

(2000) 11 CAL CK 0022
In the Calcutta High Court
Case No : APO No. 19 of 1994

Asstt. Collector of C. Ex.

APPELLANT

Vs

Naffar Chandra Jute Mills Ltd.

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2
Constitution of India, 1950 — Article 226

Citation : (2002) 141 ELT 330

Hon'ble Judges : Ashok Kumar Mathur, C.J.;Ronojit Kumar Mitra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C.J.—This is an

appeal directed against the order dated 13th March, 1993 whereby the learned Single Judge has allowed the writ petition and set aside the impugned order dated 21st April, 1992 and notices dated 17th February, 1992 and 31st March, 1992. It has been held by the learned Single Judge that the respondent shall allow exemption benefit to the petitioner under Notification No. 65/87-C.E. in respect of polythene liner jute bags manufactured by the petitioner.

2. The brief facts which are necessary for the disposal of the appeal are that the petition is a manufacturer of jute bags. This jute bags are classified under sub-heading 6301.00 of Chapter 63, Section XI to the Schedule of the Central Excise Tariff Act, 1985 (hereinafter referred to as the Act). Subheading 6301.00 relates to textile articles not elsewhere specified including blankets (other than wool), tarpaulins, tents, sails for boats, The prescribed rate of duty against the sub-heading is 12% ad valorem. The Notification No. 65/87-C.E., dated 1-3-1987 exempted various goods described in the notification from so much of the duty of excise leviable thereon as was in excess of the amount laid down in the corresponding entry in Column 5 of the table to the notification. The relevant entry reads as under :

Sl. No. Heading No. or sub-heading No. Description of goods Rate Conditions

06 63.01 Sacks and bags of jute Rs. 660 per tonne

3. In other words, the maximum excise duty on sacks and bags of jute was Rs. 660/- per tonne. The petitioner submitted the classification lists claiming exemption under the said notification in respect of the said polythene lined jute bags and the same was permitted to be effective from 17-2-91, 5-4-91, 8-4-91 and 19-8-91. It is alleged that the last three classification lists were approved by the Respondent No. 1, though the first classification was not approved. A notice was issued pertaining to first classification that is 17-2-91 that the bags containing polythene lining under sub-heading 6301.00 claiming assessment in terms of the said classification is not correct and the petitioner is not entitled to the benefits and was accordingly asked to show cause why excise duty at the 12% ad valorem plus 5% special on the baste plus cess at the rate of Rs. 132/- per metric tonne should not be realised in respect of the said bags for the relevant period. The petitioner replied to the said show cause notice on 12th March, 1992. It was submitted by the petitioner that the polythene bags are purchased by the petitioner from outside and were inserted in the jute bags manufactured by the petitioners and the same is stitched therein. It was also submitted that the weight of the jute bags including the weight of the jute twine used sewing worked out to 453 grams against the weight of the polythene bags the weight of which was 12 grams. It was submitted that the jute bags retained their essential identity. Attention was also invited to the subsequent classification for subsequent period which was approved by the authorities. The respondent by its order dated 21st April, 1992 rejected the contention of the petitioner. It was held by the Respondent No. 1 that the polythene lining was inserted inside the bag before baling. It was observed that the operation of insertion of the polythene liner was therefore ancillary to the completion of the finished product and was covered by Section 2(f) of the Central Excise and Salt Act, 1944. Secondly it was also held that the jute bags are made with polythene liner inserted and it is only after insertion of the polythene liner with the jute bags it could be considered as a finished product for marketing. Therefore, it was held that it is an essential ingredient for the purpose of completion of manufactured and the finished product as such these jute bags are not covered by the notification. In substance the Respondent No. 1 held that for the purpose of levy of duty the bags were required to be made only of jute. Consequently, the respondent rejected the application of the petitioner in classification. As a result of this order the Respondent No. 1 amended the rate relating to classification list dated 17th May, 1991. Thereafter the petitioner also received a subsequent show cause/demand notices dated 17-2-91 and 31st March, 1992 respectively in respect of the period 1-9-91 to 30-11-91 and for the period of 1-12-91 to 31-1-92. The petitioner thereafter filed the present writ petition challenging the order resulting the show cause notices for the subsequent periods. The writ petition was opposed by the respondent.

4. The Learned Single Judge after examining the matter and the various decisions of the High Court and the Apex Court came to the conclusion that in fact insertion of polythene liner does not substantially change the character of the jute bag. Sewing of polythene line inside the bag is only a marginal one and the substantial character of the jute bag has not changed and therefore the learned Single Judge set aside the order of the Respondent No. 1 and held that these bags are entitled to the benefits under the aforesaid notification. No useful purpose will be served to refer to the various decisions of the High Courts. Suffice it to say that the issue is clinched by a judgment of the Supreme Court having identical facts in the case of Union of India and Ors. v. Tata Iron Steel Co. Ltd. Jamshedpur : 1977 (1) E.L.T. (J61) (S.C.). The question in this case was where the duty paid pig iron is mixed with non-duty paid pig iron, the set off cannot be refused on the ground that non-duty paid material has also been used. In this case the assessee was a manufacturer of iron and steel products. The assessee manufactured ingot moulds and bottom stools from pig iron for use in steel melting shops. The assessee paid Central Excise duty on such ingot moulds and bottom stools in accordance with the provisions contained in Section 3 of the Central Excise and Salt Act, 1944. It was contended that when ingot moulds and bottom stools become unfit for further use these are scrapped into pieces and remelted in the assessee's steel melting shop an admixture with other non duty paid scraps and hot metal in the manufacture of steel ingots. The assessee claimed a set off of duty to the extent of the paid on pig iron being the remelted scrap

used in the manufacture of steel ingots. The same was denied by the Assessing Authority. Their Lordships held :

"22. Counsel for the respondent is right in the contention that the only question here is whether duty-paid pig iron is used along with non-duty paid materials. There is no dispute that there are materials and data to find out the quantity of duty-paid pig iron used. Pig iron is made out of iron ore plus limestone plus coke. Pig iron is melted and processed into ingots moulds and bottom stools. Nothing is added to pig iron. When ingot moulds and bottom stools become unserviceable they are broken. This becomes scrap and is melted and used in the manufacture of steel ingots. The respondent rightly contends that all the time it is duty-paid pig iron which is processed into ingot moulds and bottom stools and again broken into scrap and melted in the making of steel ingots.

23. The High Court rightly held that the contention of the Revenue falls on two broad grounds. First, there cannot be double taxation on the same article. Counsel for the Revenue gave the example of excise duty on motor cars, in spite of the fact that there was duty on tyres and duty on metal sheets. The analogy is misplaced. In such cases the duty is on the end product of motor car as a whole. The duty on tyres and the duty on metal sheets do not enter the area of duty on motor car. Second, Notification No. 30/60 grants exemption to duty-paid pig iron. The High Court rightly said that the notification does not say that exemption is

granted only when duty paid pig iron is used and that the exemption would not be available if duty-paid pig iron is mixed with other non-duty paid materials. If the intention of the Government were to exclude the exemption to duty-paid pig iron when mixed with other materials then the notification would have used the expression "only" or "exclusively" or "entirely" in regard to duty-paid pig iron. The object of the notification was to grant relief by exempting duty-paid pig iron."

5. Thereby the Learned Apex Court confirmed the finding of the High Court. Almost identical situation is in the present case. Basically what is used is jute for manufacture of jute bags and only duty paid polythene liner is inserted in the jute bags. This does not change the basic character of the jute bag. In substance the jute bag is not known in any other name than jute bags in the market. Therefore both the contentions of the Revenue appears to be totally misplaced. Neither the essential character of the bag is changed nor the bags are known by any other name in the market. The polythene liner is also duty paid and by mixing of the duty paid polythene liner with the jute bag, the essential character of the jute bag remains the same and therefore the view taken by Revenue is not correct and the learned Single Judge has rightly overruled the same. Learned Counsel has also invited our attention to decisions of the Apex Court in *Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan Vs. Collector of Central Excise, Jaipur, Rajasthan*, ; *Dharamsi Morarji Chemical Co. Ltd. Vs. Union of India and others*, ; and the case reported in *Leukoplast (India) Ltd. Vs. State of Goa*, . These judgments have no relevance whatsoever as far as the present situation is concerned. It is not the case here that some have been granted exemption and other are denied. In the present case we have examined and found that the view taken on the notification is not correct and we are of the opinion that by adding the polythene liner to the jute bag, the essential character of the jute bag is not changed. It continues to be jute bag and it is also marketed in the market as jute bag. As a result of the above discussion we are of the opinion that the view taken by the learned Single Judge appears to be just and proper does not call for any interference in the matter. Hence the appeal is dismissed with no order as to costs.