

BOMBAY HIGH COURT

Krislon Texturiser Pvt. Ltd

Vs

Union of India

(S Bharucha, J.)

14.06.1989

JUDGMENT

S Bharucha, J.

1. The petitioners imported partially oriented yarn (POY) of 115 deniers. Countervailing duty (CVD) thereon was regulated by the provisions of Item 18 II(i)(a) of the Central Excise Tariff. An Excise exemption notification dated 11th May 1982 related to such POY. Thereunder man-made fibres and yarn other than textured and polyester yarn of 100 deniers and above but not above 750 deniers was liable to excise duty at the rate of Rs. 61.25 per kg. This, in the petitioners' submission, was the rate of CVD that ought to have been imposed upon the POY imported by them. What was in fact imposed was the rate of Rs. 78.75 per kg. provided in the said notification for polyester yarn of 75 deniers and above but below 100 deniers. The petitioners' contention is that the texturing process which the POY imported by them underwent subsequent to the import to produce texturised yarn of 75 deniers was a separate excisable event; that this was a separate excisable event was recognised by the Excise authorities by reason of the issuance of an exemption notification dated 1st May 1978; and that the subsequent process could not affect the rate of CVD leviable on the imported POY.

2. That the petitioners imported POY of 115 deniers is not in dispute, nor that such yarn would be liable to CVD at the rate of Rs. 61.25 per kg, having regard to the notification dated 11th May 1982 which provides that rate for polyester yarn of 100 deniers and above.

3. Mr. Sethna, learned Counsel for the respondents, submitted, however, that the POY imported by the petitioners was rightly subjected to a levy of CVD at the rate of Rs. 78.75 per kg. prescribed for polyester yarn of 75 deniers and above but below 100 deniers for the following reason : Admittedly, the petitioners had imported the POY for texturing, which process went hand with the bringing down of the denier of the POY to 75. Therefore, in effect, what was imported by the petitioners was texturised yarn of 75 deniers. Since CVD was intended to protect

indigenously manufactured like goods, which, in the instant case, was texturised yarn of 75 deniers, CVD on the POY imported by the petitioners of 115 deniers was required to be levied on the basis that it was the texturised yarn of 75 deniers. Indigenous manufacturers paid excise duty on 115 deniers yarn as also on texturised yarn whereas importers like the petitioners were not charged excise duty on texturising.

4. I must note here that Mr. Jagtiani, learned Counsel for the petitioners, disputed Mr. Sethna's statement that the petitioners were not charged excise duty upon texturising; but I will assume for the purposes of this judgment that Mr. Sethna is right.

5. CVD must be levied on the goods as they are when they are imported. The goods here as they were when they were imported by the petitioners was POY of 115 deniers. It was liable to that rate of CVD as was provided for in respect of POY of 115 deniers. That rate was, as the petitioners rightly contend, Rs. 61.25 per kg.

6. It is not for the Customs authorities knowingly to misapply the provisions, though they do it, in their light, to protect the interests of the Revenue. If they feel that a particular provision goes against the interests of the Revenue they may so point out to the appropriate authorities so that the requisite amendments or alterations may be considered. They are bound to apply the provisions regardless of what such application may do, in their view, to the interests of the Revenue.

7. I do not understand why the petitioners and similar importers should not, as Mr. Sethna says, be made liable to pay excise duty upon texturising if the provisions so require. If excise duty upon texturising is leviable it must be levied by the Excise authorities. The Customs authorities may not attempt to secure the interests of the Revenue by attempting instead to enhance the rate of CVD leviable upon the POY used for the texturising process.

8. The petition is, accordingly, made absolute in terms of prayers (a) and (b)(ii) (subject to verification).

9. Mr. Sethna submits that I should stay the order regarding refund [prayer (b)(ii)] until the issue regarding unjust enrichment is decided by a seven-judge bench of the Supreme Court. No order is produced before me which shows that this issue has been referred to such bench. Mr. Sethna states that there is a Division Bench judgment of this court deciding the issue in favour of the Revenue. It is not produced. As I know it, the learned Judges of a Division Bench of this court differed and the decision of the third judge to whom it was referred (Shah, J. as he then was) concluded the issue in favour of the petitioners. No stay is, therefore, called for. In the event that the Supreme Court decides in favour of the respondents, the respondents will be entitled to adopt

appropriate proceedings to recover the refund amount from the petitioners.

10. No order as costs.