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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOMS APPEAL NO. 8 OF 2007

M/s. Century Rayon … Appellant

vs.
The Commissioner of Customs (Imports) … Respondent

……….
Mr. Jitendra Motwani i/b. Mr. Madhur R. Baya for the Appellant.
Mr. Pradip Jetly for the Respondent.
……….

CORAM : A.S. OKA & A.K. MENON, JJ.

DATE : 10th NOVEMBER, 2017

ORAL JUDGMENT (Per A. S. Oka. J.)

1 By this Appeal under Section 130 of the Customs Act, 1962 (for short "the said Act"), an exception is taken by the appellant – assessee to the judgment and order dated 17th May, 2006 by the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (for short "Appellate Tribunal").

2 The appellant – assessee exported quantity of 25.902 MT of Rayon Tyre Yarn (for short the "said Tyre yarn") to a Company in Germany. According to the case of the appellant–assessee, during the course of converting/processing, the said Tyre yarn was found to be defective. A part of the said Tyre yarn was used and was converted to Tyre Cord by a company in Germany. It is

the case of the appellant that during the said process, only a part of the said yarn was used and remaining part was kept as it is in the original packing. It is the case of the appellant that on receiving a complaint on this aspect, the appellant deputed its technical personnel to the plant of the company in Germany with a view to ascertain the true facts. After finding that the complaint of the company was genuine, the appellant agreed to take back the entire consignment. Accordingly, the appellant filed a bill of entry for home consumption by describing the goods as under:

> "RE-EXPORT CARGO
>
> RAYON TYRE YARN & CORD
>
> (RAYON YARN 2440 DTEX)"

3. According to the case of the appellant, report of the Dock staff was that the goods re-imported consisted of 8430.40 kgs of Rayon tyre yarn, 13981.00 kgs of Rayon Tyre Cord, 452 kgs of Yarn waste and 3041 kgs of packing materials. The claim of the appellant on the basis of proviso to sub-section (1) of Section 20 of the said Act was that the benefit of the proviso will be available and no duty will be payable on re-imported goods. The contention of the appellant was not accepted as regards last three items of the re-imported goods and therefore, on the said three items, duty was paid under protest. Pursuant to the prayer made by the appellant for grant of refund, a show cause notice was served to the appellant calling upon the appellant to show

cause as to why the claim for refund should not be rejected. The allegation in the show cause notice was that the goods originally exported had undergone a change in their form. It is alleged that in absence of the failure to establish identity at the time of importation, benefit of the proviso could not be made available.

4. After giving personal hearing to the appellant, the order-in-original dated 19th November, 1996 was passed by the Assistant Commissioner of Customs. The claim for refund was accepted under the said order. Being aggrieved by the said order, the department filed an appeal before the Commissioner of Customs (Appeals). By order dated 2nd February, 2002, the appeal preferred by the department was allowed. An appeal was preferred against the order in appeal by the appellant before the Appellate Tribunal. The said appeal has been dismissed by the impugned judgment and order.

5. Learned Counsel appearing for the appellant invited our attention to the questions of law framed in the order dated 21st February, 2007. He submitted that in the present case even going by the Show Cause Notice, the re-imported goods are the same and there is a change of the form of the goods. He pointed out that the said Tyre yarn was exported and what is re-imported was Tyre cord made up of the same. His submission on facts is that the goods are the same, but only the form of the goods has undergone a

change. He submitted that the emphasis in the proviso to Sub-Section (1) of Section 20 is on the fact that the same goods should be re-imported and the requirement of the goods being in the same form cannot be read into the proviso and if such requirement is read, the very object of enacting the proviso would be completely defeated.

6. Learned Counsel for the appellant relied upon a decision of the Delhi High court in the case of ***Western India Texturizers Ltd. vs. Union of India***[1]**.** He submitted that Delhi High Court has held that the process of twisting and doubling of the yarn does not amount to manufacture within the meaning of Section 2 of the Central Excise and Salt Act, 1944. He also relied upon decision of the Apex court in the case of ***Porritts & Spencer (Asia) Ltd. vs. Collector of Central Excise,New Delhi***[2]**.** This was the case where multifold/doubled yarn was prepared from cotton yarn and nylon filament yarn. It was held that this process does not amount to manufacture. He also relied upon the decision of the Apex court in the case of ***Collector of Central Excise, Jaipur vs. Banswara Syntex Ltd***[3]. He submitted that in view of the law laid down, the conversion of Tyre yarn into Tyre cord cannot be said to be a manufacturing process. He submitted that, in any event, even in the Show Cause Notice, it is not disputed that the goods re-imported are the same.

1 **2002(146) E.L.T. 268 (Delhi)**
2 **1999(106) E.L.T. 18 (S.C.)**
3 **1996(88) E.L.T. 645 (S.C.)**

7. Learned Counsel appearing for the respondent relied upon the decision of the Apex Court in the case of ***Gaurav Distributors (P) Ltd. vs. Commissioner of Customs, New Delhi***[4]**.** He also placed reliance upon decision of the Apex Court in the case of ***Super Cassettes Industries Ltd. vs. Commissioner of Customs, New Delhi***[5]**.** Lastly, he pressed into service the law laid down by the Apex Court in the case of ***Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Ltd.***[6] **.** He submitted that no interference is called for. On a query made by the Court, the learned Counsel appearing for the appellant submitted that the re-imported goods are in such form that now the same cannot be used at all. He also produced for perusal of the Court samples of exported goods and re-imported goods.

8. We have given careful consideration to the submissions. Sub-Section (1) of Section 20 of the said Act reads thus :

> "(1) *If goods produced or manufactured in India be imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value not so produced or manufactured are liable or subject, on the importation thereof :*
>
> *Provided that if such importation [other than importation of goods produced or manufactured in a free trade zone] takes place within three years after the exportation of*

4 **2004(170) E.L.T. 513 (S.C.)**
5 **2008 (225) E.L.T. 401 (S. C.)**
6 **2000 (120) E.L.T. 285 (S. C.)**

such goods and it is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, the goods may be admitted -

(a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback;

(b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods.

(c) in any case where the goods were exported in bond, without payment of -

(i) the customs duty leviable on the imported materials, if any, used in the manufacture of the goods or

(ii) the excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods, or

(iii) the excise duty, if any, leviable on the goods

on payment of customs duty equal to the aggregate amount of all such duties calculated at the rates prevailing at the time and place of importation of the goods.

(d) in any other case, without payment of duty.

Sub-Section (1) of Section 20 lays down the rule with regard to re-importation of goods produced or manufactured in India which are imported into India after exportation therefrom. Such goods are liable to duty and are subject to such conditions and restrictions, if any, to which goods of the like kind and value not so produced or manufactured are liable or subject, on importation thereof. Proviso to sub-Section(1) lays down that if importation takes place within three years after exportation of such goods and is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, such goods can be admitted without any payment of duty. Thus, emphasis is on the satisfaction of the Assistant Collector of Customs that the goods re-imported are the same goods which were exported.

9. It will be necessary to make a reference to the allegations in the Show Cause Notice. Relevant portion of the Show Cause notice reads thus:

> *"M/s. Century Rayons H.O. Industry house, 159, Churchgate Reclamation, Bombay 400020 had imported a consignment of 18 pallets of Nylon Tyre Yarn, 52 Pallets of cord on cheese, 2 Pallets of code [Sic] waste and 4 Pallets of packing material from Germany. Importer had claimed clearance under the respective headings of the Customs Tariff Act, 1962 read with Section 20 of the Customs Act, 1962. <u>Goods were examined under first check appraisement procedure and as reported on 28.2.94, that the identity of 52 pallets of code[Sic] on cheese, 2 pallets of code [Sic] waste and 4 pallets of packing materials could not be established due to change in the original form of the goods which were exported against the Shipping Bills mentioned in the B/Entry.</u>*

> *Section 20 allows re-importation of those goods which are manufactured in India and have been re-imported in the same condition in which they were exported. In the instant case, the goods in question had changed their original form and were subsequently imported as they were found defective for the manufacture of the Tyre Code [Sic] Fabric.*
>
> *In view of the foregoing paras it is revealed that in absence of identity not established at the time of importation the benefit of Section 20 cannot be available to the imported goods.* *(underline supplied)*

Thus, the allegation is that the goods in question had changed its original form and were subsequently imported as the same were found defective for manufacturing of Tyre Cord Fabric. 18 Pallets of Nylon Tyre Yarn which were in the same form were granted benefit of clause (b) of Sub-Section (1) of Section 20.

10. In response to the Show Cause Notice, a reply was submitted by the appellant on 5th August, 1996. It is accepted therein that the Company in Germany subjected a part of the said Tyre Yarn to spinning process, but the goods were found defective. In paragraph 2 it is accepted that a part of the yarn spun was converted into cord. In paragraph 8, it is contended that what is re-imported is the cord which is manufactured from the exported yarn. The dispute is only about those goods which were admittedly converted into tyre cord.

11. We have examined the decisions relied upon by the learned Counsel appearing for the appellant. The decisions are about the process of manufacturing in the context of the Excise Act. One decision holds that by preparation of Multifold/ doubled yarn out of duty paid cotton yarn does not mean that excisable goods come into existence. It was held that by preparation of Multifold and doubled yarn out of the duty paid cotton yarn and Nylon filament yarn does not bring into existence a distinct article having identity of its own. In the decision of the Delhi High Court, it was held that process of doubling and twisting of duty paid nylon yarn does not amount to manufacture. The said decisions are of no assistance as we are not concerned with the interpretation of Section 2(f) of the Central Excise Act and the meaning of manufacture for the purposes of Central Excise Act.

12. As pointed out earlier, the proviso is by way of an exception to the general Rule under Sub Section (1) of Section 20. Only if the conditions of the proviso are satisfied, re-import without payment of duty is permissible. The proviso is applicable provided satisfaction is recorded by the Assistant Collector of Customs that the goods are the same which were exported. In fact of the case and even in the reply, the appellant accepted that the goods are not the same, in the sense that what was exported was the Nylon yarn and by adopting a process, the same was converted into Tyre cord. Thus, going by the stand taken by the appellant, this is not a case of slight or minor transformation of the goods. In this case, goods were exported in one form

and re-imported in another form. Thus, it cannot be said that the goods imported are the same. Thus, going by the stand taken in the reply to the Show Cause Notice, it is difficult to find fault with the finding recorded by the Commissioner as well as the Appellate Tribunal that the goods exported were entirely different from the goods re-imported, considering its nature, identity and usage. We have earlier noted that in an answer to the query made by the Court, the learned Counsel for the respondent stated that the re-imported goods cannot be put to the same use as the user of exported goods.

13. Therefore, after considering the findings of the fact recorded by the authorities as well as the appellate Tribunal, we find that there is no merit in the appeal and the same is accordingly dismissed. There will be no order as to costs.

(A.K. MENON, J) **(A.S. OKA, J)**