
(1979) 08 BOM CK 0010

In the Bombay High Court

Case No : Misc. Petition No. 976 of 1974

Garware Synthetic Bristles Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 46 ELT 34

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filed under Article 226 of the Constitution the Petitioner are challenging the validity and legality of order dated August 12, 1974 passed by the Assistant Collector, Central Excise, Division IV, Bombay holding that three Demand Notices issued by the Superintendent for the monofilament yarn cleared during the period from March 16, 1972 to December 31, 1973 were proper and valid.

2. The facts which give rise to this litigation are as follows :-

The petitioners are manufactures of nylon bristles or tufts used for the manufacture of tooth-brushes, shaving-brushes and other industrial brushes as also nylon fishing line. The relevant items fall under Tariff Item No. 18 which reads as follows :-

"Rayon and Synthetic Fibres and Yarn Explanation - "Rayon and synthetic fibres and yarn" shall be deemed to include manmade fibres and yarn made out of manmade fibres."

3. The petitioners claim that they had enquired from the Assistant Collector of Central Excise whether the items manufacture by them attract duty under Tariff Item No. 18 and the petitioners were informed by a communication dated June 11, 1965 that the articles manufactured by the petitioners were not liable to duty under Tariff Item No. 18.

4. The Central Board of Excise and Customs issued Tariff Advice No. 12 of 1972 on or about June 22, 1972. By the said advice the Central Board of Excise and Customs has given a direction that the Tariff Item No. 18 was not confined to yarns used in wearable fabrics and that all nylon monofilaments having a cross-sectional dimension not exceeding one millimetre and weighing upto one gram per metre fall within the said Item No. 18. In pursuance of the said advice the respondents served the petitioners with demand notices under which excise duty of diverse amount was demanded under Tariff Item No. 18 in respect of the monofilaments cleared between March 16, 1972 and December 31, 1973. The petitioners gave a detailed reply pointing out why such monofilament is not liable to duty. But the Assistant Collector by order dated August 12, 1974 confirmed the show cause notices holding that the petitioners' product conforms to the dimension and the weight prescribed for excisable item. The order is under challenge in this petition.

5. Mr. Desai, the learned Counsel appearing in support of the petition, contended that the direction or tariff advice issued by the Central Board of Excise and Customs has no force of law and the reliance by the Assistant Collector on that direction clearly vitiates the proceedings. Mr. Desai submits that the impugned order does not disclose any other reason for holding that the petitioners' product attracts duty under Tariff Item No. 18 and the sole reliance on the said advice vitiates the entire order. Mr. Desai in support of his contention relied upon the decision of the Supreme Court in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, , in the case of *Orient Paper Mills Limited v. Union of India*. The Supreme Court in paragraph-11 of the judgment has observed that the direction given by the Central Board was not decisive of the matter and it is regrettable that when administrative officers are entrusted with quasi judicial functions, often times they are unable to keep aside administrative considerations while discharging quasi judicial functions. In view of the judgment the sole reliance by the Assistant Collector on the tariff advice makes his order unsustainable.

6. Mr. Manjirekar, appearing on behalf of the respondents very rightly did not contend that the tariff advice has any force of law or the order of the Assistant Collector based only on tariff advice is valid or according to law. Mr. Manjirekar's contention is that if the impugned order is quashed then I should remit the proceedings back to the Assistant Collector for a fresh determination on the material available to him excluding tariff advice. I do not propose to follow the course suggested by the learned counsel for more than one reason. In the first instance, I am exercising jurisdiction under Article 226 of the Constitution and I have no jurisdiction to remit the proceedings back to the Assistant Collector. The Order of the Assistant Collector is vitiated and requires to be struck down and I need not direct to the Assistant Collector what steps he should take on the other materials, if any, available before him in respect of the claim against the petitioners. The other reasons which has prompted me not to adopt the course suggested by Mr. Manjirekar is that the period for which the petitioners are liable for payment of excise duty is from March 16, 1972 to December 31, 1973 and

has more than 6 years has lapsed and I do not think that it would be proper to remit back the proceedings. I wish to make it clear that it is open for the department to adopt independent proceeding if the department has material before it excluding the tariff advice to claim that the product manufactured by the petitioners is liable to excise duty under Tariff Item No. 18.

7. In the result the petition succeeds. Rule is made absolute and the order passed by the Assistant Collector, Central Excise, Division IV, Bombay holding that the product of the petitioners attracts Tariff Item No. 18 and the petitioners are liable to pay excise duty for the monofilament yarns cleared during the period from March 16, 1972 to December 31, 1973 and from January 1, 1974 to February 28, 1974 is set aside. It is open for the department to adopt independent proceedings against the petitioners even in respect of the period under challenge for claiming excise duty, provided it is permissible by law and there is material before the department excluding the tariff advice to claim that the product manufactured by the petitioners attracts excise duty under Tariff Item No. 18. In the circumstance of the case there will be no order as to costs.