
(1987) 06 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 1682 of 1981

Ruby Mills Limited and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 17-06-1987

Acts Referred:

Citation : (1987) 31 ELT 904

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners manufacture two kinds of spun yarns; one with 48% terene and 52% viscose and the other with 85% viscose and 15% polyester. The first one becomes chargeable under Tariff Item No. 18-III(ii) and the latter one becomes chargeable under Tariff Item No. 18-III(i). They pay duty on these two kinds of spun yarn. What they do is that they double these two yarns by a process. The doubling of the said yarn is carried out merely as a preparatory process to weaving the same into fibres in the Weaving Department of the First petitioners' Mills and is done with a view to providing an earlier feed of yarn into the body of the fabric on the looms of the Weaving Department. The advantage of using doubled yarn in the body of the cloth on the looms is that the use of additional shuttles on the looms can be dispensed with. The doubling of yarn does not change the nature of character of the said two types of blended yarn produced by the First petitioners nor does it result in a new or different article from the said two types of yarn. The said doubling process does not cause any transformation of the said two types of yarn into anything else, nor does it result in any new product having a distinctive name, character or use. The two components of the doubled yarn are not only easily identifiable but also separable, thereby making it clear that the said doubled yarn really consists of two fully duty paid and fully manufactured yarns.

2. In respect of this the excise department issued a show cause notice dated March 20, 1981 wherein they alleged that the first petitioners were

manufacturing a new product by doubling and which they have not classified and, therefore, they become liable for not classifying and for action as against them. The relevant portion of the said show cause notice is as follows :

"Whereas it appears that M/s. Ruby Mills Co., Dadar, Bombay, have contravened provisions of Rule 173-B, 173-F and 173-G of C. Ex. Rules 1944 in as much as they manufactured and cleared for captive consumption Cellulosic Spun yarn of 2/40 S TV/VP, with the final composition of 31-5% non-Cellulosic fibres and 68-5% of Cellulosic fibres, falling under II 19-III(ii) without filing classification lists, without assessing it to duty after completion of manufacturing process (i.e. doubling) which is a essential process of manufacture in the doubled yarn."

Accordingly the department demanded that this doubled yarn must be classified under Tariff Item No. 18 III(ii), and they demanded excise duty at that rate. By their reply dated May 11, 1981 the petitioners expressly pointed out that the doubled or twisted yarn is not a spun yarn and, therefore, the show cause notice was not maintainable. They referred to a judgment of the Division Bench of this High Court in the case of Garware Nylons Ltd. v. Union of India and others, reported in 1980 E.L.T. 249 Bom. They also referred to two or three other cases including a Supreme Court case. However, strange are the ways of the excise department and they would not accept the submissions made by the petitioners.

3. Thereafter the department issued three more show cause notices viz. dated April 27/30, 1981, June 3, 1981 and June 20, 1981 and also a further amendment to these notices by further letters dated June 16, 1981 and June 18, 1981 and persisted in their demand that the doubled yarn becomes a new product and, therefore, is liable to be assessed under Tariff Item No. 18-III(ii) of the first schedule. It appears that in the meanwhile in a matter of Morarjee Gokuldas Spg. and Wvg. Co. Ltd. a similar question arose and the Collector of Central Excise by his order dated May 27, 1980 had expressly held against the assessee and observed that the doubled yarn becomes a new product and, therefore, becomes liable for separate excise duty. It appears that that order was set aside by the appellate authority, however, the matter was remanded back for de novo consideration. It appears that the Director of Inspection and Audit, Customs and Customs Excise, New Delhi, by his order dated May 26, 1981 upheld the contention of the department and came to the same conclusion. It is against this order that the assessee came to the High Court and filed a writ petition which is now decided by a judgment reported in 1982 E.L.T. 145 Piramal Spg. and Wvg. Mills Ltd. v. Union of India and others. The learned Judge after considering the earlier decision of the Division Bench and also after considering all materials expressly held that by doubling the yarn, no new product comes into existence and, therefore, the department was not right in treating the doubled yarn in that manner.

4. In my view in the present case the reasoning as given in the said judgment of Justice Pendse in the case of Piramal Spg. and Wvg. Mills Ltd. v. Union of India and others, expressly applies and it cannot be said that any new product comes

into existence by merely doubling the two yarns. If that is so, the petitioners must necessarily succeed.

5. Mr. Master pointed out that in the present case the petitioners have not shown any cause nor did they choose to go before the Collector of Central Excise and they have directly filed this petition as against the show cause notices, and, therefore, no relief can be granted to the petitioners. In my view, it is not necessary that the petitioners should have complied with a formal routine process of having been heard by the Collector of Central Excise, when the petitioners had been fully informed of the view of the department, not once but more than once. In these circumstances if the petitioners were to go before the Collector of Central Excise, the result would have been the same and in any event they could not have been able to avoid coming to this High Court. In my view, if the show cause notices were not per se maintainable, the entire exercise of issue of show cause notices by the department becomes an act without any authority. In any case the respondents have suffered no prejudice. I, therefore, pass the following order :

All the show cause notices beings Exs. A, C, D, E, F, G and H stand quashed and set aside.

It appears that during the pendency of the petition, the petitioners have given certain bank guarantees and personal bonds. The same also stand discharged, by virtue of this judgment of mine.

At this stage Mr. Master applies that the latter portion of the order relating to the bank guarantees and bonds be stayed for a period of four weeks from today. Accordingly the operation of that part of the order stands stayed.

Respondents to pay the costs of the petition to the petitioners.