

**Hastings Mills Ltd. Vs. Collector of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-21-1991

**Reported in :** (1992)(60)ELT469TriDel

**Appellant :** Hastings Mills Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. In the matter No. 256/91 in the High Court at Calcutta (Civil Appeal Jurisdiction) relating to M/s. Hastings Mills Ltd. v. Collector of Central Excise, Calcutta-II, Hon'ble High Court gave the direction that a Statement of the Case on the following question of law be submitted by this Tribunal :- "Whether, on the facts and in the circumstances of the case the Tribunal was right in holding that cess on Jute yarn captively consumed by the petitioner for manufacture of other jute goods within the same factory was payable by the petitioner under the Industries (Development and Regulation) Act, 1951 read with Jute Manufactures Cess Rules, 1976 though such cess was paid Jute goods at the time of final clearance from the factory." 1. M/s. Hastings Mill (Jute Division) of M/s. Digvijay Cement Company (the appellants herein) are the manufacturers of Jute yarn, twine and jute products at their factory at Rishra. The appellants possess the necessary Central Excise Licence for the manufacture of the said goods.

2. The Superintendent of Central Excise, Hastings Range, Serampore Textile Division issued the following show cause-cum-demand notices alleging non-payment of Cess duty:-----Show

Cause amount	Date	Period	Demand	Notice	No.
(4)			(1)	(2)	(3)
57,046.12	29/83	21-11-83 to 1-6-83	214.08	32/83	7-12-83 to 1-6-83
1,257.54	28/84	11-10-84 to 9-4-84	118.51	17/83	18-6-83 to 1-1-83
808.70	33/83	7-12-83 to 1-6-83	467.93	49/84	26-11-84 to 1-5-84
661.98	39/84	27-10-84 to 1-5-84	8,62,686.95	1/84	28-4-84 to 1-10-83
13,592.22					3.

According to the above show cause notices the appellants have cleared jute yarn for captive consumption in the manufacture of jute products including jute twine without payment of any Cess duty as payable thereon at the rate of Rs. 5.62 per M/Ton as required to be paid in terms of the Industries (Development and Regulation) Act, 1951, Sub-section (1) of Section 9 of the said Act. All the above show cause notices were issued for the recovery of the said amount in terms of the provisions contained under Rule 9(2) read with Section 11A of the Central Excises and Salt Act, 1944.

4. The appellants replied vide their letters dated 21-12-1983, 7-12-1983, 17-10-1984, 12-12-1984 and 22-11-1984 respectively against the above show cause notices. They pointed out that the Cess duty become payable under Rule 9 of the Central Excise Rules read with Jute Manufactures Cess Rules, 1976 and Section 9 of the Industries (Development and Regulation) Act, 1951 only when the goods are removed outside the factory. They clarified that for the purpose of manufacturing jute twine and jute products within the factory premises whenever the jute yarn is removed the above cess will not be payable on such jute yarn.

5. After granting the personal hearing during the process of adjudication of the above show cause notices the Assistant Collector of Central Excise, Serampore Division passed orders-in-original No. 48/87 dated 23-11-1987, 49/87 dated 25-11-1987, 50/87 dated 25-11-1987, 51/87 dated 25-11-1987 and 53/87 dated 30-11-1987 confirming the demands raised by the Superintendent of Central Excise vide the above mentioned show cause notices. According to the Assistant Collector prior to 1-10-1984 in terms of Rule 3 of the Cess Rules as it stood before the amendment there was no provision to clear the goods for captive consumption

without payment of Cess duty. Moreover he observed that since the jute yarn and the jute articles manufactured out of such jute yarn fall under different Serial number of items of the Schedule to the Central Excises and Salt Act, 1944, it does not fulfil the condition mentioned under third proviso to Rule 9 and therefore, the demand has been correctly made prior to 1-10-1984.

6. The appellants filed appeals against these orders-in-original before the Collector of Central Excise (Appeals), Calcutta. The Collector of Central Excise (Appeals), Calcutta vide his orders-in-appeal Nos.

236-240/89 dated 16-11-1989 confirmed the said orders-in-original and rejected the appeals filed by the appellants. Even though the appellants have pleaded before the Collector (Appeals) that the issue in dispute is pending with the Supreme Court in the case of Indian Jute Mills Association, the Collector (Appeals) relying upon the decision of the Calcutta High Court in the case of Fort William Company Limited, 1979 (4) E.L.T. (J. 23) confirmed the demand raised by the Assistant Collector. He also observed that prior to 1-10-1984 since there was no explicit provision granting exemption the said Cess duty was payable even if the jute yarn is consumed captively in the manufacture of jute articles.

7. Against the above orders-in-appeal, appeals and stay applications were filed before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. The appellants also filed Misc. applications to the stay applications through which certain additional grounds were brought before the Hon'ble Tribunal. It was pleaded before the Tribunal that though decisions exist against the appellants since the appellant company has been in a very poor financial condition which can be seen from the balance sheet and the supplementary submissions, the appellants sought for a long time for depositing the duty. The Hon'ble Tribunal while disposing of the stay applications disposed of the appeals also after waiving the pre-deposit. It held as follows vide its S-108 to 112/90-D and E/338 to 342/90-D read with order M-32/91-D dated 25-1-1991 in ROM application :- "The question that cess is payable on jute yarn captively consumed for the manufacture of other jute products is settled by the following judgments of the Tribunal :-*Nellimarla Jute Mills v. CCE, Guntur* In view of this, we reject the appeals in so far as they relate

to the levy of cess of jute yarn used in the manufacture of other jute products.

We, however, find that jute yarn captively consumed in the manufacture of jute twine was held as not being liable to cess by the Tribunal in 1988 (38) E.L.T. 306 (Tri.) - National Jute Manufacturing Corporation Ltd. v. C.C.E. Sh. Chakraborti admitted the applicability of this decision to these appeals and could not give any contrary decision of the Tribunal.

Therefore, to this extent, the demand raised against the appellants (on jute yarn utilised for the manufacture of twine) is set aside." 8. Against the above order of the Tribunal the appellants filed a Reference Application under Section 35G(1) of the Central Excises and Salt Act, 1944, requesting the Tribunal to refer to the High Court the following points :- "Whether in the facts and circumstances of the case the Tribunal was right in holding that the Cess duty on jute yarn captively consumed for the manufacture of goods within the factory was payable under the Industries (Development and Regulation) Act, 1951 read with Jute Manufactures Cess Rules, 1976, even though such Cess was payable on the jute at the time of final clearance from the factory".

They also filed a stay application alongwith the reference application requesting the Tribunal to stay the demand of Rs. 9,34,455.20.

9. The Tribunal rejected the aforesaid stay application and reference application mentioned in para 8 above vide its Order No. S-217/90-D and M-257/90-D dated 23-10-1990 holding that in view of provisions of Section 35-G(1) of the Central Excises and Salt Act, 1944 a reference application does not lie against the Tribunal's Order dated 16-5-1990 read with order dated 25-1-1991 since the order involves a question relating to rate of duty and question posed in the reference application also relates to the rate of duty. Since this position was not disputed by the learned counsel of the applicants, the reference application was dismissed.

10. However, now in view of the High Court's direction, the Statement of the case is furnished.