(1989) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 2997 of 1982

Orkay Silk Mills Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-06-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 56B, 8

Citation : (1989) 24 ECR 431 : (1989) 43 ELT 265

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

S.P. Bharucha, J.—The petitioner manufacture partially oriented yarn (POY) of 115 deniers in one of their units. This POY is transported in the mode prescribed by Rule 56-B of the Central Excise Rules, 1944, to another unit of the petitioners for texturising. The question raised here relates to the excise duty payable on the texturised yarn.

2. By a notification date 11th May 1982 issued under Rule 8 of the Central Excise Rules texturised yarn produced out of base yarn was made exigible to a concessional rate of duty, viz., the duty for the time being leviable on the base yarn, if no already paid, plus Rs. 5/- per kilogram. The first explanation to the notification defined base yarn to mean yarn falling under Sub-item II(i)(a) of Item 18 of the First Schedule to the Central Excises and Salt Act, 1944. Item 1811(i)(a) relates to man-made filament yarn, non-cellulosic, other than textured. It is not in dispute that the POY with which we are here concerned falls under Item 1811(i)(a). By reason of notification date 11th May 1982 issued under Rule 8 of the Central Excise Rules, 1944, duty was payable upon such POY at the rate of Rs. 61.25, being the rate applicable to polyester yarn of deniers between 100 and 750. According to the petitioners, therefore, they were liable to pay on the texturised yarn made by them, having regard to the exemption notification dated 11th May 1982, duty in the sum of Rs. 61.25 plus Rs. 5/- per kilogram.

3. On behalf of the respondents emphasis is laid on the fact that the POY that was manufactured by the petitioners in one unit was transported to another unit of the petitioners for texturising in the mode prescribed by Rule 56B. Thereunder the Collector may permit a manufacturer to remove excisable goods which are in the nature of semi-finished goods for carrying out manufacturing process to some other premises of his and to bring back such goods without payment of duty. Emphasis is laid on the fact that the petitioners represented the POY to be semi-finished goods for the purposes of obtaining the requisite permission. It is, therefore, contended that the POY cannot be base yarn for the purposes of the notification dated 11th May 1982.

4. It is difficult to accept this contention. Rule 56B applies to semi-finished goods which are excisable. The POY that is produced by the petitioners is excisable. It is used for the purposes of being texturised. It is, therefore, base yarn for the purposes of being texturised. It falls within the definition of base yarn in the notification dated 11th May 1982 because it falls within the particular provision of the tariff that is therein referred to. It must, therefore, be held that the petitioners are liable to pay excise duty on the texturised yarn at the rate of Rs. 66.25 (Rs. 61.25 + Rs. 5/-) per kilogram. The order to the contrary dated 15th Nov. 1982, Ex-D to the petition, is quashed.

5. It is made clear that the petitioners will also be liable to pay such special or additional duty of excise as may be leviable thereon.

6. Rule accordingly. No order as to costs.

