

Garware Nylons Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-09-1983

Reported in : (1993)(66)ELT484Tri(Mum.)bai

Appellant : Garware Nylons Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is the second appeal of M/s. Garware Nylons Ltd., to the Tribunal against the order of the Assistant Collector of Central Excise, Division II, Pune No. V (18) 30-49/78 dated 25-10-1980 as confirmed by the order of the Appellate Collector of Central Excise, Bombay No. V-2(18) 2986/80 dated 29-9-1982. The appellants argue that their factory at Pune manufactures the crimped yarn in an integrated process. Since this process is one and the same, they contend that the Central Excise duty is chargeable on the yarn after crimping and not first on the flat yarn and then on the crimped yarn as held by the lower authorities. In support of their contention the appellants state that crimping does not tantamount to a process of manufacture in terms of Section 2(f) of the Central Excises and Salt Act, 1944 and therefore their request for levying duty at one stage after the yarn is crimped should be allowed. In support of their arguments, the appellants point out that in the market textured yarn is also known as yarn and not as a different commodity. In support of their argument, they have submitted a copy of the newspaper 'Tecoya' dated Sunday the 8th August, 1982 and issued at Bombay. The learned Advocate of the appellants has also pointed out the relevant provisions of

Notification No. 55/78 dated 1-3-1978 which read "the duty for the time being leviable on the base yarn, if not already paid plus Rs. 5/- per kg." He interprets that this notification authorises the levy of duty after the yarn has been crimped. He has made a grouse that this particular argument of the appellants was adduced before the Appellate Collector of Central Excise, Bombay but he did not deal with the same and erroneously jumped to the conclusion confirming the Assistant Collector's order. The appellants stated that it is simpler for them to pay the duty after crimping them at two stages as demanded by the Assistant Collector. The Advocate has further explained that based on the Assistant Collector's decision dated 25-10-1980 demands have been issued to appellants for extra duty amounting to Rs. 15,27,890.60 and in support of his argument he has tendered a photo-copy of the letter No. GNR/T.I. 18/82 dated 3-11-1982 of the Superintendent of Central Excise addressed to the appellants. The learned Advocate has pointed out that the notional waste in the quantity of yarn arrived at by the Central Excise authorities at Pune is apparent and not real and that the procedure as advocated by the Assistant Collector is against the revenue. On the other hand, after crimping the weight of the yarn increases by addition of oil used for crimping and this is to the extent of about 1% of the total weight. Therefore, the appellants' request is in favour of revenue. Shri Berarwalla has also filed copies of the Notifications No.51/83 dated 1-3-1983 and No. 52/83 dated 1-3-1983 to show that even in the present budget the Government have issued notifications on the lines of Notification No. 55/78 dated 1-3-1978 which would permit collection of duty only at one stage after crimping. Shri Berarwalla has also stated that the Appellate Collector did not appreciate the appellant's arguments that prior to 1-3-1975 there was no distinction under Item 18 under which crimped yarn was covered. He has also drawn the Bench's attention that the Delhi High Court had admitted writ petitions, wherein one ground is that texturising the yarn is not a process of manufacture and therefore not an excisable event. For these reasons Shri Berarwalla has submitted that the appeal of M/s. Garware Nylons Ltd. be allowed and the demand of Rs. 15,27,890.60 be quashed.

On being informed that the subject matter of the appeal is only the Assistant Collector's order dated 8-12-1980 which does not deal with the amount of short levy as alleged, Shri Berarwalla has explained that pursuant to this order, the

Central Excise authorities at Pune are issuing a demand every month to the appellants and it would save unnecessary litigation if the Tribunal took note of his request and decided the appeal in respect of the demand also. The departmental representative has opposed the contentions of the appellants. He has argued that the machine for texturising the flat yarn is separate in which the flat yarn is drawn, stretched and textured to become the texturised yarn. The Notification No. 55/78 dated 1-3-1978 cannot be interpreted as urged by the appellants. It only means that if the flat yarn has paid duty, then after crimping, the extra duty of Rs. 5/- per kg. is leviable. He has, thus, opposed the submissions and requested that the stay granted to the appellants be vacated.

2. We have examined the submissions both written and oral of the appellants and the respondent. The main contention advanced by the appellants is that the texturisation is not a process of manufacture and that the flat yarn is produced and textured in a continuous process in the factory. Examining this contention it is observed that this is not so. The process of producing the flat yarn is different from the process of texturising. As the departmental representative has pointed out, the machine for texturisation is different though the texturisation is done within the same manufacturing premises as those wherein the flat yarn is produced. It cannot be accepted that the textured yarn is produced in an integrated process. In fact, the learned Advocate himself explained the process of texturisation of the yarn in the course of his oral submissions. There is, therefore, no doubt that the process of texturising the yarn is separate from the process of production of the flat yarn. The question still remains to be decided as to whether this process amounts to manufacture of a different commodity. In this behalf, the Advocate for the appellants has submitted that the flat yarn and the textured yarn are the one and the same and are known by a common name in the market; and in support of his submission he had relied on the Newspaper 'Tecoya' dated 8-8-1982 published from Bombay. This argument is also not tenable. The flat yarn is not the same as the crimped yarn. In fact, the appellants have nowhere contended that they are clearing only crimped yarn from the factory. Had this been so, the appellants would have unhesitatingly made this point in their appeal. It is a pity that the departmental representative has not brought out this point regarding the clearances of flat yarn by the appellants from their factory. The appellants'

contention that flat yarn and crimped yarn are indistinguishable is also not borne out on the basis of the quotations of the yarn in 'Tecoya' dated 8-8-1982. We find that this newspaper gives separately the quotations of man-made flat yarn and man-made crimped yarn. It also gives quotations about blended yarn, cotton yarn and fabrics. There is, therefore, no warrant in the argument of the learned Advocate that the newspaper serves as a piece of evidence that in the market there is no distinction between flat yarn and crimped yarn. The quotations are given separately for each type of yarn and if one were to enquire in the market about the price of flat yarn, one would not be offered crimped yarn or viceversa. Therefore, even on the basis of market criterion, the two types of yarn are known separately, each under a distinctive trade name. It is also seen that in the Central Excise Tariff there are two sub-items under Item 18-II(i) viz. (a) and (b); and when the classification of a commodity falling under one sub-item changes to that under the other sub-item, it tantamounts to a process of manufacture in terms of Section 2(f). Therefore, the conversion of the flat yarn into textured yarn amounts to a process of manufacture.

We further, observe that the reliance of the appellants on Notification No. 55/78 dated 1-3-1978 to show that they can pay duty on the textured yarn at one stage instead of at two stages as demanded by the Assistant Collector of Central Excise is misplaced. The Notification No. 55/78 dated 1-3-1978 is issued in terms of Rule 8(1) of the Central Excise Rules, 1944 which deals with exemption from payment of duty leviable under the statute. This notification cannot, therefore, govern the stage at which the duty is leviable under the Central Excise Law. For this purpose the relevant authority for the levy of duty in the Central Excises and Salt Act in Section 3 and the duty has to be collected in the manner as prescribed. The prescribed manner for collection of duty has been laid down under Rules 9 and 49 of the Central Excise Rules, 1944. As observed by the Appellate Collector of Central Excise in his order dated 29-9-1982, these rules have been amended with retrospective effect to remove any iota of doubt that when excisable goods are removed from any place whether they are produced, cured or manufactured to any premises within the same factory for the purpose of manufacturing other excisable goods, the Central Excise duty is chargeable on such goods before they are used for the manufacture of other excisable goods. Therefore, there is no doubt that

when flat man-made filament yarn falling under Item 18-11 (i)(a) is removed for the purpose of manufacture of textured yarn falling under Item 18-11 (i)(b), duty is leviable on the flat yarn before it is removed for the purpose of manufacture of textured yarn. Therefore, the Assistant Collector's order is correct in law. In this view, it is irrelevant whether the procedure as directed in the Assistant Collector's order dated 25-10-1980 is in favour of revenue or against the revenue. What has to be ensured is that the procedure is legal and not beyond the four corners of law.

Therefore, even when the Appellate Collector of Central Excise has not dealt with this issue specifically in his order under appeal, it is seen that his order is valid and in accordance with the provisions of law. As regards the submission in the appeal that that Assistant Collector has worked out demands on 0.5% on the total weight of the yarn produced and confirmed demand for the duty amounting to Rs. 15,27,890.60, we observe that this is not the subject of the Assistant Collector's order as confirmed by the Appellate Collector of Central Excise. There is, therefore, no reason for us to take notice of this position and to go into the same at this stage.

The appellants have the remedy by way of first appeal to the Collector of Central Excise (Appeals) and they should exercise this remedy before they can approach the Tribunal. We cannot, therefore, accept Shri Berarwalla's request to go into this aspect in the interest of avoiding litigation. One more contention of the appellants which calls for examination is that prior to 1-3-1975, there was no distinction between man-made flat yarn and man-made crimped yarn. We find that this contention is not relevant. The textured yarn was included in the Central Excise Tariff with effect from 1-3-1975 and it has come within the excise not only with effect from that date. The provisions prevailing earlier cannot justify the conclusion that the flat yarn and crimped yarn are the same commodity. Accordingly, we find that none of the contentions advanced by the appellants is acceptable. Before we conclude, we would like to deal with the stay already granted vide our Order S.P. (Bom.) Appeal No. 24/1982 dated 31-1-1983. In that order we had observed that even though the demand of duty as mentioned in the letter dated 31-11-1982 of the Superintendent of Central Excise Pune was not the subject matter of the present appeal filed by M/s. Garware Nylons Ltd., we agreed to the stay of

recovery so demanded mainly on the ground that earlier also the Appellate Collector of Central Excise had granted the stay. Since now we are rejecting the appeal, which we so order the stay order will also stand terminated with immediate effect.

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