

A COMMISSIONER OF CENTRAL EXCISE, BOMBAY

v.

M/S. RELIANCE INDUSTRIES LTD.

AUGUST 19, 2004

B [S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

Central Excise Act, 1944/Central Excise Rules. 1944; Rules 49, 173F and 173G(I) r/w. Rule 9(1) :

C *Short payment of excise duty on Polyester Filament Yarn—Show cause notice—Demand confirmed by Revenue—Quashed by CEGAT—On appeal, Held :Tribunal failed to consider various aspects relating to evasion of duty—Yarn winds on tubes does not cease to loose its characteristics merely because it breaks off before forming into a product of desired weight/specification—It cannot be treated as waste as claimed by the assessee—No reasons for treating it so, explained by the assessee—Tribunal to hear the matter afresh in accordance with law—Directions issued.*

E Appellant-Revenue issued a show cause notice to respondent-
F assessee alleging short payment of duty on account of non-disclosure of actual production of Polyester Filament Yarn (POY) in the appropriate records and its removal without payment of duty thereon. The Collector confirmed the demand of certain amount of excise duty, imposed penalty and ordered confiscation of the goods or fine in lieu of
F confiscation. Assessee challenged it before the CEGAT. Appeal was allowed by the Tribunal on the ground that there was no allegation of fraud, mis-declaration or intention to evade duty. Hence the present appeal by the Revenue.

G It was contended for the Revenue that the specific case of the
H authorities was that what was cleared was taken as waste but it was sold as yarn; that there was definite indication in the show cause notice about the intention to evade duty; that the Tribunal did not notice that in order to show what was being taken out was waste, separate register was required to be maintained; that allegation was of mis-declaration

so far as yarn is concerned, and not of waste as was observed by the CEGAT; that for removal and destruction of waste, particular procedure in terms of Rule 49 is prescribed but that has not been followed; that the effect of presence of the goods in the finishing room and the purpose as to why it was taken there, has not been explained by the assessee; and that if the stand was that the goods in question were waste, the assessee was required to prove it.

Assessee submitted that there was no suppression or mis-declaration as claimed by the authorities; that it has not been shown by the Revenue that as to how there was any intention to evade payment of excise duty; and that since the documents placed before the Collector were not considered by it, CEGAT was justified in setting aside the order of the Collector.

Dismissing the appeal, the Court

HELD : 1.1. Tribunal has not approached the controversy in the proper perspective. Various aspects which have been specifically noted by the Collector were really not considered by CEGAT. Its conclusions that there was no allegation of fraud, mis-declaration or intention to evade duty, *prima facie* do not appear to be correct. The material being wound on tubes was yarn. It did not cease to be yarn because it broke off before the required weight was achieved. It only became waste if it got entangled or messed up or if the tubes of less weight were cut. It was for the assessee to show categorically that this happened. [633-B, C, D]

1.2. The log sheet deal with tubes. But without question the weight shown in the log sheets is of yarn. This *prima facie* indicates that tubes having yarn of less than 1 kg. are also being logged. Thus, the Collector was right in arriving at the conclusion that the log sheets show presence of yarn on tubes, even of 1 kg. or less. The Collector had specifically noted that if the assessee had destroyed the tubes of 1 kg. or less of POY, the reason why the production as shown in the daily log sheets was not explained. Thus, fresh hearing of the appeal by CEGAT would be the appropriate course. So far as para (iv) of the show cause notice is concerned, the matter is remitted back to the CEGAT for fresh hearing and adjudication in accordance with law. So far as part (v) of

A show cause notice is concerned, the view of the CEGAT is correct.
[633-D, E, H; 634-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3226 of 1998.

B From the Judgment and Order dated 28.11.97 of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/4504/93-C in F.O. No. 596 of 1997-C).

C Anoop G. Chaudhary, Ms. Nisha Bagchi, Sanjay Grover and B. Krishna Prasad for the Appellants.

S. Ganesh, K.R. Sasiprabhu, A.M. Dave, M.K.S. Menon and Ms. G. Indira for the Respondents.

D The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The Commissioner of Central Excise, Bombay calls in question the legality of the order passed by the Customs Excise and Gold (Control) Appellate Tribunal, Delhi (hereinafter referred to as the 'CEGAT') quashing the order in original dated 21.5.1993 passed by the Collector of Central Excise Bombay-III (in short the 'Collector').

Background facts giving rise to the present appeal are as follows :

F A show-cause notice dated 28/29.10.1985 was issued to the respondent alleging short payment of duty on account of non-disclosure of 126.66 MTs. of production of Polyester Filament Yarn (in short 'POY') in the RG-I register and removal without payment of duty thereon. The short payment was stated to be Rs. 1,06,07,775. Similarly, another allegation related to removal of 5.65 MTs. of POY without payment of Rs. 4,75,187.50.

G Though there were several charges only two of them namely charge Nos. (iv) and (v) relating to the aforesaid allegations were confirmed. The collector confirmed the demand of duty of Rs. 1,06,07,775 raised in para (iv) of the impugned show cause notice. He also confirmed the demand of duty raised under para (v) of the said show-cause notice to the extent of Rs. 2,99,406.25. He imposed penalty of Rs. 25,00,000 under Rule

H 173Q of the Central Excise Rules, 1944 (in short the 'Rules') besides

ordering for confiscation of the land, building, plant, machinery etc. used A
in connection with the offending goods in respect of which the demand
of duty had been confirmed above. However, he has granted to the assessee
an option to pay a fine of Rs. 10,00,000 in lieu of confiscation.

So far as para (iv) of the show cause notice is concerned, as noted B
above that related to the allegation that the respondent, (hereinafter referred
to as the 'assessee'), had not accounted in the RG-I register for the
production of POY on bobbins of one kg. and less to the tune of 126.66
MTs, for the period October 1982 to April, 1985 and had removed them
without determining the Central Excise Duty as required under the C
provisions of the Central Excise Act, 1944 (in short the 'Act') and Rules
173F and 173G (1) read with Rule 9(1) of the Rules resulting in short
payment of Central Excise Duty to the tune of Rs. 1,06,07,775.

So far as para (v) of the show cause notice is concerned it was alleged D
that the assessee had removed 5.65 MTs. of POY during October, 1982
to April, 1985 without determining the duty leviable and without payment
of duty as required under the pretext of samples for texturisation resulting
in short payment of duty to the tune of Rs. 4,73,187.50. However, the
Collector confirmed the duty to the extent of Rs. 2,99,406.25. The
Collector held that tubes of 1 Kg. and less were taken to the finishing room E
though there was no denial of the fact that there is a market for tubes of
one kg. and less. But the assessee took the stand that it did not market
any such tube keeping in view its reputation and market credibility. They
were removed as waste. The Collector found that according to the
directions given on 22.11.1983, the assessee was required to maintain F
separate records for the different kinds of waste and the log sheets indicated
that the bobbins of the yarn were not waste, as claimed.

Order of the Collector was challenged before the CEGAT. The
primary stand of the assessee before the CEGAT was that the demand as G
raised is beyond the period of limitation and in order to attract the extended
period of limitation, allegation of suppression, non-disclosure or fraud was
to be made. There was no such specific allegation and, therefore, the
extended period of limitation was not applicable. In any event, it was
submitted what was sold can not be termed as yarn and was waste. Several
materials which were placed before the Collector to substantiate the stand H

A that no yarn was sold, has not been considered. Though the basis of allegation was that market enquiry revealed item sold to be yarn and not waste, there was no evidence to support the conclusion. Accordingly, both on the ground of limitation and lack of material to show that the yarn was sold the levy was not proper. Central Excise authorities took the stand that ample material existed to show that assessee had suppressed the sale and had removed the dutiable goods without payment of duty. There were specific allegations made to apply extended period of limitation. The Collector was justified in rejecting the unsupportable pleas of the assessee.

C CEGAT accepted the stand of the assessee and set aside the Collector's order.

D In support of the appeal learned counsel for the appellant submitted that the CEGAT has lost sight of relevant aspects. It is not as if there was no allegation of mis-declaration or unauthorized removal. The specific case of the authorities was that what was cleared was taken as waste but it was sold as yarn. There was definite indication in the show cause notice about the intention to evade duty. The Tribunal did not notice that in order to show what was being taken out was waste, separate register was required to be maintained in terms of a direction given on 22.11.1983, but that was not done. In the classification list which was filed, there was no mention of the size of the alleged waste. Allegation was mis-declaration so far as yarn is concerned, and not of waste as was observed by the CEGAT. It has been specifically observed by the Collector that there can be yarn even up to the weight of 50 gms., and when the issue related to one kg., *prima facie* the product was yarn. For removal and destruction of waste, particular procedure in terms of Rule 49 is prescribed but that has not been followed. The effect of presence of the goods in the finishing room and the purpose as to why it was taken there, has not been explained by the assessee. There is no dispute that it can be sold. What was contended was that it was not done by the assessee due to its reputation. In the log sheets, it has been clearly indicated to be yarn, but the effect of such mention as yarn was not considered by the CEGAT. If the stand was that the goods in question were waste the assessee was required to prove it. When there is unauthorized removal, obviously the goods were to be treated as yarn. Above being the position extended period of limitation was applicable.

Per contra, learned counsel for the assessee submitted that there was approval of the classification list. There was no suppression or mis-declaration as claimed by the authorities. Duty as waste has been paid and it has not been shown that as to how there was any intention to evade payments of duty. Voluminous documents were placed before the Collector which were not considered and, therefore, CEGAT was justified in setting aside the order of the Collector.

We find that Tribunal has not approached the controversy in the proper perspective. Various aspects which have been highlighted above and specifically noted by the Collector were really not considered by the CEGAT. Its conclusions that there was no allegation of fraud, mis-declaration or intention to evade duty, *prima facie* do not appear to be correct. The material being wound on tubes was yarn. It did not cease to be yarn because it broke off before the required weight was achieved. It only became waste if it got entangled or messed up or if the tubes of less weight were cut. It was for the assessee to show categorically that this had happened. The log sheets deal with tubes. But without question the weight shown in the log sheets is of yarn. This *prima facie* indicates that tubes having yarn of less than 1 kg. are also being logged. Thus the Collector was right that the log sheets show presence of yarn on tubes, even of 1 kg. or less. The Collector had specifically noted that, if the assessee had destroyed the tubes of 1 kg. or less of POY, the reason why production was shown in the daily log sheets was not explained. Thus, fresh hearing of the appeal by the CEGAT would be the appropriate course. The relevant aspects like presence of the articles in the finishing room, effect of mention in the log sheets and effect of non-maintenance of required records and the allegations contained in the show-cause notice to apply extended period of limitation must be considered in proper perspective. At the same time, if the assessee wants to place reliance on any material on record, the CEGAT should also consider it.

Accordingly, so far as para (iv) of the show cause notice is concerned, we remit the matter back to the CEGAT for fresh hearing and adjudication in accordance with law. It would consider the relevant aspects on the basis of materials already on record and to be placed by the parties in support of their respective stands, and to take a decision afresh in accordance with law.

A So far as para (v) of show cause notice is concerned, the view of the CEGAT appears to be correct as the assessee had disclosed as to what was being taken for texturisation, and it was indicated in the documents which were verified by the authorities. That being so the order of the CEGAT so far as the para (v) of the show cause notice is concerned, stands.

B The ultimate result is that the CEGAT shall hear the matter afresh so far as para (iv) of the show cause notice is concerned, relating to alleged unauthorised removal of POY in smaller bobbins weighing one kg. or less and the evasion of duty thereof, if any, is concerned .

C The appeal is disposed of accordingly without any order as to costs.

S.K.S.

Appeal disposed of.