PETITIONER:
COLLECTOR OF CENTRAL EXCISE, JAIPUR

Vs.

RESPONDENT:
BANSWARE SYNTEX LTD.

DATE OF JUDGMENT: 26/11/1996

BENCH:
A.M. AHMADI, J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

WITH

Civil Appeal No. 1778 of 1987

Present:

HON'BLE THE CHIEF JUSTICE
HON'BLE OF MR. JUSTICE J.S.VERMA
HON'BLE MR. JUSTICE B.N. KIRPAL

Mr. M.S. Usgaonker, additional solicitor general, Mr.V.K Verma and Mr. A. Subba Rao, Advocates with him for the Appellant.
Mr. D.A. Dave, Sr. Adv. Ms. Ruby adv. for Ms. M. Karanjawala Adv. With him for respondent.

J U D G M E N T

The following judgment of the court was delivered:

Kirpal. J.

The respondent company is engaged in the manufacture of yarn falling under tariff item No. 18, 18B and 18E of the central Excise Tariff. It manufactures single ply yarn and it also in the course of its manufacturing process, does doubling and multifolding of the yarn.

The respondent was paying excise duty, in case of doubled or multifolded yarn, on the weight of doubled or multifolded yarn, on the weight of doubled or multifolded yarn and excise duty was being paid on the single yarn which was being used for doubling or multifolding. A show cause notice dated 4th September 1982 was issued by the superintendent to pay a sum of Rs. 35,190,96 as central excise duty which had been short paid during the year 1978-79 on the ground that it had utilised 4,56,456.10 kgs. of single ply for doubling process without payment of duty .

The respondent filed its reply dated 10th September, 1982, inter alia, contending that there had neither been any removal nor any utilisation of the yarn resulting in the production of a new commodity and, therefore, duty had been paid correctly at the time of removal after doubling/multifolding of the yarn.

It appears that when the single ply yarn is doubled or multifolded there is some wastage. If duty is paid on the production of single ply yarn the respondent would not get the benefit of exclusion of the waste which arises when that single play yarn is used in the process of

doubling/multifolding, That is why the respondent chose to pay duty after the process of doubling or multifolding had been completed. The Assistant collector, central Excise vide his adjudication order dated 27th September ,1982 confirmed the demand raised in the show cause notice by coming to the conclusion that the yarn at its spindle stage, after it had been spun, was a fully manufactured product and duty was payable at that stage.

Being aggrieved by the order of the assistant collector the respondent filed an appeal to the collector (Appeals) who , vide his order dated 27th March, 1985, set aside the impugned order by holding that the duty was chargeable at the doubling/multifolding stage.

The appellant then filed an appeal before the customs, Excise and gold (Control) Appellate tribunal contending that the single ply yarn had to be subjected to duty and by paying duty on the weight of the doubled yarn the respondent had avoided payment of the duty on the waste which was generated in the doubling of the yarn. The Tribunal, however, dismissed the appeal of the appellant.

In the present appeal it is contended behalf of the appellant that the duty was payable when the single ply yarn was manufactured. It is not in dispute that at the stage of the manufacture of the single ply yarn there comes into existence an excisable item. the respondent manufactures single play yarn and it is only thereafter, if required by its customers, that the said yarn is doubled or multifolded, as the need arises. Mere doubled or its customers, that the said yarn is doubled or multifolding of the single yarn which is manufactured dose not bring into existence a new product. The single yarn which is manufactured is an excisable item and would be subject to duty upon its manufacture.

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. Reference may be made to J.K. Spinning and weaving mills Ltd. and Anr. Vs. Union of India and Ors. (1987 32 ELT 234 SC) Where rules 9 and 49 of the central Excise rules, 1944 after they were amended with retrospective effect by section 51 of the finance Act. 1982 came up for interpretation. It was held that "in view of the deeming provisions under explanation to rules 9 and 49, although the goods which are produced or manufactured at an intermediate stage and thereafter, consumed or utilized in the integrated process for the manufacture of another commodity is not actually removed, shall be construed and regarded as removed." Dealing with the question of conversion at page 250 as follows:-

> "In our view, the High court by the impugned judgment has rightly held that the appellants are not liable to pay any excise duty on the yarn after it is sized for the purpose of weaving the same into fabrics. No. distinction can be made between unsized yarn when converted into sized yarn does not lose its character as yarn.

The same principle would be applicable in the present case. 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 product and no duty is leviable at that stage.

Learned counsel for the respondent sought to place reliance on the decision of this court in Bhilwara Spinners Ltd. Vs. Collector of Central Excise (1996 [82] ELT (SC) 442) in support of his contention that the respondent was liable to pay duty on the doubled yarn and no duty ought to be levied on the single yarn. In our opinion this judgment and be of little assistance to the respondents.

In Bhilwara Spinners case the company was engaged in the manufacture of fabrics. For that purpose it manufactured four types of yarns. The yarn when produced was a single yarn but the appellant doubled and multifolded the yarn as a step towards manufacture of fabrics. The appellant's case was that it had been paying duty on doubled or multifolded yarn but not on single yarn. When called upon by the Excise Department to show cause why duty should not be levied on the single yarn, the contention of the appellant therein was that both single stage yarn and doubled/multifolded yarn are one and the same goods and inasmuch as it was paying duty on the doubled/multifolded yarn no duty was payable on the single yarn. The appellate collector accepted this contention but the Tribunal agreed with the Revenue. This court, in appeal did not go into the question whether single yarn or doubled/multifolded yarn are one and the same goods and observed as follows:-

> "We are concerned in this case with the only question whether single yarn attracts duty or not. In view of the finding of the Tribunal affirming the finding of the Assistant Collector that single yarn is a completely manufactured product, it cannot be disputed that it attracts duty. We are not concerned with the question whether the doubling/multifolding of the said yarn results in different goods or not and whether duty is leviable on doubled/multifolded yarn. We need only say that the Tribunal is right in its opinion that the single yarn is subject to duty though used in the manufacture of fabrics in a continuous process of manufacture."

These observations are not at variance with the decision in J.K. Spinning's case (supra). In view of the fact that an excisable item comes into existence with the manufacture of a single ply yarn it becomes liable to pay excise duty at that stage itself. The respondent cannot be allowed to contend that the levy of excise duty is postponed to a point of time when the yarn is removed after doubling or multifolding. The liability to pay excise duty arises at the first stage itself, namely, at the time of manufacture of single ply yarn. This being so the demand raised by the Assistant Collector was not invalid.

For the aforesaid reasons the appeals are allowed. The Judgment of the Tribunal is set aside and the decision of the Assistant Collector of Central Excise is restored. Result of this would be that the respondent would be liable to pay the aforesaid amount of Rs. 35,190,96 plus interest at the rate of twelve per cent per annum thereon. The appellant would also be entitled to costs.