

**Petrofils Cooperative Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Sep-06-1991

**Reported in :** (1992)LC136Tri(Delhi)

**Appellant :** Petrofils Cooperative Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. This appeal is directed against the orders of the lower authorities confirming a demand of duty of Rs. 62,77,908.77 against three show cause notices issued as under - (a) Show-cause notice issued on 21-6-1984 for Rs. 33,85,302.96 for the period from January, 1984 to May, 1984; (b) Show-cause notice issued on 30-11-1984 for Rs. 99,70,742.42 for the period from June, 1984 to November, 1984; and (c) Show-cause notice issued on 2-9-1985 for Rs. 29,02,033.13 for the period from December, 1984 to August, 1985.

The order of the Assistant Collector of Central Excise, Division IV, Vadodara has been fully upheld by the Collector of Central Excise (Appeals), Bombay and hence this appeal to the Tribunal.

2. The proceedings giving rise to the present order arise out of an objection of the Central Excise Revenue Audit, according to which exemption under Notification 172/72-C.E., dated 24-7-1972 being applicable only to hard waste, in the absence of any segregation of different types of waste which arise at different stages, the exemption was not available to mixed waste (viz. cut-waste, reeling and coning

waste, whether cut-waste, spool cut-waste etc.). The issue turns on the interpretation of Notification 172/72-C.E. in which hard waste falling under Items 18, 18A, 18B, 18C, 18E and 18F of the First Schedule to the Central Excises & Salt Act, 1944 - the erstwhile Central Excise Tariff Schedule - is exempt from the whole of the duty. This notification has a proviso so far as cellulosic spun yarn falling under Item 18III and cotton yarn falling under 18A are concerned. It is in respect of these two varieties only that the proviso stipulates that exemption would apply only to such waste (hard waste) as may arise prior to removal of the said cellulosic spun yarn and cotton yarn for weaving. The Explanation appended to the notification refers to waste yarn (hard waste) in case of yarn falling under Item Nos. 18III, 18A, 18C, 18E and 18F as well as woollen and acrylic spun yarn falling under Item 18B. Waste yarn falling under Item 18II(i)(a) under which the impugned waste yarn falls is not covered by either the proviso or the Explanation. The appellants' claim is that in the absence of any restriction on waste yarn falling under this category, the legislature clearly intended to extend wide meaning and scope of the definition of 'waste yarn' and it is claimed that the question of segregation of waste yarn arising at different stages for the purpose of Notification 172/72 should not arise.

3. One other ground of appeal before us is that in pursuance of an order No. V. 18(3)78/MP/83 dated 31-10-1983 passed by the Assistant Collector of Central Excise on their classification list No. 8/CL/83-84 dated 13-9-1983, the only distinction that was made was between waste yarn arising before the stage of obtaining finished yarn and waste yarn (hard waste) arising thereafter. It is in pursuance of this order that the appellants had been paying duty until the audit objection was raised and the matter was reopened. Since the Act, Rules, or the Schedule to the Act do not define the expression 'waste yarn', the expression 'waste yarn' must be construed in the light of the scheme of the Schedule and particularly Tariff Entry 18II or 18IV, as the case may be. Reliance for this purpose is placed on Section 20 of the General Clauses Act which specifically provides that any expression, not defined, inter alia, in a notification must be understood in the context of the Act under which such notification was issued. Since the Schedule was a part of the Central Excises & Salt Act, the expression 'waste yarn' must be construed according to the provisions of Tariff Entry 18II. If this is done, and the

notification is interpreted in the light of the Supreme Court decision in Hemraj Gordhandas v. Asstt.

Collector of Central Excise reported in 1978 (2) E.L.T. J 350, nothing can be read into Notification 172/72 to restrict its scope and its applicability. Shri Dushyant Dave, Learned Counsel for the appellants, submitted during the hearing that to apply the benefit of exemption only to such waste yarn which had emerged at a particular stage and to deny the benefit to other waste yarn emerging at some other particular stage or stages would be really reading into the notification what is not expressly found therein.

4. Shri Dave also referred to Notification 53/72-C.E., dated 17-3-1972, Notification 272/83-C.E., dated 18-11-1983 and submitted that these would not be applicable to waste yarn generated in the factory of the appellants because the former exempts specified varieties which are generated in a composite textile mill, while the latter exempts non-cellulosic waste which are not in the form of waste yarn. He submitted that the appellant is neither a composite textile unit nor the waste yarn in question can be treated as non-cellulosic waste.

Therefore, these two notifications would not be applicable and the notification appropriately attracted in the appeal is Notification 172/72. Even assuming that the other notifications apply, it is well-settled that assessee takes the benefit of such notification which confers most beneficial exemption to him. For this purpose he placed reliance on the decision of the Bombay High Court in Indoswe Engineers Private Limited v. Union of India - 1989 (41) E.L.T. 217 (Bom.).

5. The appellants case is that even in the order dated 15-10-1985 which led to the present appeal, the Asstt. Collector had talked only of - (a) lump waste and (b) waste in the form of polyester yarn. While lump waste is classified under sub-item IV of Item 18, the yarn waste was classified under 18II(i)(a). There was no question of any segregation of stocks of waste yarn obtained at different stages i.e., after finished yarn was obtained or at the stage before the yarn was completely manufactured. He submitted that it has never been the case of the Department that what is generated by the appellant is not waste yarn and the ground as to segregation is clearly not germane to the issue in question since

neither the notification nor the Act or the Rules limits the scope of exemption to any yarn which is segregated at any particular stage. He also made a plea that when the appellants' case has been based on the alleged non-segregation of waste yarn, thereby disentitling it to the benefit of the notification, it is not now open to the authorities to contend that the goods in question are not waste yarn. For this purpose he placed reliance on the judgment of the Supreme Court in *Mohinder Singh Gill and Anr. v. Chief Election Commissioner - AIR 1978 S.C. 851* in which the Supreme Court held as under: "When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out." 6. The Learned Counsel also placed reliance on the definition of Hard Waste in Fairchild's Dictionary of Textiles, Callaway' Textile Dictionary and the Modern Textile Dictionary by George E. Linton.

7. Arguing for the Department, Shri L.C. Chakraborty, the learned SDR submitted that yarn waste (hard waste) refers to only such waste as arises when fully finished yarn has come into existence. He submitted that other types of waste which arise before the yarn comes into existence is not covered by Notification 172/72.

8. He also submitted that undrawn filament yarn is not yarn because at that stage it is quite thick and such waste would not be eligible for benefit under the notification. He placed reliance on the decision of the Tribunal in the case of *Asop Private Ltd. v. Collector of Central Excise - 1989 (44) E.L.T. 134*. With regard to the stage at which finished yarn comes into existence, he placed reliance on another decision of the Tribunal in *Lohia Machines v. Collector of Central Excise - 1988 (38) E.L.T. 336*. Shri Chakraborty submitted that the Tribunal had decided in this case that weaving on cops is the stage when the finished yarn comes into existence and any waste arising before that stage would be waste arising during the course of manufacture. He went on to argue that exemption under Notification 172/72 could not be extended to yarn waste arising at all stages since such yarn waste was mixed up by the appellants themselves. The burden of segregation was

naturally on the assessee since it is the assessee who was claiming benefit of the notification and, in the absence of segregation, the benefit to the entire quantity had to be denied.

9. Distinguishing the Notifications 53/72 and 272/83, the learned SDR submitted that since the appellants' waste is non-cellulosic waste, even under Notification 53/72 the rate of duty was Rs. 9/- per kg. He submitted that Notification 172/72 being of a general nature and using the expression 'waste yarn' it necessarily refers to the waste of yarn and not waste arising at earlier stages. He also submitted that when all the three notifications are carefully read, one would see that there is a scheme which has been followed in all of them.

10. Shri Chakraborty further submitted that Shri Dave had placed reliance on the judgment of the Tribunal in the case of Shree Synthetics Ltd. v. Collector of Central Excise - 1984 (18) E.L.T. 495 for the purpose of excluding the waste arising at an earlier stage, namely, stage of polymer chips from the entry "non-cellulosic waste all sorts" falling under Tariff Item 18(IV), but he feels that the Explanation appended to the item restricts all wastes upto the stage of manufacture of yarn and not beyond that stage. In other words, waste yarn would cover only such waste as arises after coming into existence of yarn. Shri Chakraborty also referred to the decision of the Tribunal in the case of Shree Yamuna Mills Co. Ltd. v. Collector of Central Excise - 1985 (20) E.L.T. 353, in which it was held that since the term 'manufacture' under Section 2(f) includes any process incidental or ancillary to the completion of manufactured product, in relation to goods falling under 18A, the process of sizing would be included amongst other processes enumerated therein. Shri Chakraborty submitted that in view of the later judgment of the Supreme Court in the case of J.K. Spinning and Weaving Mills Ltd. v. Union of India - 1987 (32) E.L.T. 234 holding that conversion of unsized yarn into sized yarn, being an intermediate product which came into existence in a continuous process, would not make such conversion liable to duty as the goods continued to be yarn. He, therefore, thought that the reliance placed by Shri Dave on the decision of the Tribunal in Yamuna Mills case (supra) was misplaced.

11. Replying, Shri Dave referred to Order No. 527-A of 1985-D dated 31st December, 1985 of the Tribunal in the case of Gujarat Nets Ltd., Ahmedabad v. Collector of Central Excise, Ahmedabad and submitted that while interpreting Notification 172/72, the Tribunal had held in that case that no words of limitation such as the stage of manufacture had been found in the notification so far as man-made filament yarn was concerned. Similarly, in the present case too, no words could be read into the notification placing any condition about the stage at which yarn waste (hard waste) arises. He also referred to the decision of the Tribunal in the case of Indian Plastics Ltd. and Ors. v. Collector of Central Excise - 1988 (35) E.L.T. 434 in which it was held that a show cause notice issued merely on the basis of an audit objection without any independent investigation was liable to be quashed and submitted that the ratio of the decision was fully applicable to the present case because the demands were raised on the basis of an audit objection on the ground that hard waste arising at various stages in the manufacture of filament yarn was not segregated and, therefore, the benefit of Notification 172/72 could not be extended to the entire quantity of waste arising during such manufacture. Finally, Shri Dave placed reliance on the decision of the Tribunal in the case of Hindustan Lever Ltd. v. Collector of Central Excise - 1989 (40) E.L.T. 388 for the argument that when two exemption notifications are issued separately and independently, there was no bar to availing more than one notification unless it is barred categorically. He submitted that the appellant was entitled to the benefit of Notification 172/72 even though Notification 53/72 had been relied upon by the Department in the show cause notices and reference was also made to Notification 272/83 in the impugned order of the Assistant Collector.

12. We have given our earnest consideration to the appeal and the submissions made before us by the two sides. We have also perused the case records and studied the case law cited before us. We observe that Notification 172/72-C.E., dated 24-7-1972, as amended, does not define waste yarn (hard waste). No restriction about the stage at which such waste yarn would become eligible to exemption has been placed in the notification as has been done in the case of cellulosic spun yarn by means of the proviso or in the case of others as indicated in the Explanation appended to the notification. In the absence of any such restriction of the stage at which waste yarn (hard waste) arises, it is clear that the

exemption is available to waste yarn arising during the manufacture of non-cellulosic man-made filament yarn falling under Item 18II. We also notice that although it was initially mentioned in the three show cause notices that Notification 53/72-C.E., dated 17-3-1972 was applicable, while passing the order the Assistant Collector has, in paragraph 11, recorded the following finding: "11. Now coming to the applicability of exemption under Notification No. 172/72. In accordance with the principles already discussed above since there is no segregation of the waste, the nil rate of duty provided for in Notification No. 172/72 is not eligible/applicable in this case. Now the question remains whether for this waste which is classified under Tariff Item 18 IV the rates applicable under Notification No. 53/72 are applicable or otherwise.

For non-cellulosic waste falling under Tariff Item 18 a more specific notification has been issued - Notification No. 272/83-C.E., dated 18-11-1983. Under this notification basic excise duty on non-cellulosic waste falling under Tariff Item 18 has been fixed at 50% adv. or Rs. 9/- per kilogram whichever is less. No change has been made in Notification No. 53/72-C.E., dated 17-3-1972 which continues to cover cellulosic waste and other waste which are not covered by the aforesaid Notification No. 272/83-C.E., dated 18-11-1983. Accordingly the assessee is eligible for getting benefit of a rate lower than Rs. 9/- per kilogram in case where the value is less than Rs. 18/- per kg." 13. Thus, it is clear that while the allegation in the show cause notices was that waste in question would be subjected to duty in terms of exemption Notification 53/72, the Assistant Collector has come to the conclusion that since this notification is not applicable to the appellants case, they are to be governed by Notification 272/83 and the duty liability has been worked out in terms of that notification. The basic objection of the audit was that in the absence of segregation of waste yarn (hard waste) arising at different stages of manufacture of filament yarn, the appellants were to be denied even the exemption available to hard waste. We do not think that the authorities have undertaken any investigation after the audit raised the objection to either find out the different varieties of waste that arose or to identify them. The fact which they themselves concede is that exemption Notification 172/12 is available to waste yarn (hard waste) but no one has made any investigation to identify the nature of such waste yarn and the quantity that would arise in the appellants' case. There is

no charge against the appellants that they had withheld any information from the authorities or undertaken any clandestine activity because of which the authorities were not in a position to identify and determine the quantity of waste yarn (hard waste). In fact, the Assistant Collector had, after a detailed examination of the matter, passed an order dated 31-10-1983 on the classification list of the appellants and identified only two types of waste, namely, soft waste and hard waste and the appellants had accepted this order and complied with the directions given therein. It is also significant to note that Notification 172/72 talks only of waste yarn (hard waste) and does not talk of different types of hard waste or the stages at which such waste arises. We also observe that the appellants have placed before the Assistant Collector all relevant facts relating to different types of waste arising in the process of manufacture vide their reply dated 27th September, 1983 (Annexure-IVA of the paper book) to the show cause notice dated 22-9-1983 (Annexure-III of the paper book) and, after full consideration of all the issues, the Assistant Collector had passed order dated 31-10-1983 (Annexure-IVA). In these circumstances it was not open to the authorities to institute proceedings without undertaking any investigation to identify and quantify any waste which they thought did not qualify for exemption. Moreover, since such an exercise necessarily involved reopening of the whole matter with reference to classification list which has been approved after detailed examination, the proper course of action would have been to first undertake investigation with a view to identifying the hard waste which did not appear to be eligible for the exemption, indicate the basis of such an inference, ask the appellants to show cause why the classification list should not be modified prospectively. By denying the exemption on the specious ground that the appellants had not segregated the hard waste arising at different stages of manufacture, the authorities apparently arrived at a conclusion without any basis and Shri Dave was justified in saying that this had been done without any provision in Notification 172/72 for segregation. Viewed in this light, the conclusion that the hard waste qualifying for exemption was negligible was reached on pure surmise.

14. Shri Dave has challenged the impugned order applying Notification 272/83 on the ground that this notification relates to non-cellulosic waste whereas the goods in question were waste yarn (hard waste). He also submitted that the authorities

having alleged non-segregation of waste yarn in the show cause notice could not later contend that the goods were not waste yarn. We observe that Notification 272/83 could have been applied if there was any basis for the allegation in the show cause notice that the goods were non-cellulosic waste and, on the evidence indicated in the notice, a finding to that effect had been recorded. We do not find any such allegation in the show cause notice.

In these circumstances too, the finding that the goods were non-cellulosic waste has been recorded without any basis and order is liable to be set aside. We, therefore, reach the same conclusion. In this view of the matter, we allow the appeal and set aside the impugned order with consequential relief to the appellants.

15. The Miscellaneous Application is also disposed of in the light of the order allowing the appeal.

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