Collector of Customs, Bombay

Vs

Swastic Woollens (P) Ltd. and Others

Civil Appeal Nos. 1016-25 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

10.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These appeals under Section 130-E of the Customs Act, 1962 (hereinafter called 'the Act') arise from the decision of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter called 'CEGAT'). Section 130-E(b) permits appeal to this Court from any order of the said Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment. The appeals are at the instance of the revenue authorities, namely, the Collector of Customs, Bombay. Respondent 1/importer is a company of small scale sector in Punjab and manufactures various kinds of yarns. It is stated that on May 19, 1984, respondent 1 imported consignment of wool materials valued at Rs. 3,75,079 and claimed the benefits under Notification No. 240/76-Cus. The respondent also claimed that the wool materials were wool waste, hence, the goods in question were not liable to customs duty. It is stated that on November 6, 1984, an Expert Committee, comprised of Deputy Chief Chemist, Assistant Collector and Senior Scientific Officer was set up for the examination of the goods in question. The Expert Committee after examination opined that the wool goods were other than wool waste, hence, the goods were liable to duty of customs. On or about January 2, 1985, the department issued a notice to the respondents calling upon them a show cause as to why action under Sections 111(d) and (m) and Section 112 of the Customs Act and Section 3 of the Import and Export (Control) Act, 1947 should not be taken against them. The respondents submitted the reply to the notice. The additional Collector of Customs examined the whole case and adjudicated on March 19, 1986 and the respondents were charged with the violation of the Import Control Regulations. The Additional Collector of Customs held that the classification of the goods should be under the heading 53.01/05 and also found the import to be unauthorised. Accordingly, the goods in question were confiscated but he gave option to the respondents to redeem the goods on payment of Rs. 90,000 as fine. Respondent 1/importer preferred an appeal to the Appellate Tribunal, New Delhi, against the order of the Assistant Collector, Bombay, and the Appellate Tribunal, New Delhi, after going through the provisions of the Act and the notification allowed the appeal and set aside the order of the Additional Collector on January 19, 1987.

2. The question involved in these appeals before the GEGAT and the question involved herein in these appeals is, whether these goods are wool wastes and, as such, entitled to the benefit of exemption under the aforesaid notification. As it is apparent from the Tribunal's order, the assessee or the dealer contends that these are wool wastes. The consignments were examined on percentage basis. On examination, it was found, however, that these items contained long length of slivers/tops etc. A through examination of these consignments was, therefore, ordered to verify the actual

description of the goods. A technical panel was constituted for the purpose consisting of the Deputy Chief Chemist, Bombay, as Chairman, the Assistant Collector of Customs and a Senior Scientific Officer of the Office of the Textile Committee as the members. Based on the panel's findings, show cause notices were issued to the importers that the goods appeared to be other than wool wastes, there were long lengths of slivers/tops or deliberately broken tops which could be easily joined at the end to prepare them ready for spinning. The importers were charged with the violation of the Import Control Regulations and asked to explain why action should not be taken under Sections 111(d) and (m) of the Act, and also why the goods should not be taken under Sections 111(d) and (m) of the Act, and also why the goods should not be charged to duty under heading 53.01 and now 53.01/05(1) of the Customs Tariff Schedule read with Customs Notification No. 154-Cus dated July 4, 1979 at the rate of 40 per cent + auxiliary duty at 10 per cent + additional duty of Customs At Rs. 9.375 per Kg. under item No. 43 of the Central Excise Tariff Schedule read with the relevant under item No. 43 of the Central Excise Tariff Schedule read with the relevant notification. As mentioned hereinbefore adjudication proceedings were held by the Additional Collector of Customs, Bombay. In the said adjudication proceedings the members of the technical panel were cross-examined by counsel. The Additional Collector held that the goods were not wool waste but processed woollen products other than wool tops/raw wool and were classifiable under heading 53.01/05(1). In other words, he found that since the goods were found to be not wool wastes, the licences produced for wool waste were not acceptable and, therefore, the imports were unauthorised. Accordingly, the confiscation of the goods were ordered but option to redeem the goods on payment of fine was permitted. This order as mentioned hereinbefore was challenged before the CEGAT.

3. The Tribunal noted the history of the case and addressed itself to the points at issue. The question before the Tribunal was whether the goods were wool waste or processed woolen products other than wool tops/raw wool. The revenue's case was that the goods could not be treated as wool wastes. It may be reiterated that the goods were held to be not entitled to duty exemption under the relevant customs notification is issue. The Tribunal went into the details of the report of the expert panel. That report recognised that it was not possible to give opinion by visual observations of the material and that there was no specification laid down for the same by the ISI or International Standard Organisation. The Tribunal noted that the question would have to be understood on the basis of trade understanding.

4. We are of the opinion that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question is the safest guide. See Union of India v. Delhi Cloth & General Mills (1963 Supp 1 SCR 586 : AIR 1963 SC 791), South Bihar Sugar Mills Ltd. v. Union of India ((1968) 3 SCR 21 : AIR 1968 SC 922), Dunlop India Ltd. v. Union of India ((1976) 2 SCC 241 : (1976) 2 SCR 98), In re Colgate Palmolive (India) Pvt. Ltd. (1979 ELT 567), CST v. M/s. S. N. Bros., Kanpur ((1973) 3 SCC 496 : 1973 SCC (Tax) 254 : (1973) 2 SCR 852), and also the famous observations of Justice Cameron in His Majesty The King v. Planters Nut and Chocolate Co. Ltd. (1951 CLR (Ex) 122)

5. Dealing with the transactions in question, the Tribunal noted that the goods in the present case, had been indented and supplied as wool wastes. Attention of the Tribunal was also drawn to the explanatory notes to the Customs Cooperative counsel Nomenclature (for short CCCN) which stated at page 738 that wool waste could be of different types arising at different stages of processing of wool and in spinning of wool, that lap and sliver ends could comprise wool waste, that these could be carded or combed wool waste and that wool wastes might be used for spinning. The Tribunal noted that nowhere had it been laid down that wool wastes comprising of pieces of sliver should not

exceed 3 meters in length or that it should be packed in gunny bags and not in machine pressed bales. Some reliance was placed on a letter dated July 5, 1981 from S.C.S. India Pvt. Ltd. to Deluxe spinning Agency, Bombay that lap and sliver (broken pieces) could comprise wool waste. Wool tops would have lengths ranging from 250 to 1166 meters. But in the present case, the material was about 4 meters only. Some reliance was also placed on two letters to LWS from the Principal Scientific Officer, Punjab Test House, Ludhiana, regarding the definition of wool tops and soft waste which was set out in the order of the Tribunal. It is not necessary for our present purpose to set out the definition in extenso. But this definition of materials disproved the revenue's contention that pieces of sliver, as in this case, of 4 or 5 meters length were directly spinnable and were not wool wastes. There was cross-examination of the Deputy Chief Chemist and that cross-examination also does not support the revenue's case. It is true that the Additional Collector of Customs, Bombay by his order dated March 19, 1986 had rejected the defence put forth by the dealer and held that the goods were not wool wastes but were "processed woolen products other than wool tops/raw wool" and were classifiable under heading 53.01/05(1) of the Customs Tariff Schedule. But the question is whether he was right in so doing. It appears that the goods varied in length from 4 meters and above. It also appears that the goods were found by the Committee to be cut pieces of slivers which were parallelly laid, homogeneous and of even thickness and that these were nothing but cut pieces of wool tops, which could be considered to have arisen during the process of manufacture of yarn from wool tops in order to qualify as soft waste viz. small cut ends of wool tops/slivers. It may be relevant in this connection to refer to the Board's Tariff Advice which suggested that wool wastes may consist of free fibres and clippings, cuttings etc. These should not consist of long lengths of yarn or of rovings or slivers. The Tribunal was of the view that rovings, slivers/tops of short lengths or ends alone could be considered as wool wastes. The wool contents of the present disputed consignments are more than 98 per cent or completely wool and it is not mixed with any other wastes. The lengths of samples were not less than 3 meters but ranged between 3 to 30 meters or even more. It was, therefore, urged that these could not be treated appropriately as wool wastes.

6. The Tribunal, however, noted that the experts produced by the importers are said to have based their views on their experience, no literature or evidence regarding accepted trade practice with regard to any technical literature has been produced. The experts had no occasion to see the goods in dispute. It appeared before the Tribunal when the consignment was examined for the first time, the customs staff reported that the goods could be considered as wool wastes. The expert panel's report was not unanimous. The report did not say that the subject goods were the result of deliberate cutting of silvers. It said that the fibres were of varying, different lengths. But the majority report considered that the goods were not wastes apparently on the basis of the length of the fibres being above 3 meters. The term "wool waste" could cover sliver provided these were not deliberately cut and were not of uniform length. The evidence produced in support of the contention that slivers up to, and even more than 15 meters in length could be considered as wastes was, without justification, ignored. The Tribunal noted all these. It is clear that the goods comprised fibres of uniform length, the result of deliberate cutting. That was the basis on which the Additional Collector proceeded but there was no evidence to that effect. After taking all these factors and submissions into consideration, the Tribunal came to the conclusion that these are classed as "wool waste". The propriety and the validity of this findings is under challenge.

7. The Additional Solicitor General appearing for the appellant contended that the Tribunal has ignored vital material and relevant factors. He submitted that Technical committee's report about the expression "wool waste", CCCN's observations and the Board's Tariff Advice had been ignored. We are unable to accept this criticism advanced on behalf of the revenue.

8. The short question involved before the Tribunal and the validity of which is under challenge in these appeals is, whether the goods in question are wool wastes. If these are then these are entitled to exemption under the relevant notification and if these are not wool wastes, these are not entitled to exemption.

9. The expression "wool wastes" is not defined in the relevant Act or in the notification. This expression is not an expression of art. It may be understood, as in most of financial measures where the expressions are not defined, not in a technical or preconceived basis but on the basis of trade understanding of those who deal with these goods as mentioned hereinbefore. The Tribunal proceeded on that basis. The Tribunal has not ignored the Technical Committee's observations. We have noted in brief the Tribunal's handling of that report. The Tribunal has neither ignored the observations of CCCN nor the Board's Tariff Advice. These observations have been examined in the light of the facts and circumstances of the case. One of the basis factual disputes was long length of sliver tops. Having regard to the long length, we find that the Tribunal was not in error. Whether a particular item and the particular goods in this case are wool wastes, should be so considered or not is primarily and essentially a question of fact. The decision of such a question of fact must be arrived at without ignoring the material and relevant facts and bearing in mind the correct legal principles. Judged by these yardsticks the finding of the Tribunal in this case is unassailable. We are, however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion, is no ground to interfere with that finding in an appeal from such a finding. In the new scheme of things, the Tribunals have been entrusted with the authority and the jurisdiction to decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate tribunals act within the law. Merely because another view might be possible by a competent court of law is no ground for interference under Section 130-E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion, even if superior court feels that another view is possible, that is no ground for substitution of that view in exercise of power under clause (b) of Section 130-E of the Act.

10. In the facts and in the circumstances, in our opinion, the Tribunal has acted within jurisdiction. The Tribunal has taken all relevant and material facts into consideration. The Tribunal has not ignored any relevant and material facts. The Tribunal has not applied any wrong principles of law. Therefore, the decision of the Tribunal is unassailable even in the appeal before this Court.

11. In the premises, the appeals preferred herein are rejected. No order as to costs.

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