

(1985) 07 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 1517 of 1981

Amratlal Shamji Thacker

APPELLANT

Vs

Union of India (UOI), AC CE and Another

RESPONDENT

Date of Decision : 29-07-1985

Acts Referred:

Citation : (1992) 38 ECR 462

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

S.C. Pratap, J.—This is an excise matter.

2. The petitioner is a partner in Amar Silk Mills which undertakes from yarn manufacturers job work of twisting and doubling yarn. In 1979 the said firm was required to take out L-4 manufacturing licence and pay excise duty on "nylon twine yarn", which the firm did under protest and without prejudice.

3. According to the petitioner, doubled and twisted nylon twine yarn is already duty paid classified under Central Excise Tariff Item 18 and the same cannot be again subjected to excise duty levy under residuary Tariff Item 68. While grievance accordingly was pending before the authority, a Division Bench of this Court ruled in the case of Garware Nylons Ltd. v. Union of India and Ors. 1980 ELT 249 (Bom.) : >1980 CC 256D (Bom), inter alia to the following effect:

...nylone twine manufactured by the petitioners has been treated as a kind of nylon yarn by the people in the trade. It is commonly considered as yarn. Hence it can be classified under Item 18. The respondents have failed to establish that nylon twine must be taxed under Item 68, as it is not covered by Item 18 of the First Schedule. The respondents are the taxing authorities, and they must show that the item in question is taxable in the manner claimed by them...the burden is on the taxing authorities to show that the item in question is taxable in the manner claimed by them. In any event, there is enough material on record which goes to show that nylon twine has been commercially considered as a special

kind of nylon yarn. Hence, in the words of the Supreme Court, it must find a place in the parent Item 18 of the First Schedule. It cannot be consigned to the orphanage of the residuary Item 68.

This ruling was completely in favour of the petitioner. A Division Bench of the Panaji Bench (Goa) of this High Court has, in the case of Sainet Private Ltd. and Anr. v. Union of India and Anr. 1984 Excise Law Times 141 (Bom.), followed the ruling in Garware Nylons" case supra as also a ruling of the Supreme Court in Porritts and Spencer (Asia) Ltd. Vs. State of Haryana,

4. The petitioner thereupon applied for refund of duty paid under protest. The excise authorities accepted the claim for refund and also informed the petitioner to file refund claims on proper forms directly to the Assistant Collector of Central Excise. The petitioner was also informed that L-4 licence was not necessary for the petitioner's firm and that nylon yarn twisted in two or more plays will be classifiable as nylon yarn and not under T.I. 68. The excise authorities also intimated that there will be no further dutiability under T.I. 18(ii)(i)(a) and as such the petitioner was not required to take a fresh licence under T.I. 18. This thus was the comprehensive and positive response to the petitioner's claim.

5. Pursuant thereto, the petitioner filed appropriate application for refund. However, despite several reminders actual refund was not being made. And then suddenly, as a bolt from the blue, the petitioner received in October 1981 letter inter alia to the effect that the High Court decision in Garware Nylons" case

...has not been accepted by the government.

And further:

...As regards the judgment of the Bombay High Court in the case of Garware Nylons, the government has some reservations.

Hence this petition.

6. At the state of admission itself, the officer writing the aforesaid letters appeared before the Court and tendered unconditional apology for the statements made therein. The said apology was accepted by this Court.

7. Coining then to the merits, the issue in question here is squarely governed and covered by the Division Bench ruling in Garware Nylons" case supra followed in another Division Bench ruling in Sainet's case supra. The matter is thus no longer res integra at least so far as this Court is concerned. Mr. Deodhar, learned Counsel for the respondents, submitted that from this Court's decision in Garware Nylons" case the excise authorities have gone to the Supreme Court. That by itself, would, however, be no ground to stay and postpone the hearing of this case particularly in the light of the facts and circumstances here where the excise authorities had completely agreed with the petitioner's contentions and claims, had also agreed to grant the refund, had even asked the petitioner to make the requisite application in that behalf and then much later, showing, if one

may say so, disregard and disrespect to the ruling of this Court, effected a dramatic around/turn and refused return and then unconditionally apologised. When the issue is clear and squarely governed by not one but two binding Division Bench rulings of this Court, it would not be just and proper to even so decline or postpone relief.

8. Hence order: This petition succeeds and the same is allowed. On verification of the petitioner's claim for refund, the respondents are directed to refund to the petitioner latest by 31st October 1985 the entire due amount of refund. If refund is not effected accordingly by 31st October 1985, the excise authorities will then refund the due amount with interest thereon at 12 per cent per annum from 1st November 1985 till payment.

9. Interim orders passed by this Court at the stage of admission stand vacated. The bank guarantee/guarantees and bond/bonds furnished by the petitioner in favour of the excise authorities shall stand revoked. The same duly cancelled shall be returned to the petitioner.

10. Rule is made absolute in terms aforesaid but, in the circumstances, with no order as to costs.