(1998) 08 AHC CK 0142

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 300 (Tax) of 1998

Surya Processors (P) Ltd. APPELLANT

Vs

Collr. (Appeals) C. Ex. and Cus. RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Citation : (2000) 68 ECC 54 : (1999) 82 ECR 248 : (2000) 115 ELT 48

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : Rakesh Dwivedi and A.P. Mathur, for the Appellant; Sushil Harkauli, for the Respondent

Final Decision : Allowed

Judgement

S.L. Saraf, J.—Heard Shri A.P. Mathur, learned Counsel appearing for the petitioner-company and Shri Sushil Harkauli for the respondents.

2. This writ application has been filed by the petitioner challenging the order of the Collector (Appeals), Central Excise, dated 22-12-1994, whereby the Collector has held that the petitioner''s product i.e., impregnated cotton fabrics not visible to the naked eyes, falls under sub-heading 5901.10, treating the product of the petitioner as Buckram cloth/stiffened fabric. The case of the petitioner is that since the petitioner''s product is impregnated with plastic material, the same will not fall under sub-heading 5901.10, but it will fall under Chapters 52 to 55 of the Excise Tariff. The petitioner submits that it produces fabrics with plastic coating, which cannot be seen with naked eyes. For appreciation of the case of the parties, I set out below the relevant Tariff items :-

-- "Heading Sub-heading Description of goods Rate of duty Basic Additional -- 1 2 3 4 5 -- 59.01 Textile fabrics coated with gum or amylaceous sub- stances, of a kind used for the outer covers of books or the like tracing cloth; pre- pared painting canvass; buckram and similar stiffened textile fabrics 5901.10 Textile fabrics coated with 8% 5% gum or amylaceous sub- stances, of a kind used for the outer covers of books or the like 5901.90 Other 8% 5% -- 59.02 Tyre cord fabric of high tenacity yarn of nylon or other polyamides polyesters or viscose rayon 5902.10 Of nylon or other poly- 18% Rs. 10 amides per kg. 5902.20 - Of polyesters 18% Rs. 10 per kg. 5902.90 - Other 18% Rs. 10 per kg. -- 59.03 Textile fabrics, impregnated, coated, covered or laminated with plastics, other than those of heading No. 59.02 5903.10 - With polyvinyl chloride 18% 5% 5903.20 - With polyurethane 18% 5% 5903.90 - Other 18% 5%" --

3. Chapter 59 deals with the following items : -

"Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use."

Heading 59.03 applies to

"(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than :

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purposes of this provision, no account should be taken of any resulting change of colour;

(2) ..."

4. The argument of Mr. A.P. Mathur on behalf of the petitioner is that the petitioner''s item is not covered under Heading 59.01 though the product of the petitioner is also stiffened textile fabrics but since it is coated with plastic material, the same will not fall under Heading 59.01 and for this, Mr. Mathur has referred the above Note No. 2 to Chapter 59 which says specifically that textile fabrics, impregnated, coated, covered or laminated with plastics but not seen with naked eyes, will not be applicable to Heading No. 59.03 and in that event only Chapters 50 to 55, 58 or 60 is applicable.

5. The argument of Sri S. Harkauli appearing for the Excise Authorities is that the material manufactured by the petitioner is nothing but buckram and similar stiffened textile fabrics. He submits that Note 2 to Chapter 59 only speaks of the applicability of Chapters 50 to 55, 58 & 60 of Excise Tariff. He drew my attention to the word ''usually'' and submitted that in all cases Chapters 50 to 55, 58 and 60 are not applicable but in some cases they may be applicable.

6. The order passed by the Assistant Collector of Central Excise has discussed the material manufactured by the petitioner and has referred to the chemical

examiner''s report which specifically says that the sample of the petitioner''s product is in the form of white stiff woven cotton fabrics, impregnated with plastic material. The report of the Chemical Examiner was obtained at the instance of the Excise Authorities themselves. Ultimately, the Assistant Collector held that since the material/product cannot be classified under sub-heading 5901.10, the same was classifiable under Heading 52.06 depending on the value, The Collector in appeal has not disregarded the finding of the lower authority and has also accepted the report of the Chemical Examiner. The Collector held as under :

"In the commercial parlance, the product is known as Buckram or Interlining cloth. Since the product manufactured by the party is known in the market as Buckram/Interlining cloth, the product is very well covered under sub-heading 5901.10. The issuing corrigendum after T''/2 years of show cause notice was irregular."

7. It may be mentioned here that the first show cause notice was issue the petitioner alleging that the petitioner''s product falls under Heading 5901.10. Subsequently a corrigendum was issued alleging that the product would fall under sub-heading 5903.19.

8. I have considered the submissions of the learned counsel for the parties carefully. Mr. Mathur appearing for the petitioner strongly submitted that since the petitioner''s product was coated and impregnated with plastic and not seen to the naked eyes, the same cannot fall under Chapter 59 under any circumstance. As the Heading of 59.03 excludes such inclusion under Chapter 59. According to the learned Counsel Heading 59.01 though speaks of buckram and similar stiffened textile fabrics, still the same is not a material which is impregnated or coated with plastic material. According to him, the product falls under Chapter 52, Heading 52.06 which reads, as under :

-- Heading No. Sub-head Description of goods Rate of duty No. -- 52.06 5206.00 Cotton fabrics (excluding 20% plus Rs. fabrics covered under 5 per sq. Heading Nos. 52.09, 52,10 metre and 52.11). (a) woven on looms other than handlooms, and (b) subjected to the process of bleaching, mercerising,dyeing, printing, water proofing shrink proofing, organdie processing or any other process or any two or more of these processes with the aid of power or steam." --

Mr. Mathur further submits that all over India on the similar product the Excise Authorities are treating the same and levying duty on the basis of Heading 52.06. He referred to Annexure 16 to the writ petition, which is an invoice of M/s. Coats Viyella India Ltd., Madurai and submitted that all other manufacturers of coated materials are being taxed under Chapter 52 and not under Chapter 59.

9. Having considered the entire arguments of the counsel for the respective

parties, in my view Chapter 59.03 has no application whatsoever. In the instant case, in view of Note 2 to Chapter 59, the fabrics in which impregnation, coating or covering cannot be seen with naked eyes can only fall under Chapters 50 to 55,58 or 60. It nowhere mentions Chapter 59. Moreover, though the item manufactured by the petitioner usually looks like buckram or stiffened textile fabrics, but the same is a different product as it is impregnated with plastic coating. Under Item No. 59.01 only the buckram and stiffened textile fabric by use of gum or amylaceous substances or the like substance, could fall and duty could be levied thereon. All stiffened textile fabrics cannot come under Heading 59.01. The said buckram and similar stiffened textile fabrics can be read on the principles of ejusdem generis what has been said in the items before could govern the meaning of the word ''buckram and stiffened textile. 59.01 cannot be made applicable in the case of the petitioner. Similarly, Heading 59.03 is also not applicable as the said Note 2 itself makes it very clear that the same is applicable only to cases where one can see it with naked eyes.

10. In this connection I refer to a clarification referred to in a Ministry''s letter No. 51/20/86-CX2 (Circular No. l/Textile/1986), dated 13-6-1986, issued by the Under Secretary, Central Board of Excise & Customs, which reads as follows : -

"I am directed to say that certain doubts have been raised with regard to classification of interlining cloth as to whether the same is classifiable under Heading No. 59.01 or 59.03 or within Chapters 50 to 55 depending upon the predominance of the material contained therein."

2. As per Note 2(a)(I) of Chapter 59 Textile fabrics impregnated, coated, covered or laminated with plastics in which the impregnation, coating, or covering cannot be seen with the naked eyes have been excluded from the scope of the Heading 59.03. Heading No. 59.03 applies to only such textiles that satisfy the criterion prescribed in the Note 2 of Chapter 59.

3. As per the explanatory note in HSN, Buckram and similar stiffened fabrics are manufactured by impregnating light weight open textile fabrics with adhesives and fillers for example, with glue or amylaceous substance fixed with Kaolin."

4. If the Inter-lining cloth does not satisfy the criterion prescribed in respect of Heading No. 59.03, or the specification prescribed for Buckram and similar stiffened textile fabrics (59.01), the same would be classifiable under Chapters 50 to 55 depending on predominance of the textile material by weight."

11. The aforesaid instructions issued by the Department specifically lays down that if the interlining cloth does not satisfy the criterion prescribed in Heading 59.03 or specifications prescribed for Buckram and similar stiffened textile fabrics (59.01), the same would be classifiable under Chapter 50 to 55 depending on predominance of the textile material by weight. This circular of the department, in view is binding on the authorities, inasmuch as, the petitioner''s product is nothing but a stiffened interlining fabric impregnated with plastic material. Perusing the Chapters 50 to 55 carefully, I find no slot for the product of the

petitioner where it exists specifically. Heading 52.06 reads as follows :-

"52.06 Cotton fabrics (excluding fabrics covered 20% 20% plus under Heading Nos. 52.09, 52.10 and Rs. 5/- per sq. 52.11), metre. (a) woven on looms other than handlooms, and (b) subjected to the process of bleaching, mercerizing dyeing, printing, water -proofing, organdie processing or any other process or any two or more of these processes with the aid of power or steam."

Without expressing any opinion. Items mentioned in Heading 52.06 could be closest to the product of the petitioner inasmuch as it speaks of water-proofing and shrink proofing or any other process without, however, mentioning impregnation with plastic costing. The material produced by the petitioner is predominantly a cotton fabric with the use of resin which is also used in production of plastic material. The Excise Authorities are directed to hear the petitioner and decide the matter afresh on consideration of relevant items contained in Chapters 50 to 55.

12. In the premises, I hold that no excise duty can be levied on the petitioner''s product under Heading 59.03 or 59.01. As per the circular dated 13th June, 1986 referred to above, which is binding on the excise authorities, Chapters 50 to 55 should be made applicable considering the predominance of the taxable materials by weight. In that view of the matter, the writ petition succeeds and is allowed. The impugned order dated 22-12-1994, passed by the Collector (Appeals), Central Excise and Customs, Ghaziabad, Annexure No. 1 to the writ petition, is hereby quashed and set aside. The matter is remanded back to the Assessing authority for making an assessment under relevant items of Chapters 50 to 55.

