SUPREME COURT OF INDIA

Commissioner of Central Excise, Chennai

Vs.

Indian Organic Chemicals Limited

C.A.No.3605 of 1998

(S. N. Variava and H. K. Sema JJ.)

26.02.2004

JUDGMENT

S. N. Variava, J.

1. This Appeal is against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal (in short "CEGAT") dated 26th September, 1996.

2. Briefly stated the facts are as follows:-

> "The Respondents manufacture Polyester Fibre. In the manufacture of Polyester Fibre, there is an intermediate product known as "Tow". Under Rule 56A of the Central Excise Rules (as it then stood), the intermediate product could be cleared with nil rate of duty provided the final product, manufactured from such intermediate product, was not exempted from the whole of the duty of excise and the final product was not chargeable to nil rate of duty. The Respondents cleared Tow without payment of duty by virtue of this Rule. Thereafter they also cleared the final product, without payment of duty, on the basis of Notification No. 191/85, dated 28th August 1985. By this Notification Polyester Fibre, which was intended for use under the programme (mentioned in this Notification) was exempted from payment of duty."

3. A show cause notice was issued to the Respondents demanding duty on "Tow". The Assistant Collector confirmed the demand. The Commissioner (Appeals) dismissed the Appeal. However, the Tribunal, has, by the impugned judgment, allowed the Appeal with the following reasoning:

> "4. We have considered the pleas made by both the sides. We observe that as a matter of social welfare, the Government of India in public interest issued notification 191/85, dated 28-8-85 exempting polyester fibre which was supplied to KVIC. In the scheme of levy under tariff heading 5501.20, under which polyester staple fibre and tow figure, the duty envisaged was either at the tow stage or at the staple fibre stage. Under Notification manu- factured out of the same is cleared on payment of duty and

subject to the procedure laid down under Rule 56A. Likewise polyester staple fibre is exempted from duty in case the same is manufactured out of tow on which duty has been paid. Thus, the framers of the statute and the legislature have envisaged only one stage levy of duty i.e. either on tow or on staple fibre. Therefore, notification 191/85 has to be taken to have been issued in this context of levy of duty. Therefore, the exemption given has to be taken to be of the duty leviable either on the tow stage or at the staple fibre stage. Even if under Notification 191/85 exemption stipulated is in respect of duty payable on staple fibre what has to be read into this is that the exemption is in respect of duty which has to be paid either at the tow stage or at the staple fibre stage. To interpret the Notification in the manner in which the Reve- nue has sought to read will only defeat the very purpose of the Notification 191/85. The plea of the Revenue would have been valid in case there was two stage levy i.e. at the tow stage and the fibre stage separately. But the position here is different. By issue of Notification the levy has been re- stricted to one stage i.e. at the tow stage or fibre stage. We, therefore, in the circumstances of the case, are of the view that exemption notification 191/85 is in respect of duty which ultimately will be relatable to the staple fibre. This duty burden on the staple fibre is either relatable to the duty paid at the tow stage or the duty which will be paid at the staple fibre stage itself by use of tow which is cleared without payment of duty under notifi- cation 84/87. In the above view of the matter, no duty will be chargeable in respect of tow which has been used in the manufacture of polyester fibre which has been cleared without payment of duty under notification 191/85. the subsequent notification 76/92 dated 1-7-92 issued in this regard exempting duty on tow used for fibre for supply to be clarificatory in nature and will have retrospective effect. The appeal is therefore allowed."

Thug the Tribunal notices that the effect of Notification No. 191/85 is that levy of duty is only at one stage i.e. either at the "Tow" stage or at the Polyester Fibre stage.

4. The arguments of the Revenue, which have been produced in para- graph 3 of the impugned judgment, was exactly this. Yet for reasons, ununderstandable to us, the Tribunal concludes that accepting the argument of the Revenue would defeat the purpose of the Notification No. 191/85. All that the Revenue is claiming is that duty has to be paid at one stage. Since duty has not been paid at Polyester Fibre stage, it has to be paid at the "Tow" stage. Also the final conclusion of the Tribunal that the Notification No. 76/92 dated 1st July 1992 has retrospective effect has been arrived at without giving any cogent reasons. This Notification makes no referance to Notification No. 191/85. It is an exemption granted for the first time on 1st July 1992. Such an exemption can have no retrospective effect unless the Notification itself so specifies.

5. Thus, the impugned judgment of the Tribunal is unsustainable and is hereby set aside. The order of the Commissioner (Appeals) is restored.

6. The Appeal stands disposed of accordingly. There will be no order as to costs.