Supreme Court of India
Collector Of Central Excise, ... vs Kiran Spinning Mills, Kolshet ... on 15 February, 1988
Equivalent citations: 1988 AIR 871, 1988 SCR (2)1006
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, BOMBAY-II

Vs.

RESPONDENT:
KIRAN SPINNING MILLS, KOLSHET ROAD, THANE

DATE OF JUDGMENT15/02/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 871 1988 SCR (2)1006
1988 SCC (2) 348 JT 1988 (1) 369
1988 SCALE (1)356

ACT:
Central Excise and Salt Act 1944: Section 35L & Ministry of Finance Notification dated December 22, 1972-'Tow' and 'Staple fibre'-Distinction between-Running length fibre (tow) cut into short length fibre (staple fibre)-Substance obtained-Polyester staple fibre-Excise duty-Liability for-Taxable event under excise law is 'manufacture'.
Word & Phrases: 'Tow'-'Staple fibre'-'Manufacture'-Meaning of.

HEADNOTE:
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The Central Excise Officers during the course of investigations made against M/s Swastik Investment Company, Bombay found that some of the consignments of the material described in documents as 'crimpled uncut waste' were cleared from M/s Swadeshi Polytex Limited, Ghaziabad during the period from January, 1974 to December, 1977, were purchased by the respondents and utilised by them in the manufacture of 'polyester staple fibre'.
The Collector held that the 'crimpled uncut waste' purchased by the respondents was in fact 'polyester fibre

tow' and that the respondents had carried on manufacture of 'polyester staple fibre' from tow and, as such, exigible to duty.

Aggrieved by the Collector's Order the respondents filed an appeal before the Central Board of Excise and Customs. This appeal was transferred to the Customs Excise and Gold Control Appellate Tribunal in pursuance of s. 35-P of the Central Excises and Salt Act, 1944.

The Tribunal on an examination of the material and the contentions came to the conclusion that what the respondents had purchased was already man-made-fibre but in running length, and that what they did in relation to it, was to cut it into staple length after some manual sorting and straightening and held that such cutting involved no
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manufacture and hence no duty liability could be imposed.

In the Appeal by the revenue to this Court on the question: whether there was exigibility to taxation on the item manufactured by the respondent.

Dismissing the Appeal.

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HELD: 1. There is a distinction between 'tow' and 'staple fibre'. 'Tow' 'is fibre in running length and 'staple fibre' is obtained by cutting it into required short length. [1009B]

2. The taxable event under the Excise Law is 'manufacture'. 'Manufacture' means to bring into existence a new substance and does not mean merely to produce some change in a substance. [1009D]

3. Etymologically the word 'manufacture' properly construed would doubtless cover transformation, but the question is whether the transformation in the instant case brings about fundamental change, a new substance is brought into existence, or a new different article having distinctive name, character or use results from a particular process or a particular activity. [1009D-E]

In the instant case, it is not disputed that what the respondents did, was to cut the running length fibre (tow) into short length fibre (staple fibre). It indubitably brought a change in the substance but did not bring into existence a new substance. The character and use of the substance (man-made fibre) remained the same. By the change in the length of the fibre, the substance acquired a new name. But since the tariff entry recognised the single description 'man-made fibre' with no further sub-division based on length of fibre and even without any distinct enumeration of the various forms of fibre by cutting long fibres into short ones, the respondents did not bring into existence any new product so as to attract any levy under the same tariff entry. Even by cutting, the respondents obtained man-made fibre. Such cutting, therefore, involved no manufacture and, hence, no duty liability can be imposed upon them. [1009E-H]

Union of India v. Delhi Cloth & General Mills, [1963] 1 Suppl. SCR 586; Empire Industries Ltd. & Ors. etc. v. Union of India & Ors. etc., [1985] Suppl. 1 SCR page 292 and M/s Ujagar Prints v. Union of India, [1986] Suppl. SCC 652, referred to.
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2891 of 1984.

From the Judgment and Order dated 28.2.84 of the Customs Excise and Gold Control Appellate Tribunal, New Delhi in Order No. 118/84-D.

A.K. Ganguli, P. Parmeswaran and K. Swamy for the Appellant.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI,J. This is a statutory appeal under Section 35-L(b) of the Central Excise & Salt Act, 1944, hereinafter called the 'Act', against the Order dated February 22, 1944 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, hereinafter called the 'CEGAT' In this appeal we are concerned with the question whether there was exigibility to taxation on the item concerned under the Act. It appears that during the course of investigations made against Swastik Investment Company, Bombay, the Central Excise Officers found that some of the consignments of the material described in the documents as 'crimpled uncut waste' were cleared from M/s. Swadeshi Polytex Ltd., Ghaziabad, during the period from Jan'74 to Dec'77 and were purchased by the respondents herein and utilised in the manufacture of polyester staple fibre. The Collector held that the so-called 'crimpled uncut waste' purchased by the respondents was, in fact, polyester fibre tow and the staple fibre which were commercially two distinct products and the respondents had carried on manufacture of polyester staple fibre from tow and, as such, exigible to duty. The respondents filed an appeal before the Central Board of Excise & Customs against the Collector's Order. The appeal was thereafter transferred to CEGAT in pursuance of Section 35-P of the Act.

It appears that there is distinction between a tow and staple fibre. The Ministry of Finance (Deptt. of Revenue)'s circular indicates as follows:

"Tow is a collection of many parallel continuous filaments without twist which are grouped together in rope like form."

"Tow is used for the same purpose for which staple fibre is used. Tow is mainly converted into staple fibre and only a negligible quantity is converted directly into yarn. It has been therefore decided that duty should be levied on Tow at the rate applicable to staple fibre (MF (DR & I) F. No. 50/7/71-CX 2 dt. 22.12.72)".

In other words, Tow is fibre in running length and staple fibre is obtained by cutting it into required short length. On an examination of the material and the contention, the Tribunal came to the conclusion that the material which the respondents had purchased was already man-made fibre but in running length. All that the respondents did in relation to it, was to cut it into staple length after some manual sorting and straightening. The question, therefore, is whether cutting the long fibre into short fibre resulted into a new and different articles of commerce. Now it is well settled how to determine whether there was manufacture or not. This Court held in the case of Union of India v. Delhi Cloth & General Mills, [1963] 1 Suppl SCR 586 that 'manufacture' means to bring into existence a new substance and does not mean merely to produce some change in a substance (emphasis supplied). It is true that etymological word 'manufacture' properly construed would doubtless cover the transformation but the question is whether that transformation brings about fundamental change, a new substance is brought into existence or a new different article having distinctive name, character or use results from a particular process or a particular activity. The taxable event under the Excise Law is 'manufacture'. See in this connection Empire Industries Ltd. & Ors. etc. v. Union of India & Ors. etc., [1985] Suppl. 1 SCR page 292 and M/s Ujagar Prints v. Union of India, [1986] Suppl. SCC 652. In the instant case it is not disputed that what the appellant did, was to cut the running length fibre (tow) into short length fibre (staple fibre). It indubitably brought a change in the substance but did not bring into existence a new substance. The character and use of the substance (man-made fibre) remained the same. It is true that by the change in the length of the fibre, it acquired a new name. But since in this case the tariff entry recognised the single description 'man-made fibre' with no further sub-division based on length of the fibre and even without any distinct enumeration of the various forms of fibre by cutting long fibres into short ones, the respondents did not bring into existence any new product so as to attract any levy under the same tariff entry. Even by cutting, the respondents obtained man-made fibre. Such cutting, therefore, involved no manufacture and, hence, no duty liability can be imposed upon them.

In that view of the matter and on the facts found by the Tribunal, we are of the opinion that the Tribunal was right in the view it took and that decision needs no interference. This appeal, therefore, cannot be entertained and is accordingly dismissed.

N.V.K. Appeal dismissed.