

CASE NO.:  
Appeal (civil) 2816-2818 of 2002

PETITIONER:  
Commissioner of Central Excise, Nagpur.

RESPONDENT:  
M/s. Simplex Mills Co. Ltd.

DATE OF JUDGMENT: 01/03/2005

BENCH:  
Ruma Pal, Arijit Pasayat & C.K. Thakker

JUDGMENT:  
J U D G M E N T

WITH  
C.A. No.1694/2003,  
C.A. Nos.5039-40/2003,  
C.A. Nos. 5455-5458/2003

RUMA PAL, J.

The respondent is engaged in the manufacture of Textiles, namely; grey cotton canvas cloth, hundred percent cotton/grey cotton, belting and duck. The issue to be resolved is whether these goods are classifiable under Tariff Headings (TH) 52.02, 54.08 or 59.09 of the Schedule to the Central Excise Tariff Act, 1985. The appellant contends that they are classifiable under TH 59.09. The respondent on the other hand cleared the goods classifying them either under TH 52.02 or 54.08. Consequently on 23rd September, 1992 24 show cause notices were issued by the Excise Authorities to the respondent to show cause why differential duty amounting to Rs. 545,10,838 should not be recovered against the clearances effected during the period 20.7.1987 to 13.8.1992. The respondent showed cause. The Assistant Collector confirmed the demand on the basis of an earlier decision of the Central Excise and Gold Control Appellate Tribunal (CEGAT) in the respondent's own case reported as Simplex Mills Co. Ltd. vs. CCE Nagpur in 1993 (49) ECR 147 (referred to as 'Simplex I').

Simplex-I had rejected the respondent's submission that grey belting cloth or canvas cloth which were manufactured by it were classifiable under TH 52.05 or 54.08. These two headings read:

Chapter 52		Cotton	52.2	
Head Ing No.	Sub- heading No.	Description of goods	Rate of duty Basic Additional	
1	2	3	4	5
52.05	5205.00	Cotton fabrics,-	Nil	Nil

- a) woven, and  
b) not subjected to any process

Chapter 54 Man-made filaments 54.2

Head Ing No.	Sub- heading goods No.	Description of Basic	Rate of duty		5
			Additional	4	
1	2	3			
54.08	5408.00	Fabrics of man-made filament yarn (including fabrics obtained from materials of heading Nos. 54.06 and 54.07). a) woven, and b) not subjected to any process	Nil		Nil

It was held that fabrics for industrial use fall only under TH 59.09. TH. 59.09 reads:

Chapter 59	Impregnated, coated and laminated fabrics, etc.			59.6	
Head ing No.	Sub- heading goods No.	Description of Basic	Rate of duty		5
			Additional	4	
1	2	3			
59.09	5909.00	All other textiles products and articles of a kind suitable for industrial use (for example, textile fabrics, combined with one or more layers of rubber, leather or other material, bolting cloth, endless felts of textile fabrics, straining cloth)		12%	

The conclusion in Simplex I was arrived at on the basis that TH 59.09 referred to fabrics for industrial use and that fabrics for industrial use was a specific description and applying Rule 3(a) of the Interpretation Rules, TH 59.09 would prevail over general description of the fabrics as grey cotton fabrics or man made fabrics under TH 52.05 or 54.08. It was held that TH 59.09 was a specific entry which dealt with fabrics for industrial use and since the respondent marketed their products admittedly for industrial use, the other entries in Chapters 52 and 54 would not apply. It was further held construing CN-6 that if the article is covered by 59.09 then it was excluded from Chapters 52 to 56. A number of authorities were referred to for coming to the conclusion that the items manufactured by the respondent were industrial fabrics. Reference was also made to the HSN explanatory notes which, according to the Tribunal supported their view.

In the meanwhile, not only had the respondent challenged the decision of CEGAT in Simplex I before this Court but also on 5th November, 1993, an order was issued by the Central Board of Excise and Customs under Section 37-B of the Central Excise and Salt Act, 1944 (as it stood then) clarifying that grey cotton canvas, cotton ducks, cotton tyre cord fabrics and cotton belting fabrics would thenceforth be classified under TH No.52.05. According to the respondent in view of this circular it did not press its appeal before this Court which was accordingly dismissed for non-prosecution on 3rd November, 1995. This prompted the Central Board of Excise in Customs to examine the matter afresh and issue an order on 30th June, 1997 in supersession of the 37-B circular dated 5.11.1993 that :-

A. grey cotton tyre cord fabrics, grey, belting cloth, grey filter cloth/straining cloth and grey belting cloth and belting duck, generally having technical uses and generally not used for making clothing, household linen, bedspreads, curtains, other furnishing articles, etc. shall henceforth be classified under heading No.59.11 of the CET;

B. the grey cotton canvas and grey cotton duck, not having technical uses, shall henceforth be classified under chapter 52 of CET; and

C. the grey cotton belting shall henceforth be classified under heading 59.10 subject to note 6 to Chapter 59."

The 1997 Circular virtually reproduced the decision in Simplex I which had held that the respondents' goods were correctly classifiable under TH 59.09. (subsequently numbered as 59.11).

Relying on Simplex-I, the Commissioner (Appeals) dismissed the respondents' appeal and the demand for differential duty was confirmed. Subsequent to this, the decision in Simplex-I was overruled by a larger bench of CEGAT in Jyoti Overseas Limited Vs. CCE, Indore 2001 (130) ELT 446. The larger bench decision in Jyoti Overseas Limited Vs. Commissioner of Central Excise, Indore (supra) in overruling Simplex-I held (1) only "made up" articles can be classified under Chapters 59.09. The department's case there as well as in the case before us was not that the cotton fabrics manufactured by the respondent/assessee were in any manner made up, nor was it in dispute that the goods were woven fabrics of more than 85% by weight of cotton. The goods were in running length not cut to size or processed; 2) Tariff heading 59.09 was a residuary heading so that if goods manufactured by appellants fall in any other heading of Section XI it cannot be classified under Chapter heading 59.09; 3) textile products or textile articles as referred to in 59.09 were not textile fabrics. Only something made out the fabrics would be termed as textile products or textile articles. Therefore, unprocessed textile fabrics do not fall within 59.09 (now 59.11); 4) De hors the items contemplated by Chapter Note 6 (now 7) to Chapter 59, no articles could be classified under heading 59.09. Following the decision in Jyoti Overseas the CEGAT by the order impugned in this appeal set aside the order of the Commissioner (Appeals). The

question is was Jyoti Overseas right in overruling Simplex I ?

The three Chapters, namely; Chapters 52, 54 and 59 are contained in Section XI of the Central Excise Tariff. At the relevant time, Section Note 5 defined the word "made up" for the purposes of the entire Section as meaning:-

(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);

(c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics, the cut edges of which have been prevented from unraveling by whipping or by other simple means;

(d) Cut to size and having undergone a process of drawn thread work;

(e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

(f) Knitted or crocheted to shape, presented in the form of a number of items in the length".

"Non made up" goods would, therefore, cover running lengths of textiles, unprocessed in the manner specified in the Section Note. Section Note (SN) -6 specifically provides that Chapter 52 to 55 would not apply to "made up" goods. It would logically follow that they would therefore apply to non-made up goods. According to SN-6 Chapters 56 to 60 unless the context so required would also not apply to "made up" goods and Chapters 50 to 55 would not apply to goods of Chapters 56 to 59. Chapter Note (CN)-6 of Chapter 59 clarifies that Heading No.59.09 applies to specific goods as enumerated in paragraphs (a) and (b) thereof, which do not fall in any other heading of Section XI. It follows that (1) unless the goods fall under paragraphs (a) or (b), they would not be covered by TH 59.09 and (2) that TH 59.09 is the residuary heading to cover all the enumerated goods provided they do not fall in any other heading of Section XI. Paragraph (a) of CN-6 deals with "textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of heading numbers 59.07 and 59.08)". From this, read with SN-5 and 6, we may infer that the context of TH 59.09 requires that it apply to 'made up' goods. Running lengths of unprocessed textiles

or non made up goods therefore would not be covered by this paragraph.

Paragraph 'b' of SN-6 also pertains to "textile articles (other than those of heading principles 59.07 and 59.08) of a kind used for technical purposes [for example textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper making or similar machines (for example, for pulp or asbestos cement), gaskets, washers, polishing discs and other machinery parts]".

This paragraph of CN-6 also indicates that it refers to 'made up' or processed goods and therefore running lengths or bolts of unprocessed fabric are not covered by TH 59.09. "Endless felts" contrary to what was assumed in Simplex I is not a running length of fabric, but a product with no end such as a completed circular length which being without an end or beginning would be endless. TH 59.09 deals with textile 'articles' and not textile fabrics as wrongly assumed in Simplex I. Examples of textile articles may be found in TH 59.07 and 59.08 such as textile hose-piping, transmission or conveyor belts or belting. The language of TH 59.09 itself shows that it refers to articles and products other than articles referred to in the Chapter. There is a distinction between articles and products on the one hand and textile fabrics on the other hand as held in Jyoti Overseas.

The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order. The sub rules are quoted:-

(a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if

they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

Applying the Rules of interpretation particularly Rule 1, we are of the opinion that the reasoning of the Tribunal in Jyoti Overseas is unexceptionable and in our opinion the decision in Simplex-I was correctly overruled.

Finally it appears that in respect of other years, the Tribunal had taken the same view as has been taken by it in the order impugned in these appeals and classified the respondent's products under Chapters 52 and 54. No appeal has been preferred from those decisions by the Revenue and the finding for those years remain unchallenged.

For these reasons, the appeals are dismissed without any order as to costs.