

(2001) 01 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 11228 of 1992 and W.M.P. No. 16042 of 1992

Madura Coats Ltd.

APPELLANT

Vs

Maritime Collector

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 12, 19
Central Excises and Salt Act, 1944 — Section 35

Citation : (2002) 83 ECC 848 : (2001) 131 ELT 328

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : N.S. Sivam, for the Appellant; Vaidyalingam, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The petitioner, M/s. Madura Coats Limited, have filed this writ petition praying to issue a writ of certiorarified

mandamus, calling for the records of the respondents concerning the orders passed in Original C.No. V/55/18/1/89, dated 28-12-1989 and the

order passed in Original C.No. V/55/18/1/89, dated 11-7-1991 and to quash the said orders and to direct the respondents to refund the excise

duty of Rs. 6,91,585.59/- and Rs. 49,330.51/- paid by the petitioner company in the following cases.

ARE 41 Nos. Date Amount of Excise Duty paid

44 26-8-1988 Rs. 70,647.56

52 25-9-1988 Rs. 2,03,586.24

58 9-11-1988 Rs. 2,13,765.55

72 8-3-1989 Rs. 2,13,765.55

31 22-11-1989 Rs. 49,330.51

2. In the affidavit filed in support of the writ petition, the petitioner mills would submit that the petitioner has got several spinning and weaving mills

in the States of Tamil Nadu, Kerala and West Bengal and in Tamil Nadu, the Mills are at Madurai, Tuticorin and Ambasamudram; that one of the

main merchandise manufactured and marketed by the petitioner company is ""Coats Threads"", which has universal recognition for its quality and

durability; that specification of the threads varies from country to country and the threads manufactured for the Indian market is to the specification

No. 60/1 whereas in some other countries the thread specification varies from No. 60/1,60/2 and 60/3; that the threads exported to a particular

country must satisfy the specification of such countries; that the threads and yarns are one and the same; that by multi-folding and more twisting,

yarns are made into threads; that all over the world, the yarns and threads are treated as one and the same; that in the Central Excise Tariff Act

also, the yarn is defined to include threads and no separate excise levy is made on the threads if yarn duty is paid.

3. The further contentions of the petitioner are that the petitioner company is a leading exporter of textile articles in India; that to enable the goods

manufactured in India to be quoted for competitive prices in the export market, the Government of India have given several incentives and the main

concession is the rebate of the excise duty paid on the exported materials and on the input materials used in the manufacture of the exported

materials; that export policy of the Government of India assures the incentives given to the exporters; that in the year 1988, the petitioner company

exported threads to Indonesia to the specification No. 60/2, under AR 4A Nos. 44, 52, 58 and 72 of 1988-89; that the petitioner company filed

Rebate Claim Applications for the refund of excise duty paid on these exports. But the respondents, contrary to the export policy, have refused to

pay rebate of the excise duty paid on these export threads; that in 1988, the Ambasamudram Mills of the petitioner, executed the export order of

threads to the specification No. 60/2 following the excise proceedings and paying the excise duty; that the yarns of the specification No. 60/1, after

multi-folding and twisting to the specification of No. 60/2, were exported to Indonesia; that in the applications for removal of excisable goods for

export, Form AR 4A, the excise duty paid on the yarns has been duly mentioned with the endorsement effected by the Excise Officers concerned

in AR 4As; that the exported threads has sustained excise duty and the same is liable for the claim of the petitioner.

4. The petitioner would further submit that u/s XI of the Central Excise Tariff Act, 1985, various textiles and textiles articles are classified; that

Section Note 3 of Section XI laid down that for the purposes of Heading Nos. 52.03, 52.04, 54.04, 55.05 and 55.06, the sewing thread means

multiple folded or cabled yarn; that the sewing threads made out of Cotton, man-made filament and man-made fibres are classified under the

Chapters 52, 54 and 55 of the said Act in the following manner :

Chapter No.	Description	Rate of Duty
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Chapter No. 52

52.03 Cotton yarn including sewing

thread not containing synthetic

staple fibres Nil

52.04 Cotton yarn including sewing

thread, containing synthetic

staple fibres Nil

Chapter No. 54

54.04 Artificial filament yarn and

sewing thread, including artifi-

cial monofilament of less than

60 deniers not textured Nil

Chapter No. 55

55.05 Yarn (including sewing thread

of synthetic staple fibres) Nil

that the above descriptions unambiguously, show that the yarn includes sewing threads because yarns are spun into threads that the subordinate officials misconstruing the provisions of the Act, ordered that the threads would sustain another incidence of excise duty though the threads are spun out of the duty paid yarn; that challenging the legality of the said decision, the petitioner filed writ petition and the same was being admitted and the authorities were restrained from imposing second incidence of duty on the threads; that the Government of India by various notifications, clarified that as per the Act, yarn includes sewing threads, doubled or multi-folded and the threads are manufactured out of the yarn falling under the Chapters 52,54 and 55, on which the duty of excise has already been paid, the department authorities cannot levy another incidence of duty on the threads; that in view of the above notifications issued by the Government of India, the department themselves withdrew the proceedings initiated by them and hence, the writ petitions were withdrawn by the petitioner; that so far as the petitioner has multi-folded the duty paid yarn of the specification No. 60/1, obtained from their sister concern, into threads, of the specification No. 60/2 at their Ambasamudram unit, which were exported to Indonesia and since the said yarn of the specification No. 60/1, which had sustained the incidence of duty alone were multi-folded and twisted into threads of the specification No. 60/2 and exported. On verification, the Subordinate Central Excise at Ambasamudram certified that in AR 4A Form Nos. 44/1988-89, dated 26-8-1988, 52/1988-89 dated 26-9-1988, 58/1988-89, dated 9-11-1988 and 72/1988-89, dated 8-3-1989, the threads exported have sustained excess duty; that the petitioner company is eligible for the claim of rebate of the excise duty paid; that after the exports were effected, obtaining necessary proof of export from the Customs authorities, the petitioner company submitted its Refund Claim Application for the refund of the excise duty paid on the exported threads with the first respondent, together with the consent letters of M/s. Centenary Mills, Madurai, that the excise duty paid on the yarns multi-folded into threads and exported to Indonesia in AR 4A Nos. 44, 52, 58 and 79 were from the Ambasamudram Mills, excise duty can be refunded to the

claimants. Thus the petitioner claimed the refund, of Rs.

6,91,585.59/-, furnishing details in Refund Claim Application.

5. The petitioner would further submit that on 2-8-1989, the first respondent called a representative of the petitioner to produce all the gate passes

issued by M/s. Centenary Mills, Madurai and other excise documents which were handed over to them; that after a month, on 21-9-1989, a show

cause notice dated 6-9-1989 was sent, directing the petitioner to show cause why the rebate claims preferred by them should not be rejected in

terms of Notification 197/62; that an explanation was submitted on 7-11-1989 stating that Rule 12 provides for rebate of duty paid on all the

excisable goods exported out of India and Notification 197/62 specifies those goods enumerated in the table which are liable for refund of goods

specified in the Schedule of "Central Excise Tariff, other than the goods "A" listed against Sl. Nos. 2 to 8. As a whole, the destination of any

country or territory outside India; that threads are not mentioned as the excluded item and therefore, excise duty paid on the exported goods are

liable to be refunded and the contention in the show cause notice that Notification 197/62 does not allow any rebate as they are not sustainable in

law; that on 28-9-1999, the first respondent also afforded personal hearing and passed orders on the very same day stating that proviso (1) of the

Notification 197/62, dated 17-11-1962 stipulated on the excisable goods should be exported directly from the factory unless and otherwise

provided in the Table to the said notifications or permitted by the Board and in the present case, the duty has been paid on the SS Polyesters yarn

cleared under GP from one factory to another and the same has been converted to SS Polyester thread and exported and as per Rule 12 of the

notification, the duty on the goods exported alone are liable for rebate and not the contents of the goods exported and on such reasoning, rejected

the claim of rebate filed by the petitioner company.

6. The petitioner would further submit that they preferred an appeal to the Collector of Central Excise (Appeals), the second respondent herein,

stating that the interpretation of the first respondent concerning Proviso (1) of Notification 197/62 is contrary to law and the biased conclusions of

the first respondent are liable to be reversed. The petitioner further submitted that when the provisions of the Central Excise Tariff Act clearly

stipulates that yarn includes thread, cabled or multi-folded and the Government of India has specifically clarified that yarns and thread are one and the same, the Superintendent authorities cannot demand separate incidence of excise duty on the thread nor differentiate yarn and thread as different products and that the jurisdictional authorities have endorsed in all the 4AS and thereby endorsing the entitlement to claim rebate; that the Collector of Central Excise (Appeals) by his Order-in-Appeal No. 1/97(M) A No. 260/90(M), dated 3-1-1991, confirmed the order of the first respondent without application of mind to any other submissions urged by the petitioner company; that a revision petition u/s 35 of the Central Excises and Salt Act, 1944 of the Government of India was filed and the Government held as per its order in No. 396/91, dated 24-6-1991, Department of Revenue, Ministry of Finance amended that the threads of the specification No. 60/2 made out of the duty paid yarn No. 60/1 have not sustained any excise duty and therefore, the rebate of duty suffered by the notice given in the final production is not permissible in law and the authorities have rightly rejected the claims of the petitioner company; that against the said order of the Government of India stating that is not tenable in law, the petitioner has come forward to file the above writ petition on such and other grounds put forth in the grounds of writ petition, praying for the relief extracted supra.

7. In the counter affidavit filed on behalf of the respondents, they have submitted that the threads are manufactured out of the duty paid yarns received from their sister concern, by multi-folding and twisting them into threads; that after export, the petitioner filed rebate claim for the refund of duty paid on yarns with the Maritime Collector, Chennai for export of sewing threads; that Proviso (i) of Notification 197/62, dated 17-11-1962 as amendment issued under Rule 12 of the Central Excise Rules, 1944, for claiming rebate stipulates that ""the goods are to be exported after payment of duty in cash direct from a factory or a warehouse""; that inasmuch as the above condition was not specified for the export of thread by the petitioner, the Maritime Collector has rejected the rebate claimed, by his order dated 28-12-1989 for item Nos. 1 to 4 falling under AR4s Nos. 44, 52, 58 and 72 rejecting AR 4 Ne31 also; that it is true that yarn includes thread and duty is not liable on thread which is manufactured

out of the duty paid yarn but the rejection of the rebate claim was only for the non-fulfilment of condition laid down in Notification No. 197/62,

dated 17-11-1962 as amended, which is fully in accordance with law, wherein, the stipulation is that ""the goods are to be exported after payment

of duty in cash directly from a factory or a warehouse""; that inasmuch as the goods, namely threads, when cleared, have been exported from the

petitioner's factory, the same is not entitled for payment of rebate under Rule 12 of the Central Excise Rules, 1944 as no duty was paid on the

thread; that payment of excise duty of yarn by the sister concern of the petitioners is not relevant to the issue; that the rebate claim of exported

excisable goods is regulated by Notification No. 197/62, dated 17-11-1962 as amended under Rule 12 of the Central Excise Rules, 1944.

8. The further contentions of the respondent in the counter affidavit are that mere certificate given by the Central Excise officers in AR 4A that the

goods have suffered central excise duty will not make the goods automatically eligible for the payment of rebate claimed; that the goods should

satisfy all the conditions imposed under Rule 12; that Government of India in their letter No. 396/91, dated 24-6-1991 on the revision filed by the

petitioner have justified the rejection of the rebate claimed by the Maritime Collector, thus rejecting the petitioner's claim, and contrary to law,

there is no mala fide intention for the department in rejecting the rebate claim filed by the petitioner; that payment of duty of yarn used in the

manufacture of thread is not denied, but refund of excise duty is different from the rebate claimed and therefore, the petitioner's contention that

duty was paid on yarn by the sister concern is twisting the purview of the rebate claim filed by the petitioner; that the order passed by the Appeal

Forums and the Revision Authority are legally sustainable; that there is no extraneous or improper reasoning and they are quite legal; that the

petitioner has not conceded the fact that export was not done directly from the factories of the sister concern, who paid duty of yarn; that the

petitioner is not entitled to claim rebate on the thread manufactured out of such yarn, supplied by its sister concern. On such reasons, the

respondents would lay emphasis that the petitioners are not entitled to the refund sought for, which has already been paid and would ultimately

pray to dismiss the writ petition.

9. During arguments, the learned senior counsel appearing on behalf of the petitioner would submit that the petitioner is an exporter in sewing thread and the writ petition has been instituted against refusal to refund the excise duty, which the petitioner is entitled to. As pleaded in the writ petition, the petitioner company getting the duty paid yarn from its sister concern and multi-folding the same into thread was exporting to Indonesia under AR 4A Nos. 44,52,58 and 72 and since the excise duty paid on such exported threads the petitioner is entitled to get the refund, they filed the claim application claiming an amount of Rs. 6,91,585.59 ps. from the first respondent Maritime Collector and since he rejected the application, filing an appeal before the Commissioner, Excise, for refund of excise duty, which also came to be rejected for refund on ground that the refund of excise duty is not for the export of sewing thread, but if it had been paid only in cotton yarn; that it is Central Excise Tariff Act, 1985 which is relevant; that under Chapter XI, all types of yarn and fabric and other products are classified; that u/s 11 of the Central Excise Tariff Act, 1985, various textiles and textile articles are classified; that Note 3 of Section XI lays down the Heading Nos. 52.03,52.04,54.04,55.05 and 55.06, the "sewing thread" means multiple folded or cabled yaen; that yarn includes sewing thread. In ascertainment of this, the learned counsel would cite a Division Bench judgment of this Court delivered in State of Tamil Nadu v. R.V. Krishniah Chetty and Sons reported in 1992 (Vol. 92) STC 262 wherein relying on two judgments delivered in Muthusavari Pillai & Sons v. State of Tamil Nadu (1977) 39 STC 359 and State of Tamil Nadu v. Vaithilingam reported in (1980) 46 STC 297, it has been held :
...that sewing thread does not lose its character as cotton yarn and continues to retain its identity and character as cotton yarn notwithstanding the fact they are sold for being used as sewing thread. In our view, sewing thread is no different from cotton yarn and they are one and the same commodity....

10. Resuming his arguments, the learned senior counsel would point out that the petitioner exported a particular variety of yarn Ne 60/2 that is manufacturing 60/1 in the petitioner's sister concern at Madurai it got converted as 60/2 and exported from the petitioner's mills at Ambasamudram; that the yarn and the sewing thread are one and the same as

laid down by the Supreme Court in the two judgments; that single yarn with two or three yarns multi-folded and twisted into single thread is not a new product but continues to be yarn as held by the Supreme Court in the judgments delivered in *Porritts and Spencer (Asia) Ltd. Vs. Collector of Central Excise, New Delhi*, and *Collector of Central Excise, Jaipur Vs. Banswara Syntex Ltd.*, and that if 100 kgs. of single yarn are twisted as thread, they will be getting only 95 kgs. since 5 kgs. will go a waste.

11. Giving the procedure that is prescribed for export to be made in Form "A" or "4A", the mode and excise procedures prescribed by the Government of India in filing the form, the amount of bond and the amount of security required in the various export bonds, the learned counsel would say that originally in the Notification of 1985 all goods specified in the Schedule to the Central Excise Tariff Act, 1985 other than goods falling under "A" and "B", (ii) and (iii) are entitled for rebate; that the relief claimed is borne out as the law laid down by the Supreme Court and the petitioners are accordingly entitled to the return of the excise duty.

12. In reply, the learned counsel appearing on behalf of the respondents would submit that Centenary Mills pays excise duty on yarn but the mill seeking the rebate is Madura Coats Limited; that the claim of the petitioner is that the yarn and clothes are the same; that the judgment reported in *Indian Organic Chemicals Ltd. Vs. Collector of Customs and Excise*, is only an obiter dicta and the proposition made is that all the threads are made of yarn and therefore all the yarns are threads and amounts saying all men are mortal and therefore all mortals are men; that there could also be other things and hence the argument of the learned counsel for the petitioner that yarn is thread and yarn and thread are one and the same and therefore the duty paid on yarn manufactured at one mill even after getting converted into thread in the other mill would become entitled to get the rebate, is unacceptable. The learned counsel would also cite a judgment of the Tribunal delivered in 1998 (79) ECR 579 wherein it has been held:

We have carefully considered the pleas advanced from both sides. In our view, while there is substantial force in the legal plea of the Revenue that duty is to be charged on any excisable goods in the form and on the value (if it is ad valorem) prevalent at the time of removal of those goods from

the factory of manufacture of those goods but so far as yarn is concerned, direct judgment of the Apex Court in the matter Collector of Central

Excise, Jaipur Vs. Banswara Syntex Ltd., decides the controversy in favour of the appellants. No doubt, both J.K. Cotton Spinning and Weaving

Mills Ltd. and Anr Vs. Union of India (UOI) and Ors, and Bhilwara Spinners Ltd. Vs. Collector of Central Excise, dealt with deemed removal of

yarn in a continuous process of manufacture of fabrics, but Banswara Syntex was manufacturing and removing yarn only. Therefore, Banswara

Syntex of Apex Court squarely applies to the facts of this case and there is no escape from that case for the Revenue.

It is also true that in those cases, yarn was leviable to duty at specific rates (i.e. on the basis of weight of yarn) whereas now in this case yarn is

leviable to duty at ad valorem rate, but this change in basis, in our view, cannot and does not disturb the applicability of ratio of Banswara Syntex.

13. The next judgment cited by the learned counsel for the respondents is one delivered by the CEGAT in 2000 (70) ECC 752 wherein it has

been held:

If a particular item is not defined in the statute, recourse to "commercial parlance test" has to be taken to determine the proper classification.

14. The last judgment cited by the learned counsel, for the respondents is one delivered by the Apex Court in Aditya Mills Ltd. Vs. Union of India

(UOI), wherein it has been held :

Excise duty is a duty on the manufacture of goods and not on sale. Manufacture is complete as soon as by the application of one or more

processes, the raw material undergoes some change. If a new substance is brought into existence or a new or different article having a distinct

name, character of use results from a particular process or processes, such process would amount to manufacture. The moment there is

transformation into a new commodity commercially known as a separate and distinct commodity having its own character and use "manufacture"

takes place. In the instant case, the Tribunal has found that indisputably a new yarn has come into being which is known in the market and that

PPRF is treated differently, from polyester spun yarn and rayon filament yarn. Therefore, the Tribunal came rightly to the conclusion that this is a

separate and distinct item....

15. Continuing to argue, the learned counsel for the respondents would submit that yarn and thread are one and the same for which duty shall be

paid at the yarn stage; that the operative portion of the order passed by the authorities concerned rejecting the claim of the petitioner is to the basic

reasoning that the duty paid on thread stage 16/2; that the duty has not been paid at the thread stage 16/2 but only at the yarn stage 16/1 and

hence the petitioner is not eligible to get the rebate and would pray to dismiss the writ petition.

16. In clarification, the learned senior counsel for the petitioner would further submit that two Division Benches of this Court held that thread is yarn

respectively reported in (1) Madura Mills Company Limited v. Government of Madras (supra) and also by a single Judge of this Court in W.P.

No. 15469 of 1990, dated 24-9-1999.

17. In clarification, the learned counsel for the respondents would submit that the Supreme Court has not gone into the question of classification

and would rely on the judgment of the Apex Court reported in Aditya Mills Ltd. Vs. Union of India (UOI), .

18. In consideration of the pleadings by parties and having regard to the materials placed on record and upon hearing the learned counsel for both,

what comes to be known is that all the three respondents have uniformly rejected the case of the petitioner claiming refund of the excise duty paid

at Rs. 6,91,585.59 ps. and Rs. 49,330.51 ps. paid by the petitioner company in case of five export duties as given in the column in the first para of

this order.

19. The petitioner's case, in short, is that it has several spinning and weaving mills in the States of Kerala, Tamil Nadu and West Bengal and in

Tamil Nadu, the Mills are at Madurai, Tuticorin and Ambasamudram; that the main merchandise marketed by the petitioner company is ""Coats

Threads"" and it is to the specification of 60/1; that by multi-folding and more twisting the yarns, they are made into threads, which are treated as

one and the same throughout the world much less under the Central Excise and Tariff Act where yarn is defined to include threads and no separate

excise levy is attracted for yarn made into threads; that while so, this export item being one regarding which the exporter is entitled to get a rebate

of the excise duty paid by the petitioner company claiming for the export of

threads to Indonesia to the specification No. 60/2 under AR 4A Nos.

44,52,58 and 72 of 1988-89, the petitioner company filed a rebate claim applications for refund of the excise duty paid at these exports but the

respondents contrary to the Export Policy refused the refund of the same to the petitioner and hence the claim of the petitioner is justified.

20. On the part of the respondents, they would argue that threads are manufactured by the petitioners out of the duty paid, yarns received from

their sister concerns by multi-folding them and twisting them into threads and they claim the refund of duty paid on yarns for export of sewing

threads; that proviso (i) of Notification 197/62, dated 17-11-1962 is issued under Rule 12 of the Central Excise Rules stipulates that "The goods

are to be exported after payment of duty in cash direct from a factory or a warehouse; that inasmuch as the above condition was not complied with

for the export of the threads by the petitioner, the respondents rejected the rebate claimed by the petitioner. It would be admitted on the part of the

respondents that yarn includes thread and duty is not liable to be paid on threads, which is manufactured out of duty paid yarn. But the reason

assigned on the part of the respondents for rejection of the rebate claimed by the petitioner is that only for the non-fulfilment of the condition laid

down in Notification No. 197/62, dated 17-11-1962, which stipulates "the goods are to be exported after payment of duty in cash directly from a

factory or a warehouse" and that inasmuch as the goods viz., threads, have been exported from the petitioner's factory, the same is not entitled for

payment of rebate under Rule 12 of the Central Excise Rules, 1944.

21. There is no controversy regarding the manufacture of the items of goods enumerated at the end of Para 1 of this order forming part of the

prayer column of the writ petition have been exported by the petitioner on different dates to Indonesia in the name of "Coats Threads". There is

also no controversy so far as the said items having suffered excise duty, when they were in the form of cotton yarn. There is also no controversy

that the threads are made of cotton yarns by multi-folding and more twisting and for the purpose of Central Excise Tariff Act also, the yarn is

defined to include threads and no separate excise levy could be collected on the threads if yarn duty is paid. Therefore, the arguments advanced on

the part of the petitioner that the threads are yarn and they are one and the

same and just for the simple reason that the yarn is made into thread, the same in the form of thread, does not attract the second incidence of duty, in the form of thread and the excise duty that has been paid when the thread was in the form of yarn is sufficient.

22. The petitioner's case is that the yarn of the specification in its sister concern got multi-folded and twisted into the specification No. 60/2 at their Ambasamudram Unit and they were exported to Indonesia and therefore under the prevailing laws, the petitioner company is eligible to claim the rebate of the excise duty paid and therefore they applied for the rebate of excise duty paid observing all formalities along with the consent letter from its sister concern M/s. Centenary Mills Limited, Madurai for the refund of the amount of Rs. 6,91,585.59 ps. in toto, furnishing the details in the refund claim applications and it should have been ordered by the respondents accordingly.

23. It is the Notification No. 197/62, which is crucial to decide the dispute, which specifies the goods enumerated in the Table, which are liable for the refund of the central excise tariff, according to which threads other than those goods listed against Serial Nos. 2 to 8 wherein the threads are not mentioned as an excluded item and therefore the excise duty paid on the export goods of the petitioner are liable to be refunded. As against this argument, on the part of the respondents, they would put forth that the threads are not a prohibited item. The other conditions laid down in the Notification No. 197/62, dated 17-11-1962 wherein the stipulation is that "the goods are to be exported after payment of duty in cash directly from the factory or a warehouse"; that inasmuch as the goods viz. threads when cleared have been exported from the petitioner's factory, the same is not entitled for payment for the rebate under Rule 12 of the Central Excise Rules, 1944 since no duty was paid on the threads, that payment of excise duty on yarn by the sister concern of the petitioner's is not relevant to the issue.

24. Therefore, in the above circumstances, the relevant question that is to be answered here is whether the excise duty paid on yarn by the sister concern of the petitioner's is not relevant for consideration for payment of rebate under Rule 19 of the Central Excise Rules, 1944 since no duty was paid on them in the form of threads when they got exported? So far as the

payment of excise duty is concerned, the yarn is thread and once the excise duty is paid on yarn, no separate excise duty need be paid on the threads and therefore the claim of the petitioner that yarn is thread and they are one and the same and if duty is paid in any one of these forms, the other form does not attract payment of excise duty. This position has been made clear not only by the two Division Bench decisions cited on the part of the petitioner but also by the Apex Court judgments cited on the part of the petitioner and this position is also acceptable on the part of the respondents. But, their arguments are that since the excise duty is paid in the form of yarn by the sister concern of the petitioner and the goods are to be exported after payment of duty direct from the factory or a warehouse, the respondents claim that as per the notification, those goods that is the yarn which suffered the tax in the sister concern are not exported from the petitioner's factory but different items viz., threads and since no duty has been paid on the threads, which directly come out of the factory, the petitioner is not eligible to claim the rebate. Therefore, the relevancy and the legality of this argument advanced on the part of the respondents needs dissection.

25. There is no point in merely going by the literal meaning of the rule or the notification without assessing the pith and marrow of the substance.

When the excise duty was paid on the yarn of the sister concern of the petitioner, whether the Excise Department accepted the duty or not needs no discussion since the answer is in the affirmative. Having accepted the duty and further having accepted the proposition of law so far as it is concerned with payment of excise duty that yarn is made into thread and they both are one and the same and no additional or second incidence of duty need been suffered in the form of thread and having further accepted that it is the same yarn on which the duty is paid has been twisted in the form of threads and exported by the petitioner and since it is not the case of the respondents that it is the different yarn other than one which suffered the excise duty in the sister concern the respondents have to accept that no second incidence of duty is attracted just for the simple reason that the yarn has become the thread and therefore it is for the respondents to establish that the duty suffered yarn while entering into the factory of the petitioner from its sister concern in any manner lost its character or that they

are different materials other than the one which suffered the tax.

Just for the simple reason that this duty suffered yarn has been twisted into threads also, no second incidence of duty is attracted and therefore the

character of the yarn which has suffered the excise duty is in no manner different or lost and it is the same yarn which is in the form of the thread

and just for the simple reason that it got transformed from one of the sister concerns of the petitioner to that of the petitioner mills and got twisted

into thread, the respondents cannot in any manner come forward to claim that the thread, which has been twisted from the yarn did not suffer the

excise duty so as to deny the rebate that is lawfully claimed by the petitioners. "Goods are to be exported after payment of duty directly from the

factory or a warehouse", it is clarified that it is the same goods (yarn) which after the payment of duty that is exported from the factory in the form

of threads. It is also not the case of the respondents that because the yarn of the sister concern by the petitioner mills having been exported in the

form of threads, the Government have suffered any loss or that the petitioners have circumvented or violated any law and therefore the denial of the

rebate by the respondents is not only unreasonable and arbitrary but erroneous as well. No valid or acceptable reason has been offered on the part

of the respondents to reject the claim of the petitioners excepting to misinterpret the meaning of the rule. Interpretations must only render clarity

and cannot deny the due of the petitioner.

26. Whether the yarn is from the petitioner mills or from its sister concern is immaterial. Relevancy lies whether that yarn, whether in the form of

yarn or thread or in any other form, within the permissible limits of law, has suffered the excise duty or not? Once it comes to be known that it has

suffered the excise duty, automatically, the owner of the same is entitled to get the rebate as claimed on the part of the petitioners in the case in

hand. After all, the petitioners have got the consent letter from the sister concern also and have sent it along with the claim form. When it is the

admitted case on the part of the respondents that no separate duty is to be paid for the threads even if it is converted from No. 60/1 to that of No.

60/2, which does not attract a second incidence of duty, automatically, the owner of such items, who exported them becomes entitled to the

benefit of law and denial of the same is nothing short of denial of justice.

Therefore, as ascertained by the Division Bench of this Court in State of Tamil Nadu v. R.V. Krishnaiah Chetty & Sons reported in 1992 92 STC 262, the sewing thread does not lose its character as cotton yarn and continues to retain its identity and character as cotton yarn notwithstanding the fact they are sold for being used as sewing thread and they are one and the same, no other proof need be necessary to arrive at the conclusion that the exporter of the same is entitled for the rebate provided for.

27. The case cited on the part of the respondents delivered in 1998 (79) ECR 579 is a Tribunal finding and it does not lay down the law. The other judgment cited by the respondents relevant for consideration in the present context is Aditya Mills Ltd. Vs. Union of India (UOI), wherein on completion of the manufacture of the goods on application of one or more process the raw material undergoes change and a new substance is brought into existence and a new or different article having a distinct character has been arrived at by transformation into a new commodity by its manufacturing process resulting in a new yarn coming into being known as PPRF which is treated differently from polyester spun yarn and rayon filament yarn. Therefore the Tribunal arriving at the conclusion that it is a separate and distinct item has been justified. But in the case in hand, it is not so. It is the one and the same product in the different form supplied wherein there is no change or transformation into a different character nor does it undergo any other manufacturing process and no additional excise duty is attracted. Therefore, this case cited by the respondents is not applicable to the facts of the case.

In result, the above Writ Petition succeeds and the same is allowed with costs.

The orders passed by the first respondent in Original C.No. V/55/18/1/89, dated 28-12-1989 and Original C.No. V/55/18/1/89 EC, dated 11-7-1991 are hereby quashed.

The respondents are hereby directed to refund the excise duty of Rs. 6,91,585.59 ps. and Rs. 49,330.51 ps. paid by the petitioner to the petitioner within sixty days from the date of receipt of this order.

Consequently, W.M.P. No. 16042/92 is closed.