CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 21282 of 2014

(Arising out of Order-in-Appeal Nos. 22 &23/2014-C.E dated 15.01.2014 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18)

M/s. Kerala State Rubber Co-operative Ltd
Rubco Nagar,
Poothakuzhy PO, Pampady,
Kottayam, Kerala - 686521 **.......... Appellant**

VERSUS

Commissioner of Central Excise,
& Customs,
Central Excise Building, I.S. Press Road,
Cochin, Kerala - 18 **....... Respondent**

AND

Excise Appeal No. 21283 of 2014

(Arising out of Order-in-Appeal Nos. 22 &23/2014-C.E dated 15.01.2014 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18)

M/s. Kerala State Rubber Co-operative Ltd
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VERSUS

Commissioner of Central Excise,
& Customs,
Central Excise Building, I.S. Press Road,
Cochin, Kerala - 18 **....... Respondent**

Appearance:

Shri Arun Kumar Joseph, Advocate for the Appellant

Shri K. Viswanath, Authorised Representative for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20330-20331/2025

Date of Hearing: 19.09.2024
Date of Decision: 18.03.2025

Per: P.A. Augustian

The issue in the present appeals is whether 'quilt panel' emerging during manufacturing of final products, rubberized coir sheets and mattresses in Appellant's factory can be considered as manufacturing of 'quilt' falling under CETH 9404 90 19.

2. The brief facts are the Appellant is manufacturing rubberized coir sheets and mattresses, which were exempted from payment of Central Excise duty vide Notification No.6/2006-CE dated 01.03.2006. During course of manufacture of Rubberized coir mattresses, Appellant is also manufacturing 'quilt panel'. Since the quilted material are only part of the rubberized coir mattresses, Appellant was claiming exemption as per the above Notification. However, alleging that the quilted material manufactured and captively consumed in factory by the Appellant should be classified under Chapter Heading 9404 90 19 and not under Chapter Heading 5811 as textile material as declared, proceedings were initiated and Adjudication authority as per the impugned orders confirmed the demand of duty and also imposed penalty under Rule 25 of Central Excise Rules, 2004. Aggrieved by said orders, appeals were filed before Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order upheld the finding of the Adjudication authority. Aggrieved by said orders, present appeals are filed. Appeal No. E/21283/2014 is for the period from 01.03.2006 to 28.02.2010 and

Appeal No. E/21282/2014 is for the period from March 2010 to February 2011.

3. When the Appeals came up for hearing, the Learned Counsel for the Appellant submits that the products manufactured by Appellant are not 'quilt' but only 'quilt panels', which form part of the manufacturing activity for the final product i.e, Rubberized Coir mattresses, which is exempted from duty. Therefore, quilted fabric would be classifiable only under CETH 5811 - "*Quilted Textile products in the piece, composed of one or more layers of textile materials assembled with padding by stitching or otherwise, other than embroidery of Heading 5810*."

4. As regards the allegation of non-registration, the Learned Counsel for the Appellant submits that they were under the bonafide belief that they are not liable to pay duty as per the exemption Notification and due to that reason, they are not registered. The goods manufactured are finished products 'coir mattress' and 'quilt panel' is an intermediary product during the process of manufacture of 'coir mattress' and it is exclusively used by the Appellant. The Ld. Counsel further submits that the 'quilted panels' are manufactured and used in the factory of the Appellant, itself and are not sold in the market. Since these are exclusively used for furnishing of finished mattress which are exempted from payment of Central Excise duty, no demand can be confirmed on the intermediary product.

5. The Learned Counsel further submits that the Central Excise Tariff Heading (CETH) 9404 cover the final finished products like 'quilts'. The quilting done by the Appellant is not completed as it is not stitched on four sides and comes to being only as part of the mattress. At no point it does became a finished 'quilt'. There is no separate market for these

semi-finished products. The Learned Counsel further submits that the Appellant has not taken the CENVAT credit on the input used for making of this panels, since final product coir mattress are exempted from duty. The Learned Counsel also draws our attention to the Circular No. 903/23/2009/CX dated 20.10.2009 and submits that the term 'used in the manufacture' is important to note. It means that Heading 5811 cover only material which are further used in making of quilted final product like bedding or bedspreads. The Ld. Counsel draws our attention the decision of this Tribunal in the matter of **Collector of Central Excise, Jaipur Vs Meca Quilts Ltd – 2000 (119) ELT 497 (CEGAT –New Delhi);** where it is held that:-

> *"Where quilted fabric in running length is cut to size and edge bending done only when the quilted fabric is made into various items, they are not excisable to excise duty as there is no marketability and manufacture is not complete."*

6. The Learned Counsel also submits that the demand confirmed by the Adjudication authority by invoking the extended period of limitation is also unsustainable. The Appellant also not suppressed the details and on a bonafide belief that they are not liable to pay duty. Merely, if there is a belated payment of taxes or nonpayment of taxes, in the absence of any allegation of willful suppression of facts for evasion of duty, invoking the extended period of limitation is unsustainable.

7. The Learned AR reiterated the finding in the impugned order and submits that since the final product is not subject to excise duty, as per Rule 8, when excise goods are not sold by the assessee but are used for consumption by him or his behalf in the production of other articles, the value shall be 110% of the cost of production or manufacture of such goods. Therefore, in the instant case, the value should be 110% of the

cost of production and same has been adopted rightly for valuation and demand of duty.

8. Heard both sides and perused the records.

9. It is an admitted fact that the the 'quilt panel' manufactured by the Appellant are exclusively used for the manufacture of the final products 'coir mattress' and it is exempted from payment of customs duty. There is no evidence to show the marketability of the 'quilt panel' and it is also admitted fact that the 'quilt panel' manufactured by the Appellant are exclusively used for final product. Thus, considering the decision of this Tribunal in the matter of **Collector of Central Excise, Jaipur Vs Meca Quilts Ltd (supra),** once the manufacturing is not complete, it cannot be considered as different marketable product, and no demand of duty can be confirmed. The Board as per the Circular no. 903/23/2009 CX dated 20.10.2009 held that:-

> *"2. The matter has been examined by the Board. The HSEN to Chapter Heading 5811 reads as follows:*
>
> *'These materials are commonly used in the manufacture of quilted garments, bedding or bedspreads, mattress pads, clothing, curtains, place-mats, underpads (silencers) for table linen etc.*
>
> *The heading does not cover:*
>
>> *a. Plastic sheets quilted, whether by stitching or heat sealing to a padded core (generally Chapter 39);*
>>
>> *b. Stitches or quilted textile products in which the stitches constitute designs giving them the character of embroidering;*
>>
>> *c. **Made up goods of this Section;***
>>
>> *d. **Articles of bedding or similar furnishing of Chapter 94 padded or internally fitted**.'(emphasis supplied).*

The made up goods are defined by Section Note 7 of Section XI.

In this context, the term 'used in the manufacture' is important to note. It means that heading 5811 covers only materials which are further used in making of quilted final products like bedding or bedspreads. Further HSEN to this Chapter Heading also state that the heading does not cover made up goods of this Section (Section Note 7) and articles of bedding or similar furnishing of Chapter 94 which are padded or internally fitted. Thus, the articles of bedding and furnishing fall in Chapter 94."

10. Thus, as per the clarification given by the Board, what is covered by Heading 5811 is the quilted textile products, which are further used in manufacture of quilts, quilted bed spreads., etc. Considering the above, the goods manufactured by the Appellant cannot be considered as marketable goods and the demand confirmed as per the impugned order is unsustainable.

11. Accordingly, appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 18.03.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar