

(1993) 02 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 7979 of 1986

Asher Textiles Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 174
Central Excises and Salt Act, 1944 — Section 2

Citation : (1993) 65 ELT 181

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : Mr. T.R. Rajagopalan, for the Appellant; Mr. K. Jayachandran, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India is for the issuance of a writ of certiorari to call for the records of the first

respondent in C. No. V/18A/30/2/86, dated 31-7-1986 and to quash the same.

2. The question that arises for consideration in this writ petition is whether the process of mercerising of yarn will amount to "manufacture" for the

purpose of Central Excises and Salt Act, 1944 and the Rules framed thereunder. Brief facts relating to this case are the following :

3. The petitioner is a public limited company. It is a spinning mill. Besides spinning the petitioner company has got a separate unit for processing the

yarn manufactured at the spinning unit. It is the case of the petitioner that the grey yarn manufactured at the spinning unit was taken for processing

into mercerised yarn in the processing unit and the processing unit did not have a separate licence. However, in the year 1977, the Deputy

Collector, Central Excise felt that the mercerising unit must possess a separate

licence, as the process of mercerising would amount to

"manufacture". Accordingly, the petitioner applied for and obtained a licence L. 4 No. 1/77 (CYP). Suddenly, the petitioner was informed by the

Assistant Collector of Central Excise, Erode Division that mercerising is not a "manufacture" since the yarn is not converted into another form and

that the yarn remains the same after mercerising. Therefore the petitioner was called upon to apply for cancellation of the licence already obtained

viz., L. 4 No. 1/77 (CYP). Since the petitioner has not complied with the same, a show cause notice was issued to the petitioner by the

Superintendent of Central Excise, Tirupur I Range, Tirupur on 6-1-1986, calling upon the petitioner to show cause to the Assistant Collector of

Central Excise, Erode as to why the licensing authority should not cancel the licence viz., L. 4 No. 1/77 (CYP) under Rule 174 of Central Excise

Rules. The petitioner sent a reply on 20-3-1986 stating that the show cause notice was issued without any legal authority as there is no provision

for cancellation of the licence, that the licence has already been renewed upto 31-12-1990 and that the process carried out in the processing unit

amounts to manufacturing within the meaning of Section 2(f) of the Central Excises and Salt Act. The first respondent herein however, over-ruling

the objections of the petitioner found the impugned order that the process of mercerising the yarn will not amount to "manufacture" for the purpose

of the Act and that therefore the licence already given was unnecessary. On that view of the matter the respondents directed the cancellation of the

licence L. 4 No. 1/77 (CYP) granted to the petitioner.

4. Aggrieved by that, the present writ petition is filed. Mr. T. R. Rajagopalan, learned counsel appearing for the petitioner submitted that the view

taken by the respondents viz., that the processing of grey yarn into mercerised yarn will not amount to "manufacture" is contrary to the definition of

"manufacture" under the Act and consequently the order cancelling the licence cannot be sustained. He also submitted that the provisions

mentioned in the order for cancellation of the licence will not help the respondent to sustain the order. He further submitted that having renewed the

licence upto 31-12-1990, the cancellation without any valid reason is also not sustainable. In support of his contentions, Mr. T. R. Rajagopalan

placed reliance on the three Judgments reported in :

Empire Industries Limited and Others Vs. Union of India and Others,
Ujagar Prints Vs. Union of India (UOI), and
Ujagar Prints Vs. Union of India (UOI), .

4. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel on the other hand, submitted that the view taken by the

respondents viz., the processing of grey yarn into mercerised yarn will not amount to "manufacture" is quite in accordance with the provisions of

the Central Excises and Salt Act and in particular Section 2(f) of the Act. He also submitted that the cancellation of the licence was quite in

accordance with law. He submitted that the licence was cancelled in the light of the condition of the licence which enables the authorities to cancel

the licence. In other words, learned counsel for the Revenue submitted that the petitioner in his application for licence has stated that the licence

was required for the purpose of "manufacture", but the process of "manufacture" being not there, the petitioner is not entitled to hold L. 4 licence

for mercerising yarn. For the same reason learned counsel for the Revenue submitted that during the currency of the licence it can be cancelled.

5. I have considered the rival submissions. Before considering the relevant provisions let us understand what is meant by mercerising of yarn. The

cotton (yarn) manufactured is loaded in batches in the processing unit into the mercerising machine where it is treated with caustic soda solution

and washed. The yarn thus mercerised is treated with dilute Hydrochloric acid solution to neutralise the residual alkali and it is further treated in a

weak solution of sodium chemicals. Then, the "mercerised" and "washed" yarn is centrifuged to remove superfluous water. Thereafter, the yarn

thus hydroextracted is spread over bamboos and dried by exposure to sun light in the open drying yarn. The dried yarn is then made into bundles

and finally packed into bales.

6. The above process of mercerising of yarn, according to the Department will not amount to a process of "manufacture" of cotton yarn as it is not

ancillary or incidental to the completion of cotton yarn. On the other hand, the petitioner contends that Section 2(f) of the Act contains two parts

viz.,

(a) defining all the incidental and ancillary processes to the completion of manufactured product as "manufacture"

and

(b) stipulating that "manufacture" will include any process which has been specified in the Section/Chapter notes of the Schedule to the Central

Excise Tariff Act, 1985 and therefore the process as seen above will amount to "manufacture".

It is also the stand taken by the petitioner that cotton yarn spun will be called as grey yarn and when the same is subjected to the process of

mercerising, it loses its original identity of grey yarn and the process of mercerising is irreversible unlike the processes like rewinding or even sizing.

According to the petitioner, mercerisation is a process incidental or ancillary to the manufacture of the mercerised yarn commercially recognised as

such.

7. It appears that if the stand taken by the petitioner is accepted, the petitioner will be entitled to pay the excise duty, when it clears the packed

bales of mercerised yarn, otherwise the petitioner will have to pay the excise duty when the grey yarn is removed from the manufacturing unit.

Otherwise there appears to be no other advantage to the petitioner. Only the payment of excise duty is postponed.

8. Now let us see the relevant provisions. The definition of "manufacture" relevant for our purpose before it underwent a change in the year 1986

reads as follows

:

Section 2(f) prior to 1986

(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

(i) to (iii)

(iv) In relation to goods comprised in Item No. 18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling or any

one or more of these processes or the conversion of any form of the said goods into another form of such goods; and the word "manufacture" shall

be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but

also any person who engages in their production or manufacture on his own account;

(v) in relation to goods comprised in Item No. 19-I of the First Schedule includes bleaching, mercerising, dyeing, printing, water proofing,

rubberising, shrink proofing, organdie processing or any other process or any one or more of these processes :

It may be noted that so far as cotton yarn viz., Item No. 18-A was concerned, there was no Chapter Note. The definition of "manufacture" u/s

2(f) after 1986 reads as follows :

(f) "manufacture" includes any process

(i) incidental or ancillary to the completion of manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the Schedule to the Central Excises Tariff Act, 1985 as

amounting to manufacture.

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or

manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

As a result of Section 2(f)(ii), we have to look into the notes of the Schedule to Central Excise Tariff Act, 1985 for complete understanding of the

term "manufacture". The notes given in Chapter 52 regarding 52.03 and 52.04 relating to yarn and the notes relating to 52.06 to 56.12 dealing

with fabrics read as follows :

Notes

1. In relation to products of Heading Nos. 52.03 and 52.04 sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these

processes, or the conversion of any form of the said products into another form of such products shall amount to "manufacture". The duty on sized

yarn shall be charged on the basis of its weight before sizing.

2. In relation to products of Heading Nos. 52.06 to 52.12 bleaching, mercerising, dyeing, printing, water proofing, shrink proofing, organdie

processing or any other process or any one or more of these processes shall amount to "manufacture".

From the above the notable and deliberate omission in respect of the Note dealing with yarn is mercerising which finds a place while dealing with

fabric. A comparison of the old definition with the new definition of

"manufacture" so far as cotton yarn and cotton fabric are concerned would reveal that there is no appreciable change, but substantially they are the same. A conjoint reading of the definition u/s 2(f) with the notes as extracted above will show that there is a deliberate deviation by the legislature in defining the term "manufacture" with respect to cotton yarn by excluding the process of mercerisation of yarn from the definition of "manufacture". This deviation by the legislature cannot be ignored.

9. All the decisions cited by the learned counsel for the petitioner deal only with the cotton fabric and therefore the ratio laid down in those cases cannot be applied to understand the meaning of "manufacture" with reference to cotton yarn. I am therefore of the view that the process of mercerisation of yarn will not amount to "manufacture" for the purpose of Central Excise Tariff Act, 1985 so as to enable the petitioner to claim a licence from the Department.

10. The next question is whether the cancellation of a licence during the currency of the same is valid or not. It is stated by the learned Additional

Central Government Standing Counsel that the licence was originally issued to the petitioner on the basis of mutual mistake both on the part of the

Department as well as on the part of the manufacturer that the process of mercerisation of yarn will amount to "manufacture" and now that the

Department has correctly understood the meaning of "manufacture" with reference to cotton yarn for the purpose of Central Excise Tariff Act, it

has every right to set right the mistake already committed in particular in the light of the conditions contained in the licence itself. One of the

conditions contained in the licence granted to the petitioner was to the effect that the licence was liable to be rejected or suspended or the renewal

of the same can be refused, if any declaration made or information given in the application therefore is found to be false or if any undertaking given

in such application is not carried out. The contention is that the petitioner while applying for licence has declared that he required the licence to

manufacture mercerised yarn. As the mercerisation of yarn will not amount to "manufacture" for the purpose of Central Excise Tariff Act, 1985,

the declaration given in the application becomes incorrect, if not false. Therefore the Department is entitled to revoke the licence already granted

on the ground that such licence is not required by the petitioner.

11. In the light of the discussion above, I sustain the order impugned in this writ petition and consequently, this writ petition is dismissed. However, there will be no order as to costs.