

## **M/S Rajasthan Spinning And Weaving ... vs Collector Of Central Excise Jaipur ... on 9 May, 1995**

**Equivalent citations: AIR 1995 SUPREME COURT 1985, 1995 (4) SCC 244, 1995 AIR SCW 3108, 1995 AIR SCW 3106, (1995) 2 CIVLJ 697, (1995) 77 TAC 474, 1995 SCFBRC 368, (1995) 2 ALL RENTCAS 248, (1996) 1 LANDLR 125, (1996) 2 BANKCAS 301, (1995) 3 PUN LR 273, (1995) 3 SCR 861 (SC), (1996) 1 CURLJ(CCR) 288, (1996) 1 RRR 241, (1996) 102 STC 476, (1996) 1 LJR 2, (1996) IJR 238 (SC), (1995) 2 CIVILCOURTC 685**

**Bench: R.M. Sahai, Suhas C. Sen**

CASE NO.:

Appeal (civil) 4154 of 1988

PETITIONER:

M/S RAJASTHAN SPINNING AND WEAVING MILLS LTD. BHILWARA RAJASTHAN

RESPONDENT:

COLLECTOR OF CENTRAL EXCISE JAIPUR RAJASTHAN

DATE OF JUDGMENT: 09/05/1995

BENCH:

R.M. SAHAI & SUHAS C. SEN

JUDGMENT:

JUDGMENT 1995 (1) Suppl. SCR 112 The Judgment of the Court was delivered by SEN, J. M/s. Rajasthan Spinning and Weaving Mills Limited, Bhilwara, has come up in appeal against an order passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi. The case in the Tribunal was heard by a Bench comprising of the Senior Vice-President and the Judicial Member. There was difference of opinion between the two members on the following question:

Whether the blended yarn in which polypropylene fibre predominates was or was not entitled to benefit under Central Excise Notification No. 322/77-CE dated 1.12.1977?

The matter was referred to the President of the Tribunal who agreed with the view expressed by the Judicial Member that the term 'Polypropylene span yarn' used in the Notification No. 332/77-CE dated 1.12.1977 means yarn spun out of polypropylene fibres and will not included blended yarn manufactured by the appellant-Company comprising of 52% propylene and 48% viscose.

The appellant has contended that the majority view of the Tribunal is erroneous

having regard to scope of the Notification and also the tariff description of goods in Item 18E of the First Schedule to the Central Excises and Salt Act, 1944.

Before examining this question, the fact of the case may be noted in brief. Tariff Item No. 18 at the material point of time stood as under :

"18.I. Man-made fibres, other than mineral fibres : (i) Non- cellulosic (u) Cellulosic  
II. Man-made filament yarns : (i) Non-cellulosic -

(a) other than textured

(b) textured Explanation. - "Textured yarn" means yarns that has been processed to introduce crimps, coils loops or curls along the length of the filaments and shall include bulked yarn and stretch yarn.

(ii) Cellulosic

(iii) metallized III. Cellulosic spun yarn :

Yarn in which man-made fibre of cellulosic origin predominates in weight and, in or in relation to the manufacture of which any process is ordinarily carries on with the aid of power -

(i) not containing, or containing not more than one-sixth by weight of non-

cellulosic fibre calculated on the total fibre content,

(ii) containing more than one-sixth by weight of non-cellulosic fibre calculated on the total fibre content.

Explanation I. - "Count" means the size of grey yarn (excluding any sizing material) expressed in English Count.

Explanation II. - For multiple fold yarn, "count" means the count of the basic single yarn.

Explanation III. - Where two or more of the following fibres, that is to say,

(a) man-made fibre of cellulosic origin;

(b) cotton;

(c) wool or acrylic fibre, or both;

(d) Silk (including silk noil);

(e) jute (including Bimlipatam jute or mesta fibre);

(f) man-made fibre of non-cellulosic origin, other than acrylic fibre;

(g) flax; (h) ramie;

in any yarn are equal in weight then such one of those fibres, the predominance of which would such yarn fall under that sub-item of Item (hereafter in this Explanation referred to as the applicable sub-item or Item), among the sub-items and items Nos. 18. III, 18A, 18B, 18C, 18D, 18E, 18F, I and 18F.II, which, read with the relevant notification, if any, for the time being in force issued under the Central Excise Rules, 1944, involves the highest amount of duty, shall be deemed to be predominant in such yarn and accordingly such yarn shall be deemed to fall under the applicable sub-item or Item, as the case may be, IV. Non-cellulosic Wastes, all sorts. 18E. Non-cellulosic spun yam.-

Spun (discontinuous) yarn which man-made fibres of non-cellulosic origin, other than acrylic fibre, predominate in weight and, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Explanation. - Explanation III under sub-item III of Item No. 18 shall so far as may be, apply in relation to this Item as it applies in relation to that Item."

During the year 1978-79, the appellant-Company manufacture non-cellulosic spun yarn of the following composition:

52% Polypropylene fibre 48% Viscose fibre Since non-cellulosic fibre predominated in weight, the yarn manufactured by the appellant-company was liable to be classified under T.I.18E of the First Schedule to the Central Excises and Salt Act, 1944. The appellant- Company, however, claimed benefit of exemption from payment of the whole amount of duty of excise leviable under T.I. 18E on such yarn in view of a notification No. 332/77 dated 1.12.1977 which is as under :

"Notification No. 332/77 dated 1.12.1977: In exercise of the powers conferred by sub-rule (1) of rule of the Central Excise Rules, 1944, the Central Government hereby exempts Polypropylene spun yarn falling under Item No. 18-E of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944) from the whole of the duty of excise leviable thereon. This notification shall remain force upto inclusive of the 31st March, 1979."

It is of significance that subsequently in 1988 two separate exemption notifications were issued (147/18 and 149/80), in respect of polypropylene and the other in respect of blended yarns.

We are, however, in this case concerned with the scope and effect of the notification dated 1.12.1977 set out hereinabove. The contention of the appellant which was upheld by the Collector (Appeals) and also the dissenting member of the Tribunal, was that the exemption granted by a notification

should be construed liberally. The notification did not require that the exempted yarn must comprise of polypropylene only. Polypropylene is the predominant fibre in the yarn manufactured by the appellant and, therefore, the blended yarn is nothing but Polypropylene yarn. It is also known as polypropylene yarn in the trade.

It has further been agreed that there is no dispute that the yarn manufactured by the appellant fails under T.I.No. 18E. The tariff description of Item 18E, Non-cellulosic spun yarn, comprehends 'Spun (discontinuous) yarn which man-made fibre of non-cellulosic origin, other than acrylic fibre, predominate in weight'. That means polypropylene spun yarn, which is variety of non-cellulosic spun yarn, will fall under this tariff description, even if it was blended with some other type of yarn, provided that the polypropylene component of the blended yarn was predominant in weight. The notification dated 1.12.1977 exempted polypropylene spun yarn falling under Tariff Item No. 18E of the First Schedule to the Central Excises and Salt Act, 1944 from the duty of excise, which would include not only pure Polypropylene spun yarn, but also blended yarn, if the Polypropylene component of the yarn was predominant in weight. It came within the mischief of Tariff Item No. 18E and was dutiable as such. The notification had the effect of exempting from duty all types of polypropylene spun yarn which fell within the ambit of T.I. 18E. The exemption given by the notification could not be restricted only to pure polypropylene spun yarn. The exemption was given to polypropylene spun yarn which means whatever polypropylene spun yarn came within the mischief of T.I. 18E.

It was argued in support of this contention that in the case of Collector of Central Excise v. Rajasthan Spinning & Weaving Mills Ltd., [1933] 1 SCC 420, it was held that Item 18 to 18-1 from one group of entries dealing with composite yarn of various categories. The tariff items proceeded on the assumption that there were various types of composite yarns which consisted of different categories of yarns which were spun together and the entry specified that the composite yarn should be treated as belonging to the categories in which one relevant category predominated in weight. The entry envisaged a comparison between the weight of the particular yarn which went into its composition. Explanation III to sub-item (iii) of Item 18 proceeded on the assumption that there should be a comparison between the various types of yarns that had gone into the constitution of the composite fabric.

It was argued that there is no dispute that the appellant-Company has manufactured a composite yarn in which both polypropylene and viscose yarn have been used, but the character of the yarn produced is derived from the particular type of yarn which predominates in weight. In the instant case, since polypropylene yarn constituted 52% and viscose yarn 48% of the blended yarn, the product must be regarded as polypropylene yarn, and but for the notification, would have been taxed as non-cellulosic yarn falling under Item 18E.

We are of the view that the contentions made on behalf of the appellant cannot be upheld in the facts of this case and in view of the working of the notification dated 1.12.1977, This notification exempts from duty polypropylene spun yarn falling under T.1.18E, but not blended spun yarn containing polypropylene. Admittedly the blended yarn manufactured by the appellant, containing 52% polypropylene and 48% viscose, will fall within the T.I. 18E, coming within the ambit of the

tariff description 'Spun (discontinuous) yarn in which man-made fibres of non-cellulosic origin, other than the acrylic fibre, predominate in weight'. But blended yarn in which polypropylene predominates in weight has not been exempted.

The exemption is limited only to one type of non-cellulosic yarn out of a large variety of yarns which fall under the heading of T.I. 18E, 'Non- cellulosic spun yarn'. The exemption is limited to polypropylene spun yarn. Polypropylene fibre blended with other types of fibre will not qualify for the exemption. If in any blended yarn Polypropylene predominates in weight, then such yarn will come within the description of goods given in T.I. 18E, but that will not turn the blended yarn into 'polypropylene spun yarn', which has been exempted from duty.

It has been noted in the order of the Judicial Member of the Tribunal that no evidence has been given to show that the blended yarn manufactured by the appellant is regarded as polypropylene spun yarn in the market.

Explanation HI under sub-item III of Item No. 18, on which reliance was placed on behalf of the appellant, does not throw any light on the dispute raised in this case. This explanation only enumerates various types of fibres and deals with cases where two or more of the said fibres in any yarn are equal in weight Explanation III introduces a deeming provision to decide under which sub-items Nos. 18-III, ISA, 18B, 18C, 18D, 18E, 18F, and 18F-II in which such blended yarn will be classified for the purpose of levying duty. But that will not decide the controversy raised in this case. Here, we have a case where the appellant has produced a yarn in which polypropylene predominates. Because of the predominance of polypropylene, the goods produced will be classified as 'non-cellulosic spun yarn' under T.I. 18E. The exemption notification, however, is confined to polypropylene spun yarn only. It does not speak of any blended yarn in which polypropylene predominates or is equal in weight with any other fibre. It has been noted in the order of the Judicial Member that no proof was adduced to show that in commercial parlance such blended yarn was known as polypropylene yarn. Therefore, there is no reason to hold that the blended yarn produced by the appellant comprising of 52% polypropylene fibre and 48% viscose fibre will answer the description 'polypropylene spun yarn' as given in the exemption notification.

It is also of significance that subsequently in 1980 two separate notifications were issued granting exemption from duty under T.I. 18E, one related to polypropylene yarn and the other in respect of blended yarn.

Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.

The appeal, therefore, fails and is dismissed. There will be no order as to costs.

Appeal dismissed.