

SUPREME COURT OF INDIA

Bhor Industries Ltd.

Vs.

Collector of Central Excise, Bombay

C.A.No.9315 of 1994

(DR. A.S. Anand CJI, S. Rajendra Babu and R.C. Lahoti JJ.)

26.10.1999

ORDER

The following Order of the Court was delivered :

The appellant, a manufacturer of Laminated Textile Fabrics, filed Classification List No. 1/86 for 'waste side strips and scrap' for approval as non-excisable items on the ground that there was no Entry dealing with waste and scraps in Chapter 59 of new tariff. In the adjudication proceedings for approval of the classification, the Assistant Collector of Central Excise classified both 'Foam Patty' and 'Scrap' as "finished final laminated fabric", i.e., "rexin fabric" till 28.2.1987 and thereafter as "damaged or sub-standard leminated fabric" till 1.5.1988, after which these were treated as "Chindies", though covered by the same sub-heading 5903. The appeal of the appellant having failed before the Appellate Collector, the matter was taken to the High Court, when the matter was remanded to the Appellate Authority, which in turn remanded it to the Assistant Collector.

The Assistant Collector vide order dated 14.3.1991 issued on 18.3.1991, found mat the product is nothing but "PVC laminated fabrics". It was accordingly ordered that the goods be classified as

"PVC laminated fabrics under sub-heading 5903.19 as "cotton laminated fabrics" and 5903.29 as "man-made laminated fabrics" upto 28.2.1987. The goods were later on directed to be classified under Notification No. 63/87 dated 1.3.1987, as amended, as "damaged or sub-standard textile fabrics".

The order of the Assistant Collector was put in issue before the Collector, Central Excise (Appeals). The Appellate Authority found that the products in question were "noting but damaged or sub-standard textile fabrics laminated with plastic". The items in question were, thus classified by the Appellate Authority under sub-headings 5903.19 and 5903.29, upholding the classification made by the Assistant Collector.

The Appellant challenged the order of the Appellate Authority before the Customs, Excise and Gold (Control) Appellate Tribunal ("CEGAT"). It was the case of the appellants before the CEGAT that the products were not PVC laminated fabrics but were "waste strips" which were generated during the manufacture of the textile fabric and given the convenient name of "Foam Patty" for the purposes of identification. The CEGAT did not agree and vide an order, impugned before us, opined that "the items consist of damaged and laminated fabrics" and were liable to excise duty as such items. In para 9 of the order, the Tribunal also observed as follows:

"The 'Foam Patty' as such can be used as laminated fabric for manufacture of narrow width articles like handles of purses or shoe straps etc., and even for manufacture of complete purses by stitching together square/rectangular pieces of smaller sizes. Such articles are seen being marketed regularly. As held by the Supreme Court, the Court has to take into consideration not only the facts on record but also the facts of life. Further, the test report also clearly shows that the goods are laminated fabrics",

We have heard learned counsel for the parties and perused the record including the invoices issued by the appellant on which reliance appears to have been placed by the Tribunal. In vain have we searched through the record to any basis for the factual finding recorded in para 9 (supra) by CEGAT. The finding appears to be based on some observations to the similar effect made by the appellate authority in its order. We have not been shown any material or evidence available on the record which could justify the observations of the appellate authority. That apart, we find that none of the authorities below have applied their mind and returned a specific finding whether the items in question could answer to the description of 'laminated textile fabrics'. The application of the relevant notification and classification of the items under sub-heading 5903.19 or 5903.29 can arise only if the material was "laminated textile fabric" and the same was found to be "sub-standard or damaged". A finding, was therefore, required to be arrived at, on the basis of the evidence/material placed before the authorities below, that the items in question answered to the description of "laminated textile fabrics". The question whether such fabrics were sub- standard or damaged could only be considered after it was found as a fact that the material was "laminated textile fabric" and was being used in the manner observed by the Appellate Authority and CEGAT. In the absence of

any such finding, the authorities below could not have proceeded further to determine proper classification. We refrain from addressing ourselves to find out the nature of the `strips' or `scraps' or `foam patty' or their `possible' use, as any expression of our opinion can prejudice the case of either party before the departmental authorities.

Under these circumstances, we do not find it possible to sustain the impugned order. Accordingly, we accept the appeal and set aside the impugned Order and remand the matter to the Assistant Collector for its fresh disposal in accordance with law and in particular to determine whether the items in question, answer the description of "laminated textile fabrics" and if so, the use to which the same were being actually put.

The appeal is allowed in the above terms. No costs. Equivalant