Collector of Central Excise, Bombay-II

Vs

M/s Kiran Spinning Mills

Civil Appeal No. 2891 of 1984

(Sabyasachi Mukharji, S. Ranganathan JJ)

15.02.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is a statutory appeal under Section 35-L(b) of the Central Excises and Salt Act, 1944, hereinafter called the 'Act ', against the order dated February 22, 1944 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, hereinafter called the 'CEGAT '.

2. 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 January 1974 to December 1977 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 and Customs against the Collector's order. The appeal was thereafter transferred to CEGAT in pursuance of Section 35-P of the Act.

3. It appears that there is distinction between a tow and staple fibre. The Ministry of Finance (Department 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 dated December 22, 1972].

4. 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 article 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 Supp 1 SCR 586 : AIR 1963 SC 791) that 'manufacture ' means to bring into existence a new substance and does not mean merely to produce some change in a substance. 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. v. Union of India (1985 Supp 1 SCR 292 : (1985) 3 SCC 314 : 1985 SCC (Tax) 416) and M/s Ujagar Prints v. Union of India (1986 Supp SCC 652 : 1987 SCC (Tax) 107) . In the instant case it is not disputed that what the respondent 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.

5. 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.

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