(1990) 01 GUJ CK 0002

In the Gujarat High Court

Case No : Sp. Civil Application No. 3090 of 1981

Niranjan Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1990) 31 ECR 721 : (1992) 61 ELT 229

Hon'ble Judges : T.U. Mehta, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

G.T. Nanavati, J.—The petitioner-company is having a composite textile mills and is engaged in the business of manufacturing textile goods. During the process of manufacturing cotton fabrics, at the stage when cotton yarn is removed from the cones for the purpose of beaming, there is always some wastage of cotton yarn. Such waste cotton, which is also known as hard-waste, cannot be used for manufacturing the end-product and, therefore, the same is disposed of as waste cotton yarn. In respect of such cotton yarn, the petitioner used to submit classification lists from time to time and one such list was submitted on 26-6-1980. The petitioner had classified the said waste cotton yarn as falling under Tariff Item 18-A of the First Schedule to the Central Excises and Salt Act, 1944. The Assistant Collector approved the classification and in view of Notification No. 95/61, dated 1-4-1961, as amended from time to time, permitted clearance of these goods without payment of excise duty. According to the petitioner, even thereafter they have been clearing the waste cotton yarn in the same manner without payment of any duty. However, on 8-1-1981 the Superintendent of Excise Range VI, Surat, wrote a letter to the petitioner-company calling upon them to clear such yarn only on payment of duty and threatened to take action, if such yarn was cleared by the petitioner-company without payment of proper duty. The petitioner-company has, therefore, filed this petition challenging the said threatened action.

2. What is contended by the learned Advocate for the petitioner is that the petitioner''s classification having been approved by the Assistant Collector, the Superintendent of Excise could not have called upon the petitioner to pay duty on waste cotton yarn in view of Notification No. 95/61 issued by the Central Government in exercise of the powers conferred by sub-rule (1) of the Rule 8 of the Central Excise Rules, 1944. It appears from the letter dated 8-1-1981, that the Superintendent of Central Excise has not proposed to change the classification. What he was stated in his letter is that excise duty on cotton yarn becomes leviable at the spindle point and, therefore, waste of cotton yarn resulting after the spindle stage and during weaving is not entitled to exemption. By the said letter, no demand has been made and the learned Advocate appearing for the respondents made it clear that by issuing this letter, the Superintendent of Central Excise merely brought to the notice of the petitioner that he would be taking action, if the duty is not paid, and that it is not an order whereby any demand of excise duty has been made. He also submitted that even after such a letter, no action by way of recovery was taken in case of non-payment of duty but only show cause notices have been issued. Reading the letter as it is and also considering the submissions of the learned advocate for the respondents, the letter to the petition, is not a demand notice or a proposed action for a coercive recovery. Therefore, the question of quashing and setting aside the same does not arise.