(2000) 10 MAD CK 0018

In the Madras High Court

Case No : Ref. Case No. 6 of 1995

Collector of C. Ex. APPELLANT

Vs

Cambodia Mills Ltd. RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Citation : (2001) 128 ELT 373

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : K. Veeraraghavan, A.C.G.S.C, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—The respondent-assessee is a manufacturer of yarn in counts of 46, 64 and 70. Tests of samples were drawn from

the yarn manufactured by it on 17-7-1986 and 20-8-1986. The test results of the samples drawn on 17-7-1986 showed that the counts

manufactured were as claimed. However, the test results of the samples drawn on 28-8-1986 showed variation. A further test was, therefore,

done and also duplicate samples were again tested. As a result of those tests, it was found that the counts manufactured exceeded the specified

counts. The counts found to have been manufactured were 48.4, 64.4 and 75.2. The demand for additional duty was not raised by the Revenue in

respect of the count of 64.4 as the difference was only marginal. However, duty was demanded in respect of yarn counts which was found to be

48.4 as against the prescribed 46 and 75.2 as against the prescribed 70. The test results were not questioned by the assessee.

2. The Tribunal accepted the assessee''s plea that in the light of an order that the Tribunal had made in another case, the demand for duty should be

only in respect of the goods manufactured on the day of drawal of sample. While quoting the earlier order, the Tribunal also referred a portion of

that order, in which it was stated that all scientific tests show some variation, and therefore, tolerance limit should be allowed for such variation,

which in view of the Tribunal, was an inevitable corollary of all scientific tests. Those observations were made even in the absence of any material

having been produced by the assessee to substantiate that plea, and in the absence of any material from the Revenue to show that such tests are

not precise, and that some tolerant limit is required to be allowed.

3. The observations so quoted by the Tribunal, however, are not of any relevance here, as the ultimate order of the Tribunal was not to direct a re-

test, or to disregard the test already conducted. The ultimate order was that the duty should be paid as demanded, but only in respect of lots from

which the samples were drawn on 28-8-1986, and also in respect of the production for that day.

4. The Tribunal, however, proceeded to frame questions which went beyond what had been dealt with by the order. The question of tolerance

does not really arise for consideration. We may, however, observe that in the absence of any material, it was not proper for the Tribunal to have

merely hazarded its opinion that the errors are inevitable and, therefore, on that ground, the test results should be discarded especially when the

assessee had not questioned the correctness of the test results.

5. In so far as the quantity in respect of which the additional demand could be made, the demand made was for all the quantities manufactured

subsequent to the date of the lots drawal of the sample on 17-7-1986. The demand proceeds on the assumption :hat after the drawal of samples

from the lots manufactured on 17-7-1986, production that took place thereafter was of yarn with excess counts. No mater: al is available to

sustain such a presumption. The result of the test of the sample drawn on 28-8-1986 would certainly show that the yarn manufactured on that day

was of a higher count and if the stocks available with the manufacturer on that day had also been ascertained and samples had been crown from

those stocks that would show that the stock on hand also contained the yarn on excess count.

6. We, therefore, hold that the demand for duty can be in respect of yarn

manufactured on the date on which the samples were drawn, and the

yarn found to be in stock as on the day the sample was drawn, if sample had been drawn for that stock.

7. The question referred to us, as to whether the differential duty on the differential count of yarn which is in excess of the declared counts shall be

demanded for the entire production from the period of drawal of sample till the next sample, is answered in negative. The question, as to whether

the days production on which the representation the sample was drawn, shall be subject to the demand for duty, is answered in the affirmative. We

may also add that the stocks found on that day in case the samples were drawn from such stocks are also liable for the differential duty.