

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 A 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 ' ) .

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 D notification till 19th January , 1988 when the proviso was inserted therein .

It would be useful to read Notification No. 109 / 1986 - C.E . dated 27th February , 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<sup>F</sup> 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 .

G

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 " an  
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 . This 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  
is water based and hence the fabric has to be dried . For this purpose , it is  
G 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 A 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 .

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<sup>C</sup> , therefore , is not entitled to the benefit of the notification . The order under appeal is set aside .

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 .