(2007) 03 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No''s. 527 of 2002 and 3321 of 1998

Kemrock Industries and Exports Ltd. APPELLANT

Vs

Commissioner of Central Excise, Vadodara RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Citation : (2007) 121 ECC 363 : (2007) 147 ECR 363 : (2007) 210 ELT 497 : (2007) 5 SCALE 168 : (2007) 9 SCC 52 : (2007) 4 SCR 547

Hon'ble Judges : S. H. Kapadia, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Ramesh Singh, Bina Gupta, Shweta Verma and Amrita Swarup, for the Appellant; R. Venkataramani Shalini Kumar and B.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.H. Kapadia, J.

Civil Appeal No. 527 of 2002

1. This is a statutory appeal filed by the assessee against the final Order No. 185/2001-D dated 11.9.2001 passed by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi ("CEGAT") in appeal No. E/ 1994-R/97 Mum. The matter pertains to the issue of classification of Glass Fibres impregnated with resins/ plastics.

2. Assessee-company is the manufacturer of Glass Fibre Reinforced Plastics. They seek classification of the said item under Heading 70.14 of the Schedule to the Central Excise Tariff Act, 1985. According to the Revenue, the said item is classifiable under Heading 39.20 of Central Excise Tariff Act, 1985.

3. To resolve the above controversy, we quote hereinbelow the above two headings.

Heading No.

Subheading No.

Description of goods

Rate of duty

39.20

Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or moralized or laminated, supported or similarly combined with other materials or not

-Of polymers of vinyl chloride:

3920.11

--Rigid, plain

30%

3920.12

--Flexible, plain

30%

3920.13

--Rigid, lacquered

30%

3920.14

--Flexible, lacquered

30%

3920.15

--Rigid, moralized

30%

3920.16

--Flexible, moralized

30%

3920.17

--Rigid, laminated

30%

3920.18

--Flexible, laminated

30%

3920.19

-Other

-Of regenerated cellulose:

30%

3920.21

--Film, plain

30%

3920.22

--Film, lacquered

30%

3920.23

--Film, moralized

30%

3920.24

--Film, laminated

30%

3920.25

--Sheet, plain

30%

3920.26

--Sheet, lacquered

30%

3920.27

--Sheet, moralized

30%

3920.28

--Sheet, laminated

30%

3920.29

-Other

30%

-Of other plastics:

3920.31

--Rigid, plain

30%

3920.32

--Flexible, plain

30%

3920.33

--Rigid, lacquered

30%

3920.34

--Flexible, lacquered

30%

3920.35

--Rigid, moralized

30%

3920.36

--Flexible, moralized

30%

3920.37

--Rigid, laminated

30%

3920.38

--Flexible, laminated

30%

3920.39

--Other

30%

xxxxxxxxx

70.14

7014.00

Glass fibres (including glass wool and glass filaments) and articles thereof (for example, yarn, woven fabrics) whether or not impregnated, coated, covered or laminated with plastics or varnish.''''

4. We do not find any merit in this civil appeal for the following reasons.

The process of manufacturing articles in question of Glass Fibre Reinforced Plastics is indicated in the Tribunal''s Order in para 2.1. In short, the assessee makes use of Fibre Glass Mat of suitable specification and thereafter impregnates the said Mat with a suitable resin, catalyst, pigment and accelerator. On impregnation/ injection, the pigment spreads throughout the mat. This impregnation gives stiffness to the mat. The glass fibre mat is used as a raw material to manufacture roofing sheets, panels, doors etc. It is this stiffness which provides value addition to the fibre glass mat in the sense that the strength of the mat gained by impregnation makes the mat strong enough to be used in partitions, roofs etc. But for that stiffness, the fibre glass mat would not be in a position to be used as a roofing sheet. Further, the ''glass fibre mat'' is not an Article of glass ware per se under heading 70.14 of CETA. According to the assessee, even after impregnation the essential character of the product remains a fibre glass mat and, therefore, it is classifiable as a glass fibre under Heading 70.14 of Central Excise Tariff Act, 1985. We do not find merit in the said contention.

5. As stated above, Chapter 39 deals with ''plastics and articles thereof''. As stated above, under Heading 39.20 sheets of plastics, laminated supported or combined with other materials stand covered as plastics and articles thereof. On the other hand, Heading 70.14 falls under Chapter 70, which refers to ''glass and glassware''. It is not in dispute that the item in question is a composite item. However, as found by the Department, in the above process, the glass fibre mat when impregnated with plastic gains certain amount of stiffness which helps manufactures of roofs and partitions. In the present case, since the article in question is a composite article, the test of essentiality shall apply. This test of essentiality refers to "essential character". The test states that, if the manufactured goods has the essential character, mainly of stiffness, required for the manufacture of roofs, partitions etc. then one has to treat the item in question as an article of plastic. In the present case, Rule 3(b) of the Rules for the Interpretation of tariff entries would apply. The said Rule require that composite goods, mixtures and goods put up in sets have to be classified on the classification of that material or component which gives to the product their essential character. In the present case, if we keep in mind the manufacture of

roofs, partitions etc., then the stiffness is the main attribute of such a product. The glass fibre mat when impregnated gives stiffness which helps in the manufactures of roofs, partitions etc., e.g., in the context of an insulation paper which is a composite of plastic and paper, the item will fall under Heading 39.01/06 of the previous Customs Tariff Act since plastic gives higher degree of insulation quality. Rule 3(b) requires classification based on the material which gives it the essential characteristics. This is the test of essentiality. The effect of the tariff schedule is to classify the products under different heads according to the character of the product. In interpreting a tariff entry, Rules for the Interpretation are helpful, particularly in cases of composite goods.

6. For the aforesaid reasons, we do not find any infirmity in the impugned judgment dated 11.9.2001 of the CEGAT and accordingly this civil appeal filed by the assessee is dismissed with no order as to costs.

Civil Appeal No. 3321 of 1998 [Commnr. of Central Excise v. S.S.B. Industries Ltd.]

7. In view of our judgment in Civil Appeal No. 527 of 2002 (supra), this civil appeal stands allowed with no order as to costs.