

Standard Industries Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-22-1997

Reported in : (1998)(101)ELT359Tri(Mum.)bai

Appellant : Standard Industries Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Application is for waiver of pre-deposit of duty of Rs. 36.52 lakhs and a penalty of Rs. 75 lakhs.

2. Advocate for the applicant says that in his order the Commissioner has held that the autoconer, a machine used by the applicant to wind yarn on bobbins is not capital goods because it does not satisfy the requirements prescribed in Rule 57Q of producing or processing any goods or bringing about any change or any substance. He contends that the yarn which the applicant sells to the outside market is sold in the form of cones, which is in accordance with the practice in the trade and that the autoconer is therefore required to make the yarn marketable. He says in such a case duty is not paid on the yarn at the spindle stage when it comes into existence but only when it is wound on its bobbin. Therefore he says that the autoconer is used to manufacture the cones which is an excisable commodity. He relies upon Note 1 to Chapter 52 and Note 3 to Chapter 55 to say that winding of yarn is a process of manufacture and points out that winding is a process which has been specifically exempted by serial No. 326 of Notification 35/97.

He says that when the notice has been issued alleging that some other goods are not capital goods, the Commissioner in his order has not dealt with these aspects. This consisted of transformer used to step down the factory, parts of the auto including spindle, transformer, triac and voltage stabilizer. The transformer is part of the plant for providing electricity and spares of the autoconer would be thus capital goods. He also points to the fact that there is no justification for imposition of a penalty more than twice the duty involved.

3. The departmental representative contends that winding is not one of the processes specified in the chapter notes referred to. He says that by the act of winding, no commodity is produced and there is no change in the yarn itself. Therefore while the autoconer may perhaps be necessary for manufacture of yarn in cones it would not be capital goods within the definition of the term occurring in Rule 57Q. Its spare parts and accessories also therefore would not be capital goods.

The notes in Chapter 52-55 specifies processes such as texturising, doubling, yarn on thread as amounting to manufacture of any other process, or the conversion to any form of the said products but in the form as amounting to manufacture. The fact that wound yarn has been exempted to duty subject to conditions specified in the notification.

The expression "change in any substance" specified in Rule 57Q cannot prima facie said to exclude change from one form of a product to another form. It is not possible to say with certainty that the term "change" occurring in that rule has to be construed only as a physical or a chemical change and not a change in the identity of the product as it may be commercially known. Since prima facie it appears that conversion of yarn to bobbin to cone amounts to manufacture it would follow prima facie the machinery used for such conversion of yarn would be considered to be capital goods. Their accessories would also have to be considered as capital goods. We are therefore satisfied that the applicant has a strong prima facie case. We therefore waive pre-deposit and stay their recovery.