

A VARELI WEAVES PVT. LTD. AND ANR.

v.

UNION OF INDIA & ORS.

FEBRUARY 27, 1996

B [S.P. BHARUCHA AND B.L. HANSARIA, JJ.]

Customs Tariff Act, 1975 : Section 3.

Central Excise Rules, 1944 : Rule 8(1).

C *Imported Partially Oriented Yarn (POY)—Countervailing duty—Appellants claim for exemption under Notification dated 28th February 1982—Basis of claim that POY was of 100 deniers and above but not above 750 deniers—Authorities treated the POY imported by the appellants as falling within the slot of 75 deniers and above but below 100 deniers—They did so upon the basis of a circular dated 24th September, 1980, issued by the Central Board of Excise & Customs which stated that POY was assessable to countervailing duty and excise duty at the final denierage stage, that is to say, after the POY had been texturised—Writ challenging levy by appellant dismissed by High Court on the ground of lack of jurisdiction—Appeal before Supreme Court—Held countervailing duty must be levied on goods in the state in which they are imported—The POY imported by the appellants fell in the slot of 100 deniers and above but not above 750 deniers—It was, therefore, liable to that rate of countervailing duty as was provided for in the clause (iv) of the exemption notification—The circular upon the basis of which the duty was levied having been issued in Delhi, the Delhi High Court had jurisdiction to entertain the appellants' writ petition.*

Krislon Texturiser Pvt. Ltd. v. Union of India, (1989) 44 ELT 448, Vareli Exports Pvt. Ltd. and Another v. Union of India and Ors., CA No. 1165 of 1983 decided by Gujarat High Court, approved.

G CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 5318 of 1983.

From the Judgment and Order dated 27.1.83 of the Delhi High Court in W.P. No. 2405 of 1982.

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Writ Petition (C) No. 3881 of 1983. A

(Under Article 32 of the Constitution of India.)

Soli J. Sorabjee, P.H. Parekh and Ms. Sunita Sharma for the Appellants.

Joseph Vellappally, V.K. Verma and N.D.B. Raju for the Respondents. B

The following Order of the Court was delivered :

A common question arises in the Civil Appeal and the Writ Petition. The Civil Appeal is directed against the order of a Division Bench of the Delhi High Court summarily rejecting the appellants' writ petition upon the ground of lack of jurisdiction. C

The appellants imported partially oriented yarn (POY). They claimed for the purposes of countervailing duty (additional duty) the benefit of an exemption notification dated 28th February, 1982, issued under Rule 8(1) of the Central Excise Rules whereby manmade fibres and yarns were exempted from excise duty as therein stated. The controversy was whether the POY imported by the appellants should be taken to fall within item (iv) under the head Polyester yarn relating to POY of 75 deniers and above but below 100 deniers or within item (iii) relating to POY of 100 deniers and above but not above 750 deniers. It was the case of the appellants that the POY imported by them was entitled to exemption upon the basis that it was of 100 deniers and above but not above 750 deniers. The authorities treated the POY imported by the appellants as falling within the slot of 75 deniers and above but below 100 deniers and they did so upon the basis of a circular dated 24th September, 1980, issued by the Central Board of Excise & Customs which stated that POY was assessable to countervailing duty and excise duty at the final denierage stage, that is to say, after the POY had been texturised. D E F

Learned counsel for the appellants submitted that there was no warrant for levying countervailing duty upon imported goods at a stage they would reach subsequent to their import after undergoing a process. They had to be subjected to duty in the state in which they were when imported. Reference was made to the judgment of a Single Judge of the Bombay High Court in *Kriston Texturiser Pvt. Ltd. v. Union of India*, (1989) 44 ELT 448 G H

A [S.P. Bharucha, J.], which was followed by a Division Bench of the High Court of Gujarat in Special Civil Application No. 1165 of 1983, *Vareli Exports Pvt. Ltd. and Another v. Union of India and Others*, where it was so held.

B Learned counsel for the respondents fairly stated that the view taken in these judgments was unassailable.

The circular upon the basis of which the duty was levied having been issued in Delhi, the Delhi High Court had jurisdiction to entertain and try the appellants' writ petition.

C Countervailing duty must be levied on goods in the state in which they are when they are imported. Section 3 of the Customs Tariff Act so mandates. The POY imported by the appellants fell in the slot of 100 deniers and above but not above 750 deniers. It was, therefore, liable to that rate of countervailing duty as was provided for in the said clause (iv) of the exemption notification. There was no warrant for the levy of countervailing duty as provided for in the said clause (iii) upon the basis that, subsequent to the process of texturising the POY that was imported would have the denierage therein stated.

E The Civil Appeal is, therefore, allowed and order of the Delhi High Court is set aside. The Writ Petition filed by the appellants before the Delhi High Court is allowed. The bank guarantee furnished by the appellants pursuant to the order of this Court dated 2nd May, 1983, shall stand discharged.

F Having regard to the order made upon the Civil Appeal, no order upon the Writ Petition is requisite and it is disposed of accordingly.

No order as to costs.

T.N.A.

Appeal allowed and petition disposed of.