

SUPREME COURT OF INDIA

Sarla Performance Fibers Ltd.

Vs.

Commissioner of Central Excise & Customs, VAPI

C.A.No.5805-5807 of 2009

(A.K.Sikri and Ashok Bhushan,JJ.,)

27.04.2017

JUDGMENT

A.K.Sikri,J.,

1. All these appeals involve identical dispute, which pertain to classification of the goods known as Polyester Covered Yarn and Nylon Covered Yarn. Whereas the appellants/assesseees argue that these products are covered by Chapter No. 56 and come under CSH No. 5606.06, the Revenue has taken the position that the aforesaid goods fall in CSH No. 5402.62/61. The stand of the Revenue has been accepted by the Customs Excise & Service Tax Appellate Tribunal (for short 'CESTAT') which is challenged by the assesseees in these appeals. For the sake of convenience, we shall take note of the facts from Civil Appeal Nos. 5805-5807 of 2009.

2. The aforesaid two products, namely, Polyester Covered Yarn and Nylon Covered Yarn are manufactured by the appellants by applying the process of conventional covering on machine - MENEGATTO - Model 1500/2000 and also separately by applying the process of air covering on machine SSM-DP2-C. The dispute pertains to the goods manufactured with the application of air covering process. This process of air covering is as under: The Lycra/Spandex Spool is loaded on the feeder and nylon or polyester is loaded on the Creel. Then the Lycra or Spandex is drafted to certain extent i.e. as per the requirement of quality. Then the Nylon/polyester & Lycra/Spandex is passed through the air jet where the covering takes place. Finally the covered yarn is wound on paper tube.

3. It is an admitted case that upto July, 2001, the assesseees were themselves covering these yarns under Chapter No. 54 and paying duty accordingly. As per them, it was noticed that Custom Department was acquiring such yarns on importation under Chapter 56. The assesseees were advised that the yarns in question are to be classified under Chapter No. 56 and not Chapter No. 54 and, therefore, after intimating the Department, they started effecting the clearances under CSH No. 5606.06 w.e.f. July, 2001.

4. On visit by the officers of the Excise Department, when the aforesaid manner of effecting the clearances was noticed, the objection was raised by the Department stating that the goods were classifiable under CSH 5402.62/61 and not 5606.06. After recording the statements of some employees of the appellants company, show cause notice dated 04.09.2002 was issued proposing modification in classification of covered yarn manufactured by air covering method and on that basis differential duty for the period from March, 2001 to February, 2002 was also demanded. The show cause notice also proposed imposition of penalty and recovery of interest as well. This show cause notice led to adjudication by the Adjudicating Authority. After receiving reply to show cause notice and giving an opportunity of hearing to the assessee, the Adjudicating Authority affirmed the proposal contained in the show cause notice and also affirmed demand of differential duty of Rs.44,89,471/- with interest as applicable. Penalty of equal amount as that of duty was also imposed. This order was challenged by the assessee before the Commissioner (Appeals) and thereafter before the CESTAT, resulting into the dismissal of their appeals at both levels.

5. Before proceeding to take note of the submission of the respective counsel for the parties, it will be apt to take note of the two competing entries. Chapter 54 deals with Man-Made Filaments and CSH 54.02, with which we are concerned, pertains to Synthetic filament yarn, other than sewing thread. Various sub-heads of Heading No.54.02 are as under:

Heading No.	Sub-heading No.	Description of goods	Rate of duty	
			Basic	Additional
54.02		Synthetic filament yarn (other than sewing thread), including synthetic monofilament of less than 60 Deniers		
	5402.10	High tenacity yarn of nylon or other polyamides	16%	
	5402.20	- High tenacity yarn of polyesters	16%	
	5402.61	- Of nylon or other polyamides	16%	
	5402.62	- Of polyesters	16%	

6. There are four chapter notes and for the purposes of these appeals, chapter note 3 needs to be kept in mind. Accordingly, we reproduce the same as well:

“3. In relation to products of heading Nos. 54.01, 54.02, 54.03, 54.04 and 54.05, dyeing, printing, bleaching, mercerising, twisting, texturing, doubling, multiple-folding, cabling, air mingling, air texturing or any other process or any one or more of these processes, or the conversion of any form of the said products into another form of such products shall amount to manufacture.”

7 . Chapter 56 under which the assessee intend to cover their products, bears the heading “Wadding, Felt and Non-Wovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles thereof” . The relevant entry under Heading No.56.06 reads as under:

Heading No.	Sub-heading No.	Description of goods	Rate of duty	
			Basic	Additional
56.06	5606.00	Gimped yarn, and strip and the like of Heading No. 54.04 or 54.05, gimped (other than those of Heading No. 56.05 and gimped horsehair yarn); Chenille yarn (including flock chenille yarn); Loop wale yarn	16%	

8. Mr. Lakshmikumar, learned counsel appearing for the assessee, submitted that, no doubt, Note 3 of Chapter No. 54 stipulates that the process of air mingling is also included in Chapter No. 54. His submission, however, was that this air mingling refers to the situation where same yarn is used. He argued that when two different kinds of yarns are used in the air mingling, it is known as gimped and such process of gimped yarn would not be covered by Chapter No. 54 but was specifically covered by Chapter Heading 56.06. In support of his submission, Mr. Lakshmikumar referred to HSN Explanatory notes pertaining to Heading 56.06 wherein the nature of the product is described as under:

“These products are composed of a core, usually of one or more textile yarns, around which other yarn or yarns are wound spirally. Most frequently the covering threads completely cover the core, but in some cases the turns of the spiral are spaced: in the latter case, the product may have somewhat the appearance of certain multiple (folded), cabled or fancy yarns of Chapters 50 to 55, but may be distinguished from them by the characteristic of gimped yarn that the core does not itself undergo a twisting with the cover threads.

(emphasis added)”

9. He also sought to draw sustenance from the dictionary meaning of ‘gimp yarn’ which is defined in Fairchild’s Dictionary of Textiles, 7th Edition authored by Phyllis G. Tortora and Robert S. Merkel in the following manner:

“gimp yarn A fancy yarn made of one or more strands twisted around a central core and delivered at a faster rate to form a distinct spiral effect. The outer yarns often are colored and coarser than the core yarns. Gimp yarns originally were made of silk twisted around a fine wire or strong cord. Uses: trimming, lace, embroidery.”

10. He further submitted that the Tribunal wrongly held that HSN Explanatory notes would not apply in the instant case.

11. Counsel appearing in other appeals adopted the same arguments.

12. Mr. Radhakrishnan, learned senior counsel appearing for the Revenue, submitted, per contra, that the matter was examined in its all length and breadth, taking into consideration every relevant fact that the products were covered by Chapter Heading 5402.62/61. For this purpose, he extensively read the facts stated in the show cause notice, reasoning given by the Adjudicating Authority in the Order-in-Original as well as Order-in-Appeal passed by the Commissioner (Appeals). He further submitted that the Tribunal has given cogent reasons in rejecting these very submissions made by the appellants before this Court and commended this Court to accept well reasoned decision of the Tribunal.

13. At the outset, it may be pointed out that there is no dispute that two yarns are used in the manufacture of the product, namely, Nylon and Lycra. At the same time, however, it is also an admitted fact that in Polyester Covered Yarn, the percentage of Lycra is only nine to ten and it is Polyester/Nylon which is pre-dominantly used ranging from 91% to 93%. Taking note of these facts and definition of gimped yarn in Explanation (A) to Chapter Heading 56.00 under Section XI of Explanatory note to HSN, it was stated in the show cause notice that the product could not be treated as gimped yarn. This process which is mentioned in the show cause notice in detail, and the factual position contained therein was not disputed by the appellants, reads as under:

“5. Whereas it further appear that as per the technical details of the machineries involved in the manufacture of said polyester/nylon covered yarn that the Polyester/Nylon yarn is not wound spirally on the Polyurethane (elastomeric) yarn i.e. Lycra or Spandex that the Polyester/Nylon Texturised yarn forming the loop in relaxed condition is not wrapped around the polyurethane (elastomeric) yarn i.e. Lycra or Spandex or held in place by a binder or tie yarn that both the Polyester/Nylon texturised and Lycra or spandex are attached to each other by a new technology of yarn covering by application of pressurized air in the path of both the polyester-twist-textured yarn and elastomeric yarns, similar to the technique of intermingling i.e. Air intermingling that the process of manufacture in SSM DP2C machine is that one textured filament yarn of Polyester/Nylon is fed. Another yarn of Lycra/Spandex is fed. Both the yarns are fed together in an air jet. In the air jet, due to compressed air, the filament of Polyester/Nylon get intermingled with that of Lycra/Spandex.

6. In Polyester covered yarn the percentage of Lycra/Spandex by weight is 9 to 10%. In other words, the Polyester is predominant ranging from 91 to 93%. In nylon covered yarn, the percentage of Lycra/Spandex by weight is 2.5 to 25%. In other words Nylon is predominant ranging from 75% to 97.5% and the two yarns are held together by way of intermingling.

7. Further the gimped yarn is defined in explanation (A) to Ch.H.56.00 under section XI of explanatory note to HSN. According to explanatory notes, gimped yarns are compressed of core, usually of one or more textile yarn around which other yarn or yarns are wound spirally. Most frequently the covering threads completely cover the

core, but in some case the turns of the spiral are spaced. In the latter case product may have some what the appearance certain multiple (folded), cabled or fancy yarn of chapter 50 to 55 but may be distinguished from them by the characteristic of gimped yarn that the core does not itself undergo a twisting with the cover threads. In gimped yarn, the yarn forming the loop is wrapped around the core yarn and is held on place by binder or tie yarn. The manufacture requires two distinct twisting operation after the yarn is first made, it is twisted opposite direction to establish the desired effect. It may have the loops formed by a very soft and slackly twisted yarn. These yarns falls under Chapter Heading 56.06 of the Tariff as special yarns. In view of the above, and in view of the fact that the yarn forming the loop is not wrapped around the core yarn is not held in place by a binder or the tie yarn like in gimped yarn and loops are not formed by twisted yarn. These yarns viz. Polyester/Nylon covered yarn can not fall under Chapter heading 56.06 of the Central Excise Tariff Act, 1985.

8. It therefore appears that Air mingled yarns manufactured by M/s. Sarla Polyester Ltd. comprise a Polyester Yarn (Polyester) or Nylon Yarn (Polyamide) air mingled with Lycra/Spandex (polyurethane). The assessee using lycra or spandex as core yarn and covering the same with polyester or nylon yarn, a non elastic multi filament yarn of Polyester/Nylon is fed through an air jet with stretched lycra/spandex. In the air jet, due to compressed air, the filaments of polyester/nylon get intermingled with that of Lycra/Spandex. The resulting yarn would therefore merit classification based on the principle of pre-dominance of textile material used. Since the air mingled yarn contain more polyester or nylon by weight vis-a-vis Lycra/Spandex such yarns merit classification under Chapter Sub Heading No. 5402.61 or 5402.62 as Synthetic Filament Yarn of Nylon or Polyester respectively. This classification is decided by virtue of Section Note 2(A) to section XI covering chapter 50 to 63 of the first schedule to Central Excise Tariff Act, 1985. Since M/s. Sarla Polyester Ltd., Silvassa are having intermingling machinery at their manufacturing unit, they are adopting the intermingling/interlacing process for covering lycra/spandex. Further the unit does not have facility to manufacture spun yarn and cannot manufacture crimped yarn. The unit has the air mingling machinery capable of producing air mingled yarn only. Therefore yarn manufactured by them cannot be classified Crimped Yarn under Ch. Heading no.56.06 of CET. The interlaced/intermingled yarn manufactured by undertaking air mingling operation is to be classified by resorting to section note 2(a) to section XI i.e. by principle of pre-dominance of textile material used. The goods manufactured by M/s. Sarla Polyester Ltd. would therefore fall under chapter Heading no.5402.61 and 5402.62 as Nylon and Polyester respectively predominate in weight over lycra/spandex.”

14. In nutshell, having regard to the use of Nylon and Lycra in the ratio of 90:10, the classification was proposed on the principle of pre-dominance of textile material used. The Order-in-Original was passed by the Assessing Authority, taking note of the dominance of Polyester or Nylon yarn in the manufacturing of the said product. The Assessing Authority also referred to tests reports from Man Made Textile Research Association (MANTRA)

which also supported the version of the Revenue. Contention of the assessee that the product should be covered under Chapter Heading 56.06 was turned down by the Assessing Officer in the following manner:

“28. The assessee has claimed the classification of their covering yarn manufactured by way of attachment by applying pressurized air in Air Jet machine under Chapter Sub-heading 56.06 of Central Excise Tariff. Accordingly, on perusal of said entry in Central Excise tariff, it is seen that Chapter Sub-heading No. 56.06 covered gimped yarn, and strop and the like of heading No. 54.04 or 54.05, gimped (other than those of Heading No.56.05 and gimped horse hair); chenille yarn (including flock chenille yarn); lop wale yarn. Since the assessee has claimed polyester and Nylon covering yarn as gimped yarn under Chapter Sub-heading 56.06 of Central Excise Tariff, it may be mentioned here that as per the Explanatory Notes to HSN, Gimped yarn are composed of core, usually of one or more textile yarns, around which other yarns are wound spirally. In gimped yarn, the yarn forming the loop is wrapped around the core yarn and is held in place by binder or tie yarn. However as per the test report of MANTRA, Surat, which has not been challenged or disputed by the assessee, the polyester or Nylon yarn did not wound spirally and even did not wrapped around the Lycra/Spandex (elastoemeric) yarn or it was not held in place by a binder or tie yarn.

It was merely attached with each other due to pressurized air by way of technique of intermingling. Therefore the yarns in question cannot be said to be composed of core of yarns. And as such it is not gimped yarn.”

15. The Appellate Authority while affirming the order of the Assessing Officer also referred to Rule 3(a) of the Rules of Interpretation as per which the heading which provides the most specific description is to be preferred to the heading providing a more general description. The Tribunal has revisited the entire issue taking into consideration all the aspects of the matter and in the light of tests reports of MANTRA, affirmed the findings of the Authorities below that the products manufactured by assessee are nothing but air mingled yarn and, therefore, cannot be classified under Chapter No. 56 in view of the fact that it does not contain a core around which another yarn has been woven. Thus, a categorical finding is arrived at that the core does not itself undergo twisting with covered threads. On the basis of the aforesaid concurrent finding of the Authorities below rejecting the contentions of the assessee that the product in question was a gimped yarn, supported with cogent and valid reasons, we do not find any merit in any of the contentions raised by the appellants before us. The appeals accordingly fail and are dismissed with cost.