

Collector of Central Excise Vs. Reliance Textiles Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-21-1986

Reported in : (1986)(10)ECC71

Appellant : Collector of Central Excise

Respondent : Reliance Textiles Pvt. Ltd.

Judgement :

1. The appeal arises out of the order bearing No. M-709/TH-114/85 dated 2-5-1985 passed by the Collector of Central Excise (Appeals), Bombay.
2. The cross objections are not cross objections in the eyes of law. No relief, as such, is claimed. It contains the arguments of the Respondent in the above appeal as to why the appeal should not be allowed. As a matter of fact, Shri Nariman did not contend that cross-objections filed by the Respondent in the appeal are cross-objections in the eyes of law, or that any order is required to be passed on the cross objections.
3. The brief facts necessary for the disposal of the appeal may be stated as under:- The Respondent M/s. Reliance Industries Ltd. (for short The Reliance) have their factory at Patelganga, District Raigad, Maharashtra holding a Central Excise Licence L-4 dated 6-7-1982 for the manufacture of polyester filament yarn falling under Tariff Item No. 18 of the Central Excise Tariff. The Asstt. Collector, Central Excise, Kalyan Division, by his order dated 6-12-1982, permitted The Reliance to send polyester filament yarn falling under Tariff Item 18-11 for further

orientation and texturising to their another unit at Naroda, Ahmedabad. This permission was, however, withdrawn by the Asstt. Collector, Kalyan by his letter dated 16-3-1983. The Reliance made a fresh application dated 21-7-1983 for permission to operate under Rule 56-B. This application was rejected by the Asstt.

Collector by his letter dated 19-9-1983. Aggrieved by the order of the Asstt. Collector, The Reliance went in appeal before the Collector of Central Excise (Appeals), Bombay. The Collector (Appeals) by his order dated 24-12-1983 allowed the appeal by holding that The Reliance are entitled for the benefit of Rule 56-B of the Central Excise Rules, 1944 (for short "The Rules").

4. The Collector of Central Excise, however, preferred an appeal against the order of the Collector (Appeals) before the Appellate Tribunal and the Tribunal by its order dated 22-9-1984 set aside the order of the Collector of Central Excise (Appeals) as well as the order of the Assistant Collector but directed the Asstt. Collector to consider the matter de novo in the light of the observations contained in the order.

5. Subsequent to the remand, the Asstt. Collector, Central Excise, Kalyan issued a show cause notice dated 23-11-1984 requiring The Reliance to show cause why permission under Rule 56-B should not be rejected and permission, if any, already granted, should not be withdrawn. After the receipt of the reply from The Reliance, the Asstt.

Collector held the enquiry and by his order dated 8-1-1985 rejected the application for permission filed by The Reliance under Rule 56-B of the Rules.

6. Feeling aggrieved by the order of the Asstt. Collector, The Reliance filed an appeal before the Collector of Central Excise, (Appeals). The Collector Central Excise (Appeals) by his order dated 2-5-1985, allowed the appeal by setting aside the order of the Asstt. Collector and granted consequential relief.

7. Being aggrieved by the order of the Collector (Appeals), the Collector of Central Excise, Thane has presented this appeal. During the hearing of this appeal, the learned Departmental representative Shri. Senthivel raised various contentions:

The contentions of Shri Senthivel may be summarised as under:- (1) The power conferred on the Collector under Rule 56-B is a discretionary power. No assessee can claim the benefit of Rule 56-B as of right. Shri Senthivel laid stress on the word 'may' appearing in that Rule.

(2) The Central Excise Law all along classified the yarn into two categories, namely, textured and other than textured. For the purpose of Central Excise duty, these two categories of yarn are treated differently and they are considered as two different excisable commodities. In this connection, Shri Senthivel referred to the provisions of Central Excise Tariff Act, the Schedule to the Central Excise Act and so also to the Harmonised Tariff brought into force during 1986-87.

(3) The partially oriented yarn (POY) is a finished goods and therefore the question of Collector giving permission for its removal for the purpose of carrying out manufacturing process would not arise. To substantiate his contentions that POY is itself a finished product, Shri Senthivel referred to the application dated 29-6-1982 made by The Reliance for the issue of L-4 licence. Shri Senthivel submitted that the licence was sought for the manufacture of two commodities, namely partially oriented filament yarn and fully oriented filament yarn. If POY is not a finished goods, Shri Senthivel urged, The Reliance would not make an application for L-4 licence to manufacture POY. Shri Senthivel then referred to the Literature produced by The Reliance. He drew our attention to page 201 of the paper book filed by the Respondent. He referred to the Spinning process of POY. It is stated "POY spinning was initially investigated in the early 1950s, but did not become a commercial reality until the early 1970s. Widespread commercialisation was retarded primarily because high-speed production winders were not available and also because simultaneous draw-texturing in 1970 provided the major impetus which led to the recognition of the desirability of POY properties.

Over the 1500 meters/minute speed range typical of commercial POY spinning processes, the air drag and inertial contribution to the threadline tension become very significant and as a result the threadline tension increases rather dramatically with distance from the spinneret. With the increased threadline tension, the filaments undergo very rapid attenuation and the polyester polymer responds in a

viscoelastic manner. The elastic deformation of the polymer chains leads to significant amorphous molecular orientation which is frozen into the solidified yarn. Therefore, in this speed range, both the melt rheology and the heat transfer are important in determining the threadline attenuation rate and the level of orientation developed.... As indicated in Table I a major end use of POY is as a feeder yarn to the draw-texturing process." (4) POY is a different and distinct commodity and the Respondent (The Reliance) have admitted this fact in their application for permission to work under Rule 56-B. Shri Senthivel drew our attention to paragraph 6(II)(H) of the application. Paragraph H reads : Whether the tariff classification of semi-finished goods is likely to change after processing and the answer to this question was "Yes". It will be man made filament yarn non-cellulosic textured falling under Tariff Item No. 18 II(i)(b).

(5) POY is a finished product and it is marketed as finished product. The Reliance themselves have admitted that 52% of the manufactured quantity are sold. Shri Senthivel urged that if the POY is not the finished product it could not have been sold in the market.

After referring to the order of the Asstt. Collector, Shri Senthivel submitted that neither party produced any evidence as to the nature and character of POY before the Asstt. Collector. The order of the Asstt. Collector was based on his own reasoning as well as on the tariff entry. Shri Senthivel urged that finished and unfinished are relative terms and any product can be improved upon. He also urged that before the Asstt. Collector it was admitted by their authorised representative that POY can be used in manufacture of fabrics. Shri Senthivel urged if POY can be used in the manufacture of fabric then there is no scope to contend that it is not a finished product. Shri Senthivel further submitted that POY has other uses. It could be used as a lining material in carpet.

(6) The decision of the Collector (Appeals) is erroneous and all his reasonings are also erroneous. The decision relied upon by the Collector (Appeals) has no relevance to the issue involved. The Collector (Appeals) took into consideration the end use which is an irrelevant factor. The finding of the Collector (Appeals) that marketability is not a criterion to be taken into account, is again erroneous.

Shri Senthivel urged the usage cannot be a relevant criterion for determination whether a product is a finished product or not. He further contended that even a texturised yarn, which is admittedly a finished product, would become a semi-finished item for the manufacture of a fabric. On that ground it cannot be contended that texturised yarn is a semi-finished excisable goods requiring further manufacturing process.

(7) Excise duty is payable on POY. If it is not a finished goods no excisable duty can be levied or collected. In support of his contention that excise duty is leviable only on finished goods, Shri Senthivel relied on the decision reported in 1985 (21) ELT page 3.

In support of his contention, marketability is one of the criterion to determine as to whether the goods are a finished or not, Shri Senthivel relied on the decision reported in 1985 (22) ELT page 809.

He also relied on the decision of the Gujarat High Court reported in 1983 ELT page 326 in support of his contention that yarn is a finished product before sizing. Shri Senthivel also referred to the decision of the Bombay High Court reported in 1980 ELT page 704.

(8) From the scheme of the Central Excise Act and Rules, neither the Collector nor any other subordinate authority was conferred the power to take away the revenue. The granting of permission to remove a dutiable goods for the manufacture of another dutiable goods would result in loss of revenue and therefore the Collector has no such power. Shri Senthivel also urged the manufacturing process listed in Rule 56-B are those processes by which the semi-finished product gets converted -into a finished product. Shri Senthivel submitted that the order passed by the Asstt. Collector was proper and legal and the order passed by the Collector (Appeals) is not proper and legal and therefore the said order may be set aside.

(9) Shri Nariman, appearing for The Reliance also submitted that the power conferred on the Collector under rule 56-B is a discretionary power. The Collector is not required to exercise that power uniformly. While exercising the power, the

Collector has to take into consideration the interest of the revenue, the capacity of the manufacturer as well as the control the manufacturer has over the other unit to which the semi-finished goods are removed for effecting further manufacturing processes. Shri Nariman urged that the applicability of the Rule 56-B should be distinguished from the discretion vested with the Collector. Shri Nariman contended that the Collector has the power to impose any condition while granting permission. Shri Nariman vehemently urged that the application of The Reliance was rejected solely on the ground that POY is a semi-finished product and therefore Rule 56-B is inapplicable. The view taken by the Asstt. Collector, Shri Nariman urged, was erroneous. Shri Nariman drew our attention to Rule 56-B. He urged the Collector is required to make a special order and not general order. The special order has significance. It empowers the Collector to distinguish one manufacturer from another, the Collector is not required to grant permission to each and every manufacturer of POY. He has to exercise his discretion. If the Collector in exercise of his discretion grants permission to a manufacturer and refuses permission to another manufacturer, the manufacturer to whom the permission was refused, cannot contend that he was discriminated.

The other contentions urged by Shri Nariman may be formulated as under:- (a) The expression used in Rule 56-B is 'no semi-finished goods'.

Semifinished goods may be marketable but for the purpose of Rule 56-B, it is not the marketability alone that is to be taken into consideration. The relevant factor to be taken into consideration is to whom the product is semi-finished or unfinished. If a manufacturer seeks permission for removal of the semifinished goods for further manufacturing process, the Collector is required to consider whether goods sought to be removed is semi-finished or unfinished in so far as the manufacturer is concerned.

(b) The Asstt. Collector has confused the issue. He has mixed up the excisability with the finished product, (c) The Rule nowhere contemplates that the semi-finished goods and the goods that may be manufactured out of the semi-finished product should fall either under the same tariff item or under the sub-item of the same tariff item, (d) The expression used in the Rule is "in the nature of semi-

finished goods". The words "in the nature of" has a wider connotation. In the context it means more than the semi-finished.

The Rule has to be read with reference to the manufacturing process carried out by the manufacturer. The expression "semi-finished" has relation to subsequent manufacturing process. If the goods are capable of further processing, the Collector cannot refuse to grant permission if he is otherwise satisfied as to the capacity and control of the other unit to which the goods are to be removed for further processing and also if the Collector is satisfied that there would be no loss of revenue.

Rule 56-B confers a facility to a manufacturer and such a facility should not be denied by putting a restrictive meaning on the expression "semi-finished goods".

"POY" is certainly in the nature of a semi-finished goods. It cannot be used without further processing for weaving or knitting. Shri Nariman drew our attention to the application form prescribed by the Department to avail of the facility under Rule 56-B. Shri Nariman submitted that in the application, it was clearly stated that "POY" was to be sent to the manufacturers' Ahmedabad Unit for further orientation and texturisation. It was also stated that the product emerging out of processing would be 'texturised polyester filament yarn'. The informations required to be furnished by the manufacturer clearly indicate that 'POY' is a semi-finished product or in the nature of semi-finished product.

(e) The Collector while considering the application under Rule 56-B is required to ascertain whether the applicant was carrying on manufacturing processes. What is relevant is not that POY is semi-finished. The relevant question is whether it is semi-finished for carrying out further processes. The Collector is also required to bear in mind that Rule 56-B provides a facility for captive consumption. If the article is capable of a further processing, the permission should normally be granted. Shri Nariman referred to the manufacturing activities of the respondent stated by the appellant in the appeal memorandum. While narrating the brief facts of the case, the appellant, Collector, has stated: "M/s. Reliance Polyester, a division of Reliance Textile Industries, Bombay, situated at 4 B M.I.D.C. Area, Pathalganga, Dist. Raigad, Maharashtra, (hereinafter referred to as 'Assessee')

are the manufacturers of partially oriented polyester filament yarn (hereinafter referred to as "POY") classifiable under tariff item No. 18 II(i)(a) of the Central Excise Tariff. The assessees have another unit situated at Naroda Industrial Estate, Ahmedabad, where they have necessary facilities and equipment available for carrying out the further processing such as texturisation of the POY etc. The product, after undergoing the process of texturisation, is known as textured yarn classifiable under Tariff Item No. 18 II(i)(b) of the Central Excise Tariff". Shri Nariman stated that the Department also understood the POY as a semi-finished product requiring further processing.

(f) Shri Nariman then referred to the explanation to Tariff Item 18(a)(ii). The further processing required is to texturise the POY. As per the explanation, Shri Nariman urged textured yarn means 'yarn that has been processed to introduce crimps, coils, loops or curls along the length or film and shall include bulk yarn and stretch yarn. Shri Nariman contended that unless and until POY is subject to further processing and texturised it would not be a finished product and POY cannot be used for manufacture of fabrics. It can neither be woven nor knitted. In support -of his contention that POY is a semi-finished product, Shri Nariman relied on the two affidavits filed before the Collector (Appeals) of the two persons in the trade who have sworn to the fact that POY yarn is not the finished goods which could directly be used either on the weaving machine or on the knitting machine for producing wearable polyester filament yarn fabrics and if so done, the fabric would be unstable. Therefore, partially oriented yarn is required to be further drawn and texturised in a draw texturising machine before taking them as finished goods for either weaving and/or knitting wearable fabrics.

Shri Nariman contended that the Department had not adduced any evidence that POY is a semi-finished goods. He drew our attention to the contentions taken in the appeal memorandum regarding the opinion given by the Deputy Chief Chemist. Shri Nariman urged that if the Department intend to rely on the report of the Chief Chemist copy of the same should have been given to the Respondent. There was an order to this effect by this Bench on 11-3-1986 and no copy had been furnished to the Respondent and therefore, the Department cannot rely upon that report. If such a report had been furnished the Respondent could have led

further evidence to establish that POY is a semifinished goods. The affidavits filed on behalf of the Respondent remained uncontroverted. Therefore, they should be relied upon.

(g) Shri Nariman further contended that in the year 1984, the Addl.

Collector, thane sought clarification from the Textile Commissioner regarding the nature of POY and obtained clarification but then copy of the opinion of the Textile Commissioner was not produced.

Therefore, the adverse inference has to be drawn against the Department. Shri Nariman urged that the Textile Commissioner is an expert and is an independent authority. Regarding his qualification, Shri Nariman placed reliance on the Recruitment Rules. Shri Nariman further submitted that the Textile Commissioner is a Chief Adviser to the Ministry of Textiles. In support of his contention, Shri Nariman relied upon the Annual Report of the year 1985-86 from the Ministry of Textiles, Govt. of India wherein it is stated : "The Office of the Textile Commissioner is a subordinate office, functioning under the administrative control of the Ministry of Textiles, with its headquarters at Bombay. This office is headed by the Textile Commissioner assisted by an AdditionalTextile Commissioner, an Industrial Adviser, two Joint Textile Commissioners and one Adviser (Cotton). The Textile Commissioner acts as the principal Technical Adviser to the Ministry on all matters relating to textile industry including the textile machinery industry...." Shri Nariman urged that an import piece of evidence, which is favourable to a respondent, has been suppressed by the Department and therefore submitted that the application made by the Respondent, to summon the opinion furnished by the Textile Commissioner, should be allowed and the opinion should be looked into.

(h) Shri Nariman then referred to the definition of POY given in BISFA Terminology relating to man-made fibres. The definition "Partially oriented filament yarn" is given as under : "Filament yarn which is incompletely drawn. In the case of polyester yarn, this is defined to be a yarn which has a breaking elongation (measured by BISFA methods) in excess of 35% and which, when subjected to an elongation of 25% in its initial length, undergoes an irreversible length change of at least 20%." (i) Shri Nariman then contended that the Respondent's application

under Rule 56-B was allowed till it was withdrawn by the Assistant Collector by his order dated 11-3-83. Subsequent to the granting of permission there has been no change in the manufacturing technology or any other change requiring withdrawal. He briefly referred to the further proceedings and then drew our attention to the earlier order passed by this Bench. He referred to the following observations : "The Asstt. Collector of Central Excise, after due consideration, granted permission to the Respondent to avail of the procedure under Rule 56-B to remove the POY manufactured in their unit at Patalga ganga to their unit at Naroda, Ahmedabad for further orientation and texturisation, since the respondents did not have the requisite machinery and equipment in their unit at Patalganga. That the application for availing the facility under Rule 56-B had been made in accordance with the Trade Notice No. 168 dated 7-10-76 and the respondents complied with all the prescribed conditions and executed a bond for removal of these goods from one unit to the other. It appears that similar permission was also granted at that time to some other manufacturers on similar conditions." Besides, the Asstt. Collector, while arriving at this decision, did not consider the peculiar or special circumstances in this case viz., that the respondents had set up their units at two places which though physically separated, were in fact integrated under the same management and the POY produced in one unit was meant to be captively processed in the other unit for the purpose of manufacturing the final prdouct, viz. Textured yarn.

Relying on the above observations, Shri Nariman urged that POY is¹ a semi-finished product in so far as the respondent is concerned, and it is meant for captive consumption in the respondent's another unit and therefore the Asstt. Collector was wholly unjustified in rejecting the respondent's application.

(j) Shri Nariman submitted that the decision of the South Regional Bench reported in 1985 (22) ELT 809 is distinguishable from facts.

He urged that the goods, which is the subject matter of that appeal, fell in the same sub-item and therefore the said decision has no application. Shri Nariman also urged that the judgment of Justice Pendse in 1980 ELT 704 (BOM) also has no application to the facts of the present case. He contended the expression "in

the nature of semi-finished" appearing in Rule 56-B is used in the context of further processing. Justice Pendse was considering the case whether an item was a finished product or not and not in relation to Rule 56-B. (k) Shri Nariman relied on the following decisions in support of his contention that the expression "in the nature of" has a wider connotation : (1) Shri Nariman urged the excisability or the marketability are not the determinative factors to find out whether the goods are semi-finished for the purpose of granting permission under Rule 56-B. In the trade POY is known as "semi-finished".

(m) The use of POY in other industries is not relevant. What is relevant, according to Shri Nariman, is whether POY is semi-finished in so far as the textile industry is concerned.

(n) There was no loss of revenue to the Government. At best, Shri Nariman urged there is only postponement of payment of revenue. But then, Rule 56-B gives a facility to a manufacturer and the same should not be denied light-heartedly.

(o) Finally, Shri Nariman urged the Collector (Appeals) had passed considered order. Unless his order is wrong or perverse, the same cannot be inter-ferred with. He urged the order of the Collector (Appeals) cannot be interfered with merely because another view is possible.

9. In reply, Shri Senthivel submitted that the Assistant Collector had not placed any reliance on the Dy. Chief Chemist's report. Therefore, it would not be necessary to produce that report. The appellants also would not rely on that report. Shri Senthival further contended that the Textile Commissioner is not competent to give opinion as to the interpretation of Rule 56-B. Therefore, his opinion regarding the use of POY, is not very material and not relevant to the issue involved.

Shri Senthivel further submitted that there is a difference between excisability and durability. Duty is levied as per the provisions of Section 3. The power to exempt payment of duty is conferred on the Government and on no other authority subordinate to the Government.

POY, being a marketable commodity and sold in the market, cannot be removed without payment of duty and the Collector cannot grant permission under Rule 56-B for removal of POY for manufacture of a different commodity. Shri Senthivel referred to Rules 49 and 49 A of the Rules. He also placed reliance on the decision reported in 1983 Excise Tribunal Reporter, Vol. II page 262 Garware Nylon Ltd., Pune v. Collector of Central Excise, Pune.

10. Shri Nariman submitted that Rule 56-B is an exception to Rule 49 and there is no conflict between the two provisions.

11. We have carefully considered the submissions made on both the sides. The points that fall for determination in this appeal are : (1) Whether the Collector of Central Excise (Appeals) committed an error in holding that The Reliance are entitled to avail of the facility under Rule 56-B in respect of POY, (2) Whether POY is a 'semi-finished' or in the nature of semi-finished goods, and Points No. 1, 2, 3 : The permission sought by The Reliance was to remove POY from their factory at Patalganga to the factory at Naroda for further orientation and texturisation. The Asstt. Collector by his order dated 8-1-85 rejected the application of The Reliance made under Rule 56-B. The Asstt. Collector held that POY is excisable goods and it is finished goods. The Asstt. Collector observed that POY have been regularly sold to various parties at various places in the country.

Further, that no evidence was produced to show that POY was a 'semi-finished goods'. The Asstt. Collector further observed, "to conclude, the finished goods are those goods which are ordinarily sold and purchased in the market in the usual course of trade. My finding is that POY is so sold and purchased. Consequently, it does not fall within the meaning of "semi-finished" goods. As the permission for clearance of excisable goods for further manufacturing activity under Rule 56-B of Central Excise Rules, 1944 can be granted only in respect of goods which are in the nature of semi-finished goods, I have no option but to order the rejection of the party's application for permission under the said Rule 56-B". The Collector (Appeals) in his order observed : "Since the lower authority as well as the appellants have accepted that POY is an excisable goods, I do not propose to discuss on this issue. Only issue left is to decide whether POY is in the form of

"semi-finished" stage or in fully 'finished' condition".

The learned Collector (Appeals), after referring to the contentions 'urged on behalf of the Reliance, and bearing in mind that the Central Excise Act and Rules do not define the expression "semi-finished", and taking into consideration the decision of the Special Bench 'B' of the Appellate Tribunal in the case of *Amber Bearing Manufacturing Co. v. Collector of Central Excise, Nagpur - 1984 (16) ELT, page 278* and after referring to the article appearing in the international magazine under the title "Polyester fibres : High Speed melt spinning" by Dr. G.W.Davis, Dr. A.E. Everge, and Dr. J.R. Talbot, made a distinction between fully oriented polyester filament yarn and partially oriented polyester filament yarn and then held that POY is semi-finished goods, till it reaches the category of raw material after drawing and texturisation.

The Collector (Appeals) further observed : "It would, therefore, be observed that the process of further drawing and texturisation is a must before it is put to end use. I have also gone through two affidavits filed by a trader and trader-cum-dealer-cum-the Actual user of POY which also explain that unlike "fully oriented polyester filament yarn", POY is to necessarily undergo further process of drawing and texturising before being put to use for manufacturing woven or knitted fabrics. It is, therefore, evident that while fully oriented polyester filament yarn is a direct raw material for weaving and knitting fabrics, the POY is only a semi-finished goods and becomes a raw material only after further drawing and texturisation." The Collector (Appeals) also held that the marketability is not a criterion to determine whether the goods are 'finished' or 'semifinished'. He also rejected the contention since goods are excisable it should be treated as manufactured or finished. After referring to Rule 56-B, the Collector (Appeals) observed : "So, the above quoted words of rule 56-B dispel any doubt that excisable goods may also be in semi-finished condition. The tariff itself makes it clear that man-made filament yarn are divided into cellulosic, metallised and non-cellulosic and the latter is sub-divided into (a) "other than textured" and (b) "textured". Textured yarn has been explained in the Tariff itself which means yarn that has been processed to introduce crimps, coils, loops and curls along with the length of the filaments and shall include bulked yarn and stretch yarn".

12. Shri S. Senthival, appearing for the Collector vehemently contended that the finding of the Collector (Appeals) that marketability is not a criterion to determine whether the goods are finished or semi-finished, the Collector (Appeals)'s further finding that POY is only a semi-finished goods and it becomes a raw material only after further drawing and texturisation and as well as the finding of the Collector (Appeals) that The Reliance are entitled to avail of facility of Rule 56-B are wholly erroneous and the order passed by the Collector is wrong and not sustainable in Law.

13. Shri Senthivel urged that the Central Excise Act classifies yarn into two categories, namely, (1) textured yarn and (2) other than textured. He contended that the Central Excise Law treats these two goods distinctly and differently though basically they are yarns. In support of his contention, Shri Senthivel referred to item 18 of the First Schedule to the Act as well as relevant tariff entries in the GET.¹⁴ It was also contended by Shri Senthivel that POY is a finished product. It is obtained by manufacture. He referred to the application for licence filed by The Reliance for the manufacture of POY. Shri Senthivel urged that if POY is not a finished product there is no necessity for the Reliance to apply for licence or to obtain licence for the manufacture of POY. It was also contended by Shri Senthivel that in their application for permission to avail of the facility under Rule 56-B The Reliance did state that as a result of manufacturing process applied to POY, the product emerging would be texturised polyester filament yarn which is a new and distinct excisable commodity. Shri Senthivel submitted the manufacturing process contemplated under Rule 56-B are those processes which would complete the semifinished or goods in the nature of semi-finished into a complete product. Therefore, if the manufacturing process to be applied to the POY with a view to convert it into a new excisable commodity, then there is no scope to attract the provisions of Rule 56-B. Shri Senthivel then contended that just because POY cannot be woven or knitted or that it cannot be used in the manufacture of fabric without converting into texturised yarn, the POY does not cease to be finished product or becomes a product semi-finished or in the nature of semi-finished. The end-use, according to Shri Senthivel, is an irrelevant factor in determining the question whether the POY is in the nature of semi-finished goods. It was also urged by Shri Senthivel that 52% of the POY manufactured by The Reliance are

sold in the open market. The Reliance have removed the POY after paying excise duty. If POY is either semi-finished or in the nature of semi-finished goods, the payment of excise duty would not arise.

15. Shri Nariman, on the other hand, contended that Rule 56-B confers the facility on a manufacturer. It provides special procedure for removal of the excisable goods. The removal has to be in Bond. The Collector is required to make a special order. Having regard to the object of Rule 56-B, Shri Nariman contended whether a product is a semi-finished product or in the nature of semi-finished product has to be judged from the point of view of the manufacturer who seeks permission for removal of the semifinished goods for further manufacturing process. The marketability or excisability, according to Shri Nariman are not the criteria to determine whether a product is semi-finished product. He contended that POY cannot be used without further processing either for weaving or knitting. The sales effected by The Reliance were made to those who had the facility for further drawing and texturising, the POY. The relevant question, according to Shri Nariman, is whether POY is semi-finished for carrying out further processes. Since POY cannot be used as it is for weaving or knitting it requires further processing, namely, texturising. Admittedly, The Reliance have two units. One at Patalganga and another at Naroda. There is no facility in the Patalganga Unit for texturising and therefore POY is required to be removed to Naroda. POY, according to Shri Nariman, would remain a semi-finished product until it is drawn and texturised.

Therefore, the Collector of Customs (Appeals) was right in holding that The Reliance are entitled to avail of the facility provided under Rule 56-B. Shri Nariman had drawn our attention to the two affidavits filed before the Collector (Appeals) which were identically worded. Shri Mahesh Keswani one of the Directors of Maharaja Fabrics and Filaments Private Ltd. had sworn to an affidavit that his Company is supplying POY in the market as also drawing and texturising the said POY to supply the same as a finished goods to the weavers and knitters for manufacturing fabrics. It was stated in his affidavit "Partially oriented polyester filament yarn is not the finished goods which would directly be used either on the weaving machines or on the knitting machines for producing wearable polyester filament yarn fabrics and if so done, the fabrics would be unstable. It was also

stated in the affidavit that partially oriented filament yarn is a semifinished product and is necessarily required to undergo the process of further drawing and texturising before put to use, namely, wearable fabrics.

The affidavit filed by Abdul Rehman Hussain Malkani, a partner of the firm of M/s. S.A. Textiles is identical to the affidavit filed by Mahesh Keswani.

16. It was also the contention of Shri Nariman that valuable evidence in the form of opinion furnished by competent authority and an expert, namely the Textile Commissioner was withheld by the Department and the Department had not adduced any evidence to establish that POY is not a semifinished or in the nature of semi-finished goods.

17. In order to consider the correctness of the order passed by the Collector (Appeals), and to determine as to whether the POY is either a semi-finished or in the nature of semi-finished goods, it would be necessary to refer to certain of the provisions of the Act, the Rules and Tariff entries. Rule 56-B reads : "The Collector may, by special order and subject to the execution of a bond by the manufacturer and subject to such conditions as may be specified by the Collector, permit a manufacturer to remove : (i) excisable goods which are in the nature of semi-finished goods for carrying out certain manufacturing process, or (ii) excisable goods for carrying out tests to some other premises of his or to the premises of another person and to bring back such goods to his factory, without payment of duty, or to some other licensed premises of his or to the premises of another assessee and allow these goods (emphasis supplied by us) to be removed on payment of duty or without payment of duty for export from such other licensed premises of his or from the premises of such assessee to whom the goods have been sent.

Provided that this rule shall not apply to the goods known as "prototypes" which are sent out for trial or development test. The expressions "excisable goods" and "manufacture" are defined in clauses (d) & (f) respectively of Section 2 of the Act.

(d) "excisable goods" means goods specified in the First Schedule as being subject to a duty of excise and includes salt; (f) "manufacture" includes any

process incidental or ancillary to the completion of a manufactured product.

18. Section 3 of the Act provides for levy and collection of duties of excise on all excisable goods other than salt which are produced or manufactured in (India). The rates at which the duties of excise are to be levied is set forth in the First Schedule. Rule 8 of the Rules authorises the Central Government to exempt any excisable goods from the payment of whole or any part of the excise duty. Rule 9 requires a manufacturer to pay the excise duty on the excisable goods before its removal from the factory or the place of storage. Rule 49 precludes the excise authorities from demanding excise duty until the excisable goods are about to be issued from the place of storage. Item 18 II in the First Schedule to the Act reads : Explanation : "Textured yarn" means yarn that has been processed to introduce crimps, coils, loops or curls along the length of the filaments and shall include bulked yarn and stretch yarn; Item No. 18 II C.E.T, reads :Item No. Tariff description Rate of duty Other than textured Rupees one hundred per kg.

19. Section 56-B authorises the Collector to grant permission to a manufacturer for removal in Bond of finished and semi-finished excisable goods. While granting permission, the Collector is also authorised to impose conditions. The Collector can authorise removal of excisable goods (finished goods) in Bond for the purposes of carrying out tests only and not for any other purpose. In respect of excisable goods which are in the nature of semi-finished goods, the Collector may permit a manufacturer to remove such goods for carrying out certain manufacturing processes. The Rule makes it clear that the goods which are permitted to be removed by a manufacturer from a premise of his to another premise of his, is required to be brought back to his factory unless he is allowed to remove the said goods on payment of duty or without payment of duty for export from his other premises. Thus it is seen the finished excisable goods which are permitted to be removed for carrying out tests as well as excisable goods which are permitted to be removed for carrying out certain manufacturing process are required to be brought back after the tests are carried or the manufacturing processes are completed. The manufacturing process contemplated in Rule 56-B, in our opinion, are those processes by which excisable goods which are in the nature of semi-finished goods get convert itself into a finished product. In other

words, the manufacturing processes contemplated in the Rule are those processes required for the completion of the product. Since the Collector cannot permit removal of finished product for purposes other than carrying out tests, he cannot permit removal of excisable goods which are in the nature of semi-finished goods to convert it into a new excisable product.

If a manufacturer applies for permission to convert the semi-finished goods or the goods in the nature of semi-finished goods into another excisable commodity, the Collector has not been authorised under this Rule to permit removal. At the cost of repetition we emphasise that the manufacturing processes contemplated in Rule 56-B are only those processes required for the completion of the product. Excisable goods may be produced or manufactured by a single manufacturing process or by multiple processes. Until all the manufacturing processes are carried out the goods will be considered either unfinished or semi-finished or in the nature of semi-finished goods. A goods may not be an excisable goods unless and until it is a completely manufactured product excisable for levy of excise duty. Excise duty is leviable on finished goods and no excisable duty can be levied if the goods are semi-finished or in the nature of semi-finished.

Section 3 of the Act which lays down the legislative policy provides for levy and collection of excise duty on all excisable goods, other than salt, which are produced or, manufactured in India. The list of excisable goods is given in the First Schedule to the Act. As seen earlier, Item 18 II of the Schedule relates to man-made filament yarn.

The Man-made filament yarn is divided into two categories namely, 'Textured' and 'other than textured'.

POY is admittedly a Man-made Filament Yarn. It is non-textured. For the manufacture of POY The Reliance had applied for licence and also obtained L-4 licence. Under Rule 174 of the Rules, every manufacturer of an excisable goods is required to take out a licence. The application for a licence shall have to be in the prescribed form for the manufacture of POY. If POY is a semi-finished or in the nature of semi-finished excisable goods, there was no obligation to apply for licence or to obtain licence for manufacture of POY. At the time of applying for the

licence for the manufacture of POY, The Reliance have furnished process description of partially-oriented polyester filament yarn.

For manufacturing partially oriented polyester filament yarn, raw materials used are (1) Terephthalic Acid (TPA) and (2) Mono Ethylene Glycol. The solid TPA powder is conveyed pneumatically in feed hopper, which is then metered with a variable speed screw type feeder and blended with a metered stream of Mono Ethylene Glycol. The resulting Slurry of TPA and MEG is then pumped into a slurry feed tank.

This slurry is then injected into a reactor through injection nozzles with metered flow. In the reactor reaction between MEG and TPA takes place to form Polyester Monomer (Oligomer) with the elimination of water. The monomer is then polymerized with Antimony Trioxide in a series of vessels such as Flasher, Pre-polymerizer and Finisher.

The finished polymer is pumped from the Finisher to the Spinning Machine through Screw Pump which is cooled with liquid dowtherm. The polymer is forced under high pressure through the pack filter media and extruded through the spinnerete capillaries. The Spinning Pack with its spinnerete is periodically changed during machine operation as the filter media becomes clogged or if malfunction of the spinnerete occurs.

The hot filament extruded from the spinnerete are quenched in a cross-flow quenching assembly. The thread lines are pulled from the spinnerete through the quench zone, over the finish, roll, through the inter floor tube and through the threadline guided by feed rolls. The threadlines pass upward from the broken and sensors and are guided through interlacing jets, and the thread lines are pulled from the feed rolls through broken and sensors and interlace jets by the letdown rolls through a set of fanning guides by an 8-end windup. The windup consists of four chucks which hold two bobbins each. The bobbins are surface driven by two drive rolls mounted on each side of the windup. A suction or vacuum gun is provided for stringup of the windup. The empty bobbins are brought up to speed against the drive rolls and the yarn is then brought into contact with a tail snagging slot on the bobbin and commences winding.

When the bobbins become full of yarn the thread lines are cut into a 'off gun just above the windup. The full bobbins are removed. Now bobbins are placed on the chucks and the windup stringup without having to stringup the entire machine. Thus the partially oriented polyester filament yarn is produced.

20. From the process description given above, it would be clear that POY is a finished product and it is not either semi-finished or in the nature of semi-finished goods. Admittedly, it falls under Tariff Item 18 II (i) (a). As a matter of fact, The Reliance had cleared 52% of the POY manufactured by them after paying excise duty for selling. As has been observed earlier, the goods will not be exigible for excise duty unless it is a finished product, falling under one or other tariff items. It really the POY is a semi-finished or in the nature of a semi-finished goods one cannot expect The Reliance to pay excise duty for the quantity removed for sale. In our view, if any product is specifically described in the Schedule to the Act and GET it shall be presumed to be the finished product because an unfinished or semi-finished product would not be exigible to excise duty. As stated earlier, it is undisputed that POY is a man-made filament yarn. It falls under the category "other -than texturised" in Item 18 II of the Schedule. If excise duty is leviable on POY, it-cannot, be considered for the purpose of excise law as semi-finished or in the nature of semi-finished goods.

21. The Collector (Appeals) has stated two main reasons for his conclusion that POY is a semi-finished goods. Firstly on the ground that POY becomes raw material only after a further drawing and texturisation. Secondly that POY is to necessarily undergo further process of drawing and texturising before being put to use for manufacturing woven or knitted fabrics. Shri Senthivel appearing for the Collector had contended that both these reasons are not relevant and they have no bearing for determination of the nature and character of POY. He has also contended the Central excise law classifies yarn into two categories, namely textured yarn and other than textured. POY falls under the category other than textured. There appears considerable force in the contention urged by Shri Senthivel. In the case of Vegetable Oil Products Ltd. v. Union of India and Ors. H 1980 ELT page 704 (BOM) His Lordship Justice Pendse while repelling the contention that the vegetable tallow was not a finished excisable goods, observed

"It is necessary to find out the exact connotation of the word 'finished' ". In my judgment, a finished article comes into existence when it acquires distinguishable identity. By process of hydrogenation, an item of vegetable tallow comes into existence and it can be identified as vegetable tallow thereafter. Now once an item comes into existence with the definite identity, one can very easily say that the process of manufacture is complete. Mr. Dalai submits that the manufacture of vegetable tallow is finished or complete as soon as an identifiable item comes into existence and whether such goods are used as end product in itself or not is wholly irrelevant. There is force in the submission of Mr. Dalai. Merely because a manufactured goods is used subsequently for manufacturing another article, it cannot be concluded that the earlier manufactured goods are not finished one.

It may be that the vegetable tallow is used further for manufacture of soaps or, as stated by the Department, for glycerine, Monosteriate, Textile, Softner or Calcium Steriate, Sodium, but that would not make vegetable tallow as unfinished goods. This judgment is a complete answer to the reasons assigned by the Collector (Appeals) for coming to the conclusion that POY is a semi-finished goods. In *Arvind Mills Ltd., Ahmedabad v. Union of India and Ors.* 1983 ELT 326 (Gujarat) the Division Bench of the Gujarat High Court while holding that mills having spinning as well as weaving departments are not liable to duty on the weight of the sized yarn observed : "Sizing is a process as found from the materials which will hereafter be referred, which is applied to yarn when it is taken to the Weaving Department. Sizing is applied to yarn in order to strengthen the yarn so as to have proper strength at the time of weaving and it must be borne in mind that it is used only for the warp yarn for weaving of fabric, weft being unsized. If a manufacturer manufactures only yarn and then sells the yarn manufactured by it, the manufacturer is not required to size the yarn and yarn, a commercial commodity known to the trade, comes into existence without any sizing being required.... The manufacture of yarn is completed the moment it reaches the marketable stage, which stage is the spindle stage or cone stage. The Bench also approved the observation of the Collector which read : 'It is a common day knowledge that yarn in the form of cones, pirns, bobbins, etc. is marketed frequently.

It is in the case of composite mills that is to say mills which besides manufacturing yarn also undertake the manufacture of fabrics, that the yarn manufactured by them is subjected to the process of beaming and sizing, for using it as warp yarn. Even the extent and variety and type of sizing material is applied according to the type of fabrics to be obtained. In fact, sizing is the process of preparing yarn for manufacture of fabrics and not for the process of manufacturing of yarn itself".

22. The ratio of the above decision applies to the facts before us. POY is an identifiable item and marketed as such and known as such in the market. Drawing and texturising of POY is for manufacture of fabrics and not for the process of manufacture of POY itself. The use of POY at any subsequent stage would not make it a semi-finished goods. The contention of Shri Nariman that whether a product is finished or semi-finished should be judged from the point of view of the manufacturer appears to us as not a sound contention. The contention of Shri Nariman if pushed to its logical conclusion would imply that the texturised filament yarn produced by The Reliance, though a finished product, would be a semi-finished product for a manufacture of fabric. But then under Rule 56-B a finished product can be allowed to be removed only for the purpose of carrying out tests and to no other purpose. Therefore, the Collector cannot authorise removal of texturised yarn on the application of a manufacturer of a fabric because for the purpose of Central Excise Law, texturised yarn is a finished product and the permission that could be granted by the Collector would be for its removal for the purpose of carrying out tests and not for its use in the manufacture of a fabric.

23. The Collector (Appeals) in his order placed reliance on the Tribunal's decision reported in 1984 (16) ELT 278 (Tribunal) *Amber Bearing Mfg. Co. v. Collector of Central Excise, Nagpur*. The Collector (Appeals) has placed reliance on a half sentence contained in that judgment which was to the effect the end-product of one manufacture may well be a raw material or 'semi-finished goods' for another. If only the Collector (Appeals) had read the whole judgment he would not have committed the error of relying upon that judgment for his conclusion.

In that case, before the Tribunal, the learned Advocate who appeared for the manufacturing company contended that the outer races manufactured by the

manufacturer are not marketed and sold or bought but were used only by M/s. Metal Box (India) Ltd. Relying on the judgment of the Supreme Court in the case of Union of India v. Delhi Cloth and General Mills and Ors. 1979 ELT (J 199), it was urged by the learned Advocate "to become goods an article must be something which can ordinarily come to the market to be bought and sold. It was also urged that the article manufactured by the appellants therein were not excisable goods and therefore no duty was leviable on them. For the Department, it was contended that the races fell under item 68 and that races were Commercially a different articles than steel tubes and they had a definite identity for commercial purposes. While considering the contentions, the Bench observed : "the basic question is whether the articles known as 'outer races' were excisable goods Shri Habbu had advanced a number of arguments to show that they were not. One of these is that these were semi-finished goods which were to undergo several further processes in the factory of M/s. Metal Box (India) Ltd. We observe in this connection that what are the end-products of one manufacturer may well be raw material or semi-finished goods for another. This would apply to a large variety of chemicals, metals, materials like plastic or rubber and so on. Therefore, the fact that an article is semi-finished in the sense of requiring some further processing before being put to its final use does not mean that it cannot be goods. The fact that an article is semi-finished in the sense of requiring some further processing before being put to its final use does not mean that it cannot be goods.

The Bench further observed : "It is also relevant that in the correspondence between the appellant and M/s. Metal Box (India) Ltd. the articles have been described as races or pieces". They are nowhere described as semi-finished goods. Shri Habbu has contended that the appellant and M/s. Metal Box (India) Ltd. might have had a mistaken impression about the excisability of the articles, but the correspondence goes to show that these two parties who are dealing in the articles by way of trade and industry, neither referred to them nor apparently thought of them as semi-finished articles, but on the contrary applied the aforesaid "terms to them which indicate that they were articles of a kind known to the market.

24. The above judgment of the Tribunal in no way supports the view taken by the Collector (Appeals). The Bench was only considering whether the races manufactured by Amber Bearing Mfg. Co. fall under item 68. The Bench held that they would fall irrespective of the fact that there was a monopolistic sale in favour of M/s. Metal Box (India) Ltd. In *Union Carbide (India) Ltd. v. Asstt. Collector of Central Excise and Ors.* 1978 ELT (J. 180) Justice Sabyasachi Mukherji (as he then was) observed : "Excise is a tax on the production or manufacture of excisable goods. The tenable event is the manufacture or production of goods. It is not necessary to attract duty that the goods should be sold. If excisable goods are produced or manufactured that is sufficient to attract duty. Whether the goods are consumed, sold or not used thereafter is wholly irrelevant. His Lordship further observed : "Manufacture implies a change but every change in the raw material is not manufacture exigible to duty. Further more in order to be dutiable as one of the items mentioned in the First Schedule to the Act the transformation must result in making article as one as mentioned in the First Schedule. The specific question, is whether the operation carried on by the Petitioner as indicated before would bring into being the rough rolled zinc can be considered to be manufacture of sheets or strips in terms of item 26-B (ii) of the First Schedule. The fact that these are used by the petitioner for production of end-product and not sold by it is irrelevant". The ratio of this decision also applies to the facts of the present case. Just because POY cannot be woven or knitted into fabric without texturisation, the POY does not cease to be a finished excisable product. Its use in the end-product does not determine its character or converts it into a semi-finished product.

26. The South Regional Bench of the Tribunal in *Pondy Wire Fabricators v. Collector of Customs & Central Excise, Tiruchirappalli* K1985 (22) ELT 809 (Tribunal) held that Rule 56-B procedure is not applicable to the despatch of cold drawn rods in coils and in lengths, passed on for use in the creation of welded mesh. Before the South Regional Bench, it was contended that hot drawn wire rods of a diameter of 6 mm/8 mm are cold drawn into wires of diameter of 3.5 mm, 3 mm, 2.6 mm and 2.5 mm, they are cut into small lengths for 'line wires' and kept in the coil form for cross wires. Both are in exact length for making a welded fabric. After the welding is done in Pondy Welded Mesh, they are received back in the appellant's firm, the projected edges are trimmed and oil is sprayed. The article is

now ready for marketing. The procedure under Rule 56-B had been permitted from 26-4-81 onwards for six months in the initial stages and thereafter one year at a time on two occasions. The last extension was granted for six months from 25-4-84 upto 25-10-1984. The application dated 25-10-84 for continuation of the procedure had been rejected by the Collector. It was contended that the drawn wires are raw material in the manufacture of welded fabrics, It was further contended that the articles because of there being cut 10 correct length and in proper diameter are in the nature of semi-finished excisable goods and hence entitled to the procedure set out in Rule 5(i-B of the Central Excise Rules. While repelling the contention:-, the Bench observed "as rightly pointed out by the SDR. item 25(f) of Central Excise Tariff encompasses all wires which are referable to a cross-sectional dimension of 13 mm or less. So what is initially made in the factory of the appellant is a thinner wire from a thicker wire. Such wire is obviously a marketable product in its own right and cannot be considered as a semi-finished article for the purpose of making steel mesh. It is in the nature of a raw material. As a raw material it will not be entitled to the facilities under Rule 56-B of the Central Excise Rules, 1944. This decision is equally applicable to the facts of the present case. POY is a marketable product in its own right. It may be a raw material for texturisation. But being a finished product by itself the Collector cannot grant permission for its removal for the purpose of texturisation.

27. The Collector (Appeals) had observed "So far as the marketability is concerned,, it has been already discussed above that the marketability is not a criterion to determine whether the goods are finished or semi-finished. It is true that marketability may not determine the character and nature of the goods. Even a crude and semi-finished may be sold in the market. But then the crude and semi-finished would not be excisable goods because no excise duty could be levied on the crude or semi-finished goods. The excisable goods fit for marketing attracts excise duty. Therefore, it would not be unreasonable to take a view that for the purpose of Central Excise Law such goods are finished, goods.

28. It was not contended for The Reliance that for the completion of POY any further manufacturing process is required to be carried out.

The contention urged and the evidence adduced were that POY could not be directly used either on the weaving machine or on the knitting machine for producing wearable polyester filament yarn fabrics and therefore POY is required to be further drawn and texturised in a draw texturising machine before taking it up as finished goods for either weaving and or knitting whereby fabrics are manufactured. We have already pointed out the subsequent use of POY is not relevant for determining as to whether it is a finished or semi-finished goods. POY does not cease to be a finished excisable goods merely because it cannot be directly woven or knitted into a fabric. Similarly if POY is considered as a semi-finished it does not cease to be semi-finished if it could be knitted or woven into a fabric.

29. As has been observed earlier, the permission sought by The Reliance was for drawing and texturising the POY. By drawing and texturising, the POY gets converted into a new excisable goods. Under Rule 56-B a semifinished goods which is permitted to be removed for further manufacturing process shall have to be brought back after the completion of the manufacturing process. If by the application of the manufacturing process the POY gets converted into a new excisable goods, then that part of the rule cannot be complied with because on drawing and texturising POY as an excisable commodity, ceases to exist and a new and different excisable commodity, namely 'texturised filament yarn' emerges. As stated earlier, Rule 56-B does not empower the Collector to grant permission to convert a semi-finished excisable goods into a different excisable goods. He can only permit removal of a semi-finished excisable goods for carrying out further manufacturing processes so as to make it a finished or a completed product. It was not contended that the finished form of POY is texturised filament yarn. As stated earlier, the contention was that unless the POY is texturised it cannot be knitted or woven into a fabric.

30. It is not that Central Excise Law does not provide for removal of finished goods without payment of duty for manufacture of different excisable goods. Rule 49A empowers the Collector to permit a manufacturer to use the cellulosic spun yarn falling under item No. 18 III (i) or cotton yarn falling under item 18A(i) in the manufacture of cotton fabrics in its own factory. Rule 56-C provides for special

procedure for removal of finished goods falling under item No. 68 without payment of duty. Rule 96E as well as 96 EE provides procedure for removal of cotton yarn as well as removal of yarn other than cotton yarn or jute yarn from one factory to another without payment of duty.

But then Rule 56-B does not authorise removal of finished excisable goods for purposes other than testing.

31. It may be pointed out that according to the scheme of the Central Excise Rules, no excisable goods could be removed from the factory or from the approved places of storage without payment of duty. Removal of excisable goods for captive consumption is also not permitted without payment of excise duty. When that being the law, the Collector under Rule 56-B cannot permit removal of a finished excisable goods for the manufacture of a different excisable goods. The application of The Reliance was for removal of POY for the manufacture of texturised filament yarn. As has been held by us both POY as well as textured yarn are two different excisable articles and the removal of one excisable article for manufacture of another without payment of duty, would violate Rule 9 of the Rules. The contention of Shri Nariman that the removal will only result in postponement of duty cannot be accepted.

Even assuming that it results in postponement of duty even then the Collector has not been authorised under Rule 56-B to permit removal of a finished product for the manufacture of another finished product even if the manufacturer of both the products is by one and the same person.

32. We agree with the contention of Shri Nariman that semi-finished has relation to subsequent manufacturing process but then we are unable to agree with his submission that the further manufacturing process would include converting an excisable semi-finished goods into a different excisable goods. The Collector could permit removal for carrying out manufacturing process which would complete semi-finished into finished product.

33. We are not impressed with the arguments of Shri Nariman that irrespective of POY is semi-finished or not if it requires further manufacturing processes the

Collector cannot refuse to grant permission for removal if he is otherwise satisfied as to the capacity of the manufacturer as well as his control over the other unit and the safeguard of the revenue. However, wide construction may be placed on Rule 56-B it does not authorise the Collector to permit removal of excisable goods (finished) for carrying out any process other than testing.

34. Shri Nariman had placed reliance on the definition of POY found in Terminology relating to man-made fibres. POY is defined as a filament yarn which is incompletely drawn. But then the request of the Reliance is not for further drawing to make POY a completed yarn but to convert it into a texturised yarn and for that purpose POY cannot be allowed to be removed under Rule 56-B.35. The contention of Shri Nariman, that the decision of the South Regional Bench reported in 1985 (22) ELT page 809 is distinguishable from facts of the present case and that in the said case the raw materials as well as the manufactured product fell within the same sub-item, is not tenable. The South Regional Bench upheld the Collector's order because it came to the conclusion that the thinner wire made from a thicker wire cannot be considered as a semi-finished article for the purpose of making a finished article namely steel mesh.

Similarly, the distinction Shri Nariman sought to make of the judgment of the Justice Pendse is again not correct. His Lordship, no doubt, was considering the question as to the exact connotation of the word 'finished' but then while considering that question, His Lordship had held that merely because the manufactured goods is used subsequently for manufacturing another article, it cannot be concluded that the earlier manufactured goods are not finished one. His Lordship has further observed that the use of vegetable tallow for manufacture of soap or other articles would not make vegetable tallow as unfinished goods.

36. The contention of Shri Nariman that POY is known in the trade as semi-finished does not appear to be correct.

In the affidavits relied on by the Reliance, Shri Mahesh Keswani and Abdul Rehman Hassan Malkani have stated partially oriented filament yarn is not the finished goods which could directly be used either on the weaving machines or on the knitting machines for producing wearable polyester filament yarn fabrics and if

so done, the fabric would be unstable. Therefore, partially oriented yarn is required to be further drawn and texturised in a draw texturising machine before taking it up as a finished goods for either for weaving and or knitting wearable fabrics the end use for which polyester filament yarn are manufactured.

The reason given by Keshwani and Malkani for treating POY as semi-finished as it would not be suitable for weaving and knitting a wearable fabric. We have already held the subsequent use of POY would not make POY either finished or semi-finished.

We have held that POY is an identifiable item and marketed as such and known as such in the market. It is a goods which falls under item 18 II (a) (i) of the Central Excise Tariff. As a matter of fact, in Annexure L to the cross-objections of the Reliance, it was stated : "partially oriented yarn (POY) in respect of polyester is also classified as polyester filament yarn, like polyester filament yarn which is fully oriented.

37. The end use for both partially oriented yarn as well as fully oriented polyester yarn is for the manufacture of woven and knitted fabrics for apparels. A distinction between partially oriented and fully oriented polyester filament yarn is that, while in the case of fully oriented yarn the same can directly go in for manufacture of woven and knitted fabrics and it would only be an option to texturise the said yarn, in the case of partially oriented filament yarn. The same is necessarily to be further drawn and simultaneously texturised before it can go in for the manufacture of woven and or knitted fabrics. This way partially oriented yarn is semi-finished still it reaches the category of raw material after drawing and texturising." It is thus seen that according to the Reliance partially oriented yarn is semi-finished because it cannot be directly used in the manufacture of woven or knitted fabrics and not because it is not a polyester filament yarn.

The end use is not a criterion to determine whether POY is a finished or semi-finished goods. The texturisation is intended to make POY as a stable raw material so that it can be used for the manufacture of woven or knitted fabrics. In *Arvind Mills Ltd. v. Union of India and Ors.*

H1983 ELT 226 (Guj.), the Gujarat High Court held that the manufacturer of fabrics are not liable to pay duty on the weight of the sized yarn because the sizing applied to yarn in order to strengthen the yarn so as to have proper strength at the time of weaving and that process is for manufacturing fabrics and not for the processes of manufacturing yarn itself. Similarly, the processes to be Applied to POY is to make it stable for the manufacture of fabric.and not for the process of manufacturing in POY itself. Such manufacturing processes are not the processes contemplated by Rule 56-B.38. Shri Narinran further submitted that an important piece of evidence, namely, the opinion of the Textile Commissioner who is an expert and Adviser to the Union of India has been withheld and if a copy of that opinion had been produced it would have clearly shown that POY is a semi-finished product.

As a matter of fact, an application was also filed to direct the appellant to produce the clarification dated 4th October, 1984 sent by the Office of the Textile Commissioner to Addl. Collector, Thane. In support of that application, Shri Kirti V. Ambani had also filed an affidavit. This affidavit contains certain annexures. Annexure-A is a letter dated 7-4-86 addressed to the Director, Art Silk Branch, Office of the Textile Commissioner. In this letter, The Reliance has sought an opinion of the Textile Commissioner as to whether the POY can be directly used for the manufacture of wearable woven/or knitted fabrics.

Exhibit B is another letter to the same authority for the same purpose and it is dated 14-5-86. Exhibit-C is another letter dated 21-5-86 addressed to the same authority for the same purpose. Exhibit D is a letter dated 20-5-86 from the Office of the Textile Commissioner to Shri Kirti V. Ambani. With this letter, a copy of the letter dated 7/12-5-86 was sent. In the letter dated 7/12-5-86, the Asstt. Director had informed The Reliance that on a reference made by the Addl.

Collector of Central Excise, Thane Collectorate in July, 1984 necessary clarifications were given to him in October, 1984. In view of the above, no further clarification is necessary to be given. From the correspondence, it is seen that the clarification sought from the Textile Commissioner was as to whether POY can directly be used for manufacture of wearable woven or knitted fabrics. Even

assuming that the Director had opined that POY cannot be directly used for manufacture of woven or knitted fabrics that opinion in no way, helps the Respondent in this appeal. We have already pointed out that the nature and character of POY cannot be judged with reference to its use subsequent to its manufacture.

Shri Nariman had drawn our attention to the observation of this Bench, contained in the order dated 22-9-84 in ED (BOM) No. 36 of 84. We have already extracted the observations on which Shri Nariman placed reliance. The observations made therein have to be read in the light of the entire order. The Bench was mainly concerned with the contention regarding the denial of the principles of natural justice. The observations were made to caution the Asstt. Collector to consider the application by The Reliance after taking all aspects including the facilities they have. The Bench did not go into the question whether POY is a semi-finished product falling under Rule 56-B. Therefore, no sustenance can be drawn from the observations contained in the order.

39. The other contention of Shri Nariman was that the order of the Collector (Appeals) should not be interfered with only on the ground that two views are possible. We entirely agree with this contention. An appellate authority cannot set aside the order of a lower authority only on the ground that it is possible to take a view different from the view taken by the lower authority. In the instant case, we have, in detail, considered the order passed by the Collector of Central Excise (Appeals). We have held that his order is wrong and therefore we are interfering with his order. We are not interfering on the ground that a different view is possible but on the ground that the view taken by him is erroneous.

40. On consideration of all the aspects, we hold that the order of the Collector of Central Excise (Appeals) is erroneous. POY is not a semi-finished goods requiring further manufacturing processes. We further hold that Rule 56-B does not authorise the Collector to permit removal of POY for the purpose of drawing and texturising which process was for the purpose of manufacturing fabrics.

41. In the result, for the reasons stated in this order, we allow this appeal and set aside the order passed by the Collector Central Excise (Appeals) and confirm the

order passed by the Asstt. Collector.

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