Collector of Central Excise, Chandigarh

Vs

M/s. Decent Dyeing Co.

And

Collector of Central Excise, Chandigarh

Vs

1. M/s. Navrang Dyeing Co. & Ors. 2. M/s. Capital Dyeing Co.

Civil Appeals Nos. 2151-52(NM) and 2141-42(NM) of 1986

(B. C. Ray, Sabyasachi Mukharji JJ)

07.12.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is an appeal under Section 35-L(b) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act') against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') dated May 8, 1984.

2. The appeal is by the revenue. The respondent, Decent Dyeing Co., was dyeing acrylic yarn on job charges. The acrylic yarn was being received by the respondent from traders in the market or from the manufacturers of hosiery goods and were returning the same to them after completing the required process. The respondent was paying duty at the rate of Rs. 10 per kg. in terms of Notification No. 125/75-CE dated May 12, 1975 on the presumption that base yarn had discharged duty liability before it was received for dyeing. A show cause notice requiring the respondent to show cause to the Assistant Collector of Central Excise as to why central excise duty amounting to Rs. 4300 at Rs. 24 per kg. leviable on 180 kgs. (as applicable to base yarn under tariff Item 18(i) of the Central Excise Tariff) should not be demanded under Rule 9(2) of the Central Excise Rules, 1944, was issued to the respondent. The Assistant Collector of Central Excise directed the respondent to deposit an amount of Rs. 4300 on the basis of the demand of duty at Rs. 24 per kg. on 180 kgs. and directed the respondent to deposit the said amount under the proper head. On appeal, the Appellate Collector of Central Excise confirmed the said demand.

3. There was an appeal and the Appellate Tribunal upheld the contention of the respondent. The Appellate Tribunal found that the case related to a demand for payment of differential duty for the period May 1976 to July 1976 with reference to texturing of base acrylic yarn received by the respondent from the manufacturers of such base yarn. The respondent, the Tribunal held, had cleared such textured yarn on payment of duty at Rs. 10 per kg. claiming the benefit of Notification No. 125/75. The differential duty payment was Rs. 24 per kg. leviable on the base yarn. The respondent denied their liability but it was upheld as mentioned hereinbefore. It was contended on

behalf of the appellant before the Tribunal that duty on base yarn was payable by the manufacturers of the base yarn only and the burden of showing that the said duty had not been paid by the manufacturers was on the revenue. The authorities had, however, held that the appellant was liable to pay the differential duty since the appellant had failed to prove the payment of duty on the base yarn and, therefore, the said orders were bad. On the other hand, on behalf of the revenue, it was contended that it was for the respondent to prove that the duty had been paid on the base yarn and if the appellant was paying the duty of Rs. 10 per kg. only under notification relied upon and in the absence of proof of payment of duty, the base yarn, the orders of the lower authorities making the respondent liable to pay the duty were correctly passed. The Tribunal found that the respondent was not the manufacturer of base acrylic yarn. The work done by the respondent on the base yarn was by way of texturising the same. In respect of the same, the duty payable on the textured yarn produced out of base yarn is the duty for the time being leviable on the base yarn, if not already paid, plus Rs. 20 per kg. Under Notification No. 125/75, the duty was reduced to the duty for the time being leviable on the base yarn, if not already paid, plus Rs. 10 per kg.

4. In this connection, it is relevant to refer to Notification No. 125/75. The notification, which was issued under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, stated that the government exempted the texturised yarn of the description specified in column (3) of the Table annexed thereto and falling under sub-items of Item 18 of the First Schedule to the Act as are specified in the corresponding entries in column (2) of the said Table, from so much of the duty of excise leviable thereon as is in excess of the duty specified in the corresponding entries in column (4) of the said Table. The relevant portion of the Table annexed to the said notification reads as follows :

> #S. No. Sub Item No. Description Rate of duty1. (ii) Textured yarn The duty for the time being produced out leviable on the base yarn, if of base yarn not already paid plus Rs. 10 per kilogram.##

5. Admittedly, the respondent had paid duty at Rs. 10 per kg. and had been allowed to clear the goods. The demand for differential duty by way of duty payable on the base yarn was not in dispute. On the base yarn, the Tribunal held, the manufacturer was liable to pay duty only since purchasers of the base yarn from the market could naturally assume that duty on the base yarn would have been paid by the manufacturer before removal and that it was for the department to verify the fact of such payment and take action against the manufacturer if base duty had not been paid. Under the relevant tariff item, the duty, as mentioned before, was fixed as the duty for the time being leviable on the base yarn, if not already paid, plus Rs. 20 per kg. (reduced to Rs. 10 per kg. under the notification). The notification does not change the basic position so far as base duty is concerned from the aforesaid stand. The Tribunal held that the revenue was entitled to claim duty inclusive of the duty paid on base yarn only on proof that the duty on the base yarn had not been already paid, unless otherwise, in the normal course, the presumption inevitable, in view of the nature of the business, be that the duty on base yarn had been paid. If that is so, that cannot be the responsibility or the burden of the respondent to prove that the duty on base yarn had already been paid. It further appears that when the appeal was filed before the Collector, the respondent had disclosed the names of the persons from whom they had received the yarn as also the names of the manufacturers enclosing the copies of the relevant record. But even then the revenue had not chosen to verify these facts and the Collector (Appeals) had passed his order on the basis that it was for the respondent to prove the actual payment of base duty. This approach is not proper approach. It is not correct to state that the respondent alone should have special knowledge of the fact of payment of base duty and it was therefore for the respondent to prove the said fact. In that view of the matter, the Tribunal held in favour of the respondent. We are of the opinion that the Tribunal was right.

6. Excise is a duty on manufacture. The liability of payment of this duty is on the manufacturer. The language of the notification referred to hereinbefore indicates that only the duty for the time being leviable on the base yarn, if not already paid plus Rs. 10 per kg. was the liability. The description of manufacture was textured yarn produced out of base yarn. We are clearly of the opinion that in view of the facts and the circumstances of the case, the Tribunal was right in the view it took. In this connection, it is instructive to refer to Rule 49 of the Central Excise Rules, 1944, which deals with duty chargeable only on the removal of the goods from the factory premises or from an approved place of storage. Reference was also made before the Tribunal and our attention was also drawn to the decision of the Delhi High Court in Sulekh Ram & Sons v. Union of India (1978 ELT (J) 525 (Del HC)), where under Rule 9 of the Central Excise Rules, it was held by the Delhi High Court that under excise system, no goods can be removed from the place of manufacture without first paying the excise duty, therefore, a purchaser can presume that goods are duty paid. It would be intolerable if the purchasers were required to ascertain whether excise duty had already been paid as they have no means of knowing it. It has to be borne in mind that duty of excise is primarily a duty levied on a manufacturer or a producer in respect of the commodity manufactured or produced. See the observations of Lord Simonds in Governor-General in Council v. Province of Madras (72 IA 91 : AIR 1945 PC 98). In a situation of this nature, the Delhi High Court held that the processor was in the similar position as a purchaser of the goods. In that view of the matter, we are of the opinion that the Tribunal was right in the view it took.

7. We have heard learned counsel for the appellant and considered the matter. We find no merit in the appeal for the reasons mentioned above.

8. In that view of the matter, this appeal must fail and is accordingly dismissed without any order as to costs.

This is an appeal under Section 35-L(b) of the Act from the judgment and order of the Tribunal dated April 17, 1984. For the reasons in Civil Appeals Nos. 2151-52, this appeal must also fail and is accordingly dismissed without any order as to costs.

</html