Aditya Mills Ltd. vs Union Of India (Uoi) on 29 August, 1988

Equivalent citations: AIR1988SC2237, 1989(19)ECC43, 1988(19)ECR292(SC), 1988(37)ELT471(SC), JT1988(4)SC151, 1988(2)SCALE1068, (1988)4SCC315, [1988]SUPP2SCR668, [1989]73STC195(SC), AIR 1988 SUPREME COURT 2237, (1988) 37 ELT 471, (1988) 4 JT 151 (SC), 1988 (4) SCC 315

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Bench: S. Ranganathan, Sabyasachi Mukharji

JUDGMENT

Sabyasachi Mukharji, J.

1. This is a statutory appeal against the decision of the Customs Excise & Gold (Control) Appellate Tribunal (for short CEGAT). The appellant Company had filed a Classification List under Rule 173B of the Central Excise Rules stating that they intended to clear PPRF yarn, on which duty had already been paid.

2. According to the appellant, the PPRF yarn consists of two varieties of yarn on which duty has already been paid, namely, two plies of Polyester Spun Yarn-PP and one ply of Rayon Filament Yarn-RF, which are doubled together and the resultant yarn is referred to as PPRF Yarn. The aforesaid classification list filed by the appellant was rejected and it was directed to file a fresh classification list showing PPRF yarn under Tariff item 68 of the Central Excise Rules. The case of the appellant is that since it was not permitted to clear PPRF Yarn without further payment of duty under Tariff Item 68 of the said Rules, on or from 27th April, 1976, they started making clearance on payment of duty on PPRF Yarn under protest.

3. Thereafter, in October, 1978, the appellant filed refund claim for the period from April to September, 1978 for a sum of Rs. 84,651.77 collected by the revenue as duty on PPRF Yarn under Tariff Item No. 68. The appellant Company, thereafter, received a show cause notice requiring it to show cause as to why the refund claim should not be rejected. The appellant Company filed its reply stating therein that the duty had already been paid on Polyester Spun Yarn, which was manufactured by it in its factory (under Tariff Item 18E of the 1st Schedule to the Central Excises & Salt Act, 1944, hereinafter called 'the Act') and further that the appellant was purchasing Rayon Filament Yarn, on which duty had already been paid (under Tariff Item No. 18-II) and that the appellant was only doubling two plies of duty paid Polyester Spun Yarn with one ply of Rayon Filament Yarn and no process of manufacture was carried out and further no new product came into being.

4. On or about 3rd July, 1979, the Assistant Collector of Central Excise rejected the refund claim of the appellant despite the fact that a representation was pending before the Collector of Central Excise & Customs, Jaipur, against the action of the Inspector, Central Excise, in rejecting the Classification list dated 10.4.1978 and demanding duty of excise on the PPRF Yarn, on which duty has already been paid. In February, 1980, the appeal filed before the Revisional Authority against the order of the Appellate Collector was transferred to the CEGAT under Section 35P of the Act.

5. By the judgment in appeal, the Tribunal held that the goods in question, namely, PPRF Yarn was taxable under Tariff Item 68 and there was no question of any refund being due to the appellant.

6. Hence, the short question involved in this appeal, is: whether the goods in question, namely, a special type of yarn marked as a finished product known as 'PPRF Yarn', should be treated as such and taxed on that basis. Excise duty is a duty on the manufacture of goods and not on sale. Manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinct name, character or use results from particular process or processes, such process or activity would amount to manufacture. The moment there is transformation into a new commodity commercially known as a separate and distinct commodity having its own character and use, 'manufacture' takes place. See the observations of this Court in Union of India v. Delhi Cloth & General Mills (1963) Suppl. 1 SCR 586; Union of India v. HUF Business known as Ramlal Mansukhrai, Rewari and Anr. ; Allenburry Engineers P. Ltd. v. Ramakrishna Dalmia and Ors. ; Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. Pio Food Packers , Chowgule & Co. Pvt. Ltd. and Anr. v. Union of India and the cases referred to in the decision of this Court in Empire Industries Ltd. and Ors. v. Union of India and Ors. (1985) Suppl. 1 SCR 292.

7. In our opinion, the Tribunal was justified in the view it took. The Tribunal's view is corroborated by its own view as expressed in its decision in Hyderabad Asbestos Cement Product Ltd. and Anr. v. Union of India and Ors. (1980) ELT 735. Our attention was, however, drawn to the observations of the Bombay High Court in the case of Piramal Spg. & Wvg. Mills Ltd. v. Union of India and Ors. (1982) ELT 145, where the facts were slightly different but the learned Single Judge of the High Court held that merely by inter-twinning strings of cotton yarn and nylon yarn, no new product comes into being. Whether by a certain process a new product comes into being or not, is a question of fact. There is no particular definition of 'yarn' in the Act or the Rules or the Notifications. According to the Oxford Dictionary 'yarn' means any spun thread specially of kinds prepared by weaving, knitting or rope making. According to the Webster's new World Dictionary, it is defined as any fibre, as wool, silk, flax, cotton, nylon, etc., spun into strands for weaving, knitting or making thread.

8. This Court in Commissioner of Sales Tax, U.P. v. Sarin Textile Mills (1975) 35 STC 634 held that the fibre in order to answer the description of yarn must have two characteristics, firstly, it should be a spun strand and secondly such strand should be primarily meant for use in weaving, knitting or rope-making. The question is not whether it is a mixture of two yarns where as a process of mixing a separate and distinct goods known in the market as such, comes into being. For ascertaining the correct meaning of a fiscal entry reference to a dictionary is apt to be a somewhat delusive guide, as

it gives all the different shades of meaning. The correct guide is the context and the trade meaning. The trade meaning is always to be given preference. See in this connection the observations in the famous Canadian case of The King v. Planters (1951) CLR (Ex) 122.

9. The Tribunal has found that indisputably a new yarn has come into being which is known in the market on the evidence adduced before the Tribunal, and that PPRF is treated differently from Polyester Spun Yarn and Rayon Filament Yarn. We are, therefore, of the view that the Tribunal rightly came to the conclusion that this is a separate and distinct item. If having borne the correct legal principles in mind and in the light of the facts and without ignoring any relevant or material fact, the Tribunal comes to a conclusion on a question of classification of an item for tariff purpose, in our opinion, that finding cannot and should not be interfered with in appeal before this Court. In that view of the matter the appeal cannot be entertained and is, therefore, dismissed.