
(1992) 08 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 2395 of 1979

Century Spinning and Manufacturing Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-08-1992

Acts Referred:

Citation : (1993) 67 ELT 224

Hon'ble Judges : S.W. Puranik, J;P.S. Patankar, J

Bench : Division Bench

Judgement

Puranik, J.—The 1st petitioner company owns a factory known as Century Rayon situated at Shahad near Kalyan. The 2nd petitioner is the principal officer and shareholder of the 1st petitioner company. The petitioner company, for brief, inter alia manufactures rayon tyre yarn. The said rayon tyre yarn is then arranged in parallel rows length-wise and loosely held together by cotton threads running breadth-wise to hold them in the said position. This arrangement is popularly known as warp sheet or tyre cord warp sheet. According to the petitioners, the said warp sheet is classifiable under Tariff Item No. 22 or in the alternative under Tariff Item No. 18.

2. Prior to 1st March 1975, the petitioner company paid excise duty on rayon tyre yarn which was manufactured, as aforesaid, by holding the rayon tyre yarn in parallel length-wise arrangement held together with loose cotton threads breadth-wise. The respondent department accepted the petitioners' contention and the classification made in the returns and they were allowed to clear the said warp sheet. No separate duty was paid on yarn and warp sheet as it was correctly understood that warp sheet was not subject to separate excise duty.

3. By a letter dated 4th March 1975, the Superintendent, Central Excise, Kalyan, intimated the petitioner company that a new Tariff Item, namely Tariff Item No. 68, has been introduced and called upon the petitioner company to declare the goods falling under Tariff Item No. 68 and follow the prescribed procedure for clearance of the said goods on payment of excise duty. Despite the said letter,

while correspondence between the parties was going on, the respondent department cleared the petitioner company's product warp sheet respondent department cleared the petitioner company's product warp sheet under Tariff Item No. 18 upto the period of 1978.

4. For the period 3-6-1978 to 3-8-1978, the petitioners resisted and paid excise duty under Tariff Item No. 18, immediately followed by the following show cause notices:-

- (i) Show cause notice dated 17th November 1978 (Exhibit T);
- (ii) Show cause notice dated 6th April 1979 (Exhibit "W"),
- (iii) Show cause notice dated 16th April 1979 (Exhibit "X"); and
- (iv) Show cause notice dated 18th July 1979 (Exhibit "Z").

By these show cause notices, the respondents asked the petitioners to pay :

- (1) Short levy on the tyre cord warp sheet;
- (2) Short levy on the rayon tyre cord; and
- (3) levy of duty on the rayon content in the warp sheet exported.

5. On 7th June 1979, the respondent department fixed a date for final hearing of the first show cause notice. The hearing was held on 3rd July, 1979, but by order dated 22nd August 1979 at Exhibit "Z-A", the respondent department disposed of all the four cause notices mentioned above. The petitioner, feeling aggrieved by the said order, whereby the contention of the petitioner company was rejected by, inter alia, holding that the warp sheet manufactured by the petitioner company was classifiable under Tariff Item No. 68, has preferred this writ petition.

6. Rule was issued and after hearing both parties, interim stay order injunction were ordered on 11th October, 1979

7. We have heard Mr. Ketan Parekh appearing appears to be that warp sheet manufactured by the petitioner company is an independent product manufactured by the company. According to the respondents, the said product is freely sold in the market and, therefore, it is classifiable under Tariff Item No. 68.

9. On the other hand, the contention of the petitioner is that warp sheet is nothing but a parallel set of yarn cords held together at the ends and loosely tied across breadthwise by cotton thread. Mr. R. V. Desai, the learned Counsel for the department, submitted that the company like the petitioners can manufacture these warp sheets and can be sold to various tyre companies as a product which is then utilised by the respective tyre companies in giving a firmer base to the tyre mould. For understanding the product better, on our request the petitioners produced the warp sheet. It was explained to us that ordinary rayon yarn when twisted becomes a rayon cord and a set of rayon cords kept parallel lengthwise if

loosely held by cotton thread in the same position is conveniently called a warp sheet or a rayon tyre cord warp sheet. The end parts at the end of the warp sheet are merely to hold the warp sheet, but are not a part of the product which is used in the manufacture of the tyre. Ultimately the end parts are waste product. Thus what is the usable part is the manufactured rayon cords which is supplied by the petitioner company to various tyre companies.

10. Mr. Ketan Parekh for the petitioners placed reliance on the reported judgment of the Supreme Court in *Madura Coats Ltd. v. Collector of Central Excise, Calcutta*, 1983 E. C. R. 1625, wherein it has been held that warp sheet is nothing but a rayon cord and is, therefore, classifiable under Tariff Item no. 18. The said judgment was arising out of judgment of Calcutta High Court in *Collector of Central Excise and Others Vs. Madura Coats Ltd.*, decided on 28th of February 1980. After a detailed discussion on the nature of warp sheet in paragraph 7 of the judgment, it was held as follows :-

"In order that an article should be considered as "goods" within the meaning of Entry 68, two conditions should be fulfilled, namely, (1) it is a new article obtained through manufacturing process and (2) such article having a distinctive name, character or use can ordinarily come to the market to be bought and sold and is known to the market. In the instant case, as has been discussed by us, the nylon or rayon warp sheets do not appear to be a new article as a result of the nylon or rayon yarns being arranged lengthwise and held together by cotton yarns placed horizontally at widely spaced intervals. A very look at the warp sheet will give one the impression that it is nylon or rayon yarns and nothing else. So even if the warp sheets are bought and sold in the market as nylon or rayon tyre cord warp sheets, they do not cease to be nylon or rayon yarns. In other words, the nylon or rayon yarns are not transformed into a new substance having a distinctive character. They are arranged in the shape of a warp sheet for the convenience of being used in the manufacture of tyre-cord. We are, therefore, of the opinion that the nylon or rayon warp sheet are not "goods" within the meaning of Entry 68".

This view of the Calcutta High Court has been upheld by the Supreme Court in 1983 E. C. R. 1625 (*supra*).

11. In view of the settled position, we have no hesitation to hold that the warp sheet or the rayon tyre cord warp sheet is not "goods" as contended by the respondent department and cannot be covered by Tariff Item No. 68. The conclusion arrived at in the impugned order at Exhibit "Z-A", therefore, is totally erroneous. We, therefore, declare that the said product can only be classified under Tariff Item No. 18.

12. This will dispose of the respondents' contention in show cause notice dated 16th November 1978 at Exhibit "T".

13. As regards the 2nd and 4th show cause notices at Exhibits "W" and "Z", they relate to the levy of excise on the rayon content in the warp sheets exported. For

this purpose also the reasoning of the department is that it is a product freely marketable and exported out of India and, therefore, they have claimed levy of excise duty on the rayon content in the warp sheets. Since, however, we have held that warp sheets is nothing but rayon cord and is a product which is used in the manufacture of tyre, under Rule 13 of the Central Excise Rules this product is totally exempt from any levy for export. This will dispose of the 2nd and 4th show cause notices at Exhibits "W" and "Z" respectively.

14. Lastly remains the 3rd show cause notice at Exhibit "X" which is for short levy of rayon cord. We need not go into the contention of the department on this aspect for the simple reason that this issue has been already decided by the Assistant Collector of Central Excise. Reference may be made to the additional affidavit filed by the petitioner on 20th February 1992 wherein it is stated, and not disputed by the department, that on remand from the High Court the Assistant Collector has decided that rayon cord is classifiable under Tariff Item No. 18 as contended by the petitioner and thereafter since 1983 the same view has been followed by the department. This dispose of the third show cause notice at Exhibit "X".

15. At the stage of final hearing, Shri R. V. Desai, the learned counsel for the department, urged that since there is an alternate statutory remedy available to the petitioner of preferring an appeal to the Tribunal, this writ petition should not be entertained by this Court under Article 226 of the Constitution of India. This submission is merely to be stated to be rejected for the simple reason that Rule was issued after hearing both the parties in the year 1979 and it is too late in the day at the stage of final hearing of the petition in the year 1992 to take a preliminary objection for the exercise of our extra-ordinary powers under Article 226 of the Constitution. Even otherwise we find that our order is based on Supreme Court's decision cited above and the decision of the department itself, leaving no scope for further discussion.

16. In the result, the petition succeeds. The impugned order at Exhibit "Z-A" is quashed and set aside. There shall be no order as to costs.

17. Conditional order of furnishing Bank Guarantee from the time to time is hereby withdrawn. The petitioners are not required to furnish any Bank Guarantee.

18. Issue of certified copy is expedited.