

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9440 OF 2003

M/S. SRF LTD. ... Appellant

VERSUS

COMMISSIONER OF CUSTOMS, CHENNAI ... Respondent

WITH

CIVIL APPEAL NO. 1623 OF 2009

M/S. ITC LTD. ... Appellant

VERSUS

COMMISSIONER OF
CUSTOMS (IMPORT & GENERAL), NEW DELHI ... Respondent

O R D E R

In both these appeals, identical question of law has come up for consideration. For sake of convenience, we will take note of the facts appearing in Civil Appeal No. 9440 of 2003.

The appellant herein had imported Nylon Filament Yarn of 210 deniers falling under Chapter 54 of the Customs Tariff. The appellant claimed nil rate of additional duty of customs by relying on exemption in terms of Serial No. 122 of Notification No. 6/2002-CE dated 01.03.2002. The Deputy Commissioner of Customs passed orders dated 12.04.2002 holding that the appellant was not entitled for exemption from payment of additional duty/Countervailing Duty (CVD) since it was not fulfilling condition No. 20 of

the aforesaid Notification. The Commissioner (Appeals) confirmed the aforesaid order of the Deputy Commissioner and dismissed the appeal of the appellant vide orders dated 12.09.2002. In further appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'), even the CEGAT has affirmed the order of the authorities below and dismissed the appeal.

Entry/ Serial No. 122 in the Notification No. 6/2002 reads as under -

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
122	5402.10	Nylon filament	Nil	-	20
	5402.41	yarn or			
	5402.49	polypropylene multifilament			
	5402.51	yarn of 210			
	5402.59	deniers with tolerance of 6			
	5402.61 or 5402.69	per cent.			

As per the aforesaid entry, the rate of duty is nil. Condition No. 20 of this Notification, which was relied upon by the authorities below in denying the exemption from payment of CVD, is to the following effect:

"20. If no credit under rule 3 or rule 11 of the CENVAT Credit Rules, 2002, has been taken in respect of the inputs or capital goods used in the manufacture of these goods."

The aforesaid condition is to the effect that the importer should not have availed credit under rule 3 or rule 11 of the CENVAT Credit Rules, 2002, in respect of the capital goods used for the manufacture of these goods.

In the present case, admitted position is that no such CENVAT credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid Notification is that in the case of the appellant, no such credit is admissible under the CENVAT Rules. On this basis, the CEGAT has come to the conclusion that when the credit under the CENVAT Rules is not admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in the case of '*Ashok Traders v. Union of India*' [1987 (32) ELT 262], wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw nephtha used in HDPE in the foreign country, Central Excise duty leviable under the Indian Law can be levied or paid." Thus, the CEGAT found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.

We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this court in

'*Thermax Private Limited v. Collector of Customs (Bombay), New Customs House*' [1992 (4) SCC 440] which was affirmed by the Constitution Bench in the case of '*Hyderabad Industries Limited v. Union of India*' [1999 (5) SCC 15]. In a recent judgment pronounced by this very Bench in the case of '*AIDEK Tourism Services Private Limited v. Commissioner of Customs, New Delhi*' (Civil Appeal No. 2616 of 2001), the principle which was laid down in *Thermax Private Limited* and *Hyderabad Industries Limited* was summarised in the following manner: -

"15. The ratio of the aforesaid judgment in *Thermax Private Limited* (supra) was relied upon by this Court in *Hyderabad Industries Ltd.* (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word 'so' implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such

an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon."

(Emphasis supplied)

We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that appellants were entitled to exemption from payment of CVD in terms of Notification No. 6/02. The appeals are allowed and the demand of CVD raised by the respondents-authorities is set aside.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
March 26, 2015.

ITEM NO.105

COURT NO.15

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9440/2003

M/S. SRF LTD.

Appellant(s)

VERSUS

COMMNR. OF CUSTOMS, CHENNAI

Respondent(s)

WITH

C.A. No. 1623/2009
(With Office Report)

Date : 26/03/2015 These appeals was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. V. Lakshmikumaran, Adv.
Mr. M. P. Devanath, Adv.
Mr. Vivek Sharma, Adv.
Ms. L. Charanaya, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. R. Ramachandran, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Ambarish Pandey, Adv.
Mr. Anandh K., Adv.
Mr. Rajesh Kumar, Adv.

For Respondent(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Arijit Prasad, Adv.
Ms. Shweta Garg, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of signed order.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]