FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71905/2017-EX[DB] dated 13/07/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| | E-977/2010 | **OBEETEE TEXTILES (P) LTD.** Gopiganj, Distt. Sant Ravidass Nagar, Bhadohi |
| | | Name and Address of Respondent |
| | | -C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad |

Copy To
3 Advocate(s) / Consultant(s):

**Atul Gupta (Advocate), ALD**
**3/1A/3 OPP AUTO**
**SALES,Above the Office Of**
**Blue Dart/DHL Courier,**
**COLVIN ROAD, LOHIA**
**MARG ALLAHABAD-211001**

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mari Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/977/2010-EX[DB]

(Arising out of Order-in-Original No. (Dem-52-57/2009) 89-94/2010 dated 25/01/2010 passed by Commissioner of Customs & Central Excise, Allahabad)

**M/s Obeetee Textiles Private Limited** — **Appellant**

Vs.

**Commissioner of Central Excise, Allahabad** — **Respondent**

Appearance:

Shri Atul Gupta (Advocate) — for Appellant
Shri Rajeev Ranjan (Joint Commissioner) AR — for Respondent

**CORAM:**

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 13/07/2017
Date of Decision : 13/07/2017

FINAL ORDER NO. 71905/2

**Per: Anil Choudhary**

The issue in this appeal by the appellant a manufacturer of carpets relates to classification of their final product that is carpets/floor coverings which they have classified under Chapter Sub-heading No.5703.20 of the CETA, chargeable to rate of duty which according to the Department have to be correctly classified under Chapter Sub-heading No.5703.90.

2. The contention of the Department in the impugned

order is that the appellant manufactures carpets which are made with ground fabric of jute and exposed surface of different synthetic textile material. That the essential character of the carpet in question produced, in terms of Rule 3 of Interpretation Rules of CETA, 1985 read with Note 1 of Chapter 57 of the schedule to CETA, 1985, for their classification, has to be determined with respect to the exposed surface and not the ground fabric which remains on the bottom side of the goods in dispute, namely carpets/floor covering. The second issue pertains to the question as to whether the appellant is eligible to avail benefit of S.S.I. exemption under Notification No.08/2002-CE on clearance of car mats, made up of felt under Chapter Sub-heading No.5602.90 and felt fabric under Chapter Sub-heading No.5602.10, both otherwise attracting duty at the rate of 16% ad valorem, as per schedule to the CETA.

3. The Learned Counsel assail the impugned order states, they have classified the carpet/floor covering under Chapter Sub-heading No.5703.90 on the basis of essential character of the item after taking resort to the general Rules of interpretation as provided in the CETA. Learned Commissioner relied upon the judgment of Hon'ble Supreme Court in the case of M/s O. K. Play (India) vs. CCE 2005(180) E.L.T. 300 (SC) wherein the Court emphatically observed that importance is given to the Rules of interpretation of the CETA and the functional utility, design, shape and predominant use

have also got to be taken into account while determining classification of an item. The Learned Commissioner also held that the decision relied upon by the appellant in the case of CCE, Bhubaneswar-I Vs Champdany Industries Ltd. 2009 (241) E.L.T. 481 (S.C.) is distinguishable on the ground that in this case the Apex Court refused to consider the Revenue's plea for application of Rule 3 of the Interpretation of the Tariff on the ground that the same was not part of the show cause notice. However, in this case of Rule 3 of the Interpretation of Rules of Tariff, forms an important foundation stone in the show cause notice. Being aggrieved the appellant assessee is in appeal before this Tribunal.

4. Heard the parties.

5. The Learned Counsel for the appellant have pleaded that the issue is squarely covered by the ruling of Hon'ble Supreme Court in the case of CCE Vs Champdany Industries Ltd., wherein it was held that the carpets manufactured are liable to be classified as jute carpets/ under Chapter Sub-heading No.5703.20 by considering the predominance test. The Apex Court took notice of the argument of Revenue, that in a case where there is some doubt relating to classification of the goods, the essential characteristic of the goods will have to be looked into. Relying on this concept of essentiality test, Revenue had argued that as the exposed surface of the carpet is polypropylene fibre and not jute, these goods cannot be classified as jute carpets. It was argued also that if these

goods are to be classified as jute carpets, then the exposed surface of the carpets must be of jute. Hon'ble Apex Court observed – this argument of Revenue is contrary to the principles discussed, namely the predominance test. It is not disputed by the Revenue that by the predominance test, the content of jute in the carpet is higher and more than 50%. Polypropylene fibre has also been accepted by the Revenue as the textile material falling under Chapter 55. Therefore, the mere fact that the surface of the carpet is polypropylene fibre, it does not cease to be jute carpets. The argument of Revenue on the basis of surface or essentially test was held to be erroneous. The other argument of Revenue that for the purpose of classification, Rule 3 of the Rules of interpretation of the schedule to the Act should be applied and by applying the said Rule the goods manufactured by the respondent company – Champdany Industries Ltd., should be covered under the heading 'others'. The Hon'ble Court rejected the submission observing as follows: –

"In order to appreciate the said submission, the said Rule 3(a)(b) and (c) is quoted below: –

"3(a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings, each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

6. The Apex Court further observed – from a perusal of the said rules. It appears that the dominant intention in the said Rule, especially clause (e) thereof, is that the heading, which provides the most specific description shall be preferred to the heading providing a more general description. Following the said interpretation, the goods manufactured by the respondent company are to be classified as jute carpet or jute floor coverings. The Learned Counsel further points out that the said ruling of Hon'ble Supreme Court in M/s Champadany Industries Ltd. (supra) have been followed by coordinate Bench of this Tribunal in UNI Products India Ltd. versus CCE reported at 2009 (241) E.L.T. 491, wherein under similar facts and circumstances of classification of jute

carpets having content of about 75% to 80% of jute and rest of other textile material. This Tribunal had held, following the ruling in Champdany Industries Ltd., where it was decided with respect to the predominance test as held by the Hon'ble Supreme Court. The said ruling of this Tribunal UNI Products India Ltd. was confirmed by the Apex Court in the appeal of Revenue, reported at 2009 (241) E.L.T. 491(S.C.).

7. Accordingly, we decide this issue of classification in favour of the appellant assessee. Following the ruling of Hon'ble Supreme Court in the case of Champdany Industries Ltd. (supra).

8. So far the second issue is concerned regarding the S.S.I. exemption with respect to car mats made of felt and felt textile, we find the Learned Commissioner observed as follows: -

"The second issue raised in the instant show cause notices issued by the department is also having an important linkage with the first issue discussed in the foregoing para. As a necessary fall out of the impugned goods of the party i.e. textile floor covering, being classified under Chapter Sub-heading No.5703-90, entire quantity of these textile floor covering become chargeable to appropriate rate of ad valorem - Central Excise duty along with the quantities of car mats of felt and felt fabric cleared for home consumption by the party during the relevant period. As a result, the value of total clearances of dutiable excisable goods by the party in the preceding financial year, naturally exceeds threshold limit of Rs.300/- lakhs denying the party benefit of availment of S.S.I. exemption under Notification No.08/2002 dated 01/03/2002, during the relevant period."

9. We further find that the Learned Commissioner have given the data as per the show cause notice with respect to clearance of car mats and felt fabric during the period under dispute. We find that such figures of clearance of car mats and fabrics, is less than the amount of Rs.300/-lakhs, the limit for S.S.I. exemption under Notification No.08/2002. Accordingly, we hold that the appellant succeeds, on the second issue also and we hold that the appellant is entitled to S.S.I. exemption also:-

| **SCN** | **CAR MATS MADE UP OF FELT** | | **FELT FABRIC** | | **TOTAL VALUE** | **PERIOD** |
|---|---|---|---|---|---|---|
| | **Value** | **Duty** | **Value** | **Duty** | | |
| 16.12.2002 Page 51-52 | 90,464 | 14474 | 458499 | 73360 | 548963 | 01.10.2001 to 30.06.2002 |
| 20.12.2002 page 131 | 49374 | 7900 | 95560 | 15290 | 144934 | 01.07.2002 to 30.09.2002 |
| 08.08.2003 page 216 | - | - | 448491 | 71759 | 448491 | 01.10.2002 to 31.03.2003 |
| 19.03.2004 page 299 | - | - | 966906 | 154706 | 966906 | 01.04.2003 to 31.12.2003 |
| 21.06.2004 page 383 | - | - | 306544 | 49047 | 306544 | 01.01.2004 to 31.03.2004 |
| 19.01.2005 page 468-469 | - | - | 1145606 | 183297 | 1145606 | 01.04.2004 to 08.07.2004 |
| **Total** | **139838** | **22374** | **3421606** | **547459** | **3561444** | - |

Sd/-

10. To sum up, we allow the appeal on both the grounds and set aside the impugned order. The appellant admitted controversial benefits in accordance with law.

11. It is also noticed that pursuant to the interim order of stay, the appellant had moved before Hon'ble Allahabad High Court in CEA No.152 of 2011. Wherein by order dated 01/08/2011, the Hon'ble High Court observed as under: –

*"In the facts and circumstances, we stay the effect and operation of the order dated 04/07/2011 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No. E/977/2010–EX[DB] M/s Obeetee Textiles (P) Ltd. vs. C.C.E. Allahabad, and direct that the appeal be heard by the Customs, Excise & Service Tax Appellate Tribunal, subject to decision of this appeal, without insisting upon the pre-deposit of the excise duty and penalty."*

12. The Hon'ble High Court disposed of the appeal by final order dated 22/12/2015 in the following terms: –

The present appeal is disposed of in terms of the interim order dated 01/08/2011.

Accordingly, we find that the Hon'ble High Court, in so many words directed this Tribunal to dispose of the appeal on merits without insisting on any pre-deposit.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

ks

18/01/18

सहायक रजिस्ट्रार
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण (C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001