(2002) 09 DEL CK 0225

In the Delhi High Court

Case No : CW No. 966 of 1975

Shree Ram Mills Ltd. APPELLANT

Vs

A.K. Bandyopadhyay and Others RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0225

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Amit Bagat, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner in the present writ petition seeks a writ of certiorari for quashing the order dated 12.5.1970, passed by the Collector of Central Excise, dismissing the appeal preferred by the petitioner against the order bearing No. V(19)30-85/66/27238 dated 31.8.1966, passed by the Assistant Collector of Central Excise, Bombay, Division-I and orders, No. 1029/69/ Tracing cloth dated 23.1.1969 and No. 69/1774 dated 13.2.1969 against the orders passed by the Assistant Collector of Central Excise, Bombay Division-I.

2. Petitioner also seeks the quashing of the order dated 14.1.1975, passed by the Revisional Authority, dismissing the revision preferred by the petitioner against the order of the Collector of Excise, referred to earlier. Petitioner also seeks in the writ petition the refund of the excise duty amounting to Rs. 3,42,687/-, stated to have been paid under protest.

3. Petitioner is a company incorporated and engaged in the manufacture of tracing cloth as an end product. Petitioner''s case is that the said tracing cloth is exigible to excise duty as a "bleached cotton fabric" while the Excise Authorities are assessing the same as "fabric processed in any other manner under item 19" of the first Schedule of the Central Excises and Salt Act. The tracing cloth was earlier exempted from levy of excise duty, vide a notification dated 5.1.1957.

This exemption is stated to have been withdrawn w.e.f. 5.6.1965 vide notification No. 88/65. The case of the petitioner is that the tracing cloth is plain weave cloth of bleached variety. It is neither mercerized nor sanforised. It is also not treated with Chemicals like acid. Accordingly, the petitioner''s claim is that it should be assessed to duty at the rate applicable to bleached variety of cotton fabric and not at the rate applicable to fabric under Tariff entry 19.

4. Learned counsel for the petitioner in support of the writ petition submitted that the conclusion reached by the Excise Authorities that the bleached cotton fabric was to be treated as cotton fabric processed in any other manner was based on a mis-conception and misinterpretation of the existing notification and on a misunderstanding of the process involved.

5. Learned counsel for the petitioner submitted that manufacture of super fine grey fabric is an intermediate stage in the making of tracing cloth as an end product. It was claimed that the superfine grey cloth is first stitched from end to end. Thereafter, the grey cloth was bleached by a) shearing and cropping of loose ends b) singeing of the surface of the cloth, c) desiring that is to say removing starch, d) washing e) kier boiling which makes the grey cloth partly white and f) by passing it through a continuous junction box which renders the grey cloth completely white. Thereafter the cloth is dried on a hot air stenter machine, the object being to eliminate the crease and to bring the cloth to correct width. It is then put through padding machine, wherein the cloth is passed through the finishing mixture on the side containing starches and softeners like wax emulsion. The cloth is thereafter damped and friction calendared on calendaring rollers. The friction calendaring is done with very heavy pressure at a very slow speed to fill up the pores. When the calendaring process is on, the cloth unwinds at the out let end. On the completion of this process the cloth (rolled on the rollers) is kept aside to cool down. The next day it is again dampened with water at somewhat lower pressure. Thereafter, once more it is put through the above described calendaring process. The calendaring process is repeated until the pores are filled up and until the temporary luster and transparency are obtained. No grooved rollers are used either during padding or calendaring process.

6. Learned counsel for the petitioner submitted that tracing cloth served the same purpose as tracing paper. On import, tracing cloth is assessed as stationery. Learned counsel for the petitioner submits that the book binding cloth is not subjected to any processing duty, while the process involved in making book binding cloth was back filling, coating and calendaring on analogy and the tracing cloth should be treated as not processed in any other manner. It is claimed that the effect of bleaching the cloth is transitory. It should be considered as processed cloth only when permanent effect is left.

7. Learned counsel for the respondent Mr. Jayant Bhushan, refuting the submissions of the petitioner has taken me through the revisional order. He submits that it has been admitted by the petitioner that during padding,

starching, water, bleaching and coating agents are used. As a result of the processing done, the pores of the fabric are closed and it gets a transparent appearance. The use of oil and other materials make the fabric creaseless with smooth surface. During the padding, the fabric is dipped in a starch solution. He further submits that in the process of padding for manufacture of tracing cloth after application of liquor/paste the fabric is passed through squeeze rollers to give finish and to leave no pin-hole in the fabric after it is covered with a coating. He submits that essentially what is referred by the petitioner as "padding" is really one of impregnation and its both sides are entirely covered with the coating of the paste. The tracing cloth after subjecting to the aforesaid process acquires a degree of surface and translucency, which cannot come from simple padding. Mr. Bhushan submits that in view of the foregoing features, the view taken by the revisional authorities that the fabric would fall within entry 19 under the classification fabric processed in any other manner cannot be assailed to be either untenable or based on mis-conception or mis-apprehension of the process involved.

8. Mr. Bhushan submits that the process carried out in the instant case is not simple padding but entails other elements, as noticed above. He further submits that in this case it is not simple natural starch, which is applied as is done in simple padding, but in this case a solution containing the extricating oil is also used. He submits that the process used is not simple calendaring or padding but there are other elements involved also and the translucency, which is achieved of a permanent nature. He submits that the mere fact that when dipped in water, it may lose its translucency will note make it less permanent in character. The repeated passing of tracing cloth through the calendaring with heavy pressure at law speed is also not what is normally known as the simple calendaring process. Learned counsel for the respondent submits that in the B.T.N., tracing cloth is classified n the same group heading as book binding. This would not be determinative of the matter, specially when there are distinct feature of the process involved in making of the tracing paper.

9. In view of the distinct features and the process, as discussed above, involved in making of the tracing cloth, the concurrent view taken by the authorities cannot be said to be not a plausible view. Learned counsel for the respondent rightly submits that this Court would not entertain the writ petition in such circumstances to assail a concurrent view taken by the revenue authorities, which is justified on the basis of the process involved and the distinctive features in the manufacture of tracing cloth, as pointed out.

No ground is made out for interference in writ jurisdiction. The writ petition has no merit and is dismissed.

