SUPREME COURT OF INDIA

Commr.of Central Excise-I,Hyderabad

Vs.

Charminar Non-Wovens Ltd.

C.A.No.3828 of 2007

(D.K. Jain and Asok Kumar Ganguly JJ.)

08.09.2009

JUDGEMENT

A.K.Ganguly, J.

1. In this appeal filed by the Revenue, the issue is whether non-woven carpets having exposed surface of polypropylene are classifiable under heading 5703.20 as "jute carpet" to justify concessional rate of duty or whether the said non-woven carpets are classifiable under heading 5703.90 as "other carpets".

2. It is not in dispute that the period which is involved in this case is between April, 1996 to October, 1996.

3. The show-cause notice was issued by the Revenue against the respondent on 6.11.1996 alleging the respondent's a case of mis-classification of carpets under heading 5703.20 and thereby mis-utilization of the benefit of Notification No.29/95-CE dated 16.3.95 and 16/96-CE dated 23.7.1996 and thus clearing the goods at concessional rate of duty of 5%. The Revenue's case is that such concessional rate of duty is available only for jute exposed surface floor coverings and, therefore, there has been contravention of Rule 9(1), 52-A, 173-B, 173-F and 173-G of the *Central Excise Rules, 1944*.

4. The case of the respondent is that it is manufacturer of blankets, carpets and floor coverings falling under Chapter 63 and 57 of the *Central Excise Tariff Act, 1985* (hereinafter "the said Act") and its products known as "Charms Jute Floor Coverings", is classifiable under chapter sub-heading No. 5705.00 (before 26.7.1996) and then under chapter sub-heading No. 5703.20.

5. The respondent contested the aforesaid show-cause proceedings and therein an adjudication order dated 29.11.2004 was passed. In passing the said adjudication order, the adjudicating authority returned several findings to the effect that in the past the issue involved in this case was decided in favour of the assessee by Collector of Central Excise (Appeals) vide its order dated 16.07.1993. After the said order, no objection was raised by

the Revenue and the assessee continued to discharge its obligation of duty liability in terms of the said order. The adjudication authority also came to a finding that the surface of the goods manufactured by the assessee is neither piled nor looped with ground fabric, rather the goods are manufactured by needle punching process. The aforesaid findings were arrived at after examining a piece of the sample of floor coverings which were produced in the course of hearing. The adjudicating authority also came to a finding that in the goods manufactured by the assessee, predominance of jute content by weight has not been disputed in the show-cause notice. Rather the chemical examiner's report dated 28.08.1991 clearly states the predominance of jute by weight in the product. Therefore, the adjudicating authority followed the decision of CESTAT in the case of Uni Products (I) (Tri.-Delhi), and held that the process of manufacture of non- woven carpets which is followed in the case in hand is exactly the same which was followed in the case of Uni Products (supra) and accordingly the show-cause proceedings were dropped against the assessee by an order dated 29.11.2004.

6. Against the said order, an appeal was filed by the Revenue and the said appeal came to be decided by the Commissioner of Customs and Central Excise (Appeals), Hyderabad. In the course of hearing of the appeal, the appellate authority noted why the adjudication authority decided that the classification of the product in question should be under sub-heading 5703.20. The appellate authority also noted that the said carpet was physically examined by the adjudicating authority, and after doing so, the adjudicating authority came to a finding that floor covering was neither piled nor looped, rather the goods were manufactured by needle punching process. The adjudicating authority, therefore, came to a concurrent finding that the goods in question were correctly classified under chapter sub-heading 5703.20 and are not to be classified under "other" under chapter sub-heading No. 5703.90. The appellate authority also held that the decision of CESTAT in the case of Uni Products (supra) is applicable in the facts of the case. With the said finding, the appellate authority rejected the appeal of the Revenue.

7. When the Revenue further took the appeal up to Tribunal, the Tribunal referred to its decision in the case of Commissioner (193) ELT 295 (Tri.-Kolkata), and held that the issue is covered by the decision in Champdany Industries (supra). The appeal filed against the same decision rendered in the Champdany Industries (supra) has been dealt with by this Court in the case in Civil Appeal Nos.7075-7076 of 2005. In that judgment, all the issues raised by the Revenue have been discussed in detail. After such detailed discussion, the contentions of the Revenue have been rejected.

8. Following the same parity of reason contentions of the Revenue, which are identical in this case, are also rejected.

> “Apart from that, it appears that in this matter the Revenue's case has been constantly rejected at all the three levels, namely, in the adjudication order passed by the Addl. Commissioner of Central Excise, in the appellate order passed by the Commissioner (Appeals) and in the Tribunal. Such decisions have been rendered on the basis of the relevant materials and after analyzing the evidence on record as also the provision of Section Notes and Chapter Notes. Such concurrent findings by the lower authorities

are interfered with by this Court in exercise of its jurisdiction under Section 35L of Central Excise and Salt Act, 1944 only when such findings are patently perverse or are based on manifest misreading of any legal provision. Here none of these situations is present."

9. Reference in this connection may be made to the decision Ahmedabad - 2003 (157) ELT 502 (SC). In that judgment, the learned Judges of this Court held that with the concurrent finding of facts reached by lower authorities in classification on the basis of evidence and on analysis of relevant legal provision interference is not called for by this Court in exercise of its power under Section 35L of the Central Excise Act, 1944.

Collector, quoted in this Court held where there is a concurrent finding of fact by the authorities below in support of respondents claim for classification normally this Court does not interfere with such concurrent findings.

11. In view of the aforesaid settled law, this Court does not find any merit in the appeal filed by the Revenue. The Revenue's appeal is thus dismissed. However, there is no order as to costs.

[1]*2006 (199) ELT A.127*