(1985) 01 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 2654 of 1982

Krislon Texturisers Pvt. Ltd. and another — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 14-01-1985

Acts Referred:

Citation : (1986) 9 ECC 6 : (1987) 27 ELT 637

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

B.N. Kirpal, J.—The only question which has been agitated before us in this, and in the connected Writ Petitions, is as to whether excise duty can be levied on the petitioners who are merely processing base yarn and obtaining what is known as "textures yarn".

2. The relevant facts in this case are that the petitioners, as already indicated above do not manufacture any yarn. According to them base yarn is either purchased by them which is then processed to introduce crimps, coils, loops or curls or at times base yarn is sent to them for such processing. The case of the petitioners is that they do not undertake any manufacturing activity which can subject them to the levy of excise duty.

3. The entry under which excise duty is sought to be levied in Entry 18. The relevant Entry 18(II) reads as follows :

-- "Item Description of Rate of Duty No. Goods Basic Special Excise -- 18.II Man-made filament yarns : (i) Non-cellulosic - (a) Other then textured Eighty five Ten per cent of rupees per basic duty kilogram. charged. (b) textured Ninety five - do - rupees per kilogram. Explanation - "Textured Yarn" means yarn that has been processed to introduce crimps, coils, loops or curls along the length of the filaments and shall include bulked yarn and stretch yarn.

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4. It is not in dispute that the Government has issued Notification to the effect that when a processor, like the petitioners, pays duty on textures yarn, which duty originally was ninety five rupees per kilogram, they would be entitled to a rebate of rupees eighty five per kilogram, being the duty which had already been paid on the base yarn. The result would be that under no circumstance would be duty on textured yarn be more than ninety five rupees per kilogram.

5. Mr. Jagtiani, the learned counsel for the petitioners, submits that on a correct interpretation of Entry 18, excise duty can be levied only if a manufacturer manufactures the base yarn and also he himself textures the same. The learned counsel contends that a processor who does not himself manufacture the base yarn cannot be subjected to any excise duty on the process of text rising which he undertakes. We are unable to agree with this submission. The reading of the Entry is very clear, plain and simple. Excise duty is levied on man-made fibres other than mineral fibres and also man-made filament yarn. The ma-made filament yarns are also of three types, namely, non-cellulosic, cellulosic and metalized .It is non-cellulosic yarn which can be textures. The said Entry 18 provides for a lower duty on unreturned yarn. The duty is levied on the product. The product is textured yarn. The Explanation to the said Entry exhaustively defines what textured yarn means. According to the Explanation "textured yarn" means yarn which has been processed to introduce crimps, coils, loops or curls etc. The Explanation ,Therefore, postulates that the processor has to obtain yarns which is then subjected to the said process of text rising. The entry does not indicate that it is the manufacturer of yarn alone who could be the processor. Ordinarily it may be said that processing of yarn may not tantamount to a manufacturing activity being undertaken. In the present case, however, in view of the said Explanation ,text rising of yarn has to be regarded as manufacturing textured yarn which is subject to excise duty at the rate which is prescribed from time to time. The petitioners who purchase or obtain base yarn are liable to pay excise duty after they text rise the said yarn. We find nothing in the said Entry which would give any indication to the contrary. Mr. Jagtiani sought to refer to Entry 18 of the Schedule prior to its amendment in the year 1977. In our view that was the entry prior to its amendment can be of no assistance in our having to interpret entry 18 as it stands today. As we have already observed, textured yarn is subject of excise duty. If the argument of Mr. Jagtiani was to be accepted, it would mean that a textured yarn manufactured by the person who also manufactures the base yarn alone would be subject to duty and textured yarn, which is processed after purchasing base yarn, would not be subjected to duty. This certainly is not the meaning of the entry and nor could the Legislative intent be to that effect.

6. It was also contended by the learned Counsel that it cannot be that the same rate of duty has to be paid on textured yarn by a manufacturer who manufactures base yarn and also textures the same and by a processor like the

petitioners. According to the learned counsel the processor like the petitioners could not be expected to pay rupees ninety five per kilogram because that would mean that the levy of duty of ninety five rupees per kilogram would be in addition to the levy which has already been made on the base yarn and but for the Notification of the Central Government there would have been no exemption of the duty paid on the base yarn. In our opinion, there is no merit in this contention. The Government was conscious of the fact that if an exemption notification is not issued, a yarn may be subjected to excise duty twice over. Therefore, an exemption notification was issued which provided that if base yarn had been subjected to duty then that amount of duty will be deducted from the duty which would be levied on the processor. This is a normal way in which double taxation is avoided. It is to be borne in mind that the duty which is levied is on the item and not on the person. The duty is levied on textured yarn. It cannot be that the duty on textured yarn should be dissimilar. The only way in which similar duty could be levied is in the manner in which it has been done by Entry 18. It was, Therefore correct to subject the textured yarn to the same rate of duty irrespective of the fact as to whether it was manufactured by the manufacturer of the base yarn or it was a processor who was merely processing the base yarn and text rising the same.

7. No other contention has been raised before us.

8. For the aforesaid reasons, the writ petition is dismissed with costs. Counsel''s fee Rs. 1000/- one set.

