**(1986) 01 BOM CK 0019**

**In the Bombay High Court**

**Case No :** Misc. Petition No. 1736 of 1978

Garware Nylons Ltd. APPELLANT

Vs

Government of India and another RESPONDENT

**Date of Decision :** 29-01-1986

**Acts Referred:**

Central Excise Rules, 1944 — Rule 8

**Citation :** (1986) 9 ECC 102 : (1992) 40 ECR 147 : (1986) 26 ELT 688

**Hon'ble Judges :** S.P. Bharucha, J

**Bench :** Single Bench

# Judgement

1. Each of the two points raised in the petition is covered by a Division Bench judgment of this court. The reference to facts is, therefore, shortly made.

2. In January 1974 the petitioners imported 50 tons of nylon 6 (polyamide) chips. On 2nd February, 1974 the Chemical Examiner certified that what had been imported was polyamide synthetic resin in the form of chips. On 1st March, 1974 the petitioners wrote to the Collector of Customs and claimed exemption from countervailing duty upon the basis of a central excise notification dated 1st March, 1973. They stated that the polyamide chips that had been imported would be used only for spinning nylon yarn.

3. u/s 2A of the Indian Tariff Act countervailing duty was leviable on any article imported into India in an amount equal to the excise duty for the time being leviable on a like article produced or manufactured in India.

4. The exemption notification dated 1st March, 1973 was issued by the 1st respondent under rule 8 of the Central Excise Rules and exempted polyamide chips from the whole of the excise duty leviable thereon if used in the manufacture of nylon yarn, provided that where such use was elsewhere than in the factory of production the exemption would be allowable only if the procedure under Chapter X of the Central Excise Rules was followed.

5. On 9th April, 1974 the Collector of Customs wrote to the petitioners that the

 

polyamide chips were assessable to duty under customs tariff item 82(3). In regard to the exemption notification the Collector stated that it did not give unconditional exemption. Accordingly, he assessed countervailing duty upon the polyamide chips on the basis of item 15A of the excise tariff.

6. The petitioners preferred an appeal and, on 13th October, 1974, supplemented their contentions in the appeal by referring to two judgments of this court. In their submission the polyamide chips were chargeable to customs duty under item 87; this was a residuary item; there was no residuary item in regard to excise duty; therefore, the polyamide chips were not liable to be assessed to countervailing duty. On 30th June, 1975 the Central Board of Excise and Customs rejected the appeal and held that the polyamide chips were liable to be assessed to customs duty under item 82(3), and that they were not entitled to exemption from excise duty by reason of the exemption notification.

7. The petitioners preferred a revision application which was, on 17th May, 1978, dismissed. This petition seeks to quash the order in revision.

8. As far as this court is concerned, by reason of the Division Bench judgment in Chemicals and Fibres India Ltd. v. Union of India 1982 ELT 917, the polyamide chips must be classified under item 82(3).

9. Being so classifiable, the applicable item in regard to excise would be item 15A. The very same exemption notification was considered by a Division Bench of this court in Century Enka Ltd. v. Union of India 1982 ELT 64. It was urged on behalf of the respondents that the exemption notification provided for exemption from the whole of the excise duty only on certain conditions. The Division Bench noted that the petitioners before it had stated in the petition that the entire material imported was to be used in their factory for the manufacture of nylon yarn. The respondents there had not filed a reply. The Division Bench, in the circumstances, was satisfied that the conditions mentioned in the exemption notification was satisfied and that the petitioners were entitled to exemption from countervailing duty.

10. The same argument of conditional exemption has been advanced before me. The petitioners have stated that the imported polyamide chips would be used in the manufacture of nylon yarn. This is not disputed by the respondents. The conditions of the exemption notification must, therefore, be held to have been satisfied. The polyamide chips imported by the petitioners are, therefore, not liable to countervailing duty.

11. The order of the 1st respondent dated 17th May, 1978 is quashed and set aside in so far as it requires payment of countervailing duty upon the polyamide chips. The 1st respondent shall refund to the petitioners the amount of Rs. 4,64,409.44 paid as countervailing duty within 8 weeks from today.

 