

A

M/S. GOODYEAR INDIA LTD.

v.

COLLECTOR OF CUSTOMS, BOMBAY

JANUARY 27, 1997

B

[A.M. AHMADI, CJ. AND S.P. BHARUCHA, J.]

Customs Tariff Act, 1975/Additional Duty Rules, 1976 :

C

S. 3(1), Explanation/Rule 2—Exemption Notification No. 55 dated 1.3.1978—Imported nylon yarn fabrics described as "Nylon Woven Dipped Diffusion Resistance Fabric Goodyear Code EO2NN"—Levy of additional excise duty—Importer claiming the goods covered by the exemption notification under the category "textured yarn produced out of base yarn"—Tribunal holding that though the imported article fell under the said description additional duty would be leviable at the rate specified in the notification for "other textured yarn"—Held, additional duty leviable on the imported goods is that specified against the description "textured yarn produced out of base yarn" and not that specified against "other textured yarn".

D

E

The appellant imported bulknylon yarn fabric, described in the bill of entry as "Nylon Woven Dipped Diffusion Resistance Fabric, Goodyear Code EO2NN" and cleared the same upon payment of duty as levied. Later, on the basis of exemption Notification No. 55 dated 1.3.1978 the appellant claimed refund of additional excise duty, levied under s.3 of the Customs Tariff Act, 1975. The case of the appellant was that the goods fell under the description "textured yarn produced out of the base yarn" as enumerated at sl. No. 1, column (2) of the Table to the notification, and as such the duty would be levied as prescribed in corresponding column (3) of the said Table. Revenue rejected the claim and ultimately the appellant filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal Found that the goods fell under the description "textured produced out of base yarn", but held that duty was payable at the rate specified in the notification in respect of "other textured yarn". Aggrieved, the appellant filed the present appeal.

F

G

H

It was contended for the appellants that the Tribunal having held that the imported goods were textured yarn produced out of base yarn, in requiring the appellants to pay additional duty at a rate specified in the

notification for "other textured yarn". For the Revenue it was contended that the goods were textured yarn in respect of which the Notification prescribed different rates of duty; and, therefore, in view of Explanation to s. 3(1) of the Tariff Act, the duty was rightly levied. A

Allowing the appeal and setting aside the judgment and order of the Tribunal, this Court B

HELD : 1.1. The imported goods, as found by the Tribunal fall in the category of "textured yarn produced out of base yarn", and, therefore, the additional excise duty that is leviable is that specified against the description in the Table of the Notification No. 55/78 and they cannot be made liable to additional duty at the rate specified for "other textured yarn", that is to say, for textured yarn that does not fulfil the description of being produced out of base yarn. [562-D-E] C

1.2. Explanation to s.3(1) of the Customs Tariff Act defines the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India. It means the excise duty for the time being in force which would be leviable on a like article produced or manufactured in India. If a like article is not produced or manufactured in India, the expression means the excise duty which would be leviable on the class or description of articles to which the imported article belongs; and where such excise duty is at different rates, the expression means the highest rate of duty. [567-E-F] D E

Thermax Private Ltd. v. Collector of Customs (Bombay) New Customs House, [1992] 4 SCC 440, relied on. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3632 of 1986.

From the Judgment and Order dated 16.4.86 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. 1333/80-D) (Order No. 233/86-D). G

S. Ganesh, Amit Bansal for M/s. JBD & Co. for the Appellant.

M.S. Usgaonkar, Additional Solicitor General, V.K. Verma, S.D. Sharma, Hemant Sharma for the Respondent. H

A The Judgment of the Court was delivered by

BHARUCHA, J. The appeal arises upon a judgment delivered by the Customs, Excise and Gold (Control) Appellate Tribunal. The appellants imported bulked nylon fabric. The bill of entry described the imported goods as being Nylon Woven Dipped Diffusion Resistance Fabric, Goodyear Code E02 NN. The imported goods were cleared upon payment of duty as demanded. The appellants then claimed refund of the additional duty paid by them as now stated. The claim having been refused by the authorities below, the Tribunal was moved.

C The Customs Tariff Act, 1975, prescribes in Section 3 for the levy of additional duty equal to excise duty. Sub-section (1), its Explanation and sub-section (2) of Section 3 are relevant, and they read thus :

D "3. *Levy of additional duty equal to excise duty.* - (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

E Explanation. - In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty at different rates, the highest duty.

F
G xxx xxx xxx

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article (whether on such article duty is leviable under sub-section (1) or not) such additional duty as would counter balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or

H

similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf."

Under the provisions of Section 3(3) of the Customs Tariff Act, the Additional Duty Rules, 1976, have been framed. Rule 2 states that for the purposes of Section 3(3) "the additional duty leviable on any imported article specified in column (2) of the Table annexed hereto shall be equal to the excise duty for the time being leviable on the material specified in the corresponding entry in column (3) of the said Table to the extent that material is used in the manufacture of the imported article". The Table reads thus :

"TABLE

S.No.	Name of article	Name of material
1.	Fabrics Containing more than to per cent by weight of synthetic fibre or yarn.	Synthetic fibre and yarn.
2."

In exercise of the powers conferred by Rule 8 of the Central Excise Rules, 1944, the Central Government, by Notification No. 55/78 dated 1st March, 1978, (hereinafter called "the said notification") exempted textured yarn of the description specified in column (2) of the Table thereto falling under sub-item II (i)(b) of Item No. 18 of the First Schedule to the Central Excises and Salt Act, 1944, from so much of the excise duty leviable thereon as was in excess of the duty specified in the corresponding entry in column (3) of that Table. The Table read thus :

THE TABLE

S.No.	Description	Rate of duty
1.	Textured yarn produced out of Base yarn.	The duty for the time being leviable on the base yarn if not already paid plus five rupees per kilogram.

A	2.	Other textured yarn	(Rs. per kilogram)
		(a) Polyamide (nylon) Textured yarn -	
		(i) below 38.5. deniers	63.80
B		(ii) 38.5 deniers and above but below 88 deniers	56.80
		(iii) 88 deniers and above but below 121 deniers	49.80
		(iv) 121 deniers and above but below 165 deniers	42.80
C		(v) 165 deniers and above	24.60
	xxx	xxx	xxx

D Explanation I. - "base yarn" means yarn falling under sub-item II(i)(a) of Item No. 18 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from which textured yarn has been produced;

....."

E The Tribunal noted the contention on behalf of the appellant that the yarn in question fell under S. No. 1 aforementioned and not under S. No. 2(a)(v), and the basis for the contention, namely, that the supplier of the imported goods had bought base yarn and subjected it to the process of air-bulking to produce the textured yarn that was imported. The Tribunal stated, counsel "contends that the description of the article

F relevant to the present case is textured yarn produced out of base yarn and not other textured yarn in notification 55/78. This contention has, in our opinion, substance". The Tribunal went on to add, "The description of the article in the First Schedule to the Central Excises and Salt Act is Textured yarn. 'Textured yarn produced out of base yarn' is merely descriptive of

G process of manufacture. For duty purposes, notification No. 55/78 describes and fixes a different concessional rate of duty for textured yarn produced out of base yarn separately from other textured yarn. This itself shows that textured yarn is liable to excise duty at different rates, depending on the process of manufacture. The excise leviable on textured polyamide yarn of above 750 deniers would depend on the process of

H manufacture. It is Rs. 6.50 (Sl. No. 3(b)(vi) of notification No. 28.75 CE)

plus Rs. 5 per kg. (Col. 3 against Sl. No. 1 of notification 55/78 CE), if such textured yarn is produced out of base yarn. If it is produced otherwise, the rate of duty is Rs. 24.60 per kg. (Sl. No. 2(a)(v) of notification 55/78). In such a situation, the yarn content of the imported fabrics would attract duty at the higher rate viz., Rs. 24.60 per kg. (plus special excise duty as may be applicable." A B

Learned counsel for the appellants submitted that once the Tribunal had come to the conclusion that the imported goods were textured yarn produced out of bases yarn, only that amount of additional duty was payable thereon as was specified against the description "textured yarn produced out of base yarn" in the Table of the said notification. There was no question then of requiring the appellants to pay additional duty at a rate specified in the notification for "other textured yarn". C

The learned Additional Solicitor General, appellant for the Revenue, placed reliance upon the Explanation to Section 3(1). In his submission, the imported goods were textured yarn in respect of which the said notification prescribed different rates of duty; therefore, under the Explanation to Section 3(1), the highest duty thereon was that which was payable by the appellants. D

Section 3 requires that an article imported into India shall be liable to additional duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. The expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" has been defined by the Explanation to Section 3(1). It means the excise duty for the time being in force which would be leviable on a like article produced or manufactured in India. If a like article is not produced or manufactured in India, the expression means the excise duty which would be leviable on the class or description of articles to which the imported article belongs; and where such excise duty is at different rates, the expression means the highest rate of duty. Section 3(3) enables the Central Government, in the public interest, to levy on an imported article such additional duty as would counterbalance the excise duty leviable on raw materials, components and ingredients of the same nature as are used in the manufacture of such article or are similar thereto. The Central Government may, by notification in the Official Gazette, direct that an imported article shall bear additional duty representing such portion of E F G H

A the excise duty leviable on such raw materials, components and ingredients as it may by rules determine. It is in exercise of the power conferred by Section 3(3) that the Additional Duty Rules, 1976, have been framed and they specify that additional duty shall be imposed on fabrics containing more than 10 per cent by weight for synthetic fibre or yarn which shall be equivalent to the excise duty leviable on the synthetic fibre and yarn used therein.

B
C Insofar as the imported goods are concerned, they fall, as the Tribunal has found, in the category of "textured yarn produced out of base yarn". In respect of "textured yarn produced out of base yarn" the excise duty that is leviable is that specified against that description in the Table of the said notification. The Explanation to Section 3(1) says of an article which is not produced or manufactured in India that the expression "excise duty for the time being leviable on a like article if produced or manufactured" means that duty which would be leviable on the class or description of articles to which the imported article belongs. Since, admittedly, the imported goods fall within the description "textured yarn produced out of base yarn", the additional duty that is payable thereon is that specified against that description in the Table of the said notification and they cannot be made liable to additional duty at the rate specified for "other textured yarn", that is to say, for textured yarn that does not fulfil the description of being produced out of base yarn.

D
E We are fortified in the view that we take by the decision of this Court in *Thermax Private Ltd. v. Collector of Customs (Bombay) New Customs House*, [1992] 4 S.C.C. 440 The relevant paragraph is reproduced :

F
G "Shri A.K. Ganguly, on behalf of the Revenue raises a contention that, even assuming that the goods fulfil the conditions of the notification referred to earlier, the CVD rate applicable would be 80 per cent by virtue of the Explanation to Section 3(1) of the C.T. Act. He submits that the goods imported by the assessee are "parts of refrigerating and air-conditioning equipment". They are chargeable at different rates of duty accordingly as they fall under item with serial No. 4 (80 per cent) or that with serial No. 5 (nil) or that with serial No. 6 (20 per cent) or that with serial Nos. 7 and 8 (25 per cent). In such a situation, he says, the provisions of the Explanation to Section 3(1) are attracted and hence the assessee

H

will be liable to duty at the highest rate of 80 per cent. We are loth A
to permit the department to raise at this stage a fresh contention
not taken before the Tribunal or earlier. That apart, we do not
think it is well founded. It is no doubt true that Item 29-A of the
Schedule to the C.E Act is very wide and covers various articles.
The notification also deals with various categories of articles falling B
under that item. But there has been no dispute at any stage that
the goods we are concerned with fall under item with serial No.
8(3) of the notification. So far as the category of goods is con-
cerned, there is only one rate of duty mentioned in the notification.
The fact that certain other parts of refrigerating and air-condition- C
ing appliances and machinery may fall under item with serial No.
4(3) or elsewhere cannot attract the higher duty on the goods
presently under consideration. *The Explanation to the notification*
(sic Section 3(1) is applicable only where goods of exactly the same
description attract different rates of duty. See, in this connection, the
decisions on analogous provision in *Collector of Customs v. Western D*
India Plywood Manufacturing Co. Ltd., [1989] Supp. 2 S.C.C. 515
and *Collector of Customs v. Hansur Plywood Works*, [1989] Supp.
2 S.C.C. 520. We, therefore, reject this contention. (Emphasis
supplied.)

We are, therefore, of the view that the Tribunal was in error and that E
the judgment and order under appeal must be set aside.

The appeal is allowed. The judgment and order under appeal is set
aside.

No order as to costs. F

R.P.

Appeal allowed.