Collector of Central Excise, Hyderabad

Vs

Fenoplast (P) Ltd. (I)

Civil Appeal Nos. 3094-95 of 1989

(B. P. Jeevan Reddy, B. L. Hasaria JJ)

22.02.1994

ORDER

1. The question in this appeal is whether 'rexine cloth' produced by the respondent falls under Tariff 19-III of the Schedule to the Central Excise Act, as it obtained at the relevant time. The Tribunal has held, by a majority of 2:1, that it does not. The Revenue is assailing the majority opinion in this appeal.

2. Initially, the respondent has applied for classification of the said product under T.I. 19-III but later by their letter dated 3-3-1981 they contended that their product does not fall within the said tariff item. When the department did not agree with their contention, they submitted a classification list under T.I. 19-III under protest. In pursuance of certain orders passed by the High Court in the writ petition filed by the respondent, a proper show-cause notice was issued to the respondent and after hearing it, the Assistant Collector affirmed the classification of the said product, under T.I. 19-III. On appeal, the Collector (Appeals) allowed the respondent's appeal. He held that the said product does not fall under T.I. 19-III but he did not say under which item does it fall. The department appealed to the Tribunal, which agreed, by a majority that T.I. 19-III is not applicable.

3. The respondent purchases 100% cotton cloth and impregnates it with PVC resin and other materials. The composition of the ultimate product - rexine cloth - into the following effect :

> #"(1) Cotton fabrics 8.0% (2) PVC resin 24.5% (3) Plasticizers (DIP/DIOP/BBP) 13.0% (4) Other [fillers, (Calcium Carbonate) secondary plasticizers, pigments, solvents, thinners, foaming agents] 54.5%##
>
> The above composition is by weight."

4. Shri Gowri Sankaramurty, learned counsel for the Revenue, submits that the said product squarely falls within Tariff Item 19-III. In the alternative, he submits, it would fall under T.I. 22(B). The counsel complains that the Appellate collector as well as the Tribunal not only erred in not classifying the said product under T.I. 19-III but erred further in not specifying under which tariff item does it fall if not under T.I. 19-III. Shri Soli J. Sorabjee, learned counsel appearing for the respondent, clarified, in the first instance, that the respondent's product has been classified under T.I. 68 and that he has been paying duty thereunder. Counsel justified the opinion of the majority of the Tribunal holding that the said product does not fall within T.I. 19-III. Shri Sorabjee placed strong reliance upon the decision of this Court in Collector of Central Excise, Calcutta v. Multiple Fabrics (P) Ltd. ((1987) 2 SCC 636 : 1987 SCC (Tax) 228)

5. Tariff Items 19, 22 and 22(B) read as follows at the relevant time :

#----------Tariff Description of goods
Rate of dutyItemNo. ---------- Basic Special

Excise----------(1) (2) (3) (4)----------

19. COTTON FABRICS

'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, Chaddars, bed-sheets, bedspreads, counter-panes, table-cloth, 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 preparations containing textile flocks, if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent., by weight of cotton and 50 per cent., or more by weight of non-cellulosic fibres or yarn or both : Provided that in the case of 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 preparations containing textile flocks, such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be - I. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, (ii) fabrics, impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and (iii) fabrics covered partially or fully with textile flocks or with preparations containing textile flocks - (a) cotton fabric, not subjected 20% ad 10% of the to any process. valorem basicchargeable. (b) cotton fabrics, subjected to -do- -do- the process of bleaching, mercerising dyeing, printing, waterproofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes. (Sub-item II omitted as unnecessary) III. Cotton fabrics impregnated, The duty for coated or laminated with the time preparations of cellulose derivatives being of other artificial plastic leviable on materials. the base fabrics, if not already paid, plus 30% ad valorem. (Sub-item II omitted as unnecessary) Explanation I. - 'Base fabrics' means fabrics falling under sub-item I 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. 22. 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 preparations containing textile flocks, in each of which man-made (i) cellulosic fibre or yarn, or (ii) non-cellulosic fibre or yarn, predominates in weight : Provided that in the case of 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 preparations containing textile, flocks, such predominance shall be in relation to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be. [Sub-items (1) & (2) omitted as unnecessary] (3) Fabrics impregnated, coated The duty for 10% of the or laminated with preparations the time basicduty of cellulose derivative or of being leviable chargeable. other artificial plastic on the materials. base fabrics, if not already paid, plus 30% ad valorem [Sub-item (4) omitted as unnecessary] 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 other plastic materials or which are covered partially or fully with textile flocks or with preparations containing textile flocks. 22 B. TEXTILE FABRICS IMPREGNATED. 30% ad 10% of the COATED OR LAMINATED WITH valorem basic duty PREPARATIONS OF CELLULOSE chargeable." DERIVATIVES OR, OF OTHER ARTIFICIAL PLASTIC MATERIALS NOT ELSEWHERE SPECIFIED.##

6. Since the language of Tariff Item-19 rather involved, it would be appropriate if we read the main limb of the item proviso and Explanation I omitting unnecessary words. It would read :

> "'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent. by weight of cotton and 50 per cent. or more by weight of non-cellulosic fibres or yarn or both :
>
> Provided that in the case of fabrics impregnated .. etc. such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are impregnated, coated or laminated or covered, as the case may be.
>
> Explanation. - 'Base fabrics' means fabrics falling under sub-item (i) of this item which are impregnated, coated or laminated with preparations of cellulose derivatives or of other plastic materials."

7. It would thus appear from the above entry that "cotton fabrics" include fabrics impregnated, coated or laminated with the materials mentioned in the entry provided (i) in such fabrics cotton predominates in weight, or (ii) cotton content in such fabrics is more than 40 per cent. by weight and the content of non-cellulosic fibres or yarn or both is more than 50 per cent. The precise question that arises herein is whether the words, "such fabrics" occurring in clauses (i) and (ii) refer to the base fabrics or to the final (manufactured) product. The Appellate Collector and the Tribunal have held that the said words refer to the final product and inasmuch as the content of cotton in the final product is far less than 40 per cent., the product does not fall within Tariff Item 19. The counsel for the Revenue, however, says that the words, "such fabrics" are specifically explained in the proviso and that the proviso places the matter beyond any doubt. The proviso expressly says - that is its only purpose - that said words refer not to the final product manufactured by the respondent but to the 'base fabric' which expression has in turn been defined in Explanation I. The learned counsel says that the proviso expressly and exclusively deals with the predominance and percentages referred to in clauses (i) and (ii), since it says that in the case of fabrics impregnated, coated etc. with the aforesaid materials, such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are impregnated, coated or laminated or covered, as the case may be. The counsel further says that Explanation I makes the matter still clearer by defining the basic fabrics to mean fabrics falling under sub-item (i) i.e. plain fabrics which are subjected to the process of impregnation, coating etc.

8. The learned counsel for the Revenue replies upon the language of T.I. 22 which is more or less identically worded to emphasise his submission with the difference that while clauses (i) and (ii) in Tariff Item 19 refer both to the predominance and percentages, clauses (i) and (ii) in Tariff Item 22 refer only to predominance.

9. According to Shri Sorabjee, however, what has been mentioned in the proviso cannot override the main provision, which clearly militates against the contention of the Revenue inasmuch as the expression 'such fabrics' cannot refer to cotton fabrics for the simple reason that in that event the question of predominance of cotton, of which reference has been made in clause (i), would apparently be incongruous. It is because of this that the expression 'base fabrics' finding place in the proviso should be understood as the fabric which comes into existence ultimately; otherwise, the proviso would make the main provision nugatory, which would not be the reasonable way of reading the proviso.

10. Shri Sorabjee also contended that that 'rexine cloth' would not come either under T.I. 19-III or 22-B as it cannot be said to be of 'fabrics'; whereas the ultimate product to attract any of the aforesaid items must retain the identify and character of fabrics.

11. Shri Sorabjee has placed strong reliance on the decision of this Court in Multiple Fabrics (P) Ltd. in support of his submission. The question in that case was whether "PVC conveyer belting" manufactured by the respondents therein fell within T.I. 22 or under the residuary Tariff Item 68. It was found therein that the product in question was "composed of synthetic resin of PVC type, reinforced with textile fabric containing 42.3% by weight of cotton and rest viscose (man-made filament yarns of cellulosic origin)" wherein the percentage of textile fabric was 42.3% and PVC Compound 56.7%. The Tribunal had recorded a finding that "PVC Compounding was done simultaneously with the weaving of the fabric from the yarn which clearly indicated that the process of manufacture was conversion from yarn to fabric as also the application of the PVC Compound carried on at the same point of time". Ranganath Misra, J. (as he then was) speaking for the Bench comprising himself and G. L. Oza, J., set out Entry 22 but not the proviso, (which proviso corresponds to the proviso in T.I. 19) and held as follows : (SCC pp. 637-38, paras 4 and 5)

> "4. It is accepted that yarn is woven into fabric. Item 19 deals with cotton fabrics which Item 22 deals with man-made fabrics. On the footing recorded by the Tribunal, it is claimed that there was no pre-existing base fabric and the manufacturing process simultaneously brought into existence the commodity by weaving yarn into fabric and application of PVC Compound.
>
> 5. In view of the higher percentage of PVC 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 respondents should be entitled to its costs."

12. A reading of the above paragraphs (4) and (5) indicates that the learned Judge has given two reasons for his conclusion, namely, (1) since the PVC Compounding was done simultaneously with the weaving of the fabric, there was no pre-existing base fabric and (2) having regard to the higher percentage of PVC Compound in the ultimate product, it cannot be treated as a man-made fabric within the meaning of T.I. 22. Though the learned counsel for Revenue sought to distinguish the first ground given by the Bench saying that in that case the PVC Compounding was done simultaneously with the weaving of the fabric, the said distinction is, in our opinion, without a difference. It does not matter whether the PVC Compounding is done simultaneously with the weaving or is done on a pre-existing fabric. Be that as it may, the more relevant aspect is the second ground given by the Bench wherein they applied the test of predominance to the final product and

not to the base fabric. This was evidently done because the attention of the Bench was not invited to the proviso. As indicated hereinabove, while setting out T.I. 22, the proviso is omitted which, however, has material bearing. It is not known what would have been the conclusion if the proviso would have been noted.

13. We would have given our views on the contentions advanced by the learned counsel for both the sides but the aforesaid decision stands in our way, as to which we would say that the correctness of the same is doubtful, because the conclusion therein was arrived at without referring to the proviso which does have a material bearing.

14. In the above circumstances, it is but proper that the matter is placed before a Bench of three Judges. Let the records be, therefore, placed before the Hon'ble Chief Justice for doing the needful.

</html