

(1980) 10 DEL CK 0033
In the Delhi High Court
Case No : L.P.A. No. 21 of 1971

Collector of Central Excise		APPELLANT
	Vs	
J.K. Synthetics Ltd., Kota		RESPONDENT

Date of Decision : 16-10-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 47, 49, 9

Citation : (1981) 8 ELT 5

Hon'ble Judges : S. Ranganathan, J;Prakash Narain, J

Bench : Division Bench

Judgement

S. Ranganathan, J.—This appeal under Clause 10 of the Letters Patent as applicable to this court has been preferred by the Central Excise Authorities from the order of the learned single judge of this court dated 28-8-1970 allowing a writ petition filed by J. K. Synthetics Ltd. (hereinafter referred to as the Company) and quashing an order dated 1-2-1963 by which the Central Excise Authorities decided that "Polymer Chips" produced by the Company was covered by item 15A(iii) of the Central Excise Tariff and was dutiable as such. Though the arguments before the learned judge ranged over a very wide field, we feel that this appeal can be disposed of on a very short ground which, in our opinion, is actually covered by earlier decisions of this court. We shall, Therefore, refer to the facts and confine the discussion only to the extent it is relevant for the determination of this ground.

2. The company has a factory at Kota where it manufactures Nylon 6 yarn which is a commodity subjected to central excise duty under item 18 of the Central Excise Tariff. The basic raw material required in the manufacture of the Nylon 6 yarn is substance known as "Caprolactum". But before the yarn can be obtained it is necessary for the caprolactum, which is a monomer, to be polymerised. By the process of polymerisation the caprolactum which is the raw material, gets converted into polymer chips. One of the questions considered by the learned single judge was whether these chips could be described as "plastics, not

otherwise specified" under item 15A(iii) of the Tariff Schedule.

3. At this stage it needs to be mentioned that the Company was originally importing a commodity known as "Ultramid B.S." from abroad. The Ultramid B.S. Thus imported was utilised by the Company in the manufacture of Nylon 6 yarn. It is common ground that, commercially speaking, the polymerised chips now obtained by the company and the commodity known as "Ultramid B.S." which was being imported by it earlier are the same.

4. The process employed by the assessed for converting the caprolactum into Nylon 6 yarn may be briefly adverted to. The raw material caprolactum is put in the feeder and melters. It then passes into the dosing equipment where a Chemical compound Titanium Dioxide is added to it. The mixture then goes to what is called V. K. Reactor inside which the process of polymerisation takes place. The polymerised raw material is in a molten stage and is, Therefore, sent into a casting at where it gets a cold water bath and solidified. Thereafter it proceeds to a chip cutter where the slab is cut into chips. These chips are collected in a tank and put into an extractor. While passing through the extractor some of caprolactum which remains unpolymerised is removed and only the polymerised substance is left behind for further processing. The polymerised substance (polyamide) is then transferred into a hopper from where they are sent to the dryer. It is of utmost importance that before the polymer chips are sent for spinning purposes they should be completely dried to remove any traces of moisture, otherwise they become unfit for spinning purposes and are also likely to damage the spinning plat. In the dryer, Therefore, all traces of moisture are removed and the polymer chips in a pure and dried condition are transferred by putting them into specially imported air tight metal containers. These air tight metal containers were originally imported as part of the assessed's plant. From the air tight metal containers the polymer chips are fed into the feeder hopper and from there its flow is regulated into the spinning block. Here the polyamide is melted and spun through fine jets with the aid of nitrogen into Nylon 6 fibres. The fibres emerge into the cooling chamber and are then wound on the Take-up Bobbin and then subjected to further processing according to the customers' requirements.

4A. The department took up the stand that the polymer chips produced by the company at an intermediate stage in the manufacture of Nylon 6 yarn were assessable to duty under item 15A(iii) of the Schedule to the Act of 1944. This item read as follows at the relevant time :

"15A. Plastics, all sorts :

(i) Moulding powders, granules and flakes (thermostating and 20% ad valorem thermoplastic);

(ii) Polyethylene films, Lay flat tubing and P.V.C. sheets (that is to say, polyvinyl chloride sheets);

(iii) Not otherwise specified."

5. This contention of the department was refuted by the company and hence the writ petition praying for a writ of certiorari to quash an order dated 1st February, 1963 passed by the Collector of Central Excise, Delhi holding that the polymer chips were liable to duty at 20% ad valorem under the above item.

6. Several contentions were urged on behalf of the writ petitioner before the learned single judge. The main contention was that the polymer chips did not fall within the description of the various items in entry 15A extracted earlier. The next contention of the petitioner company was that even assuming that the polymer chips could be said to fall within the above item it would still not attract excise duty because the chips thus obtained were in such a condition that it was not possible to market them and in fact they were not being marketed. Relying upon the decision of Supreme Court in the case of South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, , it was contended that in order to be goods within the meaning of the Act an article must be something which can ordinarily go to the market to be bought and sold and that this definition was not fulfilled by the polymer chips. A third contention that was urged on behalf of the company was that in order to attract excise duty there must be removal of the excisable goods. It was pointed out that the polymer chips (assuming them to be "plastics" within the meaning of item 15A) were never removed within the meaning of Section 3 read with Rules 7, 9 and 49 of the Central Excise Rules and that Therefore they were not liable to payment of excise duty. It was pointed out that the assessed had only one industrial license for the manufacture of Nylon 6 yarn under which the entire factory of the petitioner functioned. It was argued that the whole process of manufacture of the yarn was a continuous and integrated process and it would not be correct for the respondent to demand excise duty on the ground that polymer chips were removed from any premises within the meaning of the Act. Reliance was placed on a judgment of Tulzapurkar J. in Nirlon Synthetic Fibres & Chemicals Ltd. v. Shri R. K. Audim decided by the Bombay High Court on 30-4-1970. On the other hand, on behalf of the respondents, apart from refuting the above contentions, a preliminary ground was urged that the assessed petitioner could not seek relief by way of writ petition without exhausting the alternative remedy of appeal provided in the Act against the order of the Assistant Collector of Central Excise sought to be impugned in the writ petition.

7. The learned single judge rejected the preliminary objection raised on behalf of the department. So far as the principal contention of the petitioner was concerned the learned judge after a very detailed consideration of the dictionary scientific and commercial meanings of the expression "Plastic" and after-referring to the rules of interpretation of items such as the one under consideration relating to commercial commodities came to the conclusion that the polymer chips obtained by the assessed were not covered by item 15A and that Therefore the order of the respondents imposing excise duty on the petitioner in respect

thereof was not warranted by any law. The learned single judge did not accept the second contention put forward on behalf of the petitioner. He referred to an admission by the petitioner that the polymer chips produced by it were of similar type to those imported by it under the trade name of "Ultramid B.S.". Prior to the commencement of the manufacture of polymer chips by the petitioner these very chips under the trade name of "Ultramid B.S." were being imported by the petitioner. It was not relevant or material that the assessed company did not have technical and other resources to bring the polymer chips into the market. Once it is held that the polymer chips have been manufactured by the petitioner and that they are covered by item 15A there could be no escape from the conclusion that excise duty would be immediately attracted irrespective of the fact whether these polymer chips were actually brought into the market or whether the petitioner company had the necessary resources to bring them into the market. This contention was, Therefore, rejected. The learned single judge also rejected the third contention put forward on behalf of the petitioner. He pointed out that the terms of Rules 9 and 49 would apply even in a case where excisable goods are removed from one part of the premises to another part of the premises for the purpose of further manufacture and it was not necessary that the goods must be removed altogether from the premises of the factory as such. He also pointed out that in the present case the polymer chips were manufactured by the petitioner and then placed in containers which were then sent to another part of the plant for the purpose of manufacturing Nylon 6 yarn. These two processes were separate; there was a removal from one part of the premises to another part; it was not one integrated continuous and uninterrupted process. Though the second and third contentions urged on behalf of the petitioner were rejected, the learned single judge, in view of his finding that the polymer chips produced by the petitioner were not covered by item 15A(iii), quashed the impugned order of the respondent dated 1st February, 1963 and also issued a writ restraining the respondents and its agents from recovering from the petitioner company the excise duty in pursuance of the said order of the respondents dated 1st February, 1963.

8. The Union of India has preferred this appeal. As already stated, two contentions urged on behalf of the Union of India had been rejected by the learned single judge : (i) the preliminary objection; and (2) the contention that the polymer chips were covered by item 15A. The learned Standing Counsel for the Union of India urged these two contentions before us, the first of them a little hesitantly but the second contention more seriously. On the other hand the respondent sought to sustain the order of the learned single judge in its favor by urging again before us the two grounds which had been urged by it before the learned single judge without success. It was vehemently contended that even assuming that the polymer chips could be described as "plastics" within the meaning of item 15A there could be no levy of excise duty in the present case because the commodity obtained at the intermediate stage could not at all be described as excisable goods and secondly that in any event there is no removal

of the excisable goods from the place of manufacture so as to attract the provisions of the Act.

9. We may at once say that it is necessary for us only to touch upon one of the contentions of either side as, in our opinion, that would be sufficient to dispose of the present appeal. The first point to be dealt with would be the preliminary objection because if that objection were to succeed then the writ petition would have to be dismissed and the appeal allowed. But we are satisfied that the respondents cannot raise this preliminary objection successfully. The matter has been discussed at a very great length by the learned single judge and we are in full agreement with him. Apart from other circumstances it has been pointed out that the allegations made in the writ petition that the respondents had acted under the general direction of the Central Board of Revenue which had already decided that the polymer chips produced by the present petitioner and similarly placed other companies was liable to excise duty under item 15A had not been denied in the reply affidavit filed by the respondents. In other words this was a case where the remedy of appeal and revision prescribed under the act was illusory. Moreover, the writ petition was heard and disposed of several years after the writ petition was filed and the aggrieved party also specifically gave up its right of appeal against the order of the Assistant Collector. Having regard to these circumstances we agree with the learned single judge that the writ petition was not liable to rejection on the preliminary ground raised by the respondents.

10. The other contention which has been raised by the petitioner and which we find has to be accepted is the one based on the interpretation of Section 3 read with Rules 9 and 49 of the Act to the effect that the polymer chips manufactured by the assessed have not been removed from the place of manufacture or any premises appurtenant so as to attract levy of excise duty. This aspect of the case is directly governed by the decisions of this court in the case of Caltex Oil Refinery (India) Ltd. v. Union of India and others - 1979 ELT (J 581) and the case of Modi Carpets Ltd. and another v. Union of India and others - 1980 ELT 320 (Del). These two decisions explain the circumstances in which an intermediate product satisfying the description of excisable goods in the course of the manufacture of another excisable commodity would be liable to excise duty. It has been pointed out that the intermediate product would attract duty if it is obtained by one process and is used for being converted into another product by a separate and distinct process. However, the intermediate product would not be liable to excise duty in cases where there is a single continuous and uninterrupted process of manufacture during the course of which the intermediate product itself gets converted into the other excisable commodity. It may be liable to duty where either the continuous process of manufacture snaps at some point of time or where the intermediate product is removed for purposes of consumption.

11. We are of opinion that in the present case it cannot be said that there are two distinct processes of manufacture employed by the petitioner; one for the

manufacture of polymer chips and the other for the manufacture of Nylon 6 yarn. The plant set up by the petitioner company is one composite plant for the manufacture of Nylon 6 yarn which was originally being manufactured from the raw material known as "Ultramid B.S." which was imported by the assessed from abroad. But now it is manufactured from the raw material called caprolactum. The factory of the petitioner functions under one single Industrial license for the manufacture of Nylon 6 yarn. Even at the initial stage when the plant was set up, the petitioner had also put up the V. K. Reactor Plant in which polymerisation of caprolactum takes place. In the initial stages, however, this plant did not function and the petitioner was using the Ultramid B.S. which it imported for the manufacture of Nylon yarn. But we are now concerned with the stage when the petitioner started manufacturing Nylon yarn from caprolactum having stopped the import of Ultramid B.S.

12. The learned single judge has come to the conclusion that there are two separate process in the assessed's method of manufacture primarily on two considerations. The first is that the polymer chips obtained by the assessed are admittedly the same as the Ultramid B.S. which it imported previously. He has, Therefore, held that the process of manufacture of polymer chips is independent of the process of manufacture of Nylon yarn and that there is no link between the two. The second consideration which has led the learned single judge to his conclusion referred to above is that in the present case the polymer chips are manufactured, placed in containers and then sent to another part of the plant for the purposes of manufacturing Nylon yarn. He has held that the mere fact that both the processes are being carried on in one place or building would not result in the excisable polymer chips being exempt from duty when they are removed from one part of the premises and taken to another part thereof for the manufacture of another commodity.

13. It appears to us that the two considerations pointed out by the learned single judge are not determinative of the question in issue. We do not think that the fact that the polymer chips correspond to Ultramid B.S. or again the fact that the chips are collected in a container and then subsequently sent to the spinning department through the hopper can lead to the conclusion that there are two separate processes. What we have to consider is the question as to what exactly the manufacturing process of the assessed is. As pointed out earlier, the assessed had obtained an industrial license and had imported the entire plant necessary for setting up that industry with which to manufacture of Nylon 6 yarn. As part of this plant and machinery the V. K. Reactor which constituted the polymerisation equipment was also imported by the petitioner. Again it was as a part of the plant that the petitioner imported special air tight containers in which the polymer chips could be collected. In other words, right from the inception of the plant the process of manufacture was conceived of as a single process starting with caprolactum and ending in the emergence of the Nylon 6 yarn. In the initial stages no doubt the V. K. Reactor was not functioning and the petitioner was able to obtain imports of Ultramid B.S. with which it could directly

start the spinning of the yarn. But then the plant started functioning as it was originally conceived of and, as we are concerned only with this process, we do not think it can be said that there are two separate processes merely because in the initial stages certain parts of the plant which the assessed had set up did not start functioning and it took some time before they could do so. In our view there was only a single continuous process of manufacture starting with the polymerisation of the caprolactum imported by the petitioner and ending in the emergence of nylon 6 yarn.

14. In our opinion the fact that the polymer chips are collected in containers and then transferred to a hopper could not lead to a contrary conclusion. In every process of manufacture there is always a transmission of a product from one vessel to another, from one building to another or from one machine to another. Sometimes this is done mechanically and sometimes this may have to be done manually. In the present case no doubt the polymer chips were collected by the assessed and then transmitted to the hopper. But, this in our opinion, cannot be said to be a removal within the meaning of the Act and the Rules. The learned single judge has pointed out that recently techniques have been discovered whereby polymer chips can be directly pumped from the dryer into the feeding hopper. He also agrees that the question whether there is a mere manual transmission or whether there is automatic mechanical transmission of the chips may not make much of a difference but he was inclined to the view that even if the polymer chips were pumped from the dryer direct to the feeding hopper yet they could be said to be removed from the place of the manufacture and, Therefore, liable to excise duty. With respect we are unable to agree with the conclusion of the learned single judge. As pointed out in *Modi Carpet* (Supra) the expression "place of manufacture" has to be understood in the context of the factory premises or the parts thereof specified under Rule 47. It is not sufficient for the excise authorities merely to say that at some stage in the process of manufacture an excisable commodity has emerged and it has been transmitted from one vessel into another or from one building into another. Actually that is not the question. The question is whether looking at the process of manufacture carried on by the assessed it is at all possible to say either that there are two distinct processes or that an intermediate product which is excisable having been obtained, it is removed for consumption. It will be appreciated in this context that in the *Caltex Oil* (supra) case the fuel oil which was obtained as an intermediate product was considered to be not excisable when it was pumped forward for the production of the final products manufactured by the Refinery. It was only when the fuel oil was taken out and was utilised as fuel in a process of manufacture by consuming it in the process that there was said to be a removal within the meaning of the Act. So also in the *Modi Carpet* case it was held that the silvers could not be said to be removed merely because they were transmitted from one set of machinery to another for the purpose of further manufacture. In the present case the polymer chips obtained by the assessed are not removed from one place of manufacture as understood in the above

sense to another so as to attract excise duty within the meaning of the Act and the Rules. In fact the decision in Caltex Oil has cited with approval the principle of the decisions of the Bombay High Court in Nirlon Synthetic Fibres & Chemicals Ltd. v. R. K. Audim although on the facts a distinction was pointed out between the position of the polymer chips in the process of manufacture of Nirlon yarn and the position of the fuel oil in the Caltex Oil case. We may also refer to our decision of even date in C.W. Nos. 219 and 220 of 1978 (Devidayal Electronics & Wires Ltd. v. Union of India) where we have dealt with a similar question.

15. For the above reasons we have come to the conclusion that the learned single judge was right in holding that no excise duty could be levied on the polymer chips obtained by the assessed.

16. In the view we have taken it is not necessary for us to discuss other two contentions which were dealt with by the learned single judge : the first as to whether polymer chips fall within item 15A and the second as to whether the polymer chips could be said to be goods within the meaning of Sections 3 & 4 of the Excise Duty.

17. In the result the appeal fails and is dismissed. But in the circumstances of the case we make no order as to costs.