

(1979) 10 BOM CK 0013
In the Bombay High Court
Case No : Misc. Petition 1216/75

Abdul Jaffar Abdul Sattar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-10-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) ECR 639

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

M.L. Pendse, J.—The petitioner has installed two powerlooms at 74 Byculia Station Road, Bombay, and has obtained L-4 licence under Rule 174 of the Central Excise Rules for manufacturing cotton fabrics on the said looms. The Central Excise Rules provide for special procedure for paying excise duty on cotton fabrics and the petitioner made necessary application under Rule 96(1) and the duty was accordingly levied. The rate of duty was fixed per quarter/per year under Notification No. 41/65 published on February 28, 1965.

Friday, 5th October 1979

2. The Notification No. 41/65 dated February 28, 1965 fixed the rate of Installed capacity of the powerlooms on per year basis or per quarter basis and different rates were fixed for powerlooms. The rate for powerlooms not more than 4 was fixed at Rs. 16.50 per quarter and Rs. 25/- per year. The explanation to this Notification requires to be quoted in exact terms. It reads as under:

Explanation: For the purpose of computing the periods, the period from 28.2.65 (both days inclusive) shall be deemed to be the first quarter, the period from 28.2.65 to 28.2.66 (both days inclusive) to be the first year and any part of a quarter to be a full quarter.

This explanation makes it clear that for the purpose of computing the period part of quarter is to be taken as a full quarter. This. Notification remained in force till

the year 1969 and in 1969 another Notification bearing No. 60 of 1969 was published whereby the rates for powerlooms not more than 4 were raised and the quarterly rate was fixed at Rs. 13/- while for the whole year it was fixed at the rate of Rs. 50. The explanation to this notification was also in identical terms as the explanation to the earlier notification save and except the dates.

3. The Finance Minister declared a proposal in his budget speech on February 28, 1975 and proposed to increase the excise duty on the powerlooms for the next financial year. In pursuance of that proposal, a fresh notification was published on March 1, 1975 and the rates Per quarter were raised to Rs. 50/- while for the year it was raised to Rs. 200/- this sudden rise caused difficulty to the powerloom holders and several protests were lodged all over the country. The Government of India took the representation into consideration and reduced the excise duty to Rs. 12.50 per quarter and Rs. 50/- per year. Accordingly a fresh notification in substitution of the earlier notification was published on March 1, 1975. The fresh notification came into force from April 30, 1975. It is required to be mentioned that this notification was in substitution of the earlier notification and it is not disputed that explanation in the first notification applies with equal force to the latest notification.

4. After the notfn. dated April 30, 1975 was issued, the Central Excise Authorities recovered from the petitioner duty at the new rate for two quarters commencing from March 1, 1975 to August 30, 1975 at the rate of Rs. 12,50 per quarter. The petitioner was given credit for the excess amount paid in pursuance of the Notification dated March 1, 1975. Thereafter the Central Excise Authorities served a demand notice dated October 6, 1975 on the petitioner demanding differential duty of Rs. 75/- on two powerlooms for the first quarter commencing from March 1, 1975 to May 31, 1975. This differential duty was claimed in pursuance of the Notification dated March 1, 1975. This demand notice is under challenge in this petition filed under Article 226 of the Constitution of India.

6. Mr. Sawant, the learned Counsel appearing in support of the Petition, submits that the notification dated April 20, 1975 has amended the earlier notification substituting the table only and the explanation given in the earlier notification still holds good. Mr. Sawant submits that a plain reading of the Notification along with the explanation, makes it clear that a part of the quarter shall be deemed to be a full quarter. The learned Counsel further submitted that before the first quarter commencing from March 1, 1975 ended the fresh Notification dated April 30, 1975 came into operation and the rates payable under the fresh notification was less than the earlier notification dated March 1, 1975. Mr. Sawant submits that if during the subsistence of a quarter the rates are reduced and if the explanation holds good, then the petitioner is entitled to claim advantage of the lesser rate. In my judgment the submission is sound and deserves to be upheld.

6. Mr. Manjrekar, the learned Counsel appearing on behalf of the Revenue, has raised two-fold objection to the grant of relief to the petitioner. In the first

instance the learned Counsel submits that it is not permissible for rule making authority which exercises delegated power to make rules with retrospective effect. The submission proceeds on the ground that the notification was issued by the Ministry of Finance in pursuance of Rule 96-J or the Central Excise Rules and the Rules are framed by the rule making body in exercise of its delegated powers. It was urged by the learned Counsel that such Authority is not invested with power to make rules with retrospective effect, and in support of his submission reliance is placed on the decision of the Supreme Court reported in *The Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise Cochin and Others*, *The Cannanore spinning and Weaving Mills Ltd. v The Collector of Customs and Central Excise Cochin and Ors.* There cannot be any dispute about the correctness of the submission, but a question which requires determination in this case is not whether the notification operates with retrospective effect but what is the exact ambit or scope of the explanation and the true and correct interpretation of the same.

7. Mr. Manjrekar then submitted that the notification is issued in pursuance of Rule 96-J and the changed rate of duty would be operative only from the date of alteration in view of second proviso to Rule 96J. The second proviso to Rule 96J(1) reads as follows:

Provided further that if there is an alteration in the rate of duty the sum payable shall be recalculated on the basis of the revised rate from the date of alteration and liability for duty leviable on the production of fabrics from that date shall not be discharged unless the differential duty is paid; should, however, the amount of duty so recalculated be less than the sum paid, the balance shall be refunded to the manufacturer.

Relying upon this proviso, Mr. Manjrekar submits that the proper construction would be that the petitioner would be liable to pay duty for a period between 1st March 1975 to April 30, 1975 at the rate prescribed by the Notification dated March 1, 1975 and at a lower rate for the remaining period of the quarter. The submission is that the altered rates are applicable only from the date of alteration. The submission is not correct, because it clearly overlooks the explanation to the Notification. The explanation to the Notification as mentioned hereinabove clearly states that a part of the quarter shall be deemed to be a full quarter. In my judgment in view of this explanation, it is not permissible for the tax collecting authority to claim that the quarter will be split up and higher rates will be recoverable for the part of the quarter. If the part of the quarter is to be deemed as a full quarter, then the tax-payer is entitled to take advantage of the alteration in the rates which become effective during the subsistence of a quarter. It is a well recognised principle of taxing statute that the construction should be one, if two views are possible, in favour of the tax payer and in the present case I have no hesitation in holding that the plain reading of the Notification and the explanation supports the claim made by the petitioner. In my judgment, the demand notice dated October 6, 1975 annexed as Ex. J was

totally incorrect and requires to be quashed,

8. Mr. Sawant also placed reliance on page 256 of "Maxwell on Interpretation of Statutes, Twelfth Edition appearing under the heading "Statutes encroaching on rights or imposing burdens". The paragraph undoubtedly supports the contention of the learned Counsel.

Accordingly, the petition succeeds and the rule is made absolute and demand letter dated October 6, 1975 annexed as Ex. J is quashed and the respondents are restrained from enforcing the same. In the circumstances of the case, there will be no order as to costs.