be classified under sub-heading 3918.90 of the Central Excise Tariff Act, 1985 and accordingly, charged to the Central Excise duty @ 16% ad valorem along with appropriate interest or not?

Whether the floor covering with plastic laminated on single sides manufactured and cleared by M/s. SPL Siddhartha Limited [for the period from 26-9-2002 to 28-2-2003] should be classified under tariff Heading 59.03 of the Central Excise Tariff Act, 1985 and accordingly, charged to the Central Excise duty @ 16% ad valorem along with appropriate interest or not?"

The background facts are that the Respondent-Assessee is engaged in the manufacture of two types of plastic laminated jute fabrics, viz., (i) laminated with plastic on both sides (ii) laminated with plastic only on one side.

2. The Department wants these products to be classified under Chapter Heading 3918.90 whereas the Assessee claims that these are covered by Chapter Heading 59.

3. The respective competing entries reads as under:

4. The manufacturing process of these products is described in the show cause notice itself about which there is no dispute. As per this, the Assessee procured jute fabrics, bitumen, polyethylene chips and master batch from various sources. In the first part of manufacturing process, the jute fabric is unrolled and brought with the help of a series of rollers to a plastic extrusion machine. The plastic material chips, etc., are fed into the extrusion machine and a coat of molten plastic gets fixed on one side of the fabric. The one-side laminated fabric is again loaded on a roller. The roller is transferred to the other section of the factory where two such layers of jute fabric, having plastic lamination on one surface are joined together by hot, molten, bitumen. The bitumen coat is applied on the exposed jute surface so that, in the final product, the two layers of jute fabric do not remain exposed anymore and the plastic laminations are now the visible surface on both the sides of the floor covering. The thick plastic coat is visible to the naked eye while the jute surfaces are not visible.

5. We may record here that the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") has accepted the claim of the Assessee herein and we feel that it is rightly so. On the face of it, by going through the aforesaid manufacturing process, it is clear that the products are dominantly jute products and they cannot be treated as products of plastic. Therefore, there is no question of their coverage under Chapter Heading 39. On the other hand, we find that the Entry which is more proximate to get the aforesaid product covered appears to be 59.04 which, inter alia, covers the product that is floor coverings consisting of a coating or covering applied on a textile backing. As already pointed out above, the product which is floor covering is made of jute and plastic coating is applied thereupon.

6. We may point out that in the amendment made to the sub-headings in Entry 59.04 in the year 2005, the product in question is described with more clarity inasmuch as Entry 5904.90.10 is described as "Floor coverings with jute base". As pointed out above, there is no dispute that in the instant case, the product is a floor covering with jute as its base.

7. We are of the opinion that the order of the CESTAT does not call for any interference. This appeal is, accordingly, dismissed. After having determined the classification as aforesaid, we note that in the Tariff Entry, 16% duty is prescribed. However, it is submitted by the learned Counsel for the Assessee that Exemption Notification No. 6/2000-C.E., dated 1-3-2000 at Serial No. 169 provides exemption to the product in question by specifying that it shall attract nil duty.