

(1990) 08 BOM CK 0102

In the Bombay High Court

Case No : Writ Petition No. 1475 of 1969

Plastics Packaging Private Ltd.

APPELLANT

Vs

D.N. Lal, Collector of C. Ex.

RESPONDENT

Date of Decision : 13-08-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1991) 51 ELT 271

Hon'ble Judges : M.L. Pendse, J;M.F. Saldhana, J

Bench : Division Bench

Judgement

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners are challenging order dated November 27, 1967 passed by Joint Secretary to Government of India declining to entertain the revision application filed by the petitioners. The facts leading to rejection of this revision application are as follows.

2. The petitioners are a Private Limited Company incorporated under the Companies Act, and have a factory situated at Pimpri, Poona. The petitioners manufacture nylon yarn required for the purpose of textiles, fishing nets and parachute cord since August 1965. Caprolactam manpower is a raw material which goes through the process of polymerisation and polyamide chips so produced are intended for the manufacture of nylon yarn. During the process of manufacture of nylon yarn, waste occurs during different stages. The stages are (i) during the process of polymerisation, (ii) during spinning, (iii) take up waste and (iv) draw twister waste. The wastes are an unavoidable part of the process of manufacturing nylon yarn. The polyamide chips intended for use in the manufacture of nylon yarn for manufacture of fishing nets and parachute cords are dutiable under Item 15A of the First Schedule to the Central Excise and Salt Act, 1944. At the relevant time the duty was 36% ad valorem.

3. In exercise of powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, the Central Government exempted polyamide chips falling under Tariff

Item No. 15A of the First Schedule to the Central Excise & Salt Act from the whole of the excise duty leviable thereon provided that the Collector of Central Excise is satisfied that such goods are intended for use in the manufacture of nylon yarn for the manufacture of fishing nets or parachute cords.

On August 25, 1966 the Inspector of Central Excise, Pimpri called upon the petitioners to furnish details of the quantity of waste produced out of polyamide nylon chips. The petitioners sent reply on August 26, 1966 pointing out that the nylon yarn waste does not fall in the category of nylon yarn and it cannot be used as yarn for other purpose. The petitioners pointed out that it is cleared as waste only for the purpose other than for which the yarn can be used. The petitioners claimed that polyamide chips content of waste does not attract any further duty. The Assistant Collector of Central Excise, Pune by order dated October 1, 1966 declined to accept the claim of the petitioners holding that the petitioners are liable to pay approach duty on the polyamide chips, including contents of waste. The Assistant Collector held that waste is not cleared by the petitioners for manufacture of fishing nets and parachute cords and therefore the waste is liable to payment of duty. The decision recorded by the Assistant Collector was confirmed in appeal by order dated January 2, 1967 by Collector of Central Excise, Pune. The Collector concurred with the findings recorded by the Assistant Collector. The revision application preferred by the petitioners before the Government of India, Ministry of Finance, met with the same fate. The order of the three authorities are under challenge in this petition.

4. Shri Parikh, learned Counsel appearing on behalf of the petitioners, submitted that Item 15A of the Central Excise Act does not provide for payment of duty on the waste. The learned counsel urged that waste arises out of manufacture of nylon yarn and the waste is not a product which can be described as "manufactured" or can be assessed for excise duty. The learned counsel relied upon the decision of the Delhi High Court reported in *Modi Rubber Ltd. Vs. Union of India and Others*, in support of his submission. Shri Parikh pointed out that Item 15A was subsequently specifically amended by Government of India and the waste was specifically included so as to attract payment of duty. If was submitted that as long as amendment was not carried out waste was not liable for beings assessed for payment of duty. The submission is correct and deserves acceptance. Item 15A deals with artificial or synthetic resins and plastic materials and cellulose esters and ether and articles thereof. The waste is not included in Item 15A. It was only in the year 1982 that Item 15A was amended and Explanation III was added, inter alia, prescribing that the articles set out in sub-item (1) is to be taken to apply to materials including waste and scrap. Shri Parikh submitted, and in our judgment, with considerable merit, that as long as the amendment was not carried out the authorities below were clearly in error in holding that waste or scrap is also liable to assessment of duty. The decision of Delhi High Court supports the claim of the learned counsel. High Court of Delhi held that waste/scrap is not a result of any treatment or any labour or any manipulation whereby a new and different article emerges. It was further held

that the process to fall within the ambit of expression "manufacturer" must have some relation to the manufacture of the finished product. The waste is obtained not by any process of manufacture but in the course of manufacturing and processing to produce the end product. The waste is obtained in the process of manufacture and cannot be charged for excise duty. The Delhi High Court also referred to Item No. 15A which is in existence after 1982 and which specifically includes the waste and scrap by Explanation III. We are in agreement with the view taken by the Delhi High Court that the intention of the legislature to cover waste or scrap in relation to a manufacture is required to be specifically mentioned in Tariff Item before the liability to pay duty on waste or scrap arises. The conclusion recorded by the three authorities below that even though waste is not included in Item 15A, still the petitioners are liable to pay duty on the quantity of waste therefore cannot be sustained.

5. Accordingly, petition succeeds and the order dated October 1, 1966 passed by the Assistant Collector, Central Excise, Division II and confirmed by Collector of Central Excise, Pune on January 2, 1967 and by Government of India by order dated November 27, 1967 are set aside. It is made clear that the liability to pay duty arises after amendment to Tariff Item 15A.

6. There will be no order as to costs.