PETITIONER:
M/S. GOODYEAR INDIA LTD.

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS, BOMBAY

DATE OF JUDGMENT: 27/01/1997

BENCH:
CJI, S.P. BHARUCHA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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 EO2 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.

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 (3) of Section 3 are relevant, and they read thus:

> "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 in 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.
>
> 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.

(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 in gradients of the same nature as, or 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)	(2)	(3)
1.	Fabrics containing more than 10 per cent by weight of synthetic fibre or yarn.	Synthetic fibre and yarn.
2.	....	.........."

In exercise of the powers conferred by Rule 3 of the Central Excise Rules, 194, 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)	(2)	(3)
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.
2. Other textured yarn -		(Rs. per kilogram)
(a) Polyamide (nylon) Textured yarn -		
(i) below 38.5 deniers		63.80
(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
(v) 165 deniers and above		24.60
xxx	xxx	xxx

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;

...."

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 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 process of manufacture. For duty purposes, notification No. 55/78 describes and fixes a different confessional 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 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 S1.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. (S1.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)."

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 base yarn, only that amount of additional duty was payable thereon as was specified against the description "textured yarn produced ut op 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".

The learned Additional Solicitor General, appearing 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.

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 addition duty representing such portion of 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 of synthetic fibre or yarn which shall be equivalent to the excise duty devisable on the synthetic fibre and yarn used therein.

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, th 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 fulfill the description of being produced out of base yarn.

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

> "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 as "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 will be liable to duty at the highest rate of 80 per cent. We are both 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 not 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 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 concerned, there is only one rate of duty mentioned in the notification. The fact that certain other parts of refrigerating and air-conditioning 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 India Plywood Manufacturing Co. Ltd., 1989 Supp. (2) S.C.C. 515 and Collector of Customs vs. Hansur Plywood Works, 1989 Supp. (2) S.C.C. 520. We, therefore, reject this contention. (Emphasis supplied.)<slc>

We are, therefore, of the view that the Tribunal was in error and that 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.