D.P. LON

v.

COLLECTOR OF CENTRAL EXCISE AND CUSTOMS

MARCH 13, 2003

[S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.]

Central Excise Tariff Act, 1985:

Heading 56.06:

Classification—Fancy yarn/ Taspa yarn—Levy of excise duty—Held: The process used by the appellant in manufacturing of yarn is bound to produce a special effect yarn—The yarn could appropriately classifiable as fancy yarn under Heading 56.06—Hence appellant liable to pay excise duty—Central Excise Rules, 1944—Rule 174—Central Excises and Salt Act, 1944—Section 6.

Words & Phrases:

'Fancy yarn'—Meaning of in the context of Central Excise Tariff Act, 1985.

Appellant-firm had been manufacturing yarn by the process of doubling/multifolding of yarn. The yarn so produced was claimed to be exempt from levy of excise duty. The Collector (Revenue) after issuing a show cause notice and not satisfied with the reply, confirmed demand of certain amount of central excise duty for certain period holding that the yarn manufactured by the appellant was classifiable as fancy yarn under tariff sub-heading 56.06 and also imposed penalty under Rule 173 -Q of the Central Excise Rules. The Tribunal rejected the appeal and rectification of mistake application thereafter. Hence the present appeals.

It was contended for the appellant that since the yarn produced by the appellant was exempt from payment of excise duty and in view of conflicting decisions by the Tribunal on the subject, it was incumbent on the Tribunal to follow the latest judgment of "*Pratik Crimpers* v. *Collector of Central Excise, Mumbai,* 1998 (101) ELT 437", and to set aside the order

A of the Collector levying excise duty on yarn manufactured by it, and that merely because the process resulted in the production of special effect yarn, the yarn could not be classifiable under Heading 56.06.

On behalf of the respondent it was submitted that since core yarn was used for base yarn, the yarn so produced was a special yarn falling B under Heading No. 56.06; and that the Tribunal had taken into consideration the manufacturing process as well as contents of the product and rightly came to the conclusion that the product in question was classifiable under Heading No. 56.06.

C Dismissing the appeals, the Court

HELD: 1.1. The Commissioner and the Tribunal have rightly decided that the sample appears to satisfy the requirements of definition of 'Fancy Yarn' as given in the standard technical literature and appears to be covered under Heading No. 56.06 as 'special yarn'. [1131-F]

D 1.2. Investigation revealed that the appellant had not obtained Central Excise licence for such manufacture and that they were removing such yarns without payment of central excise duty in the manner otherwise than as provided in the Central Excise Rules. Thus it is seen that the appellant-unit had contravened the provisions of Rule 174 of the E Central Excise Rules read with Section 6 of the Central Excises and Salt Act, 1944 Rule 173F read with Rule 9(1) etc. of the Central Excise Rules, 1944 inasmuch as they engaged themselves in the manufacture of excisable goods, namely, Fancy yarn/Taspa' yarn classifiable and chargeable to duty of excise under erstwhile Tariff Item 68 prior to 1.3.1986 and under Chapter/Heading 56.06 thereafter of the Central Excise Tariff Act, 1985 F without their having applied for and obtained a licence and failed to determine their liability to duty in respect of these goods manufactured and removed by them without payment of duty leviable thereon. They have also failed to file classification lists and price lists as required and failed to prepare and issue gate passes in the prescribed form for the G removal of the aforesaid goods and further failed to maintain statutory accounts of the production and removal of the said goods manufactured by them in their factory and suppressed to supply the material facts with a deliberate and wilful intent to evade payment of Central Excise Duty. [1133-G, H; 1134-A, B, C]

H 1.3. The yarn manufactured by the appellant is special yarn falling

under Heading No. 56.06 and hence the exemption notifications mentioned by them are not applicable in this case. They also failed to pay excise duty though they were required to pay duty and hence the action initiated by the preventive wing is correct. It is very clear from the findings of the adjudicating authority as well as the appellate authority that the yarn in question consists of core yarn and hence the yarn is correctly classifiable under Heading No. 56.06. Plea as to carrying out process of doubling of yarn on simple crimping machine and hence fall under Chapters 50 to 55 is not correct and not acceptable. Since the process in the particular case is bound to produce a special effect yarn, the appellant is liable to pay duty for contravention of Rule 174 read with Section 6 etc. of the Central Excises and Salt Act, 1944. [1134-E-H; 135-D]

Pratik Crimpers **v.** *Collector of Central Excise, Mumbai,* **(1998) 101 ELT 437, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5472-5473 of 2000.

From the Judgment and Order dated 25.2.2000 of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi in E/ROM//125/99-D in A.No. E/2618/90-D in F.O. No. M/12/2000-D.

Ms. Meenakshi Arora, Anshul Singal and Ms. Hema Chattri for the Appellant.

M.L. Verma, Ms. Vibha Datta Makhija and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

AR. LAKSHMANAN, J. The appellant-firm filed these appeals challenging, *inter alia*, the judgment and order dated 25.2.2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi being Miscellaneous Order No. M/12/2000-D in E/ROM/125/99-D in Application No. E/2618/90-D, and final order No. 487/98-D dated 15.6.1998 in Appeal No. E/2618/1990-D whereby the Tribunal has held that 'Taspa' yarn manufactured by the appellant was covered under Heading No. 56.06 of the Central Excise Tariff and, therefore, confirmed the demand of duty of central excise of Rs. 5,63,066.40 and penalty of Rs.50,000. The facts of the case in brief are as follows:-

A The appellant-firm was issued a licence under the Central Excise Act, 1944 for carrying out the processing work of yarn. According to the appellant, since 22.5.1986, the doubled and/or multifolded yarns falling under Chapter 54 or Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985 were wholly exempted from the duty of excise leviable thereon, provided such doubled or multifolded yarns were manufactured out of yarn falling under B Chapter 54 or Chapter 55 of the said Schedule on which appropriate duty of excise had already been paid. Relying upon the aforesaid notifications, the appellant did not pay any duty of excise on the same and neither did it recover such duty of excise from its customers. The Collector of Central Excise issued a show cause notice dated 15-7-1988 to the appellant-firm C calling upon the appellant to show cause as to why duty of excise amounting to Rs. 5,63,066.40 be not recovered on the goods, i.e., 'Taspa' yarn/fancy yarn falling under erstwhile tariff item no. 62 with effect from 1.3.1986 and under Chapter/tariff sub-heading 56.06 and penalty be not imposed on them under Rule 173-Q of the Central Excise Rules, 1944. A reply was sent to the show cause notice that the appellant categorically averred that it bona fidely D believed that the doubled filament yarn was exempted from payment of duty of Central Excise and there was no intentional contravention of Rule 173 of the Central Excise Rule, 1944.

The appellant-firm further stated that it was engaged in the business of E processing yarns such as crimping, texturing, doubling multifolding etc. and that the firm had carried out doubling of yarn on a simple crimping machine and that the simple process of doubling of yarn on crimping machine was covered under Notification M.F. (C.D.R) I. No. 114/18/86 CX 3 dated 18.4.1986.

F The Collector of Central Excise, Vadodara passed an order on 29.3.1990 confirming the demand of duty of Central Excise amounting to Rs. 5,63,066.40 for the period from February, 1986 to September 30,1987 and also imposed a penalty of Rs. 2 lakhs on the appellant.

Being aggrieved, the appellant filed an appeal before the Central Excise G and Gold (Control) Appellate Tribunal, New Delhi. The Tribunal vide its judgment and order dated 15.6.1998 rejected the appeal of the appellant. The Tribunal while rejecting the appeal relied upon its earlier judgment and order in the case of *Dhamwala Silk Mills Surat Pvt. Ltd.* v. *Commissioner of Central Excise, Vadodara,* (1997) 73ECR 383. Since the impugned judgment of the H Tribunal suffered from error apparent on the face of the record, the appellant

filed a Miscellaneous Application for rectification of mistake, being Application No. E/ROM/125/99-D and pointed out that the facts of the appellant were closely comparable to the facts of *Pratik Crimpers* v. *Collector of Central Excise, Mumbai,* (1998) 101 E.L.T. 437, the latter judgment of the Tribunal particularly, with regard to yarns being run parallel, the manufacturing process being common and the machineries being the same.

The Tribunal rejected the application for rectification of mistake vide judgment and order dated 25.2.2000 and held that 'Taspa' yarn manufactured by the appellant was covered under Heading No. 56.06 of the Central Excise Tariff and, therefore, confirmed the demand of duty of central excise of Rs. 5,63,066.40 and penalty of Rs. 50,000.

The present appeal was filed by the appellant in this Court on the basis that the Full Bench of the Tribunal has, by its final order dated 22.05.2000, upheld the view taken by it in the case of *Pratik Crimpers* (supra), which facts and decision are same to the facts of the case of the appellant.

We have heard Ms. Meenakshi Arora, learned counsel appearing for the appellant and Mr. M.L. Verma, learned senior counsel appearing for the respondent.

We have perused the notifications and orders passed by the Commissioner and the Tribunal and other relevant records. Our attention was drawn to the pleadings and records by the counsel appearing on either side. The point for consideration in these appeals are as to whether there was an error apparent on the face of the record of the judgment dated 15.06.1998 as argued by the learned counsel for the appellant and that whether the Tribunal has erred in holding that the 'Taspa' yarn is classifiable and assessable to duty of excise under Heading No. 56.06. Learned counsel for the appellant submitted that the Board's circulars as well as the fact that there was no core yarn in the disputed goods and hence the same were classifiable between Chapters 50 and 55 of the Central Excise Tariff and that the facts of the appellant were closely comparable to the facts of the case of *Pratik Crimpers* (supra), the latter judgment of the Tribunal particularly with regard to the yarns being run parallel, the manufacturing process being common and the machineries being the same. She also placed before us the Full Bench decision of the Tribunal which by its final order dated 22.05.2000 upheld the view taken by it in the case of *Pratik Crimpers* (supra), which facts and decisions, according to the learned counsel for the appellant, are similar to the facts of the case on hand. She submitted that the impugned order suffers from error

A apparent on the face of the record and hence requires to be set aside. Arguing further, she urged that the appellant had *bona fide* believed that the product in question, namely, filament doubled yarn was exempted from payment of duty of excise in view of Trade Notice No. 229/88 dated 25.11.1988. She further submitted that the Tribunal failed to appreciate that in view of the conflicting decisions on the issue of classification of the filament doubled B yarn, namely, that of *Dhamanwala Silk Mills* (supra) and the later decision in the case of *Pratik Crimpers* (supra), it was appropriate for the Tribunal to follow the latter decision on the subject. It was intended that the larger Bench of the Tribunal in the case of *Vasania Silk Mills* v. *Commissioner of Central Excise, Surat,* (1999) 114 ELT 222 decided the issue and held the 'Taspa' C yarn to be classifiable under Chapter 54 and upheld the judgment of the Tribunal in the case of *Pratik Crimpers* (supra) while rejecting the view taken in the case of *Dhamanwala Silk Mills* (supra) and since the judgment of the *Pratik Crimper's* case was later in point of time than the case of *Dhamanwala Silk Mills* (supra) and since the Tribunal in the case of *Pratik Crimpers* (supra), had also considered the Board's circular and the earlier D contrary judgment in case of *M/s. Garden Silk Mills Ltd.* v. *C.C.E.,* (1995) 78 ELT 580 T, therefore, it was incumbent on the part of the Tribunal to have considered and applied the ratio of *Pratik Crimper's* case (supra) read with the Board's circular by passing the impugned order. She further submitted that it is incorrect to state that merely because the process produces special E effect slub/loop, the yarn is classifiable under Heading No. 56.06 and that for the yarn to be classified under Heading No. 56.06, the presence of core yarn is mandatory and that there being no core yarn in the product manufactured by the appellant, the same is not classifiable under Heading No.56.06.

Per contra, Shri M.L. Verma, learned senior counsel appearing for the F respondent, submitted that there is no need to refer to any of the judgments cited by the learned counsel appearing for the appellant inasmuch as the Tribunal while deciding the present case had gone through the manufacturing process as well as the contents of the products which led to the decision for classifying the product under Heading No. 56.06. While in the case of *Pratik Crimpers* (supra), no such point was discussed and the decision was given G simply on the ground that the Tribunal had no means of knowing whether the yarn before them was identical to the yarn before the Tribunal when they gave the cited judgments. He further submitted that the finding of the Tribunal are not at all contrary to the Board's circular dated 19.10.1988 and the Board under the said circular clarified that the instructions applicable to such type H of fancy yarn in which there is a core yarn and that the instructions contained

in Board's circular F.No.55/9/87-CX-I dated 30.6.1987 are not sought to be modified by the letter dated 26.4.1988 and that both the instructions may be read separately. According to him the Tribunal had correctly observed in view of the admission of the appellant regarding use of core yarn for base yarn that the yarn in question is a special yarn falling under Heading No.56.06. He further submitted that the orders passed by the Commissioner as well as by the Tribunal are perfectly correct and that the same are not liable to be set aside as requested by the appellants and that the orders passed by the Commissioner as well as by the Tribunal are not perverse as alleged

In support of his contentions, learned senior counsel, relied on some judgments of this Court. This Court in the case of *Reliance Silicon (I) Pvt. Ltd.* v. *Collection, Central Excise Thane,* [1997] 1 SCC 215, held that where the classification of the excisable goods under different excise items involved a question of highly technical nature requiring scrutiny of the chemical characteristics of the goods, decisions of the CEGAT cannot be lightly interfered with unless the finding are perverse or otherwise erroneous in law or based on no evidence.

In the case of *West Bengal Electricity Regulatory Commission* v. *C.E.S.C. Ltd. etc. etc.,* JT (2002) 7 578, this Court observed that the High Court merely because it has unrestricted appellate power, should not interfere with the considered order of the commission unless it is satisfied that the order of the commission is perverse, not based on evidence or on misreading of evidence, keeping in mind the fact that the commission is an expert body.

In the case of *M/s. Asian Paints India Ltd.* v. *Collector of Central Excise,* [1988] 2 SCC 470, this Court held that the finding of fact arrived at on relevant and valid materials cannot be easily interfered with.

We have carefully perused both the orders under appeal. In our opinion, the Commissioner and the Tribunal have rightly decided that the sample appears to satisfy the requirements of definition of 'Fancy Yarn' as given in the standard technical literature and appears to be covered under Heading No. 56.06 as special yarn of Central Excise Tariff.

In the instant case, on collection of intelligence to the effect that the unit has been manufacturing and removing excisable goods, namely, fancy yarn of the category of the special yarns specified under Heading No. 56.06 of the Central Excise Tariff Act, 1985 without payment of duties of excise leviable thereon, thereby, indulging in a large scale evasion of Central Excise

A duty, the officer of the Headquarters Preventive Wing, Baroda on the directions of the Deputy Collector (Prev.), Central Excise and Custom, Baroda visited by surprise the factory premises of the unit on 29.9.1987 for checks and inquiry. During the course of their visit, the offcers found that the unit was carrying out processes of texturing, crimping on man made filament yarn etc. for which the unit had installed one Lohia Magnetic Machine Model No. B MT.466 in their factory premises. The officer further noticed that the unit was manufacturing 'Taspa' yarn, for which the yarns of the different deniers are taken on the aforesaid machine simultaneously; one yarn which is running in lower speed is known as core/base yarn, while the other yarn, which is running in higher speed is known as slub yarn, and that the quantity of core C yarn and the slub yarn is in the ratio 1: 1.5, and that in the manufacturing of the said 'Taspa' yarn the unit had specially attached devices Tensor and eramic guide in the said machine by importing them from Japan. From the invoices and the sale Register of the unit, it was noticed by the officers that the unit manufactured and cleared 'Taspa' yarn of the description as 20+30 "Nylon x Polyester", 75 x 75 "Polyester x Viscose", 90 x 75 "Polyester D Filament x Viscose". In response to the summons dated 20.9.1987, the unit has produced the invoices and records of purchase and sale from 1983 to 1987 for scrutiny and examination. On scrutiny of records and invoices, it was revealed to the officers that the unit had manufactured and removed 'Taspa' yarn of the category of the special yarns specified under Heading No. E 5606.00 of the Central Excise Tariff Act 1985. The Department also sought the opinion of the Chemical Examiner, Central Excise, Baroda, who by his report submitted as follows:

> "The sample is in the form of two ply yarn having elongated strips (knots) at regular intervals. It is made of textured polysters filament F yarn and viscose filament yarn. The two yarns are intertwisted deliberately in such a way so as to form strips (knots) at regular intervals lengthwise having a different appearance than the normal constructions of folded yarn."

The officers have also recorded the statement of Shri Vipulbhai Vasantial G Merchant, Partner of the appellant under Section 14 of the Central Excise and Salt Act, 1944 in which he stated that they are engaged in processing of yarn such as crimping/texturising for which they have got one machine of Lohia make-Model Ht. 416, which has got 144 spindles; that mostly they are carrying out crimping process on Nylon yarn of different deniers, as also on polyester H filament yarn of various deniers; and that they have not done any crimping

process on pay. He further replied that for the manufacture of T6 denier polyester crimped yarn as described in their invoices, they have used two yarns polyester yarn 75 deniers and the other viscose yarn of 75 deniers and processed in the same way as described alone in respect of 20 x 30 quality yarn there is no slub effect but in the yarn of 75 deniers quality there is slub effect; and added that they are using the yarns together in their crimping machine the base yarn is of 75 denier polyester filament and the slub effect yarn is 75 denier viscose, and that the ratio of quantity of base yarn to slub effect yarn is 1:1.5.

The officers have also recorded the statement of Shri Ishwar bhai Durlabhbhai Modi, Manager of M/s Ishwar Textiles of Surat, who had purchased 20x30 quality 'Taspa' yarn from the unit. He stated that they had purchased yarns only once from the appellant and that the yarn was of the description of 2000 'Taspa' yarn, which consisted of 20 denier Nylon and 30 denier polyester yarn, that the said yarn had slub effect; that the said yarn was used as weft in the manufacture of fabrics; that these fabrics also had slub effect and that the said fabrics were known as 'Taspa' fabrics or fancy fabrics. The statement of Shri Maheshwari V. Mehra, partner of M/s. Shreenath Silk Mills, Udhna, Surat was also recorded. He stated that they had purchased and received 'Taspa' yarn of the quality of 20x30 deniers and that in this yarn two yarns were crimped together—one was Nylon yarn of 20 deniers and the other was polyester yarn of 30 deniers; that the said yarn, which is known in the market as 'Taspa' yarn was having slub effect and that they had used this Taspa yarn of 20x30 quality in the writ in the manufacture of sarees and the product they manufactured was called Taspa fabrics. In view of the test results and the process of manufacture, it was revealed to the Department that the unit had been manufacturing Taspa yarn/Fancy yarn out of duty paid polyester filament/Nylon/Viscose yarns with a special process which given special design and shape to the final yarn. The statement recorded by the officers clearly shows that the Taspa yarn/fancy yarn manufactured and cleared by the unit was classifiable and chargeable to duty under Heading No. 5606.00 of the Central Excise Tariff Act, 1985 as is covered within the meaning of other special yarns from 1.3.1986 onwards and prior to 1.3. 1986 under the category of "All other goods, not elsewhere specified". The investigation also revealed that the appellant had not obtained Central Excise licence for such manufacture and that they were removing such yarns without payment of central excise duty and in the manner otherwise than as provided in the Central Excise Rules. Thus it is seen that the appellant-unit had contravened the provisions of Rule 174 read with Section 6 of the Central Excise and Salt

A Act, 1944, Rule 173F read with Rule 9(1) etc. of the Central Excise Rules, 1944 inasmuch as they engaged themselves in the manufacture of excisable goods, namely, 'Taspa' yarn/Fancy yarn classifiable and chargeable to duty of excise under erstwhile Tariff Item 68 prior to 1.3.1986 and under Chapter/ sub-heading 5606.00 thereafter of the Central Excise Tariff Act, 1985 without their having applied for and obtained a licence in Form 14 and failed to B determine their liability to duty in respect of the aforesaid goods manufactured and removed by them without payment of duty leviable thereon. They have also failed to file classification lists and price lists as required and failed to prepare and issue gate passes in the prescribed form for the removals of the aforesaid goods and further failed to maintain statutory accounts of the C production and removal, and of the said goods manufactured by them in their factory and suppressed to supply the material facts with a deliberate and wilful intent to evade payment of Central Excise Duty therefore, as rightly pointed out by the learned counsel appearing for the respondent, the conduct of the appellant, as above mentioned, invited the intervention of the Department since the appellant has committed the offence of the nature as described in D clauses (a), (b), (c) and (d) of sub-Rule (1) of Rule 173Q of the Central Excise Rules, 1944 by reason of wilfully misstatement and suppression of facts with an intent to evade payment of duty. We have perused the reply submitted by the appellant to the show cause notice to the Collector of Central Excise and Customs, Baroda. In our opinion, the reply submitted by E them is not satisfactory.

It is, therefore, seen that as per the admission of the appellant, the yarn manufactured by them is special yarn falling under Heading No. 56.06 and hence the notifications mentioned by them are not applicable in this case. They also failed to pay excise duty though they were required to pay duty F and hence the action initiated by the preventive wing is correct. It is very clear from the findings of the adjudicating authority as well as the appellate authority that the yarn in question consists of core yarn and hence in view of the above clarification, the said yarn is correctly classifiable under Heading No. 56.06. The contention of the appellant that they had carried out doubling of yarn on simple crimping machine and hence fall under Chapters 50 to 55 G is not correct and not acceptable inasmuch as the partner of the said firm in his statement had specifically stated that for manufacture of the said yarn they had used special attachment known as Tensor and Ceramic guide which are not required for simple crimping of single yarn and they also stated that the yarn under reference are manufactured in such a manner that out of the H two yarns, one yarn acts as a base and the other acts as a covering yarn.

Therefore, the process in the particular case is bound to produce a special effect yarn. The Collector of Central Excise, in our opinion, has correctly passed the order in original dated 29.3.1990 after discussing the issue at length and after considering all the arguments put forth by the notices including the relevant trade notices and also the Chemical Examiners' report. Likewise, the Tribunal also, after, giving careful consideration to the submissions made by both the sides did not find any merit in the rectification application and thus had correctly rejected the same. The Full Bench decision of the Tribunal wherein the decision taken in the case of *Pratilk Crimpers* (supra) will not be applicable to the instant case inasmuch as it was specifically discussed in the order rejecting ROM by the Central Excise and Gold (Control) Appellate Tribunal that in view of the process of manufacture there is a core yarn in the yarn in question and hence the same is classifiable under Heading No. 56.06 and is liable to duty.

For the foregoing discussion, we are of the view that the yarn manufactured by the appellant is only 'Taspa' yarn/fancy and is classifiable and chargeable to duty under Chapter Heading No. 56.06 of the Central Excise Tariff and, therefore, the appellant is liable to pay duty for contravention of Rule 174 read with Section 6 etc. of the Central Excises and Salt Act, 1944.

We do not find any error of law or any perversity in the reasoning adopted by the Commissioner or by the Tribunal on the facts of these cases. On the contrary, in our view, the decision of the Commissioner and the Tribunal are well sustained on the evidence on record and calls for no interference in these appeals moved by the appellant. We, therefore, confirm the orders passed by the Commissioner as confirmed by the Central Excise and Gold (Control) Appellate Tribunal and reject these appeals.

The appeals are dismissed. However, in the facts and circumstances of the case, we order no costs.

S.K.S. Appeals dismissed