

CASE NO.:
Appeal (civil) 7524-7525 of 2004

PETITIONER:
Commissioner of Central Excise, Jalandhar

RESPONDENT:
M/s. Rajiv Textile Industries & Anr.

DATE OF JUDGMENT: 15/04/2005

BENCH:
Ruma Pal, Arijit Pasayat & C.K. Thakker

JUDGMENT:
J U D G M E N T

RUMA PAL, J.

During the years 1995-96, 1996-97 and 1997-98, the respondent Textile Mills cleared grey cotton canvas clothes and grey cotton fabrics, without payment of any central excise duty on the ground that the products were classifiable under Chapter 52 of the Central Excise and Tariff Act 1985 under which the rate of excise duty was nil at the relevant point of time. According to the Revenue Authorities the goods were classifiable under sub-heading 5911.90 of the Tariff and liable for central excise duty at the rates specified on the Tariff. A show cause notice was issued on 27th December, 2000 why central excise duty should not be recovered and why penal action should not be taken against the respondent. In the meanwhile the respondent- Textile Mills were closed down in September, 1997 and M/s. Moti Lal Traders started functioning from the same premises with the same machinery.

The Additional Commissioner of Central Excise relying on the case of M/s. Simplex Mills Co. Ltd. Vs CCE Nagpur: 1993 (49) ECR 147 confirmed the demand of duty and also imposed personal penalty on the respondent and ordered interest on the delayed payment. Duty was also demanded from M/s. Moti Lal Traders and personal penalty as well as interest was levied.

The respondent and M/s. Moti Lal Traders both preferred appeals before the Commissioner of Central Excise (Appeals). The appeals were allowed by following the decision of a larger Bench of the Tribunal in Jyoti Overseas Limited Vs. CCE, Indore, reported in 2001 (130) ELT 446 which overruled the decision in Simplex (supra) and held that cotton fabrics which were not 'made up' were correctly classifiable under Chapter 52 and not TH 59.09 (subsequently numbered as 5911.09). The Tribunal dismissed the appellant's appeal on the same ground. The decision in Jyoti Overseas Limited (supra) has been approved by this Court in our judgment dated 1st March, 2005 in C.A. Nos. 2816-2818/2002, Commissioner of Central Excise, Nagpur Vs. M/s. Simplex Mills Co. Ltd. We therefore hold that the goods manufactured by the respondent were classifiable under Chapter 52 and not under Chapter 5911.90 as contended by the Revenue. The appeals are accordingly dismissed.