
(1984) 11 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 1193 of 1977

Binny Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 49, 9, 96V, 96W

Citation : (1985) 6 ECC 71 : (1985) 5 ECR 690 : (1986) 25 ELT 154

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : K.P. Jagadeesan, for the Appellant; K. Shivashankar, Central Govt. Senior Standing Counsel, for the Respondent

Judgement

1. M/s. Binny Limited, a public company incorporated under the Companies Act, which is the petitioner, is engaged in the manufacture of textile goods in one of its composite textile mills called "Bangalore Woollen Cotton and Silk Mills" situated at Bangalore City. Prior to 24th July, 1972 the petitioner had manufactured 17,381-30 kgs. of blended yarn ("yarn") with 50% terene, (and) consumed the same in the manufacture of a fabric called "Cascade".

2. "Blended yarn" and "fabrics" were dutiable to excise duty under tariff items Nos. 18-E, and 19(1)(2)(sic) respectively of the Central Excises and Salt Act of 1944 (Central Act 1 of 1944) ("the Act"). But, under rule 96V and W of the Central Excise Rules of 1944 ("the Rules) and Notification No. 62/72 CE dated 17th March, 1972 issued thereto by Government, the collection of excise duty on blended yarn was postponed to the point the clearance of "fabric" made out of such yarn, which is called as "compounded levy". Admittedly Government in its Notification Nos. 168 and 169 of 1972 dated 24th July, 1972 ("notifications") modified the aforesaid scheme and later withdrew the aforesaid notification and abolished the compounded levy scheme on blended yarn.

3. On the sole basis of the Notification No. 169 of 1972 dated 24th July, 1972, the Superintendent of Central Excise, Concurrent Assessment and Inspection

Group, Bangalore-5 ("the Superintendent") by his notice No. GI-6(BM)/72 dated 2nd December, 1972 (Exhibit-A) called upon the petitioner to show cause as to why a sum of Rs. 1,73,813/- being the short levy or non-levy on blended yarn on 17,381-30 kgs. should not be collected from it. In response to the same, the petitioner showed caused on 14th December, 1972 before the Assistant Collector of Central Excise, Bangalore III Division, Bangalore-1 ("the Assistant Collector") in which it inter alia urged that the entire quantity of yarn had been manufactured and consumed in the manufacture of fabrics before the promulgation of Notification No. 169 of 1972 dated 24th July, 1972 which was not retrospective and it was not liable to pay separate duty on 17,381-30 kgs. of blended yarn. On an examination of the show cause notice issued by the Superintendent, the reply filed by the petitioner and the records, the Assistant Collector by his order dated 11th June, 1973 (Exhibit-C) overruled the objections, confirmed the show cause notice and called upon the petitioner to pay a sum of Rs. 1,73,813.00 as duty under the Act.

4. Against the said order of the Assistant Collector (Exhibit-C) the petitioner filed an appeal in Appeal No. 25 of 1973 before the Appellate Collector of Central Excise, Madras ("Appellate Collector") who by his order dated 20th May, 1974 (Exhibit-E) dismissed the same. Against the said orders of the Appellate Collector and the Assistant Collector, the petitioner filed a revision petition before Government, which by its order dated 29th July, 1976 (Exhibit-G) dismissed the same. In this petition under article 226 of the Constitution, the petitioner has challenged the order of Government, the Appellate Collector and the Assistant Collector.

5. As before the authorities, the petitioner has asserted that the blended yarn in dispute had been manufactured and consumed in the manufacture of fabric before 24th July, 1972. On this factual basis, the petitioner has urged that Notification No. 169 of 1972 dated 24th July, 1972 which was prospective and not retrospective, it was not liable to pay separate duty on the yarn manufactured and consumed prior to that date.

6. In their common return, the respondents without disputing the correctness of the facts asserted by the petitioner, have justified the impugned orders on the very ground stated in their orders and other additional grounds also.

7. Shri K.P. Jagadeesan, learned counsel for the petitioner has contended that Notification No. 169/72 dated 24th July, 1972 had no retrospective effect and the blended yarn manufactured and consumed prior to its promulgation was dutiable only under tariff item No. 19(1)(2)(sic) of the Act only.

8. Shri K. Shivshankar Bhat, learned Central Government Senior Standing Counsel appearing for the respondents, sought to justify the impugned orders.

9. Blended yarn manufactured was dutiable to excise duty under tariff item No. IS(E) of the Act is not and cannot be disputed. But, Notification No. 62 of 1972 issued by Government on 17th March, 1972 extended the benefit of the special

procedure contained in Chapter-E(IV) of the Rules on blended yarn manufactured in composite textile mills and that notification that is material reads thus :

Notification No. 62/72 dated the 17th March, 1972.

"In pursuance of rule 96W of the Central Excise Rules, 1944, the Central Government hereby directs that the rate of duty in respect of yarn containing partly more than 40 per cent by weight of cotton and partly any other fibre or fibres, the wool or silk content being less than 40 per cent by weight of such yarn (where such yarn contains wool or silk) and falling under item No. 18-E of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and of the description specified in column (2) of the Table hereto annexed, shall be the rate specified in the corresponding entry in column (3) of the said Table.

THE TABLE

----- S. Description of yarn			
Rate	No.	1 2 3 -----	Paise
		(fabric made) 1. Yarn used in making superfine fabrics.	
20.00	2.	Yarn used in making fine fabrics.	12.00
	3.	Yarn used in making medium-A fabrics.	6.60
	4.	Yarn used in making medium-B fabrics.	4.40
	5.	Yarn used in making coarse fabrics.	2.20
	6.	Yarn used in the manufacture of cotton fabrics generally described as Malimo type fabrics or fabrics in which the warp and weft yarns are connected and fastened together by chain stitches barred against each other.	4.40
	7.	Yarn used in making embroidery in the The duty for the piece, in strips or in motifs. time being leviable on yarn contained in the base fabrics if not already paid.	
	8.	Yarn used in making fabrics The duty for the impregnated or coated with time being leviable preparations of cellulose derivatives on yarn contained or of other artificial plastic in the base fabrics materials. if not already paid.	
----- Provided that if the manufacturer elects to avail himself of the special provision contained in rule 96W aforesaid the procedure set out in that rule in this behalf shall uniformly apply to all the yarn of the description specified in the above Table and used by him in the production of cotton fabrics in his factory.			

Explanation. - For the purposes of this notification -

(i) "base fabrics" shall have the same meaning as assigned to it in Item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944),

(ii) the average count of yarn in a fabric shall be deemed to be the count of all yarn contained in such fabrics."

When this notification was in operation, availing the benefit of the special procedure and that notification, the petitioner had manufacture of a fabric called "Cascade". In the show cause notice, the orders and the return filed before this Court, the respondents have not rightly disputed this fact. But, they have strongly relied on Notification No. 169 of 1972 as enabling them to collect excise

duty on the same. The said notification that is material reads thus :

Notification No. 169/72 dated 24th July, 1972.

In pursuance of rule 96W of the Central Excise Rules, 1944, the Central Government hereby directs that for the words, figures and brackets "Yarn containing partly more than 40 per cent by weight of cotton and partly any other fibre or fibres, the wool or silk content being less than 40 per cent by weight of such yarn (where such yarn contains wool or silk) "occurring in the Notification of the Government of India in the Ministry Finance (Department of Revenue and Insurance) No. 62/72-Central Excises, dated the 17th March, 1972, the words, brackets, letters and figures "yarn containing two or more of (a) synthetic staple fibre of cellulosic origin, (b) jute (including Bimlipatam jute or mesta fibres) and (c) cotton, wherein the jute (including Bimlipatam jute or mesta fibres) content, if any, being less than 50 per cent by weight of such yarn" shall be substituted".

This Notification issued by Government on 24th July, 1972, is prospective and does not purport to withdraw the exemption, concession or privilege extended to the manufacturers on the manufactured article for the earlier period. The levy and collection of duty on the article manufactured earlier and consumed in the manufacture of fabrics, is not sought to be undone by Notification No. 169 of 1972 dated 24th July, 1972. In this view, the very basis on which the proceedings were initiated, culminating in the levy of excise duty on blended yarn did not exist. On this short ground the petitioner is entitled to succeed.

10. Whether Government could have given retrospective effect to the Notification Nos. 168 and 169 of 1972 does not require to be examined as those notifications in terms have not been given retrospective effect. When that was so, the question of blended yarn being separately assessed as if the notification No. 169/72 dated 24th July, 1972, provided for the same is wholly misconceived and the demand made by the Revenue on that basis is clearly without the authority of law.

11. Explanations to rules 9 and 49 of the Rules declare movement of goods from one place to another within the factory for continuous process, as removal from the factory. On the very terms of these provisions, blended yarn of 17,381.30 kgs. manufactured and consumed by the petitioner prior to 24th July, 1972 was not separately dutiable to duty. Unfortunately all the authorities have ignored these provisions and have committed a manifest illegality apparent on the face of the record. On this ground also, the impugned orders cannot be upheld. As the petitioner is entitled to succeed on these grounds, it is not necessary for me to examine the other grounds. But, as my order is subject to appeal, I propose to notice them and briefly state my views also.

12. Sri Jagadeesan has contended that the notification No. 62 dated 17th March, 1972 was really in the nature of an exemption which was withdrawn by Government on 24th July, 1972 and the goods manufactured and cleared earning such exemption were not dutiable to duty under the Act.

13. Sri Bhat has urged that the mere manufacture did not earn exemption and their clearance from the factory as ruled by the Supreme Court in Orient Paper Mills Ltd. Vs. Union of India (UOI), was relevant.

14. In reality and substance Notification No. 62 of 1972 dated 17th March, 1972 reproduced earlier was in the nature of an exemption notification. But for this notification, the manufacturer was bound to pay duty on blended yarn under tariff item NO. 18-E before their clearance.

15. When there was clearance without payment of duty under the Act, on the basis of the elaborate rules found in Chapter-E IV of the Rules in general and rules 96V and W in particular and Notification No. 62/72 dated 17th March, 1972, it necessarily follows from the same, that those goods had earned exemption in terms of Notification No. 62/72 dated 17th March, 1972. The exemption once earned was absolute full and final. On any principle, such goods cannot be subjected to duty under the Act. In this view also, the demand made by the Revenue was wholly misconceived and illegal. In Sirpur Paper Mills Limited v. Union of India and Others 1984 ELT 217 (A.P.) a Division Bench of the High Court of Andhra Pradesh has taken a similar view. I am in respectful agreement with the views expressed by their Lordships in this case.

16. In Orient Paper Mills Ltd. Vs. Union of India (UOI), on which strong reliance was placed by Sri Bhat, the Supreme Court did not examine the precise question and has not declared the law. Even otherwise, the ratio in this case does not really bear on the point.

17. Sri Jagadeesan has lastly contended that the duty, if any, paid from 24th July, 1972 to 5th December, 1972 was adjustable towards duty payable if any, on blended yarn on the basis of Notification No. 169/72 dated 24th July, 1972.

18. Sri Bhat sought to justify the action of the authorities on the very ground on which Government had refused to adjudicate and grant relief on this plea that was urged before it.

19. Before the original and the appellate authorities, the petitioner does not appear to have made a specific grievance on this aspect. But, before Government, the petitioner made a specific grievance on this aspect, which it has refused to examine on the sole ground that the same had not been urged before the original and the appellate authorities. I will assume that Government was right in so holding and examine the same.

20. The fact that the petitioner had not specifically urged a plea before the original and appellate authority. In this view, Government was bound to examine this plea and give relief, if there was merit in the same.

21. Even otherwise, the alternative plea urged by the petitioner did not require any investigation of facts and was essentially a legal plea on the basis of facts that were not at all in dispute. In this view also, Government should not have declined to examine this plea and grant relief if there was merit in the same.

22. Admittedly the Act and Notification No. 169/72 dated 24th July, 1972 do not provide for multiple levy on the very manufactured article. Assuming that on the basis of the later notifications, blended yarn was separately dutiable, in such an event also. The higher rate of duty, if any paid on the fabric, should have been ordered to be adjusted by Government.

23. On any view of the matter, the impugned orders which are manifestly illegal are liable to be quashed. I therefore, quash the impugned orders and make the rule absolute. But, in the circumstances of the case, I direct the parties to bear their own costs.