

Collector of Central Excise Vs. Jaipur Polyspln Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1995

Reported in : (1996)(85)ELT299TriDel

Appellant : Collector of Central Excise

Respondent : Jaipur Polyspln Ltd.

Judgement :

1. In all these appeals, common question of law and facts are involved, hence, they are all taken up together for disposal as per law. The question that arises for consideration in these appeals is as to whether the process of doubling of yarn, from single yarn to double yarn would amount to manufacture and, if so, whether the assesseees are required to pay the duty as per demands raised by the Department in these appeals.

2. In few of the Revenue appeals, the Assistant Collector had agreed with the contention of the assesseees that such doubling of yarn does not amount to manufacture and had dropped the proceedings, and in few of them, the Assistant Collector had confirmed the duty, on appeal Collector (Appeals) had dropped the demands. The Department had preferred review application before the Collector (Appeals), which on consideration was rejected, confirming the Assistant Collector's view holding that such doubling of yarn does not amount to manufacture and confirmed the Assistant Collector's order dropping the demands. The Revenue in the review petition in the case of Bhilwara Spinners Ltd. & Modern Thread (India) Ltd.'s case (E/3056-3057/90-D & E/3058/90-D) had contended that

both the yarns fall under Item 18A of the erstwhile Tariff. In the show cause notice as well as in the petition, this fact of single ply yarn falling under Item 18A has not been disputed.

However, the Collector (Appeals), in this case has gone on a different footing and has held that the single yarn falls under two different Items viz. Item 18(iii) and Item 18A and in that view of the matter, the Collector (Appeals) has held that the yarn is a different commodity and therefore, he held that such a process of doubling and multifolding in terms of Rule 9 and 49 would amount to manufacture and a new commodity arises which is excisable and dutiable. In that view of the matter, he allowed the three Revenue appeals of the Department. The assesseees in these appeals are contending that the Collector has wrongly concluded that two single yarns falls under two different Items viz. Item 18(iii) and Item 18A which is not the correct position and that is also not the case of the Department, both in the show cause notice, order-in-original or in the review petition and it is an admitted fact that the single yarn falls only under Item 18A. Therefore, they submitted that such an activity does not amount to manufacture and their appeals are required to be allowed in terms of earlier judgments of the Tribunal on this point.

3. We have heard the Learned DR, Shri Vijay Singh for the Revenue and the Learned Advocate, Shri Gopal Prasad for the assesseees in these matters.

4. Both the sides submitted that the issue is no longer res Integra, as this issue has already been gone into by the Tribunal on several occasions and has held that doubling, twisting or multifolding of single ply cotton yarn does not amount to manufacture nor does it amount to removal in terms of Rules 9 and 49 and therefore, duty is not leviable. In this regard, the following citations have been quoted : 1. Collector of Central Excise v. M/s. Rajasthan Spg. & Wvg. Mills Ltd. 2. Collector of Central Excise, Jaipur v. Jaipur Polyspin Ltd. (Final Collector of Central Excise, Jaipur v. Sidha Syntex Ltd. [1995 (10) R.L.T. 191] In this judgment the Three Member Bench has reviewed all the cases of the Tribunal and has held that there is no need to take a different view as expressed by different Benches of the Tribunal and that the Tribunal is required to follow the ratio of the judgment rendered in the case of Collector of Central Excise v. Banswara Syntex Ltd. 5. The

Learned DR after due verification of the records accept the contention of the assesseees that the Collector (Appeals) in the assessee's appeals in the case of Bhilwara Spinners, had made a mistake in recording that the two single yarns fall under two different items viz. Item 18(iii) and Item 18A while on verification from the show cause notice, order-in-original or review petition, the factual position is not the same and it is true that nowhere the Department has taken a stand that two single yarns fall under two different Tariff Items. Therefore, he submitted that the common view in all the cases could be taken in the light of citations referred to by both the sides.

6. We have carefully considered the submissions made by both the sides and have perused the records.

7. On a careful consideration of the matters, we agree with the contentions made by both the sides. The issue is no longer res Integra and that the Tribunal has already concluded that doubling, twisting or multifolding of single ply yarn, cotton yarn does not amount to manufacture and on such removal to doubling section in terms of Rule 9 and 49, no duty is leviable.

8. Applying the ratio of these cited judgments, we dismiss the Revenue appeals and allow the assesseees appeals by setting aside the Collector (Appeals) order.

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