

Simplex Mills Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-29-2004

Reported in : (2005)(181)ELT261Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Simplex Mills Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Simplex Mills Company Ltd. (hereinafter referred to as the assessee) manufactures inter alia cotton yarn, Man Made Yarn, Cotton Fabrics and Man Made Fabrics. They paid duty on single yarn at the spindle point stage. The yarn is then doubled and cleared for captive consumption in the manufacture of fabrics. Show cause notice, date 5-12-1995 seeking recovery of duty of Rs. 7/62,159.98 on double yarn, on the ground that exemption earlier available under Notification No.35/95 during the period from 16-3-1995 to 17-5-1995 was withdrawn with issue of Notification No. 84/95, date 18-5-1995 as the latter notification provided that exemption under serial Nos. 1 and 2 of the notification was not available to manufacturer like the assessee, having the facility to produce single yarn. The notice was adjudicated by the Assistant Commissioner who confirmed the demand under Section 11A of the Central Excise Act, 1944. The Commissioner (Appeals) upheld the denial of the benefit of the notification in terms of Serial No. 1 which was claimed by the assessee; however he held that the double yarn would not attract duty on the ground that it was yarn other than multiple (folded) or cabled

yarn under Chapter Headings 52.05 and 52.06 (in the case of cotton yarn) and other than (multiple folded) cabled yarn under Chapter headings 55.09 and 55.10 in the case of Man Made Staple Fibres and hence did not attract duty at the rate applicable to multiple/cable yarn. The assessee has preferred appeal No. E/1564/99 against the disallowance of the benefit of Serial No. 1 of Notification No. 35/95 as amended to double yarn, while the Revenue is in appeal (E/2300/99) against setting aside the differential duty liability.

2. We have heard both sides. We find that in the case of Commissioner of Central Excise Madurai v. Coats Viyella (India) Ltd. [2001 (128) E.L.T. 434 (Tri. Chennai)], the Tribunal while denying the benefit under Serial No. 1 of the table annexed to Notification No. 35/95 as amended on the ground that the respondent was an integrated unit having facility to produce single yarn and therefore hit by proviso to the Notification, held that benefit of exemption under Serial No. 5 of the notification which reads as under :-
------(1) (2) (3) (4)
(5)------(5) 52, 54 (Yarn subjected to Nil If produced out of yarn falling and 55 beaming, warping, within Chapters 52, 54 or 55 of the wrapping, winding or said Schedule, on which the ap-reeling or any one or appropriate duty of excise under the more of these proc- said Schedule, or as the case may esses, with or without be, the additional duty leviable the aid of power.

under the Customs- Tariff Act, 1975 (51 of 1975), has already b----- was available to double yarn for the reason that double yarn reaches marketable stage only when the processes specified in Serial No. 5 of Notification No. 35/95 such as beaming, warping, wrapping, winding or reeling or any one or more of these processes which are connected with the manufacture of double yarn are completed. The Bench held that the double/multifold yarn can be said to have come into existence only when it is beamed, warped, wrapped, wound or reeled and it is at that stage only that the goods are ready for dutiability purpose.

3. However the majority view in the above case does not appear to be in conformity with the settled position of law in so far as dutiability of yarn is concerned, namely that yarn becomes dutiable at the spindle stage. If that is so, the same thing should apply to double/multiple yarn. The Id. Member (J) in the Coats Viyella (India) Ltd. case holds that mere twisting of single yarn does not bring into existence any marketable commodity unless and until the doubled yarn is subjected to process like beaming, warping, wrapping, winding or reeling. On the other hand the Id. Member (T) finds that a large and distinct market exists for doubled yarn in hanks and such hanks are not wound on any core such as reels/cheeses and cones, and his finding does not appear to have been met by the other two Members in the majority. Further the Tribunal in the case of CCE Mumbai v. Bombay Dyeing and Mfg. Co. Ltd. (Order No. CB/681-82/WZB/2004, dated 28-5-2004), referring to another decision in Rajasthan Spg. Wvg. Mills Ltd. v. Commissioner of Central Excise, Jaipur [2001 (127) E.L.T. 712] held that doubled yarn manufactured in a composite Mill is leviable to duty. It is to be further noted that the Coats Viyella (India) Ltd. decision does not take into account the fact that doubled yarn when subjected to the processes mentioned in Serial No. 5 of the table Notification No. 35/95 attracts Nil rate of duty provided that duty is paid on the doubled yarn. In the case before us, the fact is that no duty is paid on the double yarn.

4. In view of the above, we are not able to persuade ourselves to follow the Coats Viyella (India) Ltd. decision, we therefore direct placing of the papers before the Hon'ble President for constituting a Larger Bench to resolve the issue.

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