A COLLECTOR OF CENTRAL EXCISE, BOMBAY

v.

MAHARASHTRA FUR FABRICS LIMITED

SEPTEMBER 24, 2002

B [SYED SHAH MOHD. QUADRI AND Y.K. SABHARWAL , JJ.]

Central Excise Tariff Act, 1985:

C *Schedule—Heading No. 60.01—Assessee manufacturing high fur fabrics by silver knitting process—Item classified by assessee under Heading 60.01—Exemption from excise duty claimed under Notification No. 109/1986-C.E. dated 27.2.1986 as amended by Notification No. 3/1988-C.E. dated 19.1.1988—Proviso to Notification excluding silver pile fabrics falling under Heading 58.01 or 60.01 if the product is subjected to process of bleaching,* D *dyeing, printing, shrink proofing, tentering, heat-setting, crease-resistant processing or any other process—Assessee's stand that the item had to be dried by merely passing it through hot air stenter, the process did not amount to stentering—Tribunal upholding the claim of assessee—Held, the process adopted by the assessee is analogous to stentering as, admittedly, the fabric is dried by passing it through hot air stenter—Applying the rule of ejusdem* E *generis the words "or any other process" would have to be understood in the same sense in which the process including tentering would be understood—Thus a process akin to stentering/tentering would fall within the meaning of the proviso and the benefit of the Notification cannot be availed by the respondent—Interpretation of Statutes—Principle of ejusdem* F *generis.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 685 of 1995.

From the Judgment and Order dated 29.4.1994 of the C.E.G.A.T. in Order No. E./254/95-D in Appeal No. E/4217/90-D.

G K. Swami, K.C. Kaushik and B. Krishna Prasad, for the Appellant.

Joseph Vellapally, Rajan Narain, Ms. Sonu Bhatnagar and Ajay Aggarwal for the Respondent.

H The following Order of the Court was delivered :

This appeal is filed by the Collector of Central Excise, Bombay against the order, No. E/254/94-D, of the Customs, Excise and Gold (Control) Appellate Tribunal in Appeal No. E/4217/90-D dated 29th April, 1994. By the impugned order, the Customs, Excise and Gold (Control) Appellate Tribunal (for short, 'the Tribunal') set aside the order of the Collector (Appeals), Bombay, affirming the order of the Assistant Collector holding that the respondent is entitled to the benefit of Notification No. 109/1986-C.E. dated 27th February, 1986, as amended by Notification No. 3/1988-C.E. dated 19th January, 1988 (for short, 'the Notification'). A B

The question that arises for consideration is: whether the respondent is covered by the proviso inserted in the notification? C

The respondent-assessee manufactures high fur fabrics by silver knitting process. In Classification List No. 1/1987 dated 10th March, 1987 filed by the respondent, the product was classified under Heading 60.01 and benefit of the said notification was claimed attracting 'nil' rate of duty. There is no dispute that the respondent was entitled to the exemption granted under the said notification till 19th January, 1988 when the proviso was inserted therein. D

It would be useful to read Notification No. 109/1986-C.E. dated 27th Fabruary, 1986, as amended by Notification No. 3/1988-C.E. dated 19th January, 1988 here: E

> "In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944 read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government hereby exempts woven pile fabrics and chenil fabrics, tufted textile fabrics and knitted or crocheted fabrics falling under Heading No. 58.01 or 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1957) as is in excess of the duty of excise and the additional duty of excise leviable under the aforesaid two Acts on the corresponding woven fabrics falling under Chapter 51, 52, 53, 54 or 55 of the said Schedule, read with any notification for the time being in force. F G
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> Provided that nothing contained in this notification, shall apply to knitted or crocheted fabrics of man-made textile materials falling under sub-heading No. 6001.12 of the said Schedule and subjected to the process of bleaching, dyeing, printing shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any H

A two or more of these processes.

Explanation:—For the purpose of this notification, the expression, 'corresponding woven fabrics' means fabrics specified in Chapter 51, 52, 53, 54 or 55 which corresponds to knitted or crocheted fabrics with reference to the processes carried out thereon, or the value of the
B fabric per square meter or the textile material contained therein.

2. This notification shall come into force on the 28th day of February, 1986."

The notification discloses that the benefit available to sliver pile fabrics
C falling under Heading 58.01 or 60.01 of the Schedule to the Central Excise Tariff Act, 1985 is lost if the product is subjected to the process of bleaching, dyeing, printing, shrink proofing, tentering, heat-setting, crease-resistant processing or any other process or any two or more of these processes.

A careful reading of the proviso to the notification would show that by
D resorting not only to the process of bleaching, dyeing, printing, shrink proofing, tentering, heat-setting, crease-resistant processing, but also to "any other process or any two or more of these processes", the respondent would lose the benefit of the exemption. It is a well established principle that general terms following particular expressions take their colour and meaning as that
E of the preceding expressions, applying the principle of *ejusdem generis* rule, therefore, in construing the words "or an other process," the import of the specific expressions will have to be kept in mind. It follows that the words "or any other process" would have to be understood in the same sense in which the process, including tentering, would be understood. Thus understood, a process akin to stentering/tentering would fall within the meaning of the
F proviso and, consequently, the benefit of the notification cannot be availed by the respondent.

In the reply to show cause notice issued by the Assistant Collector, Central Excise, panvel Division, the respondent stated, "the acrylic emulsion
G is water based and hence the fabric has to be dried. *For this purpose,* it is passed through hot air stenter." The respondent sought to explain this with reference to the certificates given by the manufacturer of the machine to say that the process does not amount to stentering.

The Assistant Collector found that the respondent was using the
H process of stentering. On appeal, the Collector (Appeals), having inspected

the manufacturing process in the factory of the respondent, affirmed the view of the Assistant Collector that stentering process was being restored to by the respondent. However, on further appeal by the respondent, the Tribunal, after referring to the expert opinion and the dictionary meaning of the words "stentering" and "tentering" held that no process of stentering/tentering is being carried out. A B

Even accepting the Tribunal's finding that the process does not strictly amount to stentering, it cannot be disputed that the process adopted by the respondent is analogous to stentering, as admittedly, the respondent is drying the fabric by passing through the hot air stenter.

In this view of the matter, the proviso clearly applies and the respondent, therefore, is not entitled to the benefit of the notification. The order under appeal is set aside. C

The civil appeal is, accordingly, allowed. In the facts and circumstances of the case, we make no order as to costs. D

R.P. Appeal allowed.