

SUPREME COURT OF INDIA

Union of India (UOI)

Vs.

Nirlon Synthetic Fibres & Chemicals Co.

C.A.No.1664 of 1991

(B.N.Kirpal and D.P.Mohapatra JJ.)

19.07.2000

ORDER

1. The point involved in this appeal is short though the amounts are heavy. Perhaps that is the reason which persuaded the Union of India to file the present appeal which, as we shall presently see, is devoid of merits.
2. It appears that the demand of excise duty was raised against the respondent who were manufacturing nylon yarn. The demand raised was in respect of inter mediate product. The said demand was challenged by the respondent filling a writ petition in the Bombay High Court on 28th of May, 1980. The case of the respondent was that the nylon yarn which was manufactured by it was consumed within the factory for the manufacture of "nylon tyre cord wrap sheet" and the nylon yarn was not an excisable commodity.
3. On 9th of July, 1980, a Single Judge of the Bombay High Court while admitting the writ petition, granted the prayer of interim injunction on the condition that the respondent should execute a bond for payment of the amount claimed by the excise authorities with interest at 18% per annum from the date of the amount becoming due and payable and the respondent should also furnish bank guarantee for payment of the said amount along with interest.
4. The respondent, instead of complying with the said order, dated 9.7.80, took out a notice of motion praying for liberty to deposit the amount of excise duty in the court and for a direction that the amount so deposited from time to time be invested by the Court. This prayer was accepted and by order dated the 2nd of November, 1981, the High Court directed the Prothonotary and Senior Master to invest the amount of excise duties by depositing the same in a nationalised bank.
5. The aforesaid writ petition was finally heard and disposed of by the Single Judge of the Bombay High Court on 22nd December, 1983. The writ petition was allowed and the letter of the Assistant Collector who demanded the excise duty was quashed. It was held that there had been violation of the principle of natural justice as the hearing had not been granted. The learned Judge gave the Excise Authority its liberty to pass a fresh order with regard to the amount of money which had been deposited from time to time by the respondent, and had been invested in a nationalised bank, the direction given by the learned Judge was as follows:

The Prothonotary and Senior Master, High Court, Bombay do, out of the moneys deposited by the

petitioners in this Hon'ble Court pursuant the order dated 9.7.1980 as modified by order dated 2.11.1981, pay to the respondents on behalf of the petitioners under protest and without prejudice to the rights of the parties herein, all principal amounts that are deposited by the petitioners in Hon'ble Court on and from 17th December, 1981 and thereafter the petitioners do pay to the respondents under protest and without prejudice to the rights and contentions of the parties herein, from and after the date of the passing of this order, excise duty that may be intimated by the respondents to the petitioners as duly determined, circulated on the basis of the present procedure of determining duty at the end stage within 3 weeks from the date of the same, being intimated by the respondent to the petitioners.

On the petitioners making payment of excise duty in terms of paragraph 4 hereinabove, the bonds and the bank guarantee already furnished by the petitioners to stand discharged.

6. The said order was not challenged by either party. It accordingly became final. When the appellant hereinabove applied for payment of money, the Prothonotary and Senior Master issued a cross cheque in favour of the applicant for a sum of Rs. 3,48,73,615. 49p. being the principal amount of excise duty which had been deposited by the respondent. The respondent took out notice of motion for an order that the amount of interest Rs. 29,37,521. 66p. which had accrued on the principal amount deposited, should be paid to the respondent - Company. This prayer was accepted and by order dated 17th of August, 1984, the Prothonotary and Senior Master was directed to pay the interest to the respondent. Aggrieved by this order, an appeal was filed which was dismissed in limine by the Division Bench which has given rise to the present appeal.

7. From the facts enumerated hereinabove, it is more than evident that the learned Single Judge by his order dated 22nd December, 1983 while allowing the writ petition of the respondent and setting aside the demand which was sought to be raised specifically directed that only the principal amount which had been deposited should be paid to the appellant hereinabove. Perhaps the learned Single Judge while quashing the demand could have ordered the entire amount which had been deposited by the respondent along with interest thereof to be refunded to the Company as no valid demand was in existence as a result of the said decision. But the learned Judge chose to direct that out of the total amount deposited on which interest had accrued, only the principal amount should be paid to the appellant and the interest to the respondent. Once this order had become final the question of the appellant subsequently contending that they are entitled to receive the interest also does not arise. The order dated 22nd December, 1983, relevant part of which has been quoted hereinabove, makes it clear that it is only the principal amount which had been deposited which has to be paid to the appellant and not anything more.

8. For the aforesaid reasons, we are of the opinion that this appeal is devoid of merits. It is accordingly dismissed with costs.