

CASE NO.:
Appeal (civil) 2170 of 2001

PETITIONER:
M/s.Rajasthan Spg. & Wvg. Mills Ltd.

RESPONDENT:
Commissioner of Central Excise, Jaipur.

DATE OF JUDGMENT: 31/01/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

(With C.A.Nos.4788/01, 4792/01, 4794/01, 4795/01, 4797/01, 4789/01, 4790/01, 4796/01, 4791/01, 4793/01 & 4798/01)

The appellant is a composite unit engaged in the manufacture of manmade fabric falling under the erstwhile Tariff Head 18-III/18-E/22 and Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. In the above process, it manufactures single ply yarn which is then used in doubling or multifolding the same in a continuous process in their factory. The question that arises for consideration in this appeal is whether the appellant is liable to pay central excise duty on the manufacture of the single ply yarn or at the stage when the single ply yarn is converted into double ply yarn/multi fold yarn when the same is cleared from the factory. The stand of the revenue is that on the manufacture of the single ply yarn the same is exigible to duty, therefore, the appellant is liable to pay duty at that stage. The appellant contends that the single ply yarn manufactured by it is not cleared from its factory but is used in a continuous process in converting the same into a double or multi fold yarn. Therefore, it is liable to pay duty at the stage when so finished double or multi fold yarn is cleared from the factory. The authorities under the Act have negated the said claim of the appellant and have demanded the duty to be paid at the stage when single ply yarn is manufactured by the appellant, obviously because the rate of duty at that stage on the relevant date was more than what the appellant would have to pay when it cleared as double or multi fold yarn from its factory.

The tribunal in appeal filed by the appellant rejected the said appeal basing its finding on two judgments of this Court in the case of Bhilwara Spinners Ltd. vs. Collector of Central Excise, [1996 (82) ELT 442 (SC)] and Collector of Central Excise, Jaipur vs. Banswara Syntex Ltd. [1996 (88) ELT 645 (SC)]. The tribunal also held it has been following these judgments in many other identical cases including that of one of the appellants before it and it found no reason to differ from its consistent view on this question.

In this appeal before us Mr. D.A.Dave, learned senior counsel appearing for the appellants fairly conceded that the case of the appellant is covered against it by the above-cited two judgments. He, however, sought to place reliance on another judgment of this Court in the case of Collector of Central Excise, Bombay vs. Polyset Corporation [2000 (115) ELT 41 (SC)] and tried to persuade us to refer this issue to a

larger bench contending that in view of the judgment of this Court in Polyset Corporation (supra) the earlier view of this Court in the case of Bhilwara (supra) as well as Banswara Syntex (supra) requires reconsideration.

We have carefully gone through the above-cited judgment and find no reason to agree with the contention of Mr. Dave. Though this court in the case of Polyset Corporation (supra) following an earlier judgment of this Court in the case of Wallace Flour Mills Co. Ltd. vs. Collector of Central Excise, Bombay [1989 (44) ELT 598 (SC)] held "Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. We are of the opinion that even though the taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience." The said principle cannot be applied to the facts of the case in these appeals.

In the case of Banswara syntex (supra), a three Judge Bench of this Court dealing with identical issue as is involved in this appeal held : "A single ply yarn is first manufactured and thereafter it is doubled or multifolded, depending upon the type of fabric which is ultimately to be woven. The liability to pay excise duty would arise on the manufacture of the single ply yarn and not after the same has been doubled or multifolded. Doubling or multifolding of the same yarn does not bring into existence a new produce and no duty is leviable at that stage. It is immaterial, in view of Rule 9(1) of the Central Excise Rules and Section 49 of the Act whether the yarn so manufactured is captively consumed or is subjected to any other or further process."

In this case, this court also approved the earlier judgment in Bhilwara Spinners Ltd. and it further held that the decision of this Court in the case of M/s. J.K.Cotton Spinning & Weaving Mills Ltd. and Anr. vs. Union of India & Ors. (1987 Suppl. SCC 350), on which Mr. Dave also relied upon, that the observations in the J.K. Cotton Spinning Case were not at variance with the judgment of this Court in Bhilwara Spinners. In view of the judgments of this Court in the case of Bhilwara and Banswara Syntex (supra), we are of the opinion that the judgment of the tribunal can not be faulted. We are also of the opinion that the judgment of this Court in the case of Polyset Corporation (supra) does not, in any way, conflict with the earlier two judgments and so far as the law relating to the stage at which single ply yarn is liable for duty, the judgments of this Court in Bhilwara and Banswara Syntex (supra) will prevail.

Thus, in our opinion, so far as the questions involved in these appeals are concerned, they are concluded by the judgments of this Court in Bhilwara and Banswara (supra). Therefore, the tribunal was justified in placing reliance on the same while rejecting the appeal of the appellants.

Following the said judgments of this Court in Bhilwara and Banswara (supra), these appeals are dismissed.

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JUDIS