

PETITIONER:
COLLECTOR OF CENTRAL EXCISE CALCUTTA

Vs.

RESPONDENT:
MULTIPLE FABRICS PVT. LTD. ETC."

DATE OF JUDGMENT 28/04/1987

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
OZA, G.L. (J)

CITATION:
1987 SCR (2) 1226 1987 SCC (2) 636
JT 1987 (2) 289 1987 SCALE (1) 1039

ACT:

Central Excise and Salt Act, 1944 Section 3 and First Schedule Item NoS. 22 and 68--P.V.C. Conveyor Belting-Whether 'man-made fabrics--Assessability to excise duty--Falls under residuary Item No. 68.

HEADNOTE:

The respondents, manufacturers of P.V.C. Conveyor Belting, contended before the Customs, Excise and Gold (Control) Tribunal that for purposes of excise duty under the Central Excise Tariff this item fell under Item 68. The Revenue submitted that the commodity was governed by Item 22. The Tribunal recorded a finding of fact that P.V.C. compounding was done simultaneously with the weaving of the fabric from yarn and held that this item should be governed by the residuary Entry 68 for the purposes of excise duty.

Dismissing the appeals by the Revenue, the Court,

HELD: It is accepted that yarn is woven into fabric. Item 19 deals with cotton fabrics while Item 22 deals with man-made fabrics. The Tribunal recorded a finding that P.V.C. compounding was done simultaneously with the weaving of the fabric from yarn, which clearly indicated that the process of manufacture was conversion from yarn to fabric as also the application of the P.V.C. Compound carried on at the same point. [1228F; 1227FG]

In view of the higher percentage of P.V.C. Compound in the commodity, it becomes difficult to treat the ultimate goods as manmade fabrics for holding that it is covered by Item 22. Upon this analysis, the Tribunal was correct in holding that the goods were not covered by Item 22 and, therefore, the residuary Item 68 applied. [1228G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2089 of 1985. (with C.A. Nos. 99-100 of 1986 & 3340-46 of 1984).

From the Judgment and Order dated 24.11.1983 of the Excise & Gold (Control) Appellate Tribunal in Appeal No. ED (SB) 1255/83-D.

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Hemant Sharma, C.V. Subba Rao and K. Swamy for the

Appellant.

R.N. Banerjee and K.J. John for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Each of these appeals under Section 35-L (b) of the Central Excise and Salt Act, 1944 is directed against the decision of the Customs, Excise and Gold (Control) Appellate Tribunal. The short question arising in each of them is as to whether P.V.C. Conveyor Belting manufactured by the different respondents in these appeals comes within the purview of Item 22(3) or would be governed by the residuary entry 68 for purposes of excise duty under the Central Excise Tariff. According to the respondents the appropriate Item is 68 while according to the Revenue Item 22 squarely covers the commodity. The Tribunal has accepted the stand of manufacturers. That is how all these appeals have been carried by the Collector of Central Excise.

The Assistant Collector who initiated the proceeding in the show cause notice reproduced the Departmental Chemical Examiner's Certificate. Therein it was stated:-

"The sample is in the form of cut-piece of black coloured Belting of width 10 c.ms. and thickness 9 m.m. It is composed of synthetic resin of P.V.C. type, reinforced with textile fabric containing 42.3% by weight of cotton and rest viscose (man-made filament yarns of cellulosic origin). Percentage of textile fabric = 43.3. Percentage of P.V.C. Compound = 56.7%".

This position has not been disputed at any stage nor even before us. The Tribunal has recorded a finding that P.V.C. compounding was done simultaneously with the weaving of the fabric from yarn which clearly indicated that the process of manufacture was conversion from yarn to fabric as also the application of the P.V.C. Compound carried on at the same point of time. Learned counsel for the appellants who initially attempted to challenge this fact was ultimately obliged to accept the situation as a finding of fact. In fact before the Tribunal the departmental representative had relied upon this position as would appear from the judgment of the Tribunal.

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It is not disputed that if the commodity would not be covered by item 22, residuary Item 68 of the Schedule would be applicable. Item 22 provides thus:-

"MAN-MADE FABRICS--

"Man-made fabrics" means all varieties of fabrics manufactured either wholly or partly from man-made fibres or yarn and includes embroidery in the piece, in strips or in motifs, fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and fabrics covered partially or fully with textile flocks or with preparation containing textile flocks, in each of which man-made (i) cellulosic fibre or yarn, or (ii) non-cellulosic fibre or yarn, predominates in weight:

Explanation I: "Base fabrics" means fabrics falling under

sub-item (1) of this Item which are subjected to the process of embroidery or which are impregnated, coated or laminated with preparations of cellulose derivatives or of other plastic materials or which are covered partially or fully with textile flocks or

with preparations containing textile flocks.

Explanation

II:

Explanation III: Explanation II under Item No. 19 shall, so far as may be, apply in relation to this Item as it applies in relation to that item."

It is accepted that yarn is woven into fabric. Item 19 deals with cotton fabrics while Item 22 deals with man-made fabrics. On the footing recorded by the Tribunal, it is claimed that there was no preexisting base fabric and the manufacturing process simultaneously brought into existence the commodity by weaving yarn into fabric and application of P.V.C. Compound.

In view of the higher percentage of P.V.C. Compound in commodity, it becomes difficult to treat the ultimate goods as man-made fabrics for holding that it is covered by Item 22. Upon this analysis it follows that the Tribunal came to the correct conclusion when it held that the goods were not covered by Item 22 and, therefore, the residuary item 68 applied. All these appeals are without any merit and are dismissed. Each of the respondents should be entitled to its costs.

N.P.V.
dismissed.
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Appeals