IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.42/08 & CO-65/08

(Arising out of Order-in-Original No.6/Commissioner/CE/Kol.VII/Adjn/2007-08 dt.12.10.2007 passed by Commissioner of Central Excise, Kol.VII)

Commr. of Central Excise, Kol.VII

Applicant (s)/Appellant (s)

Vs.

M/s New Central Jute Mills Company Ltd.

Respondent (s)

Appearance:

Shri A. Roy, Supdt. (AR) for the Revenue (s)
None for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 16.05.2018
Date of Decision : 16.05.2018

ORDER NO.F/76429/2018

Per Shri Bijay Kumar :

The present appeal has been filed the Revenue in pursuance to the impugned Order-in-Original No. 6/Commissioner/CE/Kol.VII/Adjn/2007-08 dt.12.10.2007 passed by Commissioner of Central Excise, Kol.VII, vide which he has dropped the demand of Central Excise duty to the extent of Rs.67,94,729/- raised against the respondent – assessee.

2. Brief facts of the case are that pursuant to CERA Audit Objection through DAP No.172/97-98, a demand was raised for classification of the product manufactured by them i.e. Jute matting under Heading

No.5705.00 of the 1st Schedule to the Central Excise Tariff Act, 1985. The respondent-assessee was availing the benefit of Notification No.29/95-CE dated 16.03.95 at Sl.No.3 of the Table as mentioned “Description of Goods”, under heading “Floor Coverings of Jute” leviable to Central Excise duty at the rate of 5% ad valorem. The same was objected by the Department as per CERA Audit Objection and it was proposed to classify the product manufactured by them under Sl.No.1 of the afore-mentioned Notification under Heading Carpets and other textile floor coverings, knitted, woven, tufted or flocked, whether or not made up (excluding dari sataranji, namdhs, jute carpets and coir carpets), which were chargeable to Central Excise duty @ 30% ad valorem.

3. The respondent-assessee has stated that in view of this Tribunal’s decision in the case of Commr. of Central Excise, Haldia Vs. Gloster Jute Mills Ltd. reported in 2016 (337) ELT 409 (Tri.-Kolkata), wherein it is held that the jute matting is entitled to the benefit of No.29/95-CE dated 16.03.95 at Sl.No.3. In view of the above, the ld.D.R. for the Revenue has argued that the Revenue’s Appeal is required to be set aside.

4. The ld.D.R. appearing for the Revenue has reiterated the grounds contained in the appeal memorandum and stated that the issue may be decided accordingly. The ld.D.R. on behalf of the Revenue has also argued that the impugned order is not correct and legal as Sl.No.3 of Notification No.29/95-CE dated 16.03.95, covers jute only. The product manufactured by the respondent can be used for other purposes also. He relied upon the decision of the Hon’ble

Supreme Court in the case of Collector of Customs, Bombay Vs. Perfect Machine Tools Co.Ltd. : 1997 (96) ELT 214 (S.C.), wherein it held that unless the goods are expressly covered under an exemption Notification, the same cannot be availed by the manufacturer. The jute matting is not floor covering of jute, but rightly classifiable as carpet other than the textile floor covering and therefore, will attract duty of 30% under Sl.No.3 of Notification No.29/95-CE dated 16.03.95.

5. We have considered the rival submissions and also perused the case records. We have gone through the decision of the Tribunal in the case of Gloster Jute Mills Ltd. (supra). This decision is squarely applicable in the instant case. For better appreciation, the relevant paras are hereby reproduced below :

"***3.1*** *Learned advocate also relied upon the description of word matting given in Fairchild's Dictionary of textile as under :*

"Matting : A great Variety of plaited or woven mats and similar articles made of coir fiber jute, straw. Uses : Floor or wall coverings, table mats."

That reliance placed by the Department on the wordings used in Notification No. 50/90-C.E. dated 20-3-90 will not help the case of the Revenue as this notification does not say that mattings are not floor coverings. That it is held in the case of Gujarat Ambuja Exports v. CC [2011 (269) E.L.T. 239 (T)] that interpretation of a definition contained in a particular notification has to be confined only for the purpose of that notification.

3.2 *That as the classification list filed by the respondent was duly modified under CETH 5702.49 by application of mind,* *therefore, extended period cannot be invoked and the demand is time-barred as held by adjudicating authority in paragraphs on page 8 of the O-I-O dated 8-8-2007.*

4. *Heard both sides & perused the case records. The issue involved in the present appeal filed by the Revenue is whether jute mattings manufactured by the respondents are floor coverings or not. Respondent claimed the benefit of Sr. No. 3 of table, reproduced below, to Notification No. 29/95-C.E. dated 16-3-1995 :-*

TABLE

Sr. No.	**Description of goods**	**Rate**
(1)	(2)	(3)
1.	Carpets and other textile floor coverings, knitted, woven, tufted, or flocked, whether or not made up (excluding dari, sataranfi, namdahe, jute carpets and coir carpets) (i) in or in any relation to the manufacture of which any process is ordinarily carried on with the aid of machines. (ii) other	 30% *ad valorem* Nil
2.	Floor coverings of coir	Nil
3.	Floor coverings of jute	5% *ad valorem*
4.	Hand-made carpets, whether or not any machines have been used to achieve better finish during pre-weaving or post-weaving operations.	Nil

6. In view of the above observations, we dismiss the appeal filed by the Revenue upholding the Order-in-Original dated 12.10.2007 passed by the adjudicating authority. Cross Objection No.65/08 is also disposed off.

(Operative part of the Order was pronounced in the open Court.)

Sd/
(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

Sd/
(BIJAY KUMAR)
MEMBER (TECHNICAL)

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