

Union of India and Others

Vs

Ahmedabad Manufacturing and Calico Printing Co. Ltd.

Civil Appeal No. 259 (N) of 1972

(E. S. Venkataramiah, R.B. Misra JJ)

12.08.1985

JUDGMENT

E. S. VENKATARAMIAH, J. -

1. This appeal by special leave is filed against the judgment dated April 30, 1970 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 67 of 1968. The only question which arises for consideration in this appeal is whether the goods called "Calikut Special" manufactured by the respondent, the Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad, were liable to excise duty under the Tariff Item 19 in the First Schedule to the Central Excises and Salt Act, 1944 (Act 1 of 1944) (hereinafter referred to as 'the Act') or under Tariff Item 22 thereof as they stood during the relevant time. The material part of Item 19 in the First Schedule to the Act read as follows :

19. COTTON FABRICS -

"Cotton Fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, saris, chadars, bed-sheets, bed-spreads, counterpanes and table-cloths, but do not include any such fabrics -

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(c) if it contains 60 percent or more by weight of rayon or artificial silk.

2. The material part of Item 22 in the First Schedule to the Act read as follows :

22. RAYON OR ARTIFICIAL SILK FABRICS -

"Rayon or Artificial Silk Fabrics" includes varieties of fabrics manufactured either wholly or partly from rayon or artificial silk but do not include any such fabrics -

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(iii) if it contains cotton and less than 60 per cent by weight of rayon or artificial silk; or ..."

3. The respondent was the manufacturer of the processed fabrics known as "Calikut Special" from the year 1965. At the intermediate stage of their production, the said fabrics contained 46 per cent of synthetic fibres (artificial silk) and their cotton content was about 54 per cent. The said goods were

subject to further processing such as bleaching, heat setting, etc. and at the time when goods reached the final stage of production the cotton content of the said goods was reduced to about 38.48 per cent and 61.52 per cent of the fabrics consisted of artificial silk. Having regard to the cotton content of the final product which was less than 40 per cent, the said goods were being treated all along as falling under Item 22 of the First Schedule to the Act as artificial silk fabrics and excise duty was being levied on that basis. However, the Superintendent, Central Excise, Ahmedabad by his letter dated November 23, 1967 proposed to treat the above goods as falling under Item 19 thereof as cotton fabrics on the ground that at the intermediate stage of production the cotton content was more than 40 per cent while the artificial silk content was less than 60 per cent. The respondent repudiated the claim made by the Superintendent, Central Excise, Ahmedabad by its reply dated November 25, 1967. On December 11, 1967 the Superintendent, Central Excise, Ahmedabad, formally issued a show cause notice to the respondent to show cause why the "Calikut Special" variety of goods referred to above should not be subjected to excise duty under Item 19. The respondent sent its reply on December 12, 1967 reiterating its stand that since at the final stage the product consisted of less than 40 per cent of cotton and of more than 60 per cent of artificial silk, the goods in question were liable to be taxed only under Item 22. After taking into consideration the explanation given by the respondent the Assistant Collector, Central Excise, Ahmedabad Division-I, Ahmedabad by his order dated December 29, 1967 held that the goods in question were liable to payment of excise duty under Item 19 and not under Item 22. Aggrieved by the above decision the respondent filed a writ petition under Article 226 of the Constitution on the file of the High Court of Gujarat questioning the validity of the said order. The High Court after hearing the parties agreed with the contention of the respondent and allowed the writ petition quashing the order dated December 29, 1967 passed by the Assistant Collector, Central Excise, Ahmedabad Division-I, Ahmedabad and restraining the Central Excise Department from levying excise duty under Item 19 in the First Schedule to the Act. The High Court directed the Central Excise Department to levy excise duty under Item 22. This appeal by special leave is filed by the Union of India against the judgment of the High Court.

4. There is no dispute that if the product manufactured by the respondent contained cotton and less than 60 per cent by weight of artificial silk it would fall outside Item 22 because Item 22 excludes such product from its scope and it would be cotton fabric as stated in Item 19. It is not disputed in this case by the Central Excise Department that the final product called "Calikut Special" which was manufactured by the respondent contained cotton and more than 60 per cent by weight of rayon or artificial silk and that only at the intermediate stage of its production it contained less than 60 per cent of rayon or artificial silk. The question for consideration in this case is whether merely because the goods in question contained less than 60 per cent of rayon or artificial silk at the intermediate stage they were liable to be taxed under Item 19 which imposed a heavier duty than the duty payable under the Item 22.

5. Shri Govind Dass, learned counsel for the Union of India, in support of its contention relied upon the decision of the High Court of Gujarat in *Vijay Textiles, a Partnership Firm at Plot No. 4, Nerol Abendaly v. Union of India* ((1979) ELTJ 181 : (1979) 20 Guj LR 944). The petitioner in that case claimed before the High Court that the goods involved therein were liable to excise duty at the intermediate stage itself and excise duty was leviable under Item 68 and not under Item 19 or Item 22 perhaps because the total liability under Item 68 when compared with the excise duty either under Item 19 or under Item 22 was less at that stage. The High Court accepted the contention of the petitioner in that case. But in *Empire Industries Ltd. v. Union of India* and ((1985) 20 ELT 179 : (1985) 3 SCC 314 : 1985 SCC (Tax) 416) this Court has disapproved the decision in *Vijay Textiles* case ((1979) 4 ELTJ 181 : (1979) 20 Guj LR 944).

6. Having regard to the process involved in the manufacture of "Calikut Special" by the respondent we are of the view that it is not possible to hold that the character of the goods at the intermediate stage of production could be taken into consideration for determining the liability under the Act. The processes involved in the instant case after the intermediate stage referred to above formed an integral part of the manufacture of the product in question and the classification of the manufactured product for purposes of excise duty should depend upon its nature and character at its final stage of production unless a contrary intention appears from the statute. It is seen from clause (vii) of section 2(f) of the Act which is no doubt introduced subsequently that bleaching, heat setting etc., are incidental and ancillary processes necessary for the completion of the manufactured product falling under Item 22. This amendment has only attempted to explain the obvious and to put the question beyond dispute. Therefore, even though the product in question might have fallen under Item 19 in the First Schedule to the Act at the intermediate stage of production, at the final stage when the duty became eligible it became taxable under Item 22 only. We are, therefore, in agreement with the decision of the High Court that the goods in question fell under Item 22 and not under Item 19 in the First Schedule to the Act for purposes of payment of excise duty under the Act.

7. The appeal, therefore, fails and it is dismissed with costs.

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