

Supreme Court of India

Promostyle Exports vs Collector Of Customs, Bombay on 14 October, 1997

Equivalent citations: 1997 (96) ELT 217 SC, JT 1998 (8) SC 24, (1998) 9 SCC 362

Bench: S Agrawal, B Kirpal

ORDER

1. The appellant is a manufacturer of scarves. For that purpose the appellant had imported polyester metallic film which was described as metallic yarn in the invoice and bill of entry. The clearing agent of the appellant classified the goods under Heading 52.01 of the Customs Tariff. Subsequently the appellant claimed that this was done under a mistake and that the goods were classifiable under Heading 51.01/03 of the Customs Tariff. The Assistant Collector of Customs classified the goods under Heading 52.01, On appeal the Collector of Customs (Appeals) held that the same were classifiable under Heading 39.07 of the Customs Tariff. The Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") by the impugned judgment dated 28-8-1990 has reversed the said view of the Collector (Appeals) and, agreeing with the view of the Assistant Collector, the Tribunal has held that the goods were to be classified under Heading 52.01 and not under Heading 39.07. The aforementioned items of the Customs Tariff are reproduced below:

"52.01. Mealiest yarn, being textile yarn-spun with metal or covered with metal by any process.

51.01/03. Yam of man-made fibres (continuous); monofil, strip (artificial straw and the like) and imitation catgut, of man-made fibre materials.

39.07. Articles of the materials described in Heading No. 39.01/06."

2. Shri Yashank Adhyam, the learned counsel appearing for the appellants, has submitted that the Collector of Customs had correctly classified the goods under Heading 39.07 and they could not be classified under Heading 52.01 as Mealiest yarn because the goods cannot be regarded as yarn and that the same were polyester metallic film. The learned counsel has stressed on the word "yarn" used in Heading 52.01 of the Customs Tariff. We, however, find that for the purpose of importing the goods the appellant had obtained an import licence wherein the goods which could be imported were described as "Metallic Yarn in Plastic Bobbin Silver and Gold". In the invoices also the goods are described as "metallic yam" and in the bill of entry the goods have been described as "metallic yarn". Moreover the appellants themselves claimed the goods as falling under Heading 51.01 which also relates to yarn. In these circumstances, it is not open to the appellants to come forward with the plea that the goods imported were not yarn and they cannot be classified under Heading 52.01.

3. The learned counsel for the appellants has invited our attention to the decision of the Gujarat High Court in Rama Krishna Wire Works v. P.T. Pohowala, 1978 ELT 64 (Guj). In that case the Court was dealing with Entries 15-A(2) and 18 of the Excise Tariff and it was held that the Mealiest yarn manufactured did not fall under Entry 18 relating to synthetic yarn but fell under Entry 15-A(2). The said entries in the Excise Tariff are not comparable with the entries in the Customs Tariff with which we are concerned. The said decision of the Gujarat High Court cannot, therefore,

have any application in the present case.

4. In the impugned judgment the Tribunal has taken note of the Encyclopaedia of Textiles wherein under the section "Metallic Yarns" and the sub-section "Metallic Yarns are Made" it has been stated: "Today, the most commonly used process consists of a core of single ply polyester film that is Mealiest on one side by means of a vacuum deposit of aluminium. This gives a very thin aluminium deposit with a high shine silver colour. The film is then lacquered on both sides with clear or tinted colours to achieve the desired results."

5. This shows that the polyester film which is thus Mealiest is known as "metallic yarn". We are, therefore, in agreement with the view of the Tribunal that the goods imported by the appellants have been rightly classified under Heading 52.01. There is thus no merit in the appeal and it is accordingly dismissed with costs.