

Collector of C. Excise Vs. Maharaja Shree Umaid Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-26-1996

Reported in : (1996)(87)ELT101TriDel

Appellant : Collector of C. Excise

Respondent : Maharaja Shree Umaid Mills Ltd.

Judgement :

1. The issue for determination in these appeals is whether duty can be charged when single ply yarn comes into existence at spindle point or duty should be charged after the yarn is subjected to winding, doubling, reeling etc.

2. The facts of the case are that the respondents herein are engaged in the manufacture of cotton yarn. The department alleged that as soon as the single ply yarn comes into existence at the spindle stage, it was fully manufactured and therefore, duty should be demanded at the spindle stage and not at the stage after winding, doubling, reeling etc. Accordingly a show cause notice was issued to the respondents herein asking them to explain as to why duty should not be charged on the yarn at the spindle stage. In reply to the show cause notice, the respondents herein submitted that the process of manufacture as contemplated in Section 2(f) is complete only when an item comes into existence with definite identity and pleaded that the process of winding, doubling, reeling and bundling are necessary for completion of the manufacture of the product. On the question of common parlance test, the respondents herein submitted that cotton yarn is marketed in different forms such as single or in multiple folds on hanks, on cones,

on sized beams etc. and since in their case it was doubled yarn, therefore, duty stage for doubled yarn was only when it is doubled; that yarn in their case was fully manufactured when it is packed and stored. In the circumstances, the respondents herein represented before Asstt. Collector that in terms of Section 2(f) manufacture in respect of yarn in dispute was complete only when it was double and therefore, duty can be demanded, only at the stage when the yarn is fully manufactured meaning thereby the duty should be demanded only at the double yarn stage.

3. Shri A.K. Madan, the learned SDR submitted that yarn is dutiable; that yarn comes into existence as a single ply yarn at the spindle stage; that subsequently this yarn is processed further for winding, doubling, reeling etc.; that doubling, reeling and winding processes involved a loss of yarn and therefore, the stage at which duty should be collected becomes important; that in case the duty point is shifted to the double yarn stage then the Government suffers a loss of duty on the yarn lost in the process of winding, doubling or reeling. He therefore, submits that since duty is on yarn which comes into existence at the spindle stage when it is a single ply yarn; that that is the point or the stage it is dutiable for purpose of Section 3 of the Central Excises and Salt Act, 1944. He therefore, prays that the order of the Asstt. Collector may be restored and the appeals allowed.

4. None appeared for the respondents. However, the respondents herein have requested the decision on the basis of the written submissions made by them and also on the basis of the evidence on record.

5. Heard the submissions of the learned. SDR, perused the case records and the written submissions made by the respondents. We find that duty under Tariff Entry 18 is on cotton yarn. It does not speak either of single ply yarn or double ply yarn. In the instant case, we find that the respondents herein do not clear the single ply yarn but the single ply yarn is further subjected to winding, doubling, reeling etc. The main contention of the respondents herein is that what they are clearing is yarn after winding, doubling and reeling and therefore, the duty should be collected after winding, doubling and not before that.

According to Section 3 of the CESA, 1944, duty is levied and collected on the goods produced or manufactured. The term 'manufacture' has been defined under Section 2(f) of the Act. Section 2(f) is an inclusive definition and includes any process incidental or ancillary to the process of manufacture. Now the important question that arises is whether winding, doubling reeling can be termed as a process "incidental or ancillary to the process" of completion of the yarn.

Here we find that the tariff speaks only of yarn. It does not say single ply yarn or double yarn. No doubt, single ply yarn comes into existence at the spindle stage. It is at spindle stage when yarn is manufactured. We find that single ply yarn is known in the market and is treated as yarn commercially and therefore, by the test of common parlance laid down by the Apex Court in a number of its decisions, we find that single ply yarn is goods, and thus leviable to duty. Now another question that arises is whether collection of duty can be shifted to the stage after winding, doubling and reeling. We find that single ply yarn is ready as goods at the spindle stage and can be marketed as such and therefore, we hold that for purpose of levy of duty, it is spindle stage when single ply yarn is produced. We find that a number of decisions have been cited. All these decisions pertain to the question whether doubling of yarn amounts to manufacture.

Doubling, winding and reeling are operations after spindle stage which is single ply yarn and therefore, they are not relevant to the facts and circumstances of the present case.

6. Having regard to the above discussion, we hold that duty shall be chargeable in the instant case on single ply yarn at the spindle stage.

In this view of the matter, we uphold the order of the Asstt. Collector and allow the appeals.

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