

Collector of Central Excise Vs. Indian Rayon Corpn. Ltd.

Collector of Central Excise Vs. Indian Rayon Corpn. Ltd.

SooperKanoon Citation : sooperkanoon.com/2848

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1986

Reported in : (1986)(10)ECC154

Appellant : Collector of Central Excise

Respondent : Indian Rayon Corpn. Ltd.

Judgement :

1. The facts of the case, briefly stated, are that M/s. Indian Rayon Corporation (the respondents before us) were, during the material time, engaged in the manufacture of rayon yarn [Viscose (cellulosic) Filament Yarn]. They used to remove on payment of duty (in terms of Central Excise notification No. 53/72, dated 17-3-1972) godet waste arising in the manufacture of rayon yarn. On 14-1-1981, the respondents wrote to the Superintendent of Central Excise stating that the waste collected at the lower as well as the upper godets could not be considered as rayon waste since it did not have any stretch or twist, that the stretch or twist developed only inside the spinning pots and, hence, such waste would not fall under item 18 of the Central Excise Tariff Schedule (CET). In support of this contention, they relied on the Bombay High Court Judgment dated 30-6-1980 in Century Rayon v. Union of India and Ors. (Special Civil Application No. 2672 of 1976). The Assistant Collector, Central Excise, Junagadh, passed an order on 26-5-1981 rejecting these contentions and holding that godet waste fell under item 18, CET. He also rejected the respondent's request to be allowed to remove lower godet waste without payment of duty. In the Assistant Collector's

view, the High Court judgment had no application to the facts of the case. However, on appeal, the Appellate Collector of Central Excise, held that the ratio of the High Court decision clearly applied to the instant case and, consequently, allowed the appeal of the present respondents. It is this order that is now under appeal before us.

2. We have heard Shri K.C. Sachar, Departmental Representative for the appellant. None appeared for the respondents. However, they have furnished a copy of their appeal before the Collector (appeals) and stated that their case had been fully explained therein.

3. The Bombay High Court, by its judgment in the Century Rayon case (*supra*), had quashed the Assistant Collector's order classifying lower godet waste under item 18, CET for the reason that the same Assistant Collector had, earlier, on a full consideration of the assessee's contention and after studying the manufacturing process, had given a finding that lower godet waste was not classifiable under item 18 since it did not have any stretch so as to make it yarn waste but had reversed the finding solely because of a trade notice issued by the Collector and without having applied his own mind to the issue. It is clear from para 13 of the judgment that, having regard to the nature of the order passed by the Assistant Collector, the Court did not think it necessary to go into the details of the manufacturing process and decide whether as contended by the assessee, yarn filament was converted into yarn only at the manufacturing stage at the upper godet stage, or, as contended by the Revenue, even the filament which came to the lower godet must be considered as yarn. The Court came to quash the Assistant Collector's order for the reasons already noted. Therefore, in this judgment, the High Court cannot be said to have adjudicated on what, in its opinion, was the correct classification of the goods.

4. On the other hand, we have the recent judgment of the Bombay High Court delivered on 3-12-1985 in *R.K. Synthetics and Fibres (P) Ltd, and Anr. v. Union of India and Ors.* wherein the Court ruled that non-cellulosic synthetic waste did not fall under item 18-I(i) CET but under item 68. This decision was followed by the same High Court in *International Electronics Manufacturing Co. and Anr. v. Union*

of India and Ors:- (1986) 8-ECC-166. These decisions were followed by this Tribunal in Order No. D-395 to 459/86-D dated 30-6-1986 in disposing of a number of appeals involving non-cellulosic synthetic (fibre) waste.

5. It is, however, Shri Sachar's contention that since (a) the recent decision of the High Court did not consider its earlier decision in the Century Rayon case (*supra*) and (b) the goods in the Century Rayon case was cellulosic waste and not non-cellulosic waste as in the present case, the Tribunal would be free to consider the matter independent of the Court's judgments. We do not see how the nature of the waste - whether cellulosic or non-cellulosic - should make any difference to the question of classification of waste. It would make a difference only in determining the rate of duty in term of notification No. 53/72 in case the goods are held to be classifiable under item 18-I, not otherwise. Nor do we find any contradiction between the judgment of the High Court in the Century Rayon case and the more recent judgments in the R.K. Synthetics & Fibres and International Electronics cases. As we have noted, in the Century Rayon case, the High Court did not give its own verdict on the classification of the goods. As such, there is no contradiction as alleged by the Departmental Representative. In the Collector of Central Excise, Kanpur v. Hindustan Scientific Glass & Fancy Glassware Works, Makhanpur and Anr., Order No. 60 to 66/85-D dated 8-2-1985 (cited before us by the Departmental Representative), the issue before the Tribunal was whether broken glass was excisable. The Tribunal found in favour of the Revenue and ruled that it was liable to duty under item No. 68 till 28-2-1979 and as "other glass" under item 23A(4) with effect from 1-3-1979. We do not quite see the relevance of this decision to the present dispute which centres round the question whether lower grade waste is classified under item 18 which covers man-made fibre and filament yarn, [unlike item 23A(4), CET which had the omnibus residuary description "other glass" which, according to the Tribunal, could be in waste glass also since it was nothing but glass].

7. The Departmental Representative cited the Tribunal's decision in J.K. Cotton Spinning and Weaving Mills v. Collector of Central Excise, Kanpur -1983-ELT-2445. We have gone through the order which, in our opinion, is not relevant to the facts of the present case.

8. The next decision cited by the Departmental Representative is again of the Tribunal in *Shree Synthetics Ltd., Ujjain v. Collector of Central Excise, Indore* - 1985 (18) ELT - 495. In this case the assessee was engaged in manufacture of nylon and polyester filament yarn. The period of dispute was after the insertion of item No. 18-IV in the CET with effect from 1-3-1978. The Appellate Collector had held that all waste arising in the manufacture of these products upto the stage of polymer chips, did not fall under item 18 IV but waste arising after the chip stage and upto the stretching stage fall under item 18-IV. The Tribunal held that from the stage the molten material is extruded, the manufacture of yarn commences. Waste arising thereafter would be waste in or in relation to the manufacture of man-made filament yarn. The item does not exclude waste arising at the stages prior to stretching, though the waste may arise at an intermediary stage.

9. But, as we have already noted, the Bombay High Court has considered and ruled on the question of classification of synthetic waste under 18 I(I), CET in the *R.K. Synthetics & Fibres Pvt. Ltd. case* (supra). The Court specifically considered notification No. 53/72 (under which the present appellant would have as classify the subject product: godet waste) and held that the tariff entry 18 I(1) did not include waste (18-IV was, both sides had agreed, before the Court, not the correct item). The present goods are also godet waste. That the subject godet waste arises in relation to the manufacture of viscose filament yarn and not, as in the *R.K. Synthetics & Fibres Pvt. Ltd. case*, at the fibre stage, should not, in our opinion, make any difference to the applicability of the ratio of the Court's decision. The goods also do not fall under item 18-IV which takes in only non-cellulosic wastes and not rayon (cellulosic waste).

10. The result is that we hold that the subject godet waste was not classifiable under item No. 18 of the CET. Since the goods are not specified elsewhere in the tariff, they would fall under the residuary item No. 68 as claimed by the respondents in the appeal before the Appellate Collector. The goods shall be reclassified accordingly and consequential relief granted to the respondents.