

Collector of Central Excise

Vs

Rajasthan Spg. and Wvg. Mills Ltd.

Civil Appeal Nos. 3991-92 of 1988

(S. Ranganathan, V. Ramaswami II, S. Mohan JJ)

21.01.1992

ORDER

1. These are two appeals by the Union of India from the order of the Central Excise and Gold (Control) Appellate Tribunal in the case of Rajasthan Spinning & Weaving Mills Limited.
2. The respondents manufacture yarn falling under item 18, 18-B etc. of the Central Excise Tariff as it stood at the relevant time. They manufactured three types of yarn containing polyester, viscose, and acrylic fibres. In one of the appeals, the yarn manufactured by the assessee consisted of polyester, viscose and acrylic fibres in the proportion of 24 : 26 : 50. In the other appeal, there were two types of yarn - one in which the above fabrics were mixed in the ratio of 24 : 26 : 50 and the other in which the fabrics were mixed in the ratio 45 : 5 : 50. There was another category of yarn in which the polyester and acrylic fibres were mixed in equal proportions but with that we are not concerned in the present appeals.
3. Two questions arose for the consideration of the Tribunal. The first was whether the composite yarn manufactured by the assessee could be treated as a separate item of goods on which excise duty could be levied. This question has been answered in favour of the Revenue and that conclusion has to be upheld in view of the decision of this Court in Aditya Mills Ltd. v. Union of India [(1988) 4 SCC 315 : 1988 SCC (Tax) 502 : (1988) 37 ELT 471].
4. The second question, which is the only question which survives before us, is as whether the categories of yarn we have referred to earlier manufactured by the assessee could be brought within the terms of tariff item No. 18-B(ii). This tariff entry reads as under :

"18-B. Woollen and acrylic spun yarn. - Yarn, in which wool or acrylic fibre or both predominates or predominate in weight and, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power -

#(i) * * *##

(ii) containing more than one-sixth by weight of non-cellulosic fibre (other than acrylic fibre) calculated on the total fibre content."
5. In order to determine whether the wool or acrylic fibre predominates in weight, the Tribunal has taken the view that a fibre can be said to predominate in weight only where its weight exceeds 50 per cent of the total weight of the composite yarn. The reasoning of the Tribunal for coming to this conclusion has been succinctly stated by it in its earlier decision in Gaekwar Mills Ltd. v. C.C.E.

[1983 ELT 2491 at pages 2494 and 2495]. On the other hand, the point made by Shri Gauri Shankar Murthi, learned counsel for the appellant is that since in the three categories of yarn with which we are concerned, the percentage of acrylic fibres by weight is 50 per cent as compared to the other two fibres which are either 24 per cent and 26 per cent or 45 per cent and 5 per cent, acrylic fibres must be said predominate in weight in the composite yarn manufactured by the assessee.

6. We have heard learned counsel appearing for both the parties and, after careful consideration, we have come to the conclusion that the contention urged on behalf of the appellant has to be accepted. Items 18 to 18-I form one group of entries dealing with composite yarn of various categories. Item 18-A defines cotton yarn as yarn in which cotton predominates in weight. Item 18-B talks about woollen and acrylic spun yarn as yarn, in which wool or acrylic fibre or both predominates or predominate in weight. Item 18-C deals with silk yarn in which silk predominates in weight and so on. In other words, the tariff items proceed on the assumption that there are various types of composite yarn which consist of different categories of yarn which are spun together and the entry specifies that the composite yarn should be treated as belonging to the categories in which one relevant category predominates in weight. The entry obviously envisages a comparison between the weight of the particular yarn with which the entry deals in comparison with the other categories of yarn which go into its composition. In fact, explanation III to sub-item (iii) under tariff item No. 18 makes this clear. It contemplates an eventuality where a composite yarn contains various types of yarn which are all equal in weight and it proceeds to lay down that the yarn which attracts the highest amount of duty shall be deemed to predominate. In other words, this explanation proceeds on the assumption that there should be a comparison between the various types of yarn that go into the constitution of the composite fabric. If the position were, as the Tribunal has indicated, that only that fabric can be said to predominate which is more than 50 per cent in weight, then this explanation would not at all have been necessary. The word 'predominate', in the context of a composite yarn made of different types of yarn, has a very simple meaning, namely, that the percentage of the particular yarn with which one is concerned should predominate over the weight of the other constituents of the composite yarn. This being so, we are unable to agree with the reasoning of the Appellate Tribunal so far as the items of composite yarn with which we are concerned. We hold that they fall under Item 18-B(ii) and that the duty should be levied accordingly.

7. In the view we have taken, the other questions discussed by the Tribunal do not arise. The appeals are therefore allowed. There will be no order as to costs.

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