Collector of Central Excise, Ahmedabad

Vs

M/s Ashoka Mills Ltd.

Collector of Central Excise, Bombay

Vs

M/s Mafatlal Fine Spinning and Manufacturing Co. Limited, Bombay

Civil Appeal No. 2436-37 of 1987

(S. Ranganathan, N. D. Ojha JJ)

08.09.1989

JUDGMENT

RANGANATHAN, J. -

1. These are three appeals by the Collector of Central Excise. Two of them relate to Ahmedabad and one to Bombay. The Ahmedabad appeals are in the case of M/s. Ashoka Mills Ltd. and the Bombay appeal is in the case of M/s. Mafatlal Fine Spinning and Manufacturing Co. Ltd. These appeals raise a very interesting question.

2. The assessee respondents are companies manufacturing yarn and cotton fabrics, the manufacture of yarn being a step in the process of the manufacture of cotton fabrics. Cotton fabrics (which expression included all fabrics containing more than 40 per cent. by weight of cotton) were subject to excise duty on an ad valorem basis under Item 19 of the tariff in the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). "Yarn, all sorts, no elsewhere specified..." became liable to duty under Item 18-E of the First Schedule under the Finance Act, 1972 w.e.f. March 17, 1972. The consequence was that, from March 17, 1972, the yarn which was being produced by the appellants became liable to duty under Item 18-E while the fabric manufactured by them was dutiable under Item 19.

3. The Central Government decided to give two categories of assessees the benefit of the provisions of Rules 96-V and 96-W of the Central Excise Rules : (i) assessees manufacturing woollen yarn; and (ii) assessees manufacturing cotton yarn or yarn falling under Item 18-E and using the same wholly or partly, in the manufacture of fabrics in their own factory. These rules appeared in Chapter V of the Rules as Section E.VI, headed "Cotton yarn, woollen yarn, yarn falling under tariff Item 18-E - Special Procedure". This section in the Rules was inserted by Notification No. 110/61 dated April 20, 1961 and omitted by Notification No. 146/77 dated June 18, 1977. They read thus :

> "96-V. Application to avail of special procedure. - (1) Where a manufacturer who manufactures cotton yarn or yarn falling under Item 18-E of the First Schedule to the

Central Excises and Salt Act, 1944 (1 of 1944) or woollen yarn and in the case of cotton yarn or yarn falling under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) uses the whole or part of the yarn manufactured by him in the manufacture of cotton fabrics in his own factory, makes in the proper form an application to the Collector in this behalf the special provisions contained in this section shall, on such application being granted by the Collector, apply to such manufacturer in substitution of the provisions contained elsewhere than in this section for the period in respect of which the application has been so granted.

(2) Such application shall be made so as to cover a period of not less than six consecutive calendar months, but may be granted for a shorter period in the discretion of the Collector.

(3) If at any time during such period, the manufacturer does not want to avail himself of the special provisions contained in this section, he shall give a notice in writing to the proper officer of his intention at least one week in advance; and if he fails to give such notice he shall be precluded from availing himself of such provisions for a period of 6 months from the date of such failure.

96-W. Discharge of liability for duty on payment of certain sum. - (1) Having regard to the average production of cotton fabrics from one kilogram of cotton yarn or yarn following under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) or the average prevailing prices of woollen yarn the Central Government may, by notification in the Official Gazette, fix from time to time a rate per square metre of the cotton fabrics produced or per kilogram of the woollen yarn produced, as the case may be, subject to such conditions and limitations as it may think fit to impose, and if a manufacturer whose application has been granted under Rule 96-V pays a sum calculated according to such rate, in the manner hereinafter laid down, such payment shall be a full discharge of his liability for the duty leviable on the quantity of cotton yarn or yarn falling under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) manufactured by him and used in the manufacture of fabrics in his factory or the quantity of woollen yarn produced by him :

1. Provided that if there is an alteration in the rates of duty and/or in the limit of exemption, the sum payable shall be recalculated on the basis of the revised rates and/or exemption limit from the date of alteration and liability for duty leviable on the quantity of cotton yarn or yarn falling under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) used in the manufacture of cotton fabrics or woollen yarn produced shall not be discharged unless differential duty is paid;

(a) in the case of such cotton yarn, or yarn falling under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) as on the date of clearance of the aforesaid cotton fabrics, and

(b) in the case of woollen yarn, as on the date of clearance of such woollen yarn

from the factory of the manufacturer; should, however, the amount of duty so recalculated be less than the sum paid, the balance shall be refunded to the manufacturer.

(2) The rate specified under sub-rule (1) shall be separately and distinctly notified, and shall be separately and distinctly applied, in respect of (i) cotton yarn and (ii) woollen yarn.

(3) The sum payable under sub-rule (1) in respect of cotton yarn shall be paid by the manufacturer along with the duty on fabrics in the manner prescribed in Rule 52 :

Provided that where cotton fabrics are allowed to be removed in bond under Rule 96-D from one factory to another (hereinafter referred to as 'the processing factory') for processing and the cotton fabrics also processed are cleared from the processing factory, the duty payable under sub-rule (1) shall be paid by the licensee of the processing factory."

A notification as envisaged by Rule 96-V was issued, being Notification No. 62/72, on March 17, 1972. It reads as follows :

"In pursuance of Rule 96-W of the Central Excise Rules, 1944, the Central Government hereby directs that the rate of duty in respect of yarn containing partly more than 40 per cent. by weight of cotton and partly any other fibre or fibres, the wool or silk content being less than 40 per cent. by weight of such yarn (where such yarn contains wool or silk and falling under Item 18-E of the First Schedule to the Central Excises and Salt Act, 1944 and of the description specified in column (2) of the Table hereto annexed) shall be the rate specified in the corresponding entry in column (3) of the said Table :

TABLE----------S. No. Description of yarn Rate----------(1) (2) (3) Paise per square metre of the fabric made----------1. Yarn used in making superfine fabrics 20.002. Yarn used in making fine fabrics 12.003. Yarn used in making medium 'A' fabrics 6.004. Yarn used in making 'B' medium fabrics 4.405. Yarn used in making coarse fabrics 2.206. Yarn used in the manufacture of cotton 4.40 fabrics generally described as Malimo type fabrics or fabrics in which warp and weft yarns are connected and fastened together by chain stitches barred against each other7. Yarn used in making embroidery in the The duty for the time place in strips or in motifs being leviable on yarn contained in the base fabrics if not already paid8. Yarn used in making fabrics impreg- - do - nated or coated with preparation of cellulose derivatives or of other artificial plastic materials##

Provided that if the manufacturer elects to avail himself of the special provisions contained in Rule 96-W aforesaid, the procedure set out in that rule in this behalf shall uniformly apply to all the yarn of the description specified in the above Table and used by him in the production of cotton fabrics in his factory.

Explanation. - For the purpose of this notification

(i) "base fabrics" shall have the same meaning as assigned to it in tariff Item 19 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944)

(ii) the average count of yarn in a fabric shall be deemed to be the count of all yarn contained in such fabric."

4. Rules 96-V and 96-W, it will be noticed, deal with two items : cotton yarn or yarn falling under Item 18-E of the First Schedule and woollen yarn. Normally, under the Schedule to the Act, woollen yarn was being charged to excise duty on and ad valorem basis while cotton and other yarn was being assessed on weight basis. The rules cited above and the notification referred to, however, provided an alternative, on the application of the assessee. On a notification being issued and the assessee's option being exercised, duty on woollen yarn became payable on the basis of weight at the rates prevalent at the time of clearance of the yarn from the factory. If the rates had gone up in the meantime, the assessee had to pay the differential duty and if the rates had gone down, the assessee would be entitled to a refund. Thus the assessee was given the option of paying the duty on the woollen yarn on weight basis at the rates prevalent on the date of their clearance. We are not concerned with this here. So far as cotton and other yarn is concerned, the duty, in cases governed by a notification and application under this section, would be levied not on the weight of the yarn manufactured but on the extent of fabric manufactured from such yarn. Naturally, this duty could be calculated only after the fabric had been manufactured, on the basis of the area of cloth or fabric manufactured. This would create a doubt whether the duty on yarn under the scheme is payable on the production of yarn or on the date of clearance of the fabrics. Sub-section (3) of Section 96-W clears this doubt. It provides that the duty would be paid along with the duty payable on the fabrics under Rule 52. This clearly shows that it is not the incidence of liability that is shifted but only the collection of the duty.

5. The purpose of the rules and notifications may be briefly set out thus. As already mentioned both yarn and fabrics are individual items exigible to duty. Two levies on the yarn as well as on the cotton fabrics, on different bases, may not only impose an undue burden on the manufacturer but may also unnecessarily complicate the process of collection of duty at two stages. The Act, therefore, envisages what has been described as a scheme of "compounded levy". Under this scheme, the excise duty on the yarn is collected only as and when the manufactured goods, namely, cotton fabrics are cleared from the factory and no duty is collected at the stage of the production or manufacture of yarn. The duty paid as per this notification is treated as a full discharge of the assessee's liability for the duty leviable on the yarn used by the assessee for manufacture of fabrics in its factory. To sum up briefly, Rules 96-V and 96-W, together with the notification issued thereunder are concerned only with the issue of the excise duty leviable in respect to yarn and what they seek to achieve are -

> (a) the alteration of the basis of duty from a rate calculated on the weight of yarn produced to a calculation on the basis of the area of fabric manufactured therefrom;
>
> (b) the postponement of the collection of the duty till the point of clearance of the fabrics; and
>
> (c) the levy of the duty at rates prevalent not on the date of production of the yarn but on the date of clearance of the fabric.

6. If the notification of March 17, 1972 had continued in force, there would have been no difficulty in its application. However, on July 24, 1972, the government issued Notification No. 169 of 1972, the result of which was that the special procedure referred to above was made inapplicable to the type of yarn manufactured, used for weaving and cleared by the respondents. The short question in these appeals is as to the effect of this omission in respect of yarn produced after March 17, 1972 and cleared for captive consumption before July 24, 1972 but lying in various departments at various stages of manufacture or in the form of cotton fabrics not yet cleared as on July 24, 1972.

The department has taken in view that in respect of the yarn manufactured between March 17, 1972 and July 23, 1972 the assessee is liable to pay the normal duty payable on yarn under Item 18-E so long as the fabrics manufactured out of such yarn remained uncleared from the factory as on July 24, 1972. On the other hand, the assessee's contention is that excise duty on yarn is attracted as soon as it is produced and cleared for captive consumption though kept in abeyance and collected, so long as the notification was in force, till the corresponding fabrics were cleared. The assessee is not liable to pay any higher duty in respect thereof unless one could bring it within the terms of the proviso to the notification. The short contention is that the proviso applies only in a case where the notification under Section 96-W continues to be in force and there is a change in rates under the scheme of compounded levy introduced by the notification but not where the difference in rates is one between those prevailing on the date of production of yarn under the scheme and the date of clearance of the goods after the abandonment of the scheme.

7. The Customs, Excise and Gold Control Appellate Tribunal (CEGAT) accepted the contention of the assessee following its earlier decision dated April 2, 1983 in Raipur Manufacturing Co. v. CCE ((1988) 33 ELT 542). It held that the yarn cleared for captive consumption during the period from March 17, 1972 to July 23, 1972 in terms of the special procedure was entitled to the benefit of the rates fixed under Notification No. 62/72-CE dated March 17, 1972 and that no further duty was payable on that quantity of the yarn. A consequential refund to the appellants was directed. We notice that this order of the Tribunal was followed by another bench of the Tribunal in its order dated July 20, 1983 and this decision had been reported much earlier as Crown Spinning and Manufacturing Co. Ltd. v. Collector ((1983) 14 ELT 2433 (CEGAT)). The Collector, Central Excise has preferred these appeals.

8. We have come to the conclusion that the view taken by the Tribunal has to be upheld. 'Yarn' is an excisable commodity and it is common ground before us that, normally and but for the special procedure and notification, duty thereon is leviable at the point of production and clearance for captive consumption. On that view, the duty attaches itself at the point of production and clearance of the yarn. The notification does not alter this position. It does not shift the incidence of duty from yarn to the woven fabric. It still talks only of the liability of the yarn to duty and proceeds to provide only for its postponed collection. If we are right on this, the duty on such yarn - produced between March 17, 1972 and July 24, 1972 - has to be determined in accordance with the rates specified in the notification, though such rates may have to be calculated in terms of the area of the fabric cleared on or after July 24, 1972. The duty cannot be determined at the rates specified for yarn under Item 18-E as applicable on the dates of clearance of the fabric manufactured by using the yarn. To hold otherwise would really mean holding that the incidence of duty on the yarn under the notification arises only on the date of clearance of the manufactured fabric. This, in our view, is not the effect of the notification.

9. The proviso to Rule 96-W does not help the revenue. It only contemplates cases where there is a change in their rates prescribed under the notification between the date of production of the yarn and the date of clearance of the fabric. In such a case, an assessee may well contend, but for the proviso, that the duty having attached itself on the date of production of the yarn, it has to be calculated only at the rates then prevalent and should not be recalculated at the rates prevalent on the dates of clearance of the fabrics. The proviso precludes such an argument. It would be entirely superfluous and redundant if, as contended for by the revenue, the liability to pay duty on the yarn itself arises only on the date of clearance of the fabrics. It is intended to provide specifically that it is the intention of the government that in such a case, the rates prevalent on the date of clearance of the fabric should govern. The word 'recalculated' used in the proviso also supports such a

conclusion. This word would be inappropriate if the notification envisaged the levy of duty at the point of clearance of the fabrics, as contended for by the revenue, for in that event, there would be only one calculation as at that point of time and no question of recalculation would arise. In other words, the notification grants a concession but only subject to changes in these concessional rates that may occur until the fabrics made out of the yarn are cleared.

10. We do not think that the words of the proviso can be extended to cover a case where the notification itself has ceased to apply by the date of clearance of the fabric. To apply the proviso to such a case would result in its applicability to a totally different situation. It would involve a comparison of unlikes. It would mean the substitution of one set of rates prescribed in connection with a special procedure on the basis of the area of cloth by another set of rates applicable to yarn in the normal course which is to be worked out on the basis of weight. This involves a mix-up of two totally different schemes of levy of duty on yarn. We do not think it is correct to place this construction on these provisions. In our opinion, the normal rates de hors the notification will apply only in respect of yarn produced on or after July 24, 1972 and not to yarn produced between March 17, 1972 and July 23, 1972. The assessees having paid at the normal rates in respect of the latter period were rightly held entitled to seek a refund.

11. We may also point out that the best that can be said for the department is that the system of compounded levy ceased only on July 24, 1972. This means that the normal rules will become applicable. But the normal duty on yarn, effective from July 24, 1972, cannot be retrospectively applied to the yarn which had been authorisedly removed from the spindles for captive consumption prior to that date. The fact that the clearance of the fabrics made of such normal duty for yarn. There is no principle or statutory language that compels an assessee to be deprived of the concessional rate that has been made available to it, under a special procedure, in respect of the yarn produced by it and utilised for captive consumption.

12. For these reasons, we agree with the view taken by the Tribunal and dismiss these appeals. We, however, make no order as to costs.

</html