(2015) 09 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 2993 of 2006.

Commissioner of Central Excise, Bombay - Appellant @HASH Reliance Industries Ltd.

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 323 ELT 674

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri. Yashank Adhyaru, Sr. Advocate, Rupesh Kumar, Arijit Prasad, Jitin Singhal and B. Krishna Prasad, Advocates, for the Appellant; S/Shri. Rohan Shah, K.R. Sasiprabhu, Vishnu Sharma, Somiran Sharma, Ms. Shilpa Balani, Ms. Swati Jain, B.P. Raman and Alok Yadav, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. The respondent-assessee is engaged in the manufacture of polyester filament yarn (hereinafter referred to as the ?yarn?). During the production of this yarn, it is wound on bobbins/tubes to a standard size of 8 to 9 kg. In some cases, due to mechanical/operational defects, the threads of yarn get broken before reaching the standard size. In such a case, the bobbins, which are partially wound, are removed and new bobbins are inserted. The partially wound bobbins are also marketed in separate lots, i.e., in the lots of 8-6 kg, 3-6 kg, 0.5-1 kg, etc. On this, Excise duty is paid and there is no dispute. However, the respondent has been treating the yarn of bobbins weighing 1 kg or less as waste and thus, not marketable. It is in respect of this purported ?waste?, the dispute arose, inasmuch as, according to the Revenue treating the entire such quantity up to 1 kg. as waste was improper. It resulted in Show Cause Notice dated 28-10-1985 which was issued to the assessee alleging therein that the assessee had not accounted in the RG-1 register for the production of polyester filament yarn on bobbins of 1 kg. and less to the tune of 126.65 metric tonnes for the period October, 1982 to April, 1985 and the same was explained in paragraph 4 of Annexure ?A?. It was also alleged that this yarn was removed without determining the Central Excise Duty as required under Rule 173F and 173Q(1)

read with Rule 9(1) resulting in short payment of Central Excise Duty to the tune of Rs. 1,06,07,775/-. The assessee responded to the aforesaid show cause notice by explaining that it was a ?waste? which was not marketable as yarn and therefore, it did not attract any Excise duty. The explanation was not accepted by the Collector who passed the order confirming the demand in the Show Cause Notice. The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as ?CEGAT?), in appeal, set aside the order of the Collector. The order of the CEGAT was challenged by filing appeal in this Court.

2. The appeal of the Revenue was disposed of by this Court [2004 (171) E.L.T. 151 (S.C.)] resulting into remand of the case back to the CEGAT for proper consideration inasmuch as in the opinion of this Court, some of the aspects were not discussed properly and considered by the CEGAT. After remand, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ?CESTAT?) has again come to the same conclusion for which it has given detailed reasons in the impugned order [2006 (199) E.L.T. 681 (Tri.-Del.)] which is the subject matter of the present appeal.

3. We need not go to the entire gamut of material which was produced by the assessee before the CESTAT. The purpose will be served by recording the following discussions in the impugned order :-

"The only dispute is how the appellant disposed of such yarn and whether such disposal was on payment of appropriate Central Excise Duty. The first question that would arise is how such yarn was accounted by the appellant after the log sheet (machine) stage. The other question is whether such yarn was released from the tubes by cutting it and it was added to the waste arising at other stages. There is no account kept or produced before any authority about such cutting or adding to the waste arising at other stages. Therefore, the findings on these have to be based on the collateral evidence available. As already noted, there has been considerable contemporaneous correspondence between the appellant and the jurisdictional excise authorities about waste arising at the yarn stage. The aforesaid adjudication order of the Commissioner dated 3-3-1984 specifically took note of the waste arising at on the tubes and held that such waste is also classifiable along with other waste under Item 18(IV). Similarly, we have already noted from the RG-1 of the appellant that the appellant was recording waste yarn in its RG-1 (production register) and the stock of waste yarn was verified on 3-11-1984 by the Central Excise officers and certified total quantity of waste held in stock to be about 23 lakhs Kg. with regard to this same waste, the officer who carried out the stock taking, explained to the Additional Commissioner that the waste included waste at the yarn stage. He also has stated that the waste stored outside the factory included yarn waste. Even the letter of the Supdt. under which the assessee was directed to account waste, category wise, notes that waste arises at the yarn stage. These observations of facts from time to time by the field officers having charge of the appellant?s factory confirm that the part of yarn was treated as waste. Waste yarn arises only after production of yarn on machines. This makes it clear that part of the yarn entered in the log sheet account was subsequently treated as waste. Therefore, there is merit in the contention of the appellant that, even though the yarn of less than 1 Kg. is emerging at the spinning stage, such yarn does not get sold by the appellant as yarn. That part gets classified as waste and is disposed of accordingly. The description of the waste as made in the various contemporaneous correspondence and the description of the waste checked and certified by the officer at the time of stock taking confirm that part of the waste is of yarn. In these facts and circumstances, it would not be reasonable to take the view that all the yarn accounted in the log sheets at the machine stage, could have been cleared by the appellant as yarn only and, therefore, there is evasion of duty."

4. The aforesaid discussion clearly shows that the factual aspects were considered by the CESTAT in detail and more, particularly, the manner in which the matter was dealt with by, none else, but the officers of the Revenue themselves, a finding of facts was arrived at to the effect that the said yarn was treated as waste.

5. We have heard learned counsel for both the parties at length and are of the opinion that the aforesaid finding does not suffer from any infirmity. We, thus, confirm the order passed by the CESTAT. The appeal is, accordingly, dismissed.