Union Of India And Others vs Garware Nylons Ltd. Etc on 9 September, 1996

Equivalent citations: AIR 1996 SUPREME COURT 3509, 1996 (10) SCC 413, 1996 AIR SCW 3570, (1996) 87 ELT 12, (1996) 66 ECR 644, (1996) 3 SCJ 323

Bench: S.P. Bharucha, K.S. Paripoornan

PETITIONER:
UNION OF INDIA AND OTHERS

Vs.

RESPONDENT:
GARWARE NYLONS LTD. ETC.

DATE OF JUDGMENT: 09/09/1996

BENCH:
S.P. BHARUCHA, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 11644 OF 1996 (Arising out of S.L.P. (C) Nos. 11008 of 1988 AND CIVIL APPEAL NO. 7564 OF 1996 J U D G M E N T PARIPOORNAN, J.

Special leave granted in S.L.P. (C) No. 11008 of 1988.

2. The above three appeals involve a common question of law, namely, whether "Nylon Twine" can be considered as "Nylon Yarn" so as to be covered by Item 18 of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act") as it stood prior to the Amendment of 1977.

"18 RAYON AND SYNTHETIC FIBRES AND YARN

---------- Tariff Item Description of goods Rate of duty Basic

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18. RAYON AND SYNTHETIC FIBRES AND YARN INCLUDING TEXTURED YARN, IN OR IN RELATION TO THE MANUFACTURE OF WHICH ANY PROCESS IS ORDINARILY CARRIED ON WITH THE AID OF POWER:-

(i) Fibres and Yarn other than Rs. 85.00 per kg. Textured Yarn.

(ii) Textured Yarn produced out of Base Yarn.	The duty for the time being leviable on the base yarn, if not already paid plus Rs. 20/- per kg.
(iii) Other Textured Yarn	Rs. 105.00 per kg.

Explanation-I "Fibres and Yarn, other than Textured yarn", shall be deemed to include -

(i) man-made fibres;

(ii) man-made metallic yarn;

(iii) spun (discontinuous yarn containing not less than ninety per cent by weight of man-made fibres calculated on the total fibre content; and

(iv) man-made filament (continuous) yarn that has not been processed to introduce crimps, coils, loops or curls along the length of the filaments, but does not include bulked yarn and stretch yarn.

Explanation-II "Textured Yarn means yarn 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.

Explanation-III "Base Yarn" means yarn falling under sub-item (i) of the this Item from which the Textured Yarn has been produced. Explanation-IV - This item does not include mineral fibres and yarn."

3. It will be useful to note that from 1st March, 1977 a new item i.e. Item 68 was introduced to the first schedule to the Act which is to the following effect.

"

---------- Tariff Item Description of goods Rate of duty Basic

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68. ALL OTHER GOODS, NOT ELSEW HERE 1% Adv. SPECIFIED, MANUFACTURED IN A FACTORY BUT EXCLUDING -

a) alcohol all sorts including alcoholic liquors for human consumption;

....."

Item 18 was also amended int he following manner:

"II. Man-made filament yarns-

(i) Non-cellulosic -

(a) other than textured

(b) textured Explanation: "Textured Yarn" means yarn 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."

4. We heard Counsel.

5. In this group, the main appeal is Civil Appeal No. 715/81. It is an appeal preferred by the Union of India (Revenue) against the judgment and order of the High Court of Bombay dated 9.4.1980 rendered in Special Civil Application No. 2974/78. In the other two cases, the judgment in special civil application No. 2974/78 was followed. The judgment in the said special civil application is reported in 1980 (6) E.L.T. 249 (Bom.).

6. The respondents-assessees manufacture "Nylon Yarn" and "Nylon Twine". They are doing so eversince 1962. Under first schedule, Item 18 of the Act excise duty is payable in respect of "Nylon Yarn" as specified therein. The notification issued under Rule 8 of the Excise Rules provided that "Nylon Yarn", which is meant for use int he manufacture of fishing nets and parachute cords is exempt from the payment of so much of excise duty leviable under Item 18 as is in excess of Rs.4/- per kg. The assessees contended that "Nylon Twine" manufactured by them is used for the purpose of making fishing nets. Prior to 1975 they were allowed to clear Nylon Twine manufactured by them on payment of excise duty as specified under the above exemption notification. Thereafter, when the

new item, viz Item 68 (residuary entry) was introduced in the Act, it was contended by the Excise Authority that Nylon twine manufactured by the assessees was not covered by item 18. According to the Revenue Nylon twine and Nylon yarn are two different items and Item 18 takes within its fold Nylon yarn only and not Nylon twine. The authorities claimed excise duty on "Nylon twine" under Item 68. The assessees paid such duty under protest. Thereafter, the application filed by the assessees for refund before the Assistant Collector failed. He passed an order to that effect on 28.5.1976. The appeal filed was rejected by Appellate Collector on 28.9.1976. Similarly the Central Government rejected the revision by order dated 31.10.1979. It is thereafter the assessees approached the High Court of Bombay for refund of the amount paid under protest. A Division Bench of the High Court heard and disposed of the petition by judgment and order dated 9.4.1980. Sujata Manohar, J. delivered the leading judgment and Masodkar, J., though for different reasoning, agreed with the conclusion of Sujata Manohar, J.

7. Sujata Manohar, J., after referring to the following materials - viz. - Encyclopaedia Britennica, Vol.X (abridged version), the Indian Standards Indstitution Standard bearing No. AIS 332 of 1967 wherein the expressions "Twine and Yarn"

> were dealt with, the Indian Standards Institution Standard bearing No. IS 1402-767 relating to "netting for fishing", the Manual called "Netting Materials for Fishing Gear" the manual published by the Food and Agriculture Organisation of the United Nations, the orders received by the assessees from the Director of Fisheries, Madras, two affidavits, one from the Managing Director of Maharashtra Rajya Machimar Sekhari Sangh Limited and another from a Partner of Maharashtra Fishing Material Company, concluded thus, in paragraph 14 of the judgment:
>
> "14. There is, however, sufficient material on record which goes to show that nylon twine manufactured by the petitioners has been treated as a kind of nylon yarn by the people in the trade. It is commonly considered as yarn. Hence it can be classified under Item 18. The respondents have failed to establish that nylon twine must be taxed under Item 68, as it is not covered by Item 18 of the First Schedule. The respondents are the taxing authorities, and they must show that the item in question is taxable in the manner claimed by them. the burden is on the taxing authorities to show that the item in question is taxable in the manner claimed by them."

(Emphasis supplied) The learned Judge, therefore, directed the Revenue to refund to the assessees the excess amount collected from them as Central Excise Duty on the basis that "Nylon Twine"

> falls under Item 68 of the First Schedule to the Act.

8. Sri P.A. Chaudhary, Senior Advocate, appearing for the Union of India - appellant, contended that Nylon Twine is different from Nylon Yarn, that Item 18 of the Act would cover only "Nylon Yarn" and not Nylon Twine; that a mere look of Nylon Twine will go to show that it is different from Nylon Yarn,; that in commercial different physical characteristics. He stressed that Nylon Twine -- the commodity involved int e instant case is not known as "Nylon Yarn" and so, the same is outside the

purview of Item 18 of the Act. Certain decisions of general application were also cited. Counsel for the respondents - assessees contended that the Nylon Twine is nothing but Nylon Yarn, other than textured yarn and referred to the Encyclopaedia Britennica, Vol X (abridged version), and the literature issued by the Indian Standards Institution and others, the trade inquiries and the affidavits filed by persons in the particular trade, would conclusively show that Nylon Twine is considered as a kind of Nylon Yarn by the traders and persons dealing with the subject matter and the High Court had abundant material to substantiate the above proposition.

9. We do not think it is necessary, especially in this batch of cases, to refer in detail to the decisions cited by the Revenue or the text-books and the literature of the Indian Standards Institution and the Manual published by the Food and Agriculture Organisation, United Nations, as to what is meant by "Twine", "yarn", "netting twine" etc. referred by the High Court. In this case, clinching evidence is afforded to demonstrate that trade and industry which deals with the goods, consider "Nylon Twine" as a kind of "Nylon Yarn".

10. Thee are innumerable decisions of this Court which have laid down the test or the principles to be borne in mind in construing the Items or Entries in Fiscal Statutes. In recent decision in Indian Cable Company Ltd., Calcutta v. Collector of Central Excise, Calcutta and Others, [(1994) 6 SCC 610 - at page 615] a three-member Bench stated the law thus:

"..... in construing the relevant item or entry, in fiscal statutes, if it is one of every day use, the authority concerned must normally, construe it, as to how it is understood in common parlance or int he commercial world or trade circles. It must be given its popular meaning. The meaning given in the dictionary must not prevail.

No should the entry be understood in any technical or botanical or scientific sense. In the case or technical words, it may call for a different approach. The approach to be made in such cases has been stated by Lord Esher in Unwin v.

Hanson thus:

> "If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words."

We would only add that there should be material to enter appropriate finding in the case. The material may be either oral or documentary evidence."

(Emphasis supplied)

11. In a subsequent decision in Collector of Central Excise, Chandigarh v. Steel Strips Ltd., Sangrur, [(1935) 4 SCC 241 - at pages 243-24], another three-member Bench stated the law thus:

"..... We find no evidence upon the record in regard to what happens to hot-rolled steel strips before cold-rolled steel strips are produced."

It cannot be sufficiently emphasised that when it is the case of the Excise authorities that an article is the result of a process of manufacture and it is commercially distinct and known as such, it is for the Excise authorities to lay evidence in this behalf before the first adjudicating authority regardless of the fact that he is an officer of the Excise Department. There should, ordinarily, be article is the result of a process of manufacture; in the event of difficulty, it would be open to the Excise authorities to seek a direction requiring the assessee to set out in writing what it does to obtain the article. Too often, as our experience in this Court and in the High Courts, before the Tribunal was established, shows, lack of evidence has led to the failure of the case of the Excise authorities and, consequently, to the loss of revenue to the State.

Failure to lay the requisite evidence cannot be made up by reference to authoritative publications unless the Excise authorities inform the assessee that they propose to rely upon the same before the adjudicating authority ..... Technical evidence and authoritative publications must, therefore, be placed in the first instance before the adjudicating authority and the Tribunal. They have the requisite technical expertise to evaluate the same."

(Emphasis supplied)

12. The law on the point as laid down by this Court (in various decisions) has been summarised int he book "Principles of Statutory Interpretation" (Sixth Edition - 1996) by Justice G.P. Singh, at pages 67, 70, 72 and 73, thus:

> "..... So in construing entries of goods in Excise, Customs or Sales Tax Acts resort should normally be had not to the scientific or technical meaning but to their popular meaning viz. the meaning attached to the expressions by those dealing in them.
>
> ..... The popular meaning int he context of a Sales Tax Act is that meaning which is popular in commercial circles for the Act essentially, in its working, is concerned with dealers who are commercial men."
>
> "The justification of the rule that the words are to be understood in their natural, ordinary or popular sense is well expressed by JUSTICE FRANKFURTER: "After all legislation when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed." In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject - matter of statute and to whom the legislation is addressed, will give if the problem

were put to him."

xxxx xxx xxx xxx "As a necessary consequence of the principle that words are understood in their ordinary or natural meaning in relation to the subject- matter, in legislation relating to a particular trade, business, profession, art or science, words having a special meaning in that context are understood in that sense. Such a special meaning is called the technical meaning to distinguish it from the more common meaning that the word may have. ..... The Supreme Court "has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff Schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understand it which constitutes the definitive index of legislative intention". "

13. Stated briefly, we should understand, the expression occurring in Item 18 of the Act, in the sense, in which the persons who deal in such goods understand it normally.

14. In this case, apart from the meaning given to the words "Yarn", "Twine" etc., in the standard works referred to by the High Court, two items of evidence stand out prominent and clinch the issue. The first is, an order received by the assessee from the Director of Fisheries, Madras which goes to show that Nylon Twine is considered as a type of Nylon Yarn used for making fishing nets. The second is, two affidavits filed by the assessees before the authorities - one from the Managing Director of Maharashtra Rajya Machimar Sekhari Sangh Limited and another from a Partner of Maharashtra Fishing Material Company, wherein it is stated that "Twine" is a category of "Yarn"> What is more - the assessees made available the above persons who have sworn to the affidavits for cross-examination at the time of the hearing of the applications, but the Revenue did not cross-examine them. The trade inquiry received by the assessees and also the affidavits conclusively point out that Nylon Twine is considered as a kind of "Nylon Yarn" in the particular trade by persons conversant with the subject- matter. The revenue has not let in any material to the contra.

15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in a case a this, where the claim of the assessee is borne out by the trade inquiries received by them and also the affidavits filed by persons dealing with the subject matter, a heavy burden lay upon the revenue to disprove the said materials by adducing proper evidence. Unfortunately, no such attempt was made. As stated, the evidence led in this case conclusively goes to show that Nylon Twine manufactured by the assessees has been treated as a kind of Nylon Tarn by the people conversant with the trade. It is commonly considered as Nylon Yarn. Hence, it is to be classified under Item 18 of the Act. The Revenue has failed to establish the contrary. We would do well to remember the

guidelines laid down by this Court in Dunlop India Ltd. v. Union of India (AIR 1977 SC 597 - at page 607), in such a situation, wherein it was stated:-

> "..... When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."

(Emphasis supplied)

16. We concur with the reasoning and conclusion of the High Court. There is no substance in these appeals. The judgment s appealed against in this batch of appeals are affirmed. The appeals are dismissed with costs, including Counsel's fee of Rs.5,000/- in each case.