

M/s. Ujagar Prints

Vs

Union of India

Union of India and Others

Vs

Narendera Processing Industries and Others

Writ Petition No. 12183 of 1985

(CJI P. N. Bhagwati, G. L. Oza JJ )

19.12.1986

ORDER

1. Two questions have been raised for consideration in this group of cases. One question is whether the processes of bleaching, dyeing printing, mercerising etc. carried on by a processor on job-work basis in respect of grey cotton fabrics and manmade fabrics belonging to the customer and entrusted by him for processing amount to "manufacture" within the meaning of the Central Excises and Salt Act as it stood prior to its amendment by the Central Excises and Salt and Additional Duty of Excise (Amendment) Act, 1980 so as to attract levy of excise duty on the processed fabrics and whether, in any event, after the Amendment Act, these processes amount to manufacture and excises duty is leviable on the processed fabrics. The other question is whether, even if the processed fabrics are assessable to excise duty in the hands of the processor who carries on these processes on job-work basis, what is the value on the basis of which the processed fabrics are liable to be assessed. So far as the first question is concerned, it was agitated before this Court in Empire industries Ltd. v. Union of India and this Court held that the processes of bleaching, mercerising, dyeing, printing, water-proofing, etc. carried out by the processors on job-work basis amount to manufacture both under the Act as it stood prior to the amendment as also under the Act subsequent to the amendment and the processed fabrics are liable to be assessed to excise duty in the hands of what may be called "jobbers". Since this was a decision given by a Bench of three Judges, the petitioners and appellants who are carrying on business of processing on job-work basis could not contend that these processes do not amount to manufacture and that the processed fabrics are not liable to be assessed to excise duty in the hands of the jobbers. But, it was the second question which provoked serious controversy before us. So far as this question is concerned, it was also incidentally argued in the Empire Industries case and Mukharji, J. speaking on behalf of the court observed as follows : [SCC p. 342, SCC (Tax) p. 445, para 53]

When the textile fabrics are subjected to the processes like bleaching, dyeing and printing, etc. by independent processes, whether on their own account or on job charges basis, the value for the purposes of assessment under Section 4 of the Central Excise Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time in the wholesale market. That is the effect of Section 4 of the Act. The value would naturally include the value of grey fabrics supplied to the independent processors for the processing.

However, excise duty, if any, paid on the grey fabrics will be given pro forma credit to the independent processors to be utilised for the payment on the processed fabrics in accordance with the Rules 56-A or 96-D of the Central Excise Rules as the case may be.

The learned counsel for the petitioners and the appellants contended that these observations did not represent the correct law on the subject and that this question was required to be reconsidered in some depth because it vitally affected the processors who were carrying on processing of cotton and manmade fabrics on job-work basis.

2. It was common ground between the parties that the procedure followed by the Excise authorities was that the trader, who entrusted cotton or manmade fabrics to be processor for processing on job work basis, would give declaration to the processor as the what would be the price at which he would be selling the processed goods in the market and that would be taken by the Excise authorities as the assessable value of the processed fabrics and excise duty would be charged to the processor on that basis. This may be illustrated by giving the following example :

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| (1) Value of grey cloth in the hands of the processor  | Rs. 20.00 |
| (2) Value of job-work done Rs. 5.00<br>Value of finished cloth returned to the trade (1 + 2) | Rs. 25.00 |
| (3) Trader's selling price inclusive of his selling profits, etc.                            | Rs. 30.00 |

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The assessable value in the case given in this example would be taken by the Excise authorities at Rs. 30 which was the sale price of the trader. There were also instances where, on finding that the trader had sold the processed fabrics in the market at a higher rate than that mentioned in the declaration the Excise authorities raised a further demand against the processor for excise duty on the basis of such higher price. This, contended the learned counsel appearing on behalf of the petitioners and the appellants, was clearly not justified under the provisions of the Act. The learned counsel used that since the processor is doing only job-work of processing in respect of grey fabric cloth which does not belong to him but belongs to the trader who has commissioned him to do the job-work and the processed fabric is returned to the trader, levy of excise duty could only be on the value of the job-work done and no other elements could be loaded into this value. It was also conceded in the alternative by the learned counsel that in any event the assessable value of the processed fabric could not possibly include the profit at which the trader sold the processed fabrics once the processor was concerned only with the processing of the grey fabric and was not concerned with the sale which the trader might effect after the processing was done and the manufacture of processed fabric was completed. We do not agree with the first contention of the learned counsel on behalf of the petitioners and the appellants but the alternative contention urged by him is certainly well founded.

3. It is clear from the decision of this Court in *Union of India v. Bombay Tyre International Ltd.* that under the Central Excise and Salt Act and the Rules made thereunder the assessable value of the manufactured goods is to be determined at the factory gate that is at the stage when the manufactured goods leave the factory and enter the mainstream. We may assume and indeed in view of the decision of this Court in *Empire Industries* case we must so assume, that processing of grey fabric involves manufacture and that when the processor carries out processing on the grey fabric he

manufactures the processed fabric. But the assessable value of the processed fabric must obviously be taken to be the wholesale cash price of the processed fabric at the factory gate that is when the processed fabric leaves the factory of the processor and it cannot possibly include the selling profit of the trader who subsequently sells the processed fabrics. It is at the point when the processed fabric leaves the factory of the processor that its assessable value has to be determined and that assessable value cannot include the selling profit of the trader.

4. We cannot accept the contention of the learned counsel on behalf of the petitioners and the appellants that the value of the grey cloth which is processed by the processor should not be included in the assessable value of the processed fabric since the grey cloth is one of the raw materials which goes into the manufacture of the processed fabric and the value of the processed fabric cannot be computed without including the value of the raw material that goes into its manufacture. The assessable value of the processed fabric cannot therefore be limited merely to the value of the job-work done but it must be determined by reference to the wholesale cash price of the processed fabric at the gate of the factory of the processor. Thus in the example given above the assessable value of the processed fabric must be taken to Rs. 20 + 5 that is Rs. 25 and the profit of Rs. 5 which the trader may make by selling the processed fabric cannot be included in the assessable value. The element of selling profit of the trader would be entirely an extraneous element and it cannot be taken into account for the purpose of determining the assessable value of the processed fabric which would comprise the value of the grey cloth and the job-work charges but exclude the profit at which the trader may subsequently sell the processed fabric.

5. This according to us is the correct mode of determination of the assessable value of the processed fabric in the hands of the processor who does job-work in respect of grey cloth supplied by the manufacturer or trader. We would have proceeded to decide these writ petitions and appellants on the basis of this view which we are inclined to take but we find that in Empire Industries case Mukharji, J. speaking on behalf of a Bench of three Judges has expressed a view which is different from the one we are taking and though that view has been expressed by Mukharji, J. incidentally we do not think it would be right for us to ignore what Mukharji, J. has said and to proceed to take a view different from that taken by him on behalf of the Bench. Judicial discipline requires that a Bench of two Judges should not disregard the decision of a Bench of the three Judges but if the Bench of two Judges is inclined to disagree with what has been said by the bench of three Judges on the ground that it does not represent that correct law on the subject, the case should be referred by the Bench of two Judges to a larger Bench.

6. We accordingly refer these writ petitions and appeals to a larger Bench of Five Judges. Of course, when these writ petitions and appeals are referred to the larger Bench it will be open to the larger Bench to consider not only the question of determination of the assessable value but also the other question, namely, whether processing of grey fabric by a processor on job-work basis constitutes manufacture, because the judgment in Empire Industries case which has decided this question in favour of the revenue and against the processor is a judgment of a Bench of only three Judges and now the present writ petitions and appeals will be heard by a bench of five Judges.

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