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**(1991) 07 BOM CK 0055**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1634 of 1983

Modern Syntex (India) Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 03-07-1991

**Acts Referred:**

**Citation :** (1993) 63 ELT 17

**Hon'ble Judges :** S.P. Bharucha, J;M.F. Saldhana, J

**Bench :** Division Bench

## Judgement

Bharucha, J.—Two contentions are raised in each of this large bunch of writ petitions. The first contention is that the use of the expression ''duty of customs'' in an Exemption Notification implies that exemption is given not only in respect of basic Customs duty but also in respect of additional and auxiliary Customs duty. For the reasons stated by the us in the judgment that we have just delivered in Writ Petition No. 2525 of 1982, Ceat Tyres India Ltd. v. Union of India, this contention must be decided against the petitioners.

2. The Notification that uses this expression applies to "polyester fibre" and "all others", the rates of duty being different. It is the contention of the petitioners that what they had imported was polyester staple fibre which is technologically and commercially distinct and different from polyester fibre and, therefore, falling under the category of "all others". In the affidavit filed by the respondents in reply it is stated that the word "staple" is added to the expression "polyester fibre" to indicate that the polyester fibre is available in a specific staple length. In commercial use polyester fibre always has a specific staple length. If fiber''s of various staple lengths are mixed up then spinning is uneven and not productive of good quality. Polyester fibre with mixed staple length is referred to as polyester fibre waste and it is polyester fibre waste which falls within the category "all others". We are impressed by the statement made in the affidavit in reply. It appears to us to be in accord with the true position. Polyester staple fibre would fall within the meaning of the expression "polyester fibre".

Accordingly, on this contention also the decision must be against the petitioners.

3. The petitions are dismissed. The respondents shall be entitled to recover the amounts due by the petitioners with interest thereon at the rate of 12% per annum and shall be at liberty to encash the bank guarantees given by the petitioners.

4. No order as to costs.

5. Prothonotary to act on the minutes.

 