

Collector Of Customs, Bombay

Vs

J. K. Synthetics Ltd.

Civil Appeal No. 4202 of 1984\

(S. P. Bharucha, Faizanuddin JJ)

24.09.1996

ORDER

1. It is not in dispute that the judgment of this Court in Thermax (P) Ltd. V. Collector of Customs ((1992) 4 SCC 440 : (1992) 61 ELR 352) applies to the facts of this case. This Court considered the terms of a letter of the Central Board of Excise and Customs and agreed "with the observation of the Board that the benefit of exemption or concession should be granted wherever the intended use of the material can be established by the importer or by other evidence".

2. Had the judgment concluded here the learned counsel would have had no difficulty in stating that the appeal had to be dismissed because there was evidence on record that showed the intended use of the material by the respondents so that the respondents were entitled to the benefit of the exemption. The learned counsel for the Revenue, however, drew our attention to the following paragraph of the judgment, which reads thus : (SCC p. 454, para 13)

"This conclusion however does not entitle the assessee to the concession claimed in both these appeals. Its entitlement will depend on whether the purchaser is the holder of an L-6 licence (or C. T. 2 certificate) or not. The Tribunal has pointed out that the goods were supplied by the assessee to Indian Rayon Corporation and M/s. Nirlon Synthetics Fibre and Chemicals Ltd., of which the latter was holder of an L-6 licence. The position in regard to the former is not known. The grant of concession in respect of the former by the Collector (Appeals) in the first appeal is, therefore, correct and is upheld. So far as the other appeal is concerned, the assessee produced no material to show that the 'beneficiary' factory was eligible for the concession under Rule 192. The benefit of such concession to the assessee must therefore be held to have been rightly denied in that appeal."

3. We do not read this paragraph (paragraph 13) as laying down a principle. The principle is laid down in the preceding paragraph, quoted above. In paragraph 13 the Court was considering the material on the record and its observations in regard to eligibility for the concession under Rule 192 were limited to the case before it.

4. The appeal must, therefore, be dismissed, with no order as to costs.