Collector of Central Excise and Vs. P.B. Textile Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-1988

Reported in : (1988)(17)ECC1

Appellant : Collector of Central Excise and

Respondent : P.B. Textile Works

Judgement :

1. This appeal is directed against Order-in-Appeal No. S/49-229/84.CL, dated 3-4-1984 passed by the Collector of Customs (Appeals), Bombay.

2. Briefly stated, the facts of the case are that respondent M/s. P.B.Textile Works, Surat, imported "Partially Oriented Yarn" ("POY", for short) and deposited the goods in a bonded warehouse. At the time of clearance of the goods from bond, they were assessed inter alia to additional duty of customs on the basis of their denierage of 115D. The goods were thereafter texturised and the texturised yarn was cleared on payment of excise duty leviable thereon. Subsequently, the Department raised demands for duty on the respondent in respect of the ex-bond clearances of POY on the footing that additional duty of customs was liable to be paid on the basis of the denierage of the yarn after it was texturised. The respondent contended that subsequent texturisation of the POY had no nexus with the original denierage of the yarn at the time of its importation and warehousing. In due course, the Assistant Collector confirmed the demands against the respondent. In appeal, the Collector (Appeals) set aside the Assistant Collector's order on the ground that additional duty of customs was leviable on the POY on

the basis of its denierage at the time of its importation and not on the basis of its denierage after it was subjected to the process of texturisation. It is against this order that the Collector of Central Excise and Customs, Baroda, has come in appeal.

3. We have heard Shri L.C. Chakraborty, Departmental Representative, for the appellant-Collector and Shri C.L. Beri, Advocate for the respondent.

4. The sole ground urged in the appeal is that additional duty of customs is required to be collected in respect of POY on the basis of its ultimate denierage as declared at the time of its importation. A circular issued by the Central Board of Excise and Customs (No.Yarn/2/80-CX-2, dated 24-9-1980) is cited in support of this ground.

The basis for this circular has not been spelt out nor has it been explained before us.

5. It is well settled that goods are to be assessed to customs duty (which will include additional duty of customs) on the basis of the condition of the goods at the time of their import into the country (see Supreme Court judgment in the case of Dunlop India and Madras Rubber Factory Ltd. - of the report) 1983 ELT 1566 (S.C.). While Central Excise duty may be liable to be charged on the basis of the denierage of the texturised yarn made out of the imported POY, there is no basis for the contention that additional duty of customs is also liable to be charged on the POY on the basis of its denierage after texturisation. The matter is clear enough. The appeal has no merit and is dismissed.