ANNEXURE-2

1990 (46) E.L.T. 58 (Tribunal)

BEFORE THE CEGAT, SPECIAL BENCH 'D', NEW DELHI
S/Shri G. Sankaran, Vice-President and V.T. Raghavachari, Member (J)

VELCRO INDIA LTD.
Versus
COLLECTOR OF CUSTOMS

Order No. 27 to 29/87-D, dated 13-1-1987 in Appeal Nos. CD(SB) A.No. 511/82-D, 2593/86-D and 2594/86-D

Drawback at lower rates on unused imported returnable bobbins with nylon yarn wound on them not correct - Unwinding of bobbins does not amount to taking them into use - Drawback admissible at 98% of duty paid in terms of Section 74 of the Customs Act - Customs & Central Excise Duties Drawback Rules, 1971.

- Appellants claimed drawback at higher rate on imported returnable **bobbins** of a **durable** nature, on which nylon yarn was wound. The **bobbins** were taken to the appellants premises and the yarn was removed by a process of unwinding. The claim of drawback at higher rate was disallowed on the ground that the **bobbins** were taken into use. It was held that **bobbin** is in the nature of a **container** or receptacle for the packing of yarn. Just as a crate box cannot be emptied of its contents without it being opened and the contents abstracted manually or otherwise, the nylon twine wound on the **bobbins** could not have been removed without employing the process of unwounding, which in all probability would have been a mechanical process. Putting the **bobbins** through such process, would not amount to taking them into use between the time of their import and export. Therefore, drawback at the rate of 98% of the duty paid in terms of Section 74 of the Customs Act was admissible. [paras 3 & 4]

REPRESENTED BY : None for the Appellants.
Mrs. Dolly Saxena, SDR, for the Respondent.

[Order per : G. Sankaran, Vice-President]. - Despite notice of hearing, the appellants were not represented in the court when the matter was taken up for hearing today. They had sent a letter to the effect that they would not be appearing in person and that the matter might be disposed of on the basis of submissions on record. In the circumstances, we have heard Smt. Dolly Saxena, Sr. D.R. for the respondent Collector.

2. The only issue arising for determination in these 3 appeals is whether the returnable **bobbins** of a **durable** nature which were imported by the appellants along with nylon yarn wound on them could be said to have been taken into use between the time of their clearance from the control of the customs and their export. The **bobbins** were taken to the appellant's premises and the yarn wound thereon was removed from the **bobbins** by the process of unwinding. The Appellate Collector, by his impugned order 22-5-1982 has held:

> "The main purpose of the **bobbins** is to hold yarn and when it is emptied on another **bobbins** (sic), it is so used and the dbk (draw back) at lower rates as per Rules is justified".

If the above process of unwinding the nylon yarn from the imported **bobbins** could be said to amount to taking the **bobbins** into use, the appellants would be entitled only to the reduced rate of drawback as held by the lower authorities. On the other hand if the process is held not to amount to taking into use of the **bobbins**, then the appellants would be entitled to the full amount of draw back.

3. The **bobbin** is in the nature of a **container** or receptacle for the packing of yarn. Just as a crate or a box cannot be emptied of its contents without it being opened and the contents abstracted manually or otherwise, the nylon twine would on the **bobbins** could not have been removed without employing the process of unwinding, which in all probability would have been a mechanical process. Putting the **bobbins** through such process, in my view, would not amount to taking them into use between the time of their import and export. If the said **bobbins**, after the nylon twine wound around them was removed, were to be used by the appellants for the process of winding yarn on them and unwinding the same from them, there possibly could exist a case for saying that the **bobbins** were taken into use, but I do not Find that there is any such allegation or finding against the appellants. In the circumstances, I do not consider that the **bobbins** had been taken into use.

4. In the above view of the matter, it must be held that the action of the customs authorities in granting draw back at the reduced rates was not correct. The appellants must be granted draw back at 98% of the duty paid in terms of Section 74 of the Customs Act. I, therefore, allow the appeals with consequential relief.
