

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3758 OF 2006

Commissioner of Central Excise ...Appellant(s)

Vs.

M/s. UNI Products (I) Ltd. & Ors. ...Respondent(s)

With

Civil Appeal Nos.5631, 4686, 5845 of 2006

And

Civil Appeal No.5342 of 2007

J U D G M E N T

JUDGMENT

GANGULY, J.

1. This judgment deals with Civil Appeal Nos.3758/2006, 5631/2006, 4686/2006, 5845/2006 and 5342/2007.

2. It appears that in all these appeals, the respondents are manufacturing non-woven floor coverings where the basic fabric is jute, but the case of the appellant is that the exposed surface is made of synthetic textile material like polypropylene felt or polypropylene fiber and as such these goods cannot be classified as non-woven jute floor coverings.

3. In the case of Civil Appeal No.3758 of 2006, the show-cause notice was issued on 5.5.1997 and the case of the Revenue as set out in paragraph No. 6.8 of the show-cause notice is as follows:

".....Therefore, it appears that the said textile floor coverings are classifiable as 'other textile floor coverings' under sub heading 5703.90 of CETA leviable to duty @ 30% Adv. and not as floor coverings of jute under sub heading 5703.20 of CETA....."

4. The case of the respondents-company as disclosed in the counter affidavit is that it has relied on a technical opinion given by

Prof. P.K. Banerjee, who has the experience of research in non-woven textile material and he has given his opinion of the products manufactured by the respondents-company to the effect that the products which are manufactured by the respondents-company cannot be classified as floor coverings with piled or looped surface.

5. In the reply to the show-cause notice given by the respondents-company, they have relied on the said opinion of Prof. P.K. Banerjee, a Professor in the Indian Institute of Technology, who visited the factory of the respondents and examined the manufacturing process of the varieties of carpets in question and gave the said opinion.

6. The Revenue before us also did not dispute the correctness of the said opinion.

7. The learned counsel for the respondents-company also relied on an Order-in-original No.69/89 dated 29/12/1989 passed by the Collector, Central Excise, New Delhi as also the findings recorded in the said order. The relevant portion of the said order is as below:

"Chapter-Note (1) of Chapter 57 will not determine the fact that floor covering is floor covering of jute or polypropylene. The said Chapter Note describes and defines the floor covering. Section Note (4) and (14) has to be necessarily considered for this purpose. It is an admitted position that the top surface (exposed surface) does not have a pile or loop surface and hence Clause (b) of Section Note 14 does not apply. Hence in terms of Clause (a) to Section Note 14 whichever textile material predominates in weight that will determine the classification of the product. Since admittedly jute predominates in weight over other textile material, namely, polypropylene goods are classifiable only under heading 5702.20 and the classification already approved does not require any change."

8. In the ultimate finding in the said order the Adjudicating Authority came to the following conclusion:

"...In the background of these facts, it would be seen that the party's contention based on Chapter Note(1) of Chapter 57 and Sec. Note (2) and (14) of Sec. XI that floor coverings are classifiable under 5702.20 is correct. The show cause notice says that polypropylene constitutes exposed surface and hence floor covering of the party should come under 5702.90 and not 5702.20, in spite of the fact that polypropylene is not a predominating textile but jute alone is predominating textile material. This point made in the show cause notice is without force and is not legally correct. As contended by the party Chapter Note (1) of Chapter 57 is relevant only for deciding whether the product is covered by the expression "carpet and other textile floor coverings". This Chapter Note cannot and does not decide the further question as to whether the product is floor covering of jute or polypropylene. It only says that if the exposed surface of the article textile material, the product is treated as carpet and other textile floor coverings. To say that because exposed surface is polypropylene the product would be treated as floor covering of polypropylene would be a total misreading of Chapter Note(1).

On the other hand, as rightly pointed out by the party, the question as to whether the product is floor covering of jute or floor covering of polypropylene can be decided only in terms of Sec. 14(a) of Sec. XI read with Sec.(2) of Sec. XI. Stated briefly these section notes provide that products containing two or more textile materials would be regarded as consisting wholly of that one textile material which predominates by weight over any other single textile material. As already stated it is an undisputed position that the textile material jute predominates by weight over other textile material used in the floor covering namely polypropylene. Hence the floor covering cleared by the party can be classified only under 5702.20 and not under 5702.90. Thus on the merits of classification of floor covering, party's contention alone represents the correct interpretation and the classification already approved by the Assistant Collector is hereby affirmed and confirmed."

JUDGMENT

9. Strong reliance was placed by the respondents on the said finding by the adjudicating authority and the learned counsel for the Revenue could not point out anything to the contrary.

10. Learned counsel for the respondents submitted that despite the aforesaid finding, the present show-cause is wholly unnecessary.

11. However, in the said show-cause proceedings the Commissioner ultimately dropped all penal proceedings and also the duty demand for the period beyond six months.

12. Ultimately, the matter rested when the appeal was filed before the Tribunal by the assessee and the tribunal in its order dated 30.9.2005 held as follows:

"...It is seen from the manufacturing process as explained by the learned advocate that the carpet is manufactured in a continuous process and the said carpet is to be considered as of one identity rather than as having separate identity of having a exposed surface and under surface. The tacking of the fibers of polypropylene and jute to be further needle punched into Hessian cloth brings into existence one commodity that is carpet."

13. The tribunal after discussing the Chapter Notes, Sub-headings and also the Section Notes returned a finding that the classification should be done on the basis of the predominance test, that is to say, on the basis of textile materials which predominate by weight over other single textile material.

14. The tribunal noted that before the adjudicating authorities it has been claimed that the carpets manufactured by the appellants has jute contents of 75% to 85% and the tribunal noted that "the revenue has not disputed this".

15. After opining as above, the tribunal went on to discuss the second question, namely, whether the Hessian cloth has to be separated for the purposes of the predominance test or not?

16. After discussing the matter in detail, the tribunal came to a finding that while determining the predominance test, it would not be permissible to exclude base fabric (Hessian cloth).

17. The tribunal came to the conclusion that the predominance test of the assessee's products has to be done taking the product manufactured by it as a whole and not by separating the layers and then applying the predominance test.

18. The tribunal also noted that the revenue's reliance on a single dealer's statement indicating that the assessee's jute carpets are known in the market as "Synthetic carpet" is of no consequence especially when such statement is not substantiated by any evidence.

19. It is well known that the tribunal being the last authority on fact, it is not proper for this Court, in exercise of its power under Section 35 L(b) of the Central Excise Act, 1944, to disturb such findings of the tribunal since such findings are based on evidence.

20. For the reasons discussed above, we find no merit in this appeal. The appeal is dismissed.

21. Since the same questions are involved in the other appeals with slight factual modification, those appeals for the reasons discussed above and also for the reasons given in Civil Appeal No.7075-7076 of 2005 are also dismissed.

22. There shall be no order as to costs.

.....J.
(D.K. JAIN)

New Delhi
September 8, 2009

.....J.
(ASOK KUMAR GANGULY)