

CASE NO.:
Appeal (civil) 2205 of 1999

PETITIONER:
THE COLLECTOR OF CENTRAL EXCISE, MEERUT

Vs.

RESPONDENT:
M/S. KAPRI INTERNATIONAL (P) LTD.

DATE OF JUDGMENT: 30/04/2002

BENCH:
N. Santosh Hegde & Shivaraj V. Patil

JUDGMENT:

SANTOSH HEGDE, J.

The Assistant Collector of Central Excise had made a demand on the respondent for clandestine clearance of bed-sheets, bed spreads etc. The said demand was confirmed by the Commissioner of Central Excise along with the demand made for wrongful availment of benefits under Notification dated 1.3.1983 for the period 1983-85 as also the order of seizure of goods with an option to the respondent to redeem the same, if it so desired, on payment of a redemption fine with a further direction to pay a penalty of Rs.25 lacs. Against the said order, the respondent preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (for short 'the tribunal') which by its order dated 3.8.1998 allowed the said appeal.

Being aggrieved by the said order, the Revenue has preferred this appeal before us. Learned Attorney General appearing for the appellant, contended that though the items, namely, bed-sheets, bed spreads, table clothes, napkins etc. are manufactured by the respondent by cutting cotton fabrics from running length through their sister concern M/s. Dior International, the finished products were totally new marketable commodities, having distinct market identity. Therefore, even though the material, namely, the cotton fabrics had earlier been subjected to duty in view of the fact that new products after the process of manufacture had emerged, which are marketable on their own identity as bed-sheets, bed spreads, table clothes, napkins and pillows made of cotton fabrics, same are exigible to duty again. He pointed out that though the tribunal specifically did not give a finding as to the emergence of a new product from the running length of cotton fabrics, it seems that the tribunal proceeded on the basis that such a new product had emerged but the same was not exigible to fresh duty because the cotton fabric from which the new product was made, had already suffered duty under Tariff Item 19(I). Learned Attorney General argued that this view of the tribunal that once the raw-material suffers duty under a particular tariff item, any new product emerging out of the process of manufacture from such material cannot be made exigible to the levy of duty under the very same tariff item, is erroneous and cannot be sustained.

We have perused the order of the original authority as well as that of the tribunal. We have no doubt that by cutting the cotton fabrics from running length into small pieces and giving them a

definite required shape to form new articles like bed sheets, bed spreads, table clothes etc., the respondent has produced a new commodity which has a definite commercial identity in the market.

The pertinent question, therefore, is : whether such new article is exigible to duty under Tariff Item 19(I) or not ? The tribunal has held that since the raw-material has already suffered a duty under a particular tariff item, namely, Tariff Item 19(I), the product manufactured by such material, is not exigible to levy of duty. In our opinion, this view of the tribunal is not correct. This Court in the case of Laminated Packings (P) Ltd. v. Collector of C. Ex. (1990 [49] ELT 326 SC), in a similar situation, had held thus :

"The further contention urged on behalf of the appellant that the goods belong to the same entry is also not relevant because even if the goods belong to the same entry, the goods are different identifiable goods, known as such in the market. If that is so, the manufacture occurs and if manufacture takes place, it is dutiable. 'Manufacture' is bringing into being goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function. On this score, in our opinion, there is sufficient evidence. If that is the position, then the appellant was liable to pay duty."

It is evident from the above that the mere fact that the material from which the new goods are manufactured, has suffered a duty under a particular tariff item that does not exclude the finished product from being exigible to fresh duty if the Tariff Act provides for it. In the instant case, though the cotton fabric had suffered duty under Tariff Item 19(I), the Tariff Act has made bed sheets, pillow covers etc. also dutiable under the very same tariff item, therefore, the respondent is liable to pay duty on bed sheets, pillow covers, napkins etc. manufactured by it.

For the reasons stated above, this appeal is allowed, the impugned judgment/order of the tribunal is set aside and that of the Commissioner restored.

.J.
(N. Santosh Hegde)

..J.
(Shivaraj V. Patil)

April 30, 2002.