PETITIONER:
COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

Vs.

RESPONDENT:
DECENT DYEING CO.

DATE OF JUDGMENT07/12/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RAY, B.C. (J)

CITATION:
1989 SCR Supl. (2) 430 1990 SCC (1) 180
JT 1989 Supl. 377 1989 SCALE (2)1262

ACT:
Central Excises and Salt Act, 1944: Section 35L(b) and Rule 9(2)--Assessee--Dyeing acrylic yarn on Job charges--Levy of excise duty--Legality of.

HEADNOTE:
The Respondent Company was in the business of dyeing acrylic yarn received from traders and manufacturers of hosiery goods on job basis. It was paying duty at the rate of Rs. 10 per K.G. in terms of Notification No. 125/75-CE dated 12.5.1975 on the presumption that base yarn had discharged duty liability before it was received for dyeing. A show cause notice under section 9(2) of the Central Excise Rules, 1944 was issued by the Assistant Collector of Central Excise demanding an amount of Rs.4,300 as central excise duty (C) Rs.24 per K.G. on 180 Kgs. for the period May 1976 to July 1976. The demand was resisted by the Respondent Company contending that duty on base yarn was payable by the Manufacturers and the burden of showing that this had not been paid by the Manufacturers was on the Revenue which was not accepted and on appeal by the Assessee the Appellate Collector of Central Excise confirmed the demand. On further appeal, however, the Appellate Tribunal upheld the contention of the Respondent holding that the Manufacturer was liable to pay duty on the base yarn since purchasers could naturally assume that the duty on base yarn would have already been paid by the Manufacturer and that it was for the Department to verify the fact of such payment and take action against the manufacturer, if duty had not been paid particularly when in this case the Assessee had disclosed the names of persons/manufacturers from whom it had received the yarn for dyeing while the matter was pending before the Collector.
Dismissing the appeals preferred by the Revenue, this Court,
HELD: Excise is a duty on manufacture. The liability of payment of this duty is on the manufacturer. The language of the Notification No. 125/75 dated 12th May 1975 indicates that only the duty for the time being leviable on the base yarn, if not already paid, plus ten rupees per kg. was the liability. The description of manufacture was textured yarn produced out of base yarn. [434B]
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It would be intolerable if the purchasers were required to ascertain whether excise duty had already been paid as they have no means of knowing it. It has to be borne in mind that duty of excise is primarily a duty levied on a manufacturer or a producer in respect of the commodity manufactured or produced. A processor is in the similar position as purchaser of the goods. [434D-E]

Sulekh Ram & Sons v. Union of India & Ors., [1978] ELT J 525 and Governor General in Council v. Province of Madras, 72 Indian Appeals 91, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 15 152 (NM) of 1986 etc.

From the Order dated 8.5.1984 of the Customs Excise and Gold Control/Appellate Tribunal, New Delhi in Appeal No. 2530/83-D & Cross objections 27/84, Order No. 258/84-D and Misc. Order No. 67 84-D.

A.K. Ganguli, P. Parmeswaran and Hemant Sharma for the Appellant.

Gobinda Mukhoty and P.N. Gupta for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal under section 35L(b) of the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act') against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') dated 8th May, 1984.

The appeal is by the revenue. The respondent, Decent Dyeing Co., was dyeing acrylic yarn on job charges. The acrylic yarn was being received by the respondent from traders in the market or from the manufacturers of hosiery goods and were returning the same to them after completing the required process. The respondent was paying duty at the rate of Rs. 10 per kg. in terms of notification No. 125/75-CE dated 12th May, 1975 on the presumption that base yarn had discharged duty liability before it was received for dyeing. A show cause notice requiring the respondent to show cause to the Assistant Collector of Central Excise as to why central excise duty amounting to Rs.4,300 at Rs.24 per Kg. leviable on 180 kgs. (as applicable to base yarn under tariff item 18(i) of the Central Excise Tariff) should not be demanded under rule 9(2) of the Central Excise Rules, 1944, was issued to the respondent. The Assistant Collector of Central Excise directed the respondent to deposit an amount of Rs.4,300 on the basis

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of the demand of duty at Rs.24 per kg. on 180.00 kgs. and directed the respondent to deposit the said amount under the proper head. On appeal, the Appellate Collector of Central Excise confirmed the said demand.

There was an appeal and the Appellate Tribunal upheld the contention of the respondent. The Appellate Tribunal found that the case related to a demand for payment of differential duty for the period May, 1976 to July, 1976 with reference to texturing of base acrylic yarn received by the respondent from the manufacturers of such base yarn. The respondent, the Tribunal held, had cleared such textured yarn on payment of duty at Rs. 10 per kg. claiming the benefit of notification No. 125/75. The differential duty payment was Rs.24 per kg. leviable on the base yarn. ,The respondent denied theft liability but it was upheld as mentioned 'hereinbefore. It was contended on behalf of the

appellant before the Tribunal.that duty on base yarn was payable by the manufacturers of the base yarn only and the burden of showing that the said duty had not been paid by the manufacturers was on the revenue. The authorities had, however, held that the appellant was liable to. pay the differential duty since the appellant had failed to prove the payment of duty on the base yarn and, therefore, the said orders were bad. On the other hand, on behalf of the revenue, it was contended that it was for the respondent to prove that the duty had been paid on the base yarn and if the appellant was paying the duty of Rs. 10 per kg. Only under notification relied upon and in the absence of proof of payment of duty, the base yarn, the orders of the lower authorities making the respondent liable to pay the duty were correctly passed. The Tribunal found that the respondent was not the manufacturer of base acrylic yarn. The work done by the respondent on the base yarn was by way of texturising the same. In respect of the, same, the duty payable on the textured yarn produced out of base yarn is the duty for the time being leviable on the base yarn, if not already, paid plus Rs.20 per kg. Under notification No. 125/75, the duty was reduced to the duty for the time being leviable on the base yarn, if not already paid, plus Rs. 10 per kg.

In this connection, it is relevant to refer to notification No. 125/ 75. The notification, which was issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944, stated that the Government exempted the texturised yarn of the description specified in column (3) of the Table annexed thereto and falling under sub-items of item No. 18 of the First Schedule to the Act as are specified in the corresponding entries in column (2) of the said Table, from so much of the duty of

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excise leviable thereon as is in excess of the duty specified in the corresponding entries in column (4) of the said Table. The relevant portion of the Table annexed to the said notification reads as follows:

S. No.	Sub-Item No.	Description	Rate of duty
1.	(ii)	Textured Yarn produced out of base yarn	The duty for the time being leviable on the base yarn,if not already paid plus ten Rupees per kilogram.

Admittedly, the respondent had paid duty at Rs. 10 per kg. and had been allowed to clear the goods. The demand for differential duty by way of duty payable on the base yarn was not in dispute. On the base yarn, the Tribunal held, the manufacturer was liable to pay duty only since purchasers of the base yarn from the market could naturally assume that duty on the base yarn would have been paid by the manufacturer before removal and that it was for the department to verify the fact of such payment and take action against the manufacturer if base duty had not been paid. Under the relevant tariff item, the duty, as mentioned before, was fixed as the duty for the time being leviable on the base yarn, if not already paid, plus Rs.20 per kg. (reduced to Rs. 10 per kg. under the notification). The notification does not change the basic position so far as base duty is concerned from the aforesaid stand. The Tribunal held that the revenue was entitled to claim duty inclusive of the duty paid on base yarn only on proof that the duty on the base

yarn had not been already paid, unless otherwise, in the normal course, the presumption inevitable, in view of the nature of the business, be that the duty on base yarn had been paid. If that is so, that cannot be the responsibility or the burden of the respondent to prove that the duty on base yarn had already been paid. It further appears that when the appeal was filed before the Collector, the respondent had disclosed the names of the persons from whom they had received the yarn as also the names of the manufacturers enclosing the copies of the relevant record. But even then the revenue had not chosen to verify these facts and the Collector (Appeals) had passed his order on the basis that it was for the respondent to prove the actual payment of base duty. This approach is not proper approach. It is not correct to state that the respondent alone should have special knowledge of the fact of payment of base duty and it was therefore for the respondent to prove the said fact. In that view of the matter, the
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Tribunal held in favour of the respondent. We are of the opinion that the Tribunal was right.

Excise is a duty on manufacture. The liability of payment of this duty is on the manufacturer. The language of the notification referred to hereinbefore indicates that only the duty for the time being leviable on the base yarn, if not already paid plus ten rupees per kg. was the liability. The description of manufacture was textured yarn produced out of base yarn. We are clearly of the opinion that in view of the facts and the circumstances of the case, the Tribunal was right in the view it took. In this connection, it is instructive to refer to rule 49 of the Central Excise Rules, 1944, which deals with duty chargeable only on the removal of the goods from the factory premises or from an approved place of storage. Reference was also made before the Tribunal and our attention was also drawn to the decision of the Delhi High Court in Sulekh Ram & Sons v. Union of India & Ors., [1978] ELT J 525, where under rule 9 of the Central Excise Rules, it was held by the Delhi High Court that under excise system, no goods can be removed from the place of manufacturer without first paying the excise duty, therefore, a purchaser can presume that goods are duty paid. It would be intolerable if the purchasers were required to ascertain whether excise duty had already been paid as they have no means of knowing it. It has to be borne in mind that duty of excise is primarily a duty levied on a manufacturer or a producer in respect of the commodity manufactured or produced. See the observations of Lord Simonds in Governor General in Council v. Province of Madras, 72 Indian Appeals 91. In a situation of this nature, the Delhi High Court held that the processor was in the similar position as a purchaser of the goods. In that view of the matter, we are of the opinion that the Tribunal was right in the view it took.

We have heard learned counsel for the appellant and considered the matter. We find no merit in the appeal for the reasons mentioned above.

In that view of the matter, this appeal must fail and is accordingly dismissed without any order as to costs.
Appeals dismissed.
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CIVIL APPEAL NOS. 214 1-42 (NM) OF 1986.
Collector of Central Excise, Chandigarh
Versus
1. M/s Navrang Dyeing Co. & Ors.
2. M/s Capital Dyeing Co This is an appeal under s. 35L(b) of the Act from the judgment

and order of the Tribunal dated 17th April, 1984. For the reasons in civil Appeals Nos. 2151-52, these appeals must also fail and are accordingly dismissed without any order as to costs.

R.N.J. Appeal dismissed

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