REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4112 OF 2007

M/S. MERIDIAN INDUSTRIES LTD. .....APPELLANT(S)

VERSUS

COMMISSIONER OF CENTRAL EXCISE .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The appellant-assessee is engaged in the manufacture of cotton yarn which is 100% Export Oriented Undertaking (EOU) constituted as per Export and Import Policy 1997-2002. During the period August, 2000 to March, 2001, it had cleared the aforesaid cotton yarn made to Domestic Tariff Area (DTA). While clearing these goods, the appellant did not pay normal excise duty that is chargeable for the aforesaid product. Instead it took benefit of Notification No.8/97-C.E. dated 01.03.1997 and paid duty at concessional rate in terms of the said notification. This notification provides for concessional rate to those products which are cleared to DTA by an EOU. However, one of the conditions for availing the benefit of the said notification is that the

products that are manufactured by such EOU should have been manufactured using indigenous raw material only.

2. The appellant while manufacturing cotton yarn had used indigenous cotton and also imported wax. The Department sought to deny the benefit of Notification No.8/97-C.E. on the ground that imported wax was also used, which was treated as the "raw material". Show cause notice dated 04.09.2001 was, accordingly, issued by the Superintendent of Central Excise, Pollachi-II Range, in O.C. No.777/2001 to state that the appellant was wrong in claiming the benefit of Notification No.8/97-C.E. dated 01.03.1997 since cotton yarn was manufactured out of indigenous cotton and imported wax, as wax was contained in the final product (yarn). It was stated that the appellant is maintaining separate production account for manufacture of cotton yarn both for indigenously procured and imported cotton as detailed in Annexures-I and II to the show cause notice. The appellant filed objections/reply dated 29.01.2001 wherein it stated that:

(i) wax disc was used in the High Speed Autoconer for supply to hosiery industries. Wax acts as a lubricant for reducing the friction and hairiness arising due to cone winding of yarn at a speed of 1200-1500 meters per minute.

(ii) The lubrication of the yarn also facilitated the use of the high speed knitting machines.

(iii) The wax was only a temporary coat and did not form part of the cotton yarn and the wax removed permanently after the knitting and does not remain part and parcel of the yarn.

(iv) The jurisdictional Superintendent of Central Excise had consistently issued Warehousing Certificate treating the same as 'consumable' and the wax disc was treated as 'capital goods' consistently as entered in RG 23C for Cenvat purposes.

3. The Commissioner of Central Excise, Coimbatore after hearing the matter, passed the Order-in-Original dated 21.06.2002 deciding the matter in favour of the assessee and, thus, dropped proposed demand in the show cause notice by recording the finding to the effect that:

(i) Wax disc acted as a lubricant and facilitated processing and use in the manufacturing process and remained a temporary coat.

(ii) By Circular No.631/22/2002-CX dated 28.03.2002, the Ministry of Finance held that consumables used in capital goods cannot be termed as 'raw material' for the manufacture of finished goods and in the case wax was only a consumable for the capital goods.

(iii) Revenue was inconsistent in having dealt with wax discs as consumable in the warehousing operation of the appellant but dealt as raw material for denying the benefit of exemption.

(iv) Benefit was available to cotton yarn manufactured wholly out of indigenous cotton as well as cotton yarn manufactured out of imported

cotton yarn on which appropriate additional duty of customs was paid when removed into DTA.

4. However, the Central Board of Excise & Customs, reviewed the order of the Commissioner of Central Excise in Order-in-Original No.32/2002-Commr. dated 21.06.2002 and directed the Commissioner to present an appeal before the Appellate Tribunal exercising power under Section 35B of the Act. The Commissioner of Central Excise preferred the appeal as directed by the Central Board of Excise & Customs against his own Order-in-Original No.32/2002-Commr. dated 21.06.2002 before the Tribunal.

5. The Tribunal allowed the appeal preferred by the Commissioner of Central Excise vide its decision dated 17.07.2007. Perusal of the decision indicates following thought process:

(i) The imported wax was used through discs fitted in the cone winder (Auto Coner) running at a speed of 1200-1500 meters per minute.

(ii) The wax coating was necessary to smoothen the surface and to lubricate yarn in winding and further process of knitting.

(iii) The coating disappears in the further process to which the knitted fabric is subjected to, but at the time of clearance of the yarn from the EOU, wax was part of the yarn.

(iv) The use of the wax satisfied the definition of “raw material” and wax

provided lubricity to the yarn.

6. Present appeal is preferred by the appellant challenging the correctness and validity of the aforesaid decision of the Tribunal.

7. Mr. Bagaria, learned senior counsel, appearing for the appellant, drew our attention to the language used in the exemption notification which provides for 100% exemption to EOU or a free trade zone from excise duty on the finished products, rejects and waste or scrap specified in the Schedule to the Central Excise Tariff Act, 1985 when produced or manufactured 'only **from** the raw materials produced or manufactured in India...' On the basis of the aforesaid wording from the notification, his submission was that the word 'from' clearly suggests that the material used has to be 'raw material' and the wax, in the present case, was not used as the raw material. In this behalf, he explained the process of manufacturing of cotton yarn by explaining that since it was only a yarn, the same was manufactured and wound on cones. In this process, the yarn is passed over an imported wax disc fitted on the cone winder (Auto Coner) at a speed of 1200 to 1500 meters when the wax gets coated on the yarn. The purpose of wax coating was only to smoothen the yarn and provide lubrication to this product. It was not used as raw material for the production of cotton yarn, as yarn could be produced even without the said wax cotton. He also explained that the cotton yarn

was sold by the appellant to the consumers for the purpose of manufacturing/fabricating the garments and after the fabrication, the said wax was removed. Therefore, on that basis, he submitted that the requirement of the notification was that the product which is cotton yarn in the instant case had to be manufactured from raw material and when the matter is considered in the aforesaid perspective since wax was not the raw material for the production of yarn, the use thereof could not disqualify the appellant from taking benefit of Notification No.8/97-C.E.

8. Mr. Bagaria also referred to Circular No.389/22/98-CX issued by the Ministry of Finance on Notification No.8/97-C.E. dated 01.03.1997 applicable to 100% EOU, which clarified certain doubts and paragraph 3 thereof reads as under:

> "3. The matter has been examined by the Board and it is clarified that:
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> (a) In respect of situation (i) above the benefit of Notification 8/97-C.E. dated 01.03.1997 cannot be extended to those units which manufacture goods out of both imported and indigenous raw material. The benefit is available to those units which manufacture goods only from indigenous raw materials.
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> (b) In respect of situation (ii) a Unit is eligible for the benefit of Notification 8/97-C.E., *ibid*, even if, imported consumables are used since the notification does not debar the use of imported consumables, provided other conditions of the said notification are satisfied."

9. On the basis of the aforesaid clarification particularly contained in para (b) thereof which clarifies that the use of imported consumables would

not debar such a manufacture from availing the benefit from the notification. He also referred to two circulars of the Ministry of Finance in support of his aforesaid plea, the particulars and the material contained thereof are as under:

(i) Circular No.614/5/2002-CX dated 31.01.2002, the Ministry of Finance stated as under:

> "I am directed to refer Board's Circular No.389/22/98-CX dated 05.05.1998 [1998 (100) ELT T19] relating to extension of benefit under Notification No.8/97-C.E. dated 01.03.1997 to EOUs even if they use imported consumables and to say that the matter has been re-examined by the Board and it has been decided to withdraw the circular. Accordingly, it is clarified that the benefit of Notification No.8/97-C.E. dated 01.03.1997 shall not be available to those EOUs which use imported consumables."

(ii) By Circular No.631/22/2002-CX dated 28.03.2002, the Ministry of Finance vide paragraph 2 further clarified as follows:

> "I am directed to invite reference to Board's Circular No.614/5/2002-CX dated 31.01.2002 [2202 (140) ELT T3] regarding denial of the benefit of Notification No.8/97-C.E. dated 01.03.1997 (as amended) to the export oriented units using imported consumables. It has been brought to the notice of the Board that the field formations are denying the benefit of Notification No.8/97-C.E. to units using imported consumables with capital goods.
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> 2. Board has taken serious view of this mis-interpretation. Notification No.8/97-C.E. dated 01.03.1997 extends the benefit of concessional rate of duty to EOUs on finished products which are wholly manufactured from the indigenous raw materials. The consumables used with the capital goods cannot be termed as raw materials for the manufacture of finished goods. Therefore, it is clarified that benefit of concessional rate of duty under Notification

> No.8/97-C.E. dated 01.03.1997 (as amended) should not be denied to export oriented units using imported consumables with capital goods provided all other conditions of notification are satisfied."

10. Mr. Bagaria went on to argue that the issue was no more *res integra* as this Court had already taken a view on this aspect, favourable to the assesses/manufacturers. In this direction, he pointed out that the Chennai Bench of the Tribunal in the case of ***Super Spinning Mills Ltd.*** v. ***Commissioner of Central Excise, Tiruchirapalli***[1] which was concerned with identical type of case, took the view in the process of waxing of hosiery cotton yarn which was done at the winding stage, wax could not be considered as raw material but was only consumable and on that basis, held that the use of imported wax would not debar the assessee from claiming benefit of the exemption Notification No.8/97-C.E. dated 01.03.1997. In order to show the parity of that case with the instant matter, learned senior counsel referred to the discussion contained in para 2 of the said decision of the Tribunal, which reads as under:

> "2. We have heard both sides on the appeal against the order. The process of waxing of hosiery cotton yarn is done at the winding stage (whether auto-cone or manual cone). In the auto-coner machine, the imported wax disc is kept in the yarn path and the yarn is allowed to pass through the wax disc while the wax disc is rotated to ensure uniform waxing. The waxed yarn is subsequently conditioned by "Yarn Conditioning Process" in which yarn is conditioned by steam

[1] 2013 (296) ELT 133

> injection in a vacuum auto-clave at low temperature. Wax is present in the final product. Waxing is done to maintain co-efficient of friction between yarn and metal in order to avoid excessive yarn breaks as well as needle breaks. The purpose of waxing is the same as that of M/s. Forbes Gokak Ltd. who also cleared cotton yarn to DTA claiming the benefit of the same notification and the benefit stands extended by the Hon'ble Karnataka High Court as seen from 2010 (250) E.L.T. 186 (Kar.) holding that wax cannot be considered as raw material but as consumable and upholding the Tribunal's order reported in 2005 (192) E.L.T. 1000 to this effect. The Karnataka High Court's decision cited supra is applicable on all fours to the facts of the present case. Although, ld. JCDR seeks to rely upon the remand and order of the Apex Court in *Vanasthali Textiles Industries Ltd.* v. *CCE, Jaipur* [2007 (218) E.L.T. 3 (S.C.)] to examine whether sizing material was a raw material for the manufacture of terry towels and draws the attention of the Bench to the remand orders of the Tribunal in *CCE, Coimbatore* v. *Meridian Industries Ltd.*[2007 (217) E.L.T. 576] and in direct decision of the Hon'ble Karnataka High Court on the same item, namely wax, we follow the ratio thereof to hold that the benefit of the exemption under the relevant notification cannot be disallowed on the ground of use of imported wax as wax has already been held by the Hon'ble High Court to be a consumable and not a raw material, set aside the impugned order and allow the appeal. CO disposed of accordingly."

11. He also brought to the notice of this Court that against the aforesaid judgment of the Tribunal, the Revenue/Department had preferred an appeal in this Court, being Civil Appeal No.5294-5299/2010 which was dismissed by this Court on 08.07.2010 with the following order:

> "The appeal is dismissed on the ground of delay as well as on merits."

He, thus, made passionate plea that this appeal be also allowed on the basis of parity.

12. Ms. Shirin Khajuria, advocate with the guidance of Mr. K. Radhakrishnan, senior advocate argued the matter on behalf of the Revenue/respondent and stoutly refuted the aforesaid submissions of the appellant's counsel. Main thrust of her argument was that the decision of ***Super Spinning Mills Ltd.*** was not applicable to the facts of the present case and in this behalf, she endeavoured to draw subtle distinction between the facts of the two cases. She further submitted that the Tribunal had appreciated the same in the impugned decision appropriately discerning the facts of the present case and, therefore, the impugned order did not warrant any interference. We shall take note of the arguments of Ms. Khajuria in some detail at the later stage. At this point of time, we would like to deal with the contentions raised by the learned senior counsel for the appellant.

13. The appellant is seeking the benefit of exemption Notification No.8/97-C.E. Since it is an exemption notification, onus lies upon the appellant to show that its case falls within the four corners of this notification and is unambiguously covered by the provisions thereof. It is also to be borne in mind that such exemption notifications are to be given strict interpretation and, therefore, unless the assessee is able to make out a clear case in its favour, it is not entitled to claim the benefit thereof. Otherwise, if there is a doubt or two interpretations are

possible, one which favours the Department is to be resorted to while construing an exemption notification.

14. The gravamen of the charge against the appellant is that wax disc which is admittedly imported and used for the production of cotton yarn constitutes 'raw material' and since imported material is used for the production of the aforesaid commodity, benefit of Notification No.8/97-C.E. cannot be extended to the appellant. It is not in dispute that wax is used in the process which is an imported material. However, the refutation of the appellant is that wax is not 'raw material' and it is only used as 'consumable' in the process of manufacturing cotton yarn. The Export and Import Policy 1997-2002, which is applicable in the instant case, defines both the expressions, namely, 'consumables' and 'raw material' and, therefore, it would be apposite to take note of these definitions:

> "*Consumables*" means any item which participates in or is required for a manufacturing process, but does not form part of the end product. Items which are substantially or totally consumed during a manufacturing process will be deemed to be consumables.
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> "*Raw material*" means:
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> (i) basic materials which are needed for the manufacture of goods, but which are still in a raw, natural, unrefined or unmanufactured state; and
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> (ii) for a manufacturer, any materials or goods which are required for the manufacturing process, whether they have actually been previously manufactured or are

processed or are still in a raw or natural state."

15. As is evident from the aforesaid definitions, a particular item, though required for a manufacturing process or participates in the said process would be treated as 'consumable', if it does not form part of end product and instead it gets substantially or totally consumed during the manufacturing process. In contrast, as per sub-para (ii) of the definition of raw material, if any materials or goods are required for the manufacturing process, such materials or goods would be treated as the 'raw material', whether they have actually been previously manufactured or are processed or are still in a raw or natural state.

16. These expressions have come up for interpretation before this Court on earlier occasions in few cases. Some of these judgments were taken note of in the case of ***Vanasthali Textiles Industries Ltd.*** v. ***CCE, Jaipur***[2]. We may clarify at the outset that the Court in that case was concerned with the provisions at the relevant time that did not contain the definition of 'raw material' and, therefore, it banked upon the meaning that has to be given in ordinary connotation in the common parlance of those who deal with the matter. At the same time, some observations made in the said case, particularly, 'dominant ingredient test', which was applied were pressed into service by the appellant and, therefore, the discussion in the said judgment becomes relevant. As far

[2] (2007) 12 SCC 115

as term 'raw material' is concerned, following discussion followed in the said judgment:

> "13. The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well-accepted connotation in the common parlance of those who deal with the matter. In *Ballarpur case* (1989) 4 SCC 566 it was *inter alia* observed as follows: (SCC p. 572, para 14)
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> > "14. The ingredients used in the chemical technology of manufacture of any end product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product; those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last-mentioned class qualify themselves as and are eligible to be called 'raw material' for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end product in the sense that without its absence the presence of the end product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the

> manufacturing process as distinct from the manufacturing apparatus."

14. CEGAT had held in that case that the use of indigo dye is as a raw material in the manufacture of denim fibre. According to the High Court also the question was whether the use of small quantity of imported dye in bringing the end product into existence, even in that case it can be treated that the finished product has come into existence wholly from cotton. It was held that for the manufacture of denim the basic raw material and the finished product cannot be treated as wholly produced or manufactured from cotton. Therefore, placing reliance on *Ballarpur case,* it was held that the finished product is not wholly from basic raw material i.e. cotton but it has to be treated that the dye is also a raw material which is imported.

15. It is to be noted that cost of dye varied between 2 and 2.5% of the total production cost. The denim is manufactured from cotton and not from indigo. The condition for getting the benefit of the notification is that the end products should be wholly manufactured from the raw material produced and sold in India.

16. It is to be noted that dominant ingredient test has not been applied in the instant case; so also the effect of value addition. In *Ballarpur case* it was held in para 19 as follows: (SCC p. 573)

> "19. We are afraid, in the infinite variety of ways in which these problems present themselves it is neither necessary nor wise to enunciate principles of any general validity intended to cover all cases. The matter must rest upon the facts of each case. Though in many cases it might be difficult to draw a line of demarcation, it is easy to discern on which side of the borderline a particular case falls."

17. It is true that the notification does not make distinction on account of value. Stress is on the word "wholly". In the Circular dated 5-5-1998 it is stated as follows:

> "3(b) In respect of Situation (*ii*) a unit is eligible for the benefit of Notification No. 8/97-CE ibid., even

> if imported consumables are used since the notification does not debar the use of imported consumables, provided other conditions of the said notification are satisfied."

18. In *Chemical Technology of Fibrous Materials* by F. Sadov, M. Korchagin and A. Matelsky it has been stated as follows:

> "In industry, textile fonning (fibrous) items used for manufacturing (main activity) a textile product are referred to as raw material e.g. cotton, viscose, wool, silk, nylon, polyester, etc. or their blends in different compositions. Whereas, (non-fibrous) items used for chemical processing of textile product (ancillary activity) are referred to as consumables e.g. starches, variety of chemicals, several colouring matters such as dyes and pigments, etc. Power and water are other consumable items in addition to fuel oil, lubricating agents and packing materials. It is a common practice in textile industry and trade to identify and categorise raw material and consumables on such basis."

19. Since the reliance on dominant ingredient test in regard to cost variation has not been considered by CEGAT though the same has relevance, the matter is remitted to CEGAT to consider those aspects. It shall also consider whether the items can be considered as "consumable" on the facts of the case.

20. Dealing with a case under a sales tax statute i.e. the Andhra Pradesh General Sales Tax Act, 1957, this Court held that the word "consumable" takes colour from and must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" therein refers only to material which is utilised as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason, a departure was made from the concept that "consumables" fall within the broader scope of the words "raw materials". Reference in this connection can be made to the view expressed in *Dy. CST* v. *Thomas Stephen & Co. Ltd* (1988) 2 SCC 264

and *Coastal Chemicals Ltd.* v. *CTO* (1999) 8 SCC 465. In the cases at hand "consumables" are treated differently from "raw materials".

17. In that case, the Court was concerned with the same notification wherein the appellant-company, which was 100% EOU, claiming partial exemption from duty in terms of Notification No.8/97 in respect of goods sold in DTA. One of the conditions for availing the benefit of the said notification was that the goods could have been manufactured **wholly** from the raw material produced or manufactured in India. For manufacturing the goods in question, the said assessee had procured the raw material from domestic manufacturer in India and had also imported (1) carboxymethyl cellulose which is used for sizing of single yarn to give strength to the yarn during weaving after which the woven towels are washed to remove completely the sizing materials and (2) ultrafresh N.M. which is used for anti-bacteria and anti-fungus treatment of terry towels. The question that fell for consideration was as to whether the aforesaid imported material used while manufacturing the goods could be termed as 'raw material' or was only 'consumable'. The Tribunal had accepted the stand of the Department holding that the assessee was using carboxymethyl cellulose which is sizing material in the manufacture of finished product and since it was imported material, the assessee was not entitled to the benefit of the notification. In support of its conclusion that the sizing material is an essential

ingredient of weaving terry towel, reliance was placed on the decision of this Court in ***CCE*** v. ***Ballarpur Industries Ltd.***[3] wherein this Court has held that the valid tests to determine whether the ingredient qualifies to be called raw material could be that ingredient should be so essential for the chemical processes culminating in the emergence of the desired end product.

18. As already pointed out above, Export and Import Policy 1997-2002 provided the definition of 'consumables' and 'raw material'. The definition of 'consumables' suggest that if a particular item participates in or is required for a manufacturing process, but does not form part of the end product and instead it is specifically or totally consumed during a manufacturing process, the same would be treated as 'consumables'. On the other hand, 'raw material', *inter alia*, includes any materials or goods that is required for the manufacturing process for a manufacturer. Though, these terms were not specifically defined at the relevant time when *Vanasthali Textiles Industries Limited* and *Ballarpur Industries Limited* cases were decided, going by the dictionary meaning, almost similar test was applied to determine whether a particular input would be treated as 'consumable' or 'raw material'.

19. A cursory glance of these judgments may give an impression that the present case is also covered by those decisions as in the instant case

[3] (1989) 4 SCC 566

the waxing is ultimately removed from the cotton yarn by the buyer, after using this cotton yarn as raw material for fabricating the cloth. It is this aspect on which great stress and emphasis is laid by Mr. Bagaria, learned senior counsel for the appellant/assessee. However, a fine and subtle distinction is pointed out by Ms. Khajuria that becomes determinative of the outcome and changes the entire complexion, weighing the scales in favour of the respondent. Consumable is an item which does not form part of the end product. The assessee while arguing so is taking into consideration the end product at the hands of buyer which is not only extraneous and irrelevant but clearly impermissible. We are concerned with the article manufactured by the assessee, viz. cotton yarn, and not with the new and altogether different product, viz. knitting hosiery, manufactured by the buyer, who buys the cotton yarn as raw material/input. The article manufactured by the assessee is cotton yarn. Insofar as the assessee is concerned, its 'end product' is cotton yarn. This cotton yarn becomes input for the manufacture of hosiery by the buyer who buys the cotton yarn from the assessee. This is to be kept in mind while determining whether wax as an item used in manufacturing cotton yarn becomes part of this cotton yarn or not.

20. Concentrating on this pertinent aspect, let us revisit the manufacturing process of cotton yarn by the assessee, which is the 'end product' as far

as the assessee is concerned.

21. Evidence has emerged on record, on which there is no dispute, that the final product which was cleared by the assessee, namely, cotton yarn was made of indigenous as well as imported cotton coated with imported wax. The wax coating is found to be essential for lubrication of the yarn and was allowed to remain on the yarn in order to facilitate its winding on cones and its use in knitting hosiery. Wax imparts a quality whereby the protruding fibres of the yarn are made to settle uniformly on the surface of the yarn to enable easy winding. This quality of the yarn is essential for its application in the manufacture of knitted fabrics by the buyers. It follows from the above that insofar as assessee is concerned, it manufactured cotton yarn by applying wax coating thereon. This wax coating, or significant portion thereof, remains on the cotton yarn. The buyer wants wax coating to remain as that is needed for lubrication of the yarn to facilitate its winding on cones when the buyer uses the said cotton yarn for manufacture of hosiery. No doubt that cotton yarn can be produced without wax as well. However, such cotton yarn without wax would be of inferior quality for the purposes of buyer in comparison with cotton yarn coated with wax as the use of cotton yarn with wax thereupon acting as lubricant is much more useful and becomes a value addition making it better quality cotton yarn, insofar as requirement of the buyer in using such cotton yarn for manufacture of knitted fabircs is

concerned. When matter is examined from this angle, an irresistible conclusion is arrived at, namely, wax was used as raw material and not as consumable, insofar as end product of the assessee is concerned. For the assessee, end product is cotton yarn and not knitted hosiery. Knitted hosiery is the end product of the buyer. If buyer removes the wax after manufacture of knitted fabrics, that may not be of any consequence insofar as the assessee is concerned and would be totally extraneous to determine the issue at the hands of the assessee.

22. Once we examine the matter from the aforesaid angle, other arguments of the learned senior counsel appearing for the assessee also pale into insignificance. It clearly follows that the judgment in the case of *Super Spinning Mills Ltd.* or the judgments of this Court as noted above would not apply in the present case. Likewise, Circular No.389/22/98-CX issued by the Ministry of Finance giving certain clarifications, would not help the assessee. On the contrary, clarifications given therein go against the assessee. Para 3 (a) thereof which has already been reproduced in the earlier part of the judgment categorically states that those units which manufacture goods out of both imported and indigenous raw material would not be entitled to the benefit of Notification No.8/97. No doubt, as per para 3 (b), if imported consumables are used, benefit of the notification would still be available.

However, in the present case, we find, as a fact, that wax is not used as consumable but as raw material. For same reasons, other circulars also will not advance the case of the assessee.

23. As a result, this appeal fails and is hereby dismissed with costs.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI
OCTOBER 27, 2015.