

Krishna Chandra Hambrom and Others

Vs

State of Bihar and Another

Civil Appeal No. 1466 of 1994

(Kuldip Singh, Yogeshwar Dayal JJ)

21.02.1994

ORDER

1. Special leave granted.

2. The High Court dismissed the writ petition filed by the appellants petitioners in limine in the following words :

"Heard the learned counsel for the parties.

Since the question involved is political the Court cannot give any relief to the petitioner.

This writ application is dismissed."

3. The relief sought by the appellants in the writ petition before the High Court was the issuance of a direction to the State Government to enforce the Bengal Regulation XIII of 1833 called "Wilkinson's Rules".

4. We are of the view that the High Court was not justified in dismissing the writ petition on the ground that it involved political question. Whether the Bengal Regulation XIII of 1833 are applicable to the area concerned and if so whether the petitioners have any rights under the said Regulation are some of the questions involved in the writ petition. The High Court should have applied its mind to these questions.

5. We set aside the impugned order of the High Court and send the case back with the direction that the writ petition be dealt with in accordance with law in the light of the observations made by us. The appeal is allowed. No costs.

MARCO TEXTILES, APPELLANT v. UNION OF INDIA AND OTHERS, RESPONDENTS.

Civil Appeal No. 1107 of 1976, decided on February 16, 1993.

ORDER

1. The question before the authorities under the Central Excise Act, 1944 (the Act) was whether "tufted fabric" manufactured by the appellant was "furnishing fabric" and as such liable to Central Excise duty under tariff item 19(1) (1) 1st Schedule to the Act. The Assistance Collector came to the conclusion that the 'tufted fabric' was 'furnishing fabric'. The appeal filed by the appellant was dismissed by the Collector. The Central Government as revisional authority upheld the findings of the Assistant Collector and that of the Collector in the following words :

"The Government of India observes that tufting is not embroidering and it is a distinct process of manufacture from a base fabric, handloom or otherwise. In the process of tufting, extra yarn is added in rounded bunches with a mechanical process. This could be done on looms in an integrated manner or separately on the fabric by sewing machines. In this case the goods were cleared without assessment; Rule 10 Central Excise Rules is not applicable in this case; Rule 9(2) is applicable."

2. We have heard Mr. Dholakia, learned Senior Advocate appearing for the appellant. We do not agree with him that the 'tufted fabric', the sample of which has been shown to us in Court, is not 'furnishing fabric' and is only embroidered fabric. We see no infirmity in the reasoning and conclusions reached by the Assistant Collector/Collector as upheld by Central Government. We also do not find any material on the record to show that the appellant bona fide believed that the goods manufactured by it were embroidered fabric and as such entitled to exemption under law. We, therefore, uphold the finding of the courts below that Rule 9(2) of the Central Excise Rules, 1944 was applicable and as such the recovery was not barred by limitation. The appeal is dismissed. No costs.

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