

Supreme Court of India

Mehta Nettings Pvt. Ltd. vs Collector Of Central Excise, ... on 7 May, 1997

Equivalent citations: 1997 (92) ELT 452 SC, (1997) 11 SCC 82

Bench: S Sen, K Thomas

ORDER

1. In this case the challenge is to a Show cause notice issued, on 30th July, 1986. In the Show cause notice the allegation was :

Whereas it further appears that the Round Mosquito Nettings have been woven by the assessee on the roller locker machine and not on looms and, therefore, the said fabrics do not appear to be classifiable under Heading No. 52.06. The said Round Mosquito Nettings manufactured by the assessee appears to be appropriately classifiable under sub-heading No. 5804.90 as Heading No. 58.04 covers tulles and other net fabrics.

2. The appellants submitted that roller locker machines were power-looms and the correct classification was under Heading 52.06. That the Netting was manufactured by roller locker machines which were powerlooms. Therefore, the Show cause notice was misconceived.

3. The contention of the appellant was rejected by the Excise authority as well as the Tribunal.

4. Mr. Dushyant Dave, learned senior counsel has drawn our attention to Rule 96MMM of the Central Excise Rules, 1944, which is as under :

RULE 96 MMM Reckoning of roller locker machines - where roller locker machines are installed, either exclusively or in addition to any other type of powerloom every metre of the width of such machine shall be reckoned as one powerloom and where the total width is in excess of whole metres, any fraction less than half a metre shall be ignored and any fraction of half a metre or more shall be increased to one whole metre.

5. Mr. Dave has contended that it has been statutorily recognised that roller locker machines have to be reckoned as powerloom. The contention of Mr. Dave is that in view of this rule, there is no scope for any argument that roller locker machines are not powerlooms. The Show cause notice was misconceived.

6. We are of the view that the arguments of Mr. Dave is of substance and must be upheld. As a matter of fact in another case before us Collector of Central Excise, Ahmedabad v. Ahmedabad Mfg. and Calico Ptg. Co. Ltd., Ahmedabad (Civil Appeal No. 1709 of 1990), Rule 96MMM was examined by another Bench of the Tribunal. The Tribunal decided the case in favour of the assessee relying upon Rule 96MMM.

7. In that view of the matter this Civil Appeal No. 3889 of 1990 is allowed and the Civil Appeal No. 1709 of 1990 is dismissed. No order as to costs.