

(1985) 03 MAD CK 0069
In the Madras High Court
Case No : Writ Appeal No. 232 of 1978

Assistant Collector of Central Excise, Madurai	APPELLANT
Vs	
Madura Coats Ltd., Madurai	RESPONDENT

Date of Decision : 08-03-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 96H

Citation : (1985) 5 ECC 169 : (1986) 24 ELT 504

Hon'ble Judges : M.A. Sathar Sayeed, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Thiru T. Somasundaram, for the Appellant; Thiru S. Govind Swaminadhan, for Kingand Partridge, for the Respondent

Judgement

Ramanujam, J.—This appeal is directed against the judgment of Mohan, J. in Writ Petition No. 3737 of 1975. The said writ petition was filed by the respondent herein for the issue of a writ of prohibition, prohibiting the appellant from proceeding further in pursuance of a show cause notice dated 17th February, 1975 and collecting the levy contemplated in the notice in respect of future transactions.

2. The circumstances under which the said writ petition came to be filed may briefly be noted : (The respondent herein is a company manufacturing yarn) and it continues to carry on the business hitherto carried on by Madurai Mills Company Ltd., until its amalgamation with the respondent company. One of the products manufactured by the respondent is cotton/nylon duck. The above material was produced out of twisted cotton/nylon yarns by adopting the following process : The cotton yarn and nylon yarn are spun separately by the usual spinning process and they are thereafter twisted or mixed together with a view to make a combination thereof which ultimately is used in the manufacture of the above product viz., cotton/nylon duck. Nylon yarn and cotton yarn thus mixed have been subject to excise duty apart from the excise duty levied on cotton yarn and nylon yarn. The respondent used to supply such twisted yarn

according to the specifications and requirements of one of the customers, viz., Fenner Cockill Limited.

3. The end product thus produced, namely, cotton/nylon duck is also subject to ad valorem duty under Item 19(1) of the Central Excise Tariff. By virtue of notification No. 35 of 1974 issued by the Central Government in pursuance of Rule 96H of the Central Excise Rules, 1944, the respondent was permitted to pay the excise duty at the compounded rate of 5 paise per sq. metre in respect of the said cotton/nylon duck. But so far as the supply of such twisted yarn to Fenner Cockill Ltd., it was totally exempted as non-excisable goods even by the Assistant Collector of Central Excise till 30th September, 1974.

4. The respondent as usual submitted a classification list dated 1st August, 1974, which was approved in the first instance by the Assistant Collector of Central Excise, Madurai on 8th August, 1974. However, by a corrigendum dated 21st September, 1974, the Assistant Collector purported to modify the classification list stating that the twisted yarn made by the respondent which until then was non-excisable was brought under the levy of excise duty under Item 18E of the Central Excise Tariff. The respondent questioned the said classification but its attention was drawn to a letter from the Central Board of Revenue dated 3rd September, 1974 wherein it is stated that the Ministry of Law had expressed the view that if the mixed yarn manufactured from duty paid yarn falls under a separate item and is a new commodity known to the market as such it will be liable to duty as a new product. Based on the said letter of the Central Board of Revenue dated 3rd September, 1974, the Assistant Collector of Central Excise issued again a corrigendum dated 21st September, 1974 reiterating what has been approved earlier. Thereafter, the Assistant Collector issued a show cause notice dated 17th February, 1975 as to why action should not be taken against the respondent for contravention of the provisions of Rules 173(b) and 175 of the Central Excise Rules, 1944 inasmuch as the respondent, during the period from 3rd September, 1944 to 31st December, 1974 had manufactured 59775 kg. cotton/nylon twist falling under Item 18E without availing approval of classification list for the same without payment of duty thereof. It is at this stage the respondent had filed the above writ petition seeking the relief referred to above.

5. In the counter-affidavit filed by the appellant, reliance was placed on the circular of the Central Board of Revenue classifying the product under tariff Item 18E. However, during the pendency of the writ petition there has been a further reclassification brought about by amendment of the rules relating to the goods in question, with effect from 8th August, 1977. The learned Judge allowed the writ petition based on the said reclassification which took place on 8th August, 1977. We do not see how the reclassification made on 8th August, 1977 will affect the legal position which obtained earlier. The reclassification which came into force on 8th August, 1977 has not been given retrospective effect, and therefore, notwithstanding the reclassification, the respondent's liability to pay excise duty

on the goods in question has to be determined with reference to the legal position as on the period from 3rd September, 1974 to 31st December, 1974 for which period the respondent has been asked to pay the duty. Thus we are not in a position to accept the reasoning given by the learned Judge for allowing the writ Petition.

6. The question then is whether the respondent is liable to pay excise duty during the period in question viz., 3rd September, 1974 to 31st December, 1974 on the twisted yarn under tariff Item 18E. According to the learned counsel for the respondent/writ petitioner tariff 18E before its amendment in 1977 will not take in twisted yarn. Tariff Item 18E before its amendment in 1977 was as follows :

"Yarn, all sorts, not elsewhere specified, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power."

7. The learned counsel for the respondent refers to tariff Items 18A to 18D and submits that Item 18E is a residuary clause and, therefore, it will cover yarn which is not elsewhere specified. "Twisted yarn" made of cotton yarn and nylon yarn cannot, according to him, fall within that residuary item. It is further pointed out by the learned counsel that twisted yarn is not the result of a manufacturing process and that even if twisted yarn can be taken to be a new product apart from cotton yarn and nylon yarn of which twisted yarn is made of, unless the product is the result of a manufacture, it cannot be subject to excise duty. According to him excise duty is paid on cotton yarn as well as nylon yarn and if the twisted yarn which is made up of cotton yarn and nylon yarn on which excise duty has been paid is to be brought again under the excise levy, it should be shown that the twisted yarn is the result of a manufacturing process and that in this case excepting the twisting of the yarn no manufacturing process is adopted or resorted to and, therefore, twisted yarn is not excisable. The learned counsel relies on the decisions in *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, and *Oudh Sugar Mills Ltd. v. Union of India - 1982 E.L.T. 937* in support of his submission that "manufacture" means bringing into existence a new substance and not merely to produce some change in substance. However, we are of the view that there is considerable substance in the submission made by the learned counsel. Before an article is brought under charge to excise duty it should be shown that that particular article is a product of manufacture. If twisted yarn is not the product of a manufacture, it cannot be brought under tariff merely because twisted yarn is different from cotton yarn and nylon yarn out of which it is made of. This aspect of the matter has not been gone into by the excise authorities. The submission of the learned counsel for the respondent that tariff Item 18E is a residuary entry and it will cover only spun yarn and not a mixture of cotton yarn and nylon yarn which has been already subjected to excise duty has also not been considered. In this view of the matter the show cause notice proposing to initiate action for contravention of Rules 173 and 175 has to be quashed with a direction to the appellant to consider the

question of liability of the respondent for excise duty on twisted yarn in the light of what has been stated above within two months from today and to take such action as is necessary in the light of the said decision. Thus, though we have not accepted the reasoning of the learned Single Judge, the ultimate order question the show cause notice has to be upheld. However, the direction given by the learned Judge for refund of the the amount of excise duty paid within three months is made subject to the decision to be rendered by the appellant in the light of what has been stated above as to whether excise duty is leviable under tariff 18E as it stood at the relevant time. The writ appeal is ordered accordingly. There will, however, be no order as to costs.