
(1978) 02 DEL CK 0003
In the Delhi High Court
Case No : Suit No. 142 of 1973

Bharat Carpets Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Citation : (1978) 2 ELT 111

Hon'ble Judges : F.S. Gill, J

Bench : Single Bench

Final Decision : Allowed

Judgement

F.S. Gill, J.—plaintiff Company has brought this suit against the Defendant for the recovery of Rs. 7,31,153.08. It is alleged in the Plaint that the plaintiff carries on business of manufacturing and dealing in machine-made woollen tufted carpets. It is further alleged that the said carpets are not excisable goods within the meaning of woollen fabrics described in item 21 of the First Schedule to the Central Excises and Salt Act, 1944, as such articles are not specified therein.

2. A The plaintiff has further stated that their factory, set up at Faridabad, had started its production some time in 1967, that the Central Excise authorities wrongfully and illegally contended that the carpets manufactured by them were excisable goods within the meaning of the Act and, Therefore they insisted for the payment of Central Excise duty livable on the said goods and that, as demanded by the authorities, the plaintiff paid Rs. 7,31,153.08 in the form of Excise Duty for the period 22nd June 1968 to 20th April 1972. The payments were, however, made under protest. Details of the payment have been shown year wise in the Statement annexed to the Plaint.

3. It is further stated that the plaintiff had challenged the order of the Assistant Collector about the levying of the Central Excise Duty, before the Collector, on the ground that tufted woollen carpets were not subject to the levy of such duty. The appeal failed but the statutory revision, referred to the Government of India

was, however, accepted on 14th April 1972. The said order was passed by the Joint Secretary, Government of India, Ministry of Finance (Department of Revenue & Insurance). It was candidly held therein that the woollen tufted carpets were not excisable goods.

4. After the passing of the order in revision, the plaintiff applied to the Assistant Collector for the repayment/refund of the amount of Rs. 7,31,153.08 which had been paid under coercion and/or mistake. As the Assistant Collector did not pass any Order on the application, the plaintiff served a Notice u/s 80 of C.P.C. It is stated that on failure to receive any reply, the present suit for recovery of Rs. 7,31 153.08 together with future interest was instituted.

5. The Defendant has denied the claim of the plaintiff. It is alleged in the Written Statement that woollen tufted carpets clearly fall under entry No. 21 of the First Schedule of Central Excises and Salt Act, 1944 and, are Therefore, liable to the payment of excise duty. It is further stated that the earlier refund for Rs. 14,381.06 related to a specified period as was mentioned in the application dated 27th March 1968 itself .

6. The Order passed in Revision on 14th April 1972 has been admitted in the Written Statement. It is, however, added that this Order did not cover the subsequent payments, but determined the refund of Rs 14,381.06 only. It is further stated that at the time of application for the refund of disputed amount of Rs. 7,45,534.14 was still pending before the Assistant Collector, the plaintiff hastened to bring the present application in this Court on 26th March 1973. It is accordingly contended that, this Suit was not maintainable, being premature. The Assistant Collector has dismissed the application on 31st. March

7. It is further alleged that after passing the Order of Assistant Collector, this suit had become infructuous as the plaintiff could only seek his remedy in an appropriate forum under the Central Excise and Salt Act, 1944 by challenging the said Order. The only course thus available to him was to file an appeal before the Collector and then a statutory revision before the Government of India, Inter alia, pleading about limitation and jurisdiction had also been taken in the Written Statement.

8. In their Replication, the plaintiff has reasserted the averments made in the Plaint. It is denied that the suit had become infructuous or barred by time.

9. From the pleading of the parties, the following issues were framed :-

1. Whether the Defendant was not entitled to withhold the amount in suit because of the Order dated 14th April 1972 passed by the Joint Secretary to the Govt. of India, holding that the carpets manufactured by the plaintiff were excisable ?

2. Did the aforementioned Order dated 14th April 1972 only have the effect or Order the refund of the excise duty paid up to 27th March 1968 and was the Order wholly ineffective, consenting subsequent payment of excise duty ?

3. Alternatively, was the Defendant obliged to repay or refund the amount in suit as soon as the Order dated 14th April 1972 was passed, holding that no excise duty was payable in respect of carpets manufactured by the plaintiff ?

4. It is now open to the Defendant to urge that excise duty is payable in respect of carpets manufactured by the plaintiff and, if so, has this Court jurisdiction to determine whether excise duty is payable or not ?

5. Were there any Orders passed on 31st March 1973, whereby the Assistant Collector of Central Excise, Faridabad, held that carpets manufactured by the plaintiff were subject to excise duty and the amount in suit was not refunded and, if so, do such orders have legal effect notwithstanding the Order dated 14th April 1972.

6. Whether this suit has become infructuous or the plaintiff had become disentitled to get relief by reason of Orders dated 31st March 1973, passed a few days after the suit was instituted ?

7. Whether the carpets manufactured by the plaintiff are not excisable as claimed by the plaintiff and if so, can this question be gone into by this Court and does it have any effect on the claim in suit ?

8. Whether the sum of Rs. 7,31,153.08 or any lesser sum has been paid by the plaintiff to the Defendant under protest and what is its effect ?

9. Whether the said sum or any lesser sum was paid by the plaintiff to the Defendant under coercion or mistake and whether the Defendant is bound to repay or refund the same to the plaintiff ?

10. Whether the suit is barred by time ?

11. Whether this Court has jurisdiction to try this suit ?

12. Relief.

10. To substantiate the issue the plaintiff has examined R. K. Dixit, Sales Executive of M/s. Bharat Kala Kendra Pvt. Ltd., Jagat Narain, Cloth Merchant, Rajeswarnath Gupta, Production Director of the plaintiff Company and Devi Chand Sethi, who deals in textile and readymade garments. An behalf of the Defendant, Dr. V. S. Ramanathan, a retired Chief Chemist, Central Revenues, Ministry of Finance has been examined. I have also heard the learned Counsel for the parties on the various contentions urged on the pleadings.

Issue Nos. 1 to 6

11. All these issues are inter-mingled. They can, Therefore very conveniently be discussed together. The first three issues relate to the scope of the Order passed by the Joint Secretary, Government of India on 14th April 1972 in the statutory revision. According to the plaintiff Company the woollen tufted carpets, which they manufacture do not fall within the definition of woollen fabrics, as are described in Entry No. 21 in the First Schedule of the Central Excise and Salt Act,

1944. It is contended that the Central Excise authorities pressed the plaintiff to pay the excise duty on their manufactured goods and that they paid for the period 29.11.1967 to 31.01.1968 under protest. On 27.03.1968, the plaintiff Company made an application to the Assistant Collector, Central Excise, Faridabad (Annexure B), praying for the refund of Rs. 14,381.06 paid as excise duty under protest. This application was duly considered by the Assistant Collector, but he did not agree that the interpretation placed by the plaintiff and communicated the Order on 04.11.1968 (Annexure D). The decision conveyed was that the contention that the woollen tufted carpets manufactured by the plaintiff were not liable to Central Excise duty were not correct and that such carpets were livable under tariff item No. 21 read with Notification No. 50/62 dated 24.04.1962 as amended.

12. Against the said Order, the plaintiff filed an appeal to the Collector u/s 35 of the Act, which was dismissed on 1st May 1971 (Annexure I). The plaintiff then preferred a Revision Petition to the Government of India u/s 36 of the Act. This statutory revision was ultimately allowed by Shri D. N. Kohli, Joint Secretary to the Government of India, Ministry of Finance (Department of Revenue & Insurance) on 14.04.1972. This Order dealt with various contentions of the parties at length.

13. After the Revision Application was allowed by Government of India, the plaintiff made an application on 03.07.1972 (Annexure L) for the refund of the excise duty paid by the Company. It was at the tune of Rs. 7,45,534.14. The Assistant Collector did not pass any order to refund the amount. Notice u/s 80 of the C.P.C. given by the plaintiff on 24.01.1973 did not elicit any reply. In the circumstances, the plaintiff filed the present suit for recovery of Rs. 7,31,153.08 paid as excise duty to the Department.

14. It may be observed here that on the date of the Suit instituted in this Court on 26-3-1973, the Assistant Collector had not passed any Order on the application of the plaintiff made on 3rd July 1972 for the refund of the excise duty paid. He, however, passed his order on 31st March 1973 and rejected the claim of the plaintiff for the refund of the disputed amount, paid as excise duty from 28th March 1968 to 24th April 1972 (Annexure O).

15. The various contentions incorporated in the issues under consideration have to be considered in the light of the above facts. Out of the issue Nos. 1, 2 and 3 relate to the scope of the Order dated 14th April 1972 passed by the Government of India for revision. There is no doubt that the said Order determined the question of excise duty payable on the woollen tufted carpets for the period 29.11.1967 to 31.01.1968 and the amount involved was only Rs. 14,387.06. Both the parties have tried to put different interpretation to the meaning and scope of this Order. According to the plaintiff, the question of excise duty payable on the goods manufactured by them was in issue in general form and, Therefore, its decision covers all cases, even relating to subsequent period, whereas the version of the Defendant is that the ambit of the order is limited to the period and amount

involved in that case alone and has no general application to other similar cases.

16. It is further contended on behalf of the plaintiff that the Order passed u/s 36 of the Act, while deciding the Revision Petition was final and hence binding on the department, more so, When no change in the product or in the law had taken place. It is impetuously argued by Shri Raman that failure to refund the amount already deposited, or making any further demand for the subsequent period, was not tenable in view of the express and unambiguous order of the Government of India passed in the Statutory revision.

17. On the other hand, it has been argued on behalf of the Defendant that the Order passed in the earlier application while restricted only to the period to which the refund related and that which had no application to the duty paid or demand made, for subsequent period. TO support his submission, Shri Tandon, the learned Counsel for the Defendant has referred to Dwarkadas Kesardeo Morarka Vs. Commissioner of Income Tax, Central Bombay, , B.D. Barucha Vs. Commissioner of Income Tax, Central, Bombay, and Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, and has tried to impress that in matters of taxation, there is no question of res judicata because if fresh matter comes to the notice of the taxing authority, it then has the power to re-assess or reconsider the amount of tax payable.

18. There is no row over the principle of law decided in these cases. But the ratio of these decisions has no application to the facts of the present case, where no additional evidence has been collected. Here only the interpretation of expression, "Woollen fabrics" occurring in item No. 21 of the First Schedule of the Act is involved. All the cases cited on behalf of the Defendant do not in any way elucidate or advance the question of interpretation of woollen fabrics, which was directly in issue in the earlier case.

19. Another submission made on behalf of the Defendant is that this Court has no jurisdiction to take cognisance of such disputes as the Central Excises and Salt Act, 1944, lays down a complete procedure for dealing with such matters. It is argued that under the said Act, an appeal lies to the Collector from the Order of the Assistant Collector (See Section 35) and then a statutory revision lies to Government of India u/s 36 of the same Act. It has been canvassed by Shri Tandon that the plaintiff had not exhausted all these legal remedies available and Therefore the jurisdiction of the Civil Courts under the general law is barred.

20. The question of jurisdiction is vitally linked with the act of the Defendant for declining or failing to refund the amount of excise duty paid for the subsequent periods and also with regard to the further demands made for these purposes. If the action of the department was illegal on both these counts, in view of the decision given in the statutory revision on 14.4.1972, surely a Civil Court has jurisdiction to take cognisance of the matter.

21. To gauge the force of arguments, a reference to Section 40 of Central Excise and Salt Act, 1944 is essential.

* * * * * 22. The provisions of Section 40, *ibid* are *pari Materia* with Section 18 of the Madras General Sales Tax Act, 1939. Section 18 is in these terms :

"No suit shall be instituted against the Government and any suit, prosecution or other proceedings shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the Act complained of".

23. While interpreting Section 18 of Madras Act, it was held by Supreme Court in *The Provincial Government of Madras Vs. J.S. Basappa*, that the exclusion of jurisdiction of the Civil Court is not to be readily inferred and even if a provision giving the Orders a finality was indicated, Civil Courts still have jurisdiction to interfere where fundamental provisions of the Act are not complied with, or where the Statutory tribunals do not act in conformity with the fundamental principles of judicial procedure. It was further observed that it did not make valid an action which was not warranted by the Act, as for example, the levy of tax in a commodity which was not taxed at all or was exempt.

24. It will also be quite relevant to quote another important observation of the Supreme Court made in *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, where the question of jurisdiction of a Civil Court came up for consideration over the levy of terminal tax on Salt imposed by the Municipal Committee. It was held there that "under Section 9 of the CPC the Courts shall have jurisdiction to try all suits of similar nature except suits of which cognisance is either expressly or impliedly barred. A statement Therefore expressly or by necessary implication, can bar the jurisdiction of Civil Court in respect of a particular matter and that the mere conferment of special jurisdiction on a Tribunal in respect of the said matter does not itself exclude the jurisdiction of the Civil Courts". It was further held in the same case that "there is also an equally well settled principle, governing the scope of the Civil Courts" jurisdiction in a case where a statement created a liability and provided a remedy. Even in such cases, the Civil Courts" jurisdiction is not completely ousted. A suit in a Civil Court will always lie to question the Order of the Tribunal created by statement even if its Order is expressly or by necessary implication made final, if the said Tribunal abused its power or does not act under the Act but in violation of the provisions".

25. In the case under consideration, the interpretation of item No. 21 is as to whether an excise duty was payable on woollen tufted carpets was directly and substantially in issue in the earlier proceedings. The situation remains the same, when, after the decision of the Government of India on 14.4.1972, the plaintiff had applied for refund of the amount already deposited or had declined to pay when further demand was raised. The order passed in Revision was quasi-judicial nature. The dispute had been set at rest when all the legal remedies available under the Act had been exhausted and the Order in Revision had become final and conclusive qua the parties. The department did not respect the said Order

and failed to act when an application for refund of Rs. 7,31,153.08 was made. This was illegal on the part of the Defendant. As the Special Tribunal acted in an arbitrary manner in the exercise of its jurisdiction the Civil Court has power to interfere and set the matter right by providing the remedy to the person who has been damnified.

26. Relying on J.S. Basappa's Case (supra), Andhra Pradesh High Court has also held in Bommidala Poornaish Vs. The Union of India, , that Section 40 of the Central Excise and Salt Act, 1944 covers only suits of tortious nature, for compensation or damages and that the bar was created only with regard to these matters. It was further held therein that questions of collection of illegal taxes or orders imposing the taxes, duty or penalty, are not dealt with by Section 40. In the said case their Lordships have clearly ruled that a suit for declaration is completed when the Order of Excise authority, levying penalty and duty was illegal and that such a suit was not barred by Section 40.

27. The authorities cited by the learned counsel for the Defendant are not applicable to the facts of the present suit as it was not a matter of accounts for production of relevant books for assessing any tax or duty. It was purely a question involving the interpretation of Item No. 21 in respect of woollen fabrics vis-a-vis woollen tufted carpets. Cases relating to the Income tax or other taxes cannot be made applicable to the present case, as it stands on an absolutely different footing.

28. There is thus no force in the contention that the present suit was not competent unless the plaintiff had gone through the same rigour and had obtained a decision in revision u/s 36 of the Act. There is also no force in the submission that because the application made before the Assistant Collector had not yet been decided, the suit was premature or that after the decision of the application for refund of the amount by the said Officer on 31.03.1973, the suit already instituted, had become infructuous. The Order passed by the Government of India in the statutory revision had evidently much wider scope, and, Therefore, covered even these cases which related to the subsequent periods. Thus, in view of the said Order, no excise duty was payable on woollen tufted carpets.

29. The same controversy was later raised by the Department as a refund of the amount already paid was not being allowed and secondly, further demand had also been made to pay the excise duty for the subsequent periods. These acts of the department were, Therefore, not legally justified, hence unsustainable. I, accordingly, hold that the Order of Government of India dated 14.04.1972 fully applied to the subsequent periods as well and that failure to refund the amount of excise duty or making of further demands, were in utter violation of the said Order, which was fully binding on the Defendant for the subsequent periods. Thus, the action of the Department was wholly illegal and the Civil Court has jurisdiction to take cognisance of the matter and provide a remedy to the aggrieved person under the common, law. Issue Nos. 1 to 6 are accordingly

decided in favor of the plaintiff and against the Defendant.

Issue No. 7 .

30. This issue covers another aspect of the same matter. The first part of the issue relates to the interpretation of clause, "whether excise duty can be levied on woollen tufted carpets under the Act, more particularly, under Item No. 21 referred to earlier".

31. In support of this part of the issue, the learned Counsel for the plaintiff has mainly relied on Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills, , where the interpretation of the same Entry viz., item No. 21 occurring in First Schedule of the Act came up for consideration. In this case, the firm concerned manufacture non-woven fabrics from woollen fabrics. In the appeal before the Supreme Court, the only question requiring determination was "whether goods manufactured by the Respondent were woollen fabrics within the meaning of Entry No. 21 of the First Schedule to the Act".

* * * * * 32. In the matter before the Supreme Court the question posed was "are the products of respondents factory woollen fabrics". In that context the Court held that fabrics means woollen material.

33. Shri Raman has strongly argued that the products of the plaintiff Company could not be branded as woollen fabrics, according to the Supreme Court, means and covers only those goods, which comprises woollen materials. It is accordingly submitted that woollen tufted carpets of the present case are not from woven material, as the process of manufacturing itself indicates so.

34. It is further argued by Shri Raman that in the above case, the Supreme Court gave the Statutory definition of woollen fabrics indisputably woollen tufted carpets are not woven. They are base fabrics, i.e. neither of wool nor of cotton, but are of jute. It is argued that the entire controversy about interpretation of the expression woollen fabrics appearing in Entry No. 21 have been set at rest in the case of Gujrat Woollen Felt Mills (supra) and that this Court is bound by the authoritative decision of the Supreme Court.

35. In order to find out whether or not the evidence had been produced in the Gujrat case, the paper book was got produced in this Court. It has been found that in that case evidence had been produced in the shape of Affidavits. The question of interpretation of expression woollen fabrics occurring in Entry No. 21 was the main theme before the Supreme Court. In the present case, the interpretation of the same item has arisen before this Court. The ratio of the Supreme Court decision is very clear and definite. I respectfully follow the said interpretation of woollen fabrics in the present case, as it applies on all fours. I accordingly hold that woollen tufted carpets in question, being non-woven are not excisable and, Therefore, the Defendant cannot claim the payment of any duty thereon.

36. Now regarding the second part of the issue, it relates to the jurisdiction of

this Court. As already discussed earlier, this Court has full jurisdiction to go into the question as to whether excise duty is payable on woollen tufted carpets or not. If no excise duty is payable on such carpets for the reason already listed, while interpreting the expression woollen fabrics occurring in Entry No. 21 of the First Schedule of the Act, the Order dated 14.04.1972 was fully binding on the authorities of the Central Excise Department. Issue No. 7 is, Therefore, decided in favor of the plaintiff and against the Department.

Issue No. 8

37. It is true that out of the total amount of Rs. 7,31,153.08 a sum of Rs. 4,11,285.32 had been paid under protest, while the remaining amount had been paid without protest, (see Annexures A and B of exhibit P/6). The making of the payment without recording the words "under protest" does not in any way take away or extinguish the right of the plaintiff to the refund of these amounts. It has already been held that no excise duty payable on the woollen tufted carpets. The amount deposited under the self assessment scheme cannot change the nature or complex of the matter. The amount retained by the department is not legally recoverable as no such levy is payable under any authority of law.

38. I have already observed that after the passing of the Order of the Government of India on 14.04.1972, no change in the process of manufacturing the good or even in the law has taken place. The Assistant Collector, a subordinate authority is Therefore bound by the decision of the Government of India. As the goods manufactured by the plaintiff are not assessable to excise duty, the entire amount whether deposited under protest or not, is refundable to the plaintiff. Issue No. 8 is, accordingly decided in favor of the plaintiff fund against the Defendant

Issue No. 9

39. For the reasons already discussed, it hardly matters whether deposits had been made under coercion or otherwise. The entire amount, to which the Defendant, is not entitled, is liable to be repaid or refunded. Issue No. 9 is accordingly decided in favor of the plaintiff.

Issue No. 10

40. This issue relates to the question of limitation. The claim of the plaintiff is not barred by time as refund under the common law can be claimed within three years plus two months of the Notice. The suit was filed on 26.03.1973 and cause of action had arose on 14.04.1972, when the Government of India had decided that no excise duty was livable on the goods manufactured by the plaintiff, Issue No. 10 is, Therefore decided against the Defendant and in favor of the plaintiff.

Issue No. 11

41. It relates to the jurisdiction of this Court with regard to the subject matter of the dispute. The word, "Jurisdiction" relates to the power, scope and ambit of

authority. This question has already been discussed in some detail in the previous issues. Those reasons need not be reiterated here. I may however, add that in this case there exists conditions, which are essential for creating the jurisdiction of the Civil Court

and that there is no usurpation of any power, as in the nature of the breach of the statutory function by a Tribunal by neglecting or refusing to act, the right of civil action accrues to the aggrieved person. For if it were not so, the statute shall be wholly ineffectual. This Court has, Therefore, jurisdiction to take cognisance of the dispute arising between the parties. Issue No. 11 is accordingly decided in favor of the plaintiff and against the Defendant.

Issue No. 12

42. As a result of the above findings of the various issues, this suit is bound to succeed.

43. In the result, I grant a decree for the recovery of Rs. 7,31,153.08 in favor of the plaintiff Company and against the Defendant. The plaintiff shall also be entitled to future interest at the rate of six per cent per annum from the date of the institution of the suit to the date of realisation.

44. Costs to follow the event.