
(1990) 01 MAD CK 0041
In the Madras High Court

Bojaraj Textiles Mills Ltd.

APPELLANT

Vs

Assistant Collector of C. Ex.

RESPONDENT

Date of Decision : 01-01-1990

Acts Referred:

Citation : (1990) 45 ELT 559

Hon'ble Judges : V. Ramaswami, J;Bellie, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The appellants in these two appeals are two public limited companies engaged in the manufacture of cotton yarn. Under

the provisions of the Central Excises and Salt Act, 1944, cotton yarn is an excisable article. As per the Act, Rules and the Schedule I thereunder,

duty excisable on cotton yarn of less than count N. F. 51 was NIL, and the rate of duty for cotton yarn of count N. F. 51 to 69 was 65 paise per

kilogram. Both these companies have adopted the self-removal procedure in respect of their manufacture of cotton yarn. The appellants were not

paying any excise duty and declaring that the goods manufactured and removed are below count N. F. 51 and that therefore they are not liable to

pay excise duty. The Central Excise Department periodically takes samples in order to check whether the manufactured yarn is of above count N.

F. 51 or below it. One such sample was taken from the mill of the appellant in W. A. No. 207 of 1981 viz., Vardalakshmi Textiles Ltd., on 30-

12-1974; the goods having been manufactured on 28-12-1974. As usual, the samples were taken in triplicate. One such sample was sent first to

the Chemical Examiner and in his report dated 31-1-1975 he stated that it was of count N. F. 55.8. Allowing the permissible tolerance in this

regard, it was determined that the count was N. F. 54.4. Again, the other sample taken on the same day was sent to the Chemical Examiner and

that was found to be of count N. F. 56 and after giving tolerance it was determined as count N. F. 53.99. The report dated 31-1-1975, after the

second sample was tested, was sent to the company asking them to show cause why action should not be taken to levy a differential duty of Rs.

590/20 due on 980 kgs of cotton yarn cleared on payment of Nil duty and why differential duty at the appropriate rate cannot be demanded on

39,770.40 kgs of cotton yarn left uncleared. Overruling the objection, the Assistant Collector of Central Excise, passed an order on 6-4-1976

holding that the quantity of 25,081.67 kgs was liable to duty at the appropriate rate as of count N. F. 51 and more. It may be mentioned that the

determination of this quantity is for the period from 28-12-1974 upto 21-4-1975. This was because on 22-4-1975, the Department again took

samples and tested the counts and found that the yarn manufactured was less than count N. F. 51. Accordingly, the levy of duty was restricted to

the period from 28-12-1974 to 21-4-1975. The appeal preferred by the appellant against the order of the Assistant Collector to the Appellants

Collector of Customs and the revision filed thereafter were dismissed and the appellant/company preferred W. P. No. 868 of 1978. The facts in

the other writ petition in W. P. No. 869 of 1978 are also identical except that the dates of inspection, counts and the period are different; the

period for which assessment was made being 30-10-1973 to 21-11-1973. Both these writ petitions were dismissed by the learned Single Judge

by a common order dated 6-10-1978, holding that there is no illegality in the levy and also for levying for a period till the next sample is taken.

2. The learned Counsel for the appellants raised two contentions. Firstly, based on an unreported judgment in W. P. No. 305 of 1970 dated 1-3-

1972, (Coimbatore Pioneer Mills Ltd. v. The Assistant Collector of Central Excise), to which one of us was a party, he contended that when the

second time the sample was taken on 22-4-1975, it was found that the counts were less than N. F. 51 and therefore no action should have been

taken on the earlier finding regarding the sample taken on 30-12-1974. This was on the view that unless the samples taken at various intervals

show somewhat similar or same results, the contention of the assessee that he was manufacturing cotton yarn of less than count N. F. 51 and

therefore, no assessment was made, should be taken as correct. We are unable to agree with this contention of the learned Counsel. The judgment

referred to by the learned Counsel related to a case where the sample was taken on the same day in triplicate as in all cases of taking samples.

Two of the samples taken showed the counts above N. F. 51 and the triplicate sample showed the counts below N. F. 51, In the circumstances,

the Division Bench refused to rely on the Chemical Examiner's reports as they were conflicting and, while rejecting this evidence they also

considered the records produced by the assessee which showed that he had sold the yarn as at less than count N. F. 51 and realised the price for

that count and it was also in evidence that the yarn of count N. F. 51 and above were of higher price than the yarn of count below N. F. 51.

Therefore the decision was based on the facts in that case and has no application for the general contention made by the learned Counsel that if on

different dates samples were taken and they showed different counts, no reliance can be placed on the Chemical Examiner's reports. The first

point is rejected.

3.The second contention of the learned Counsel was that the sample was taken on 30-12-1974 and assessment may be made only in respect of

the stock available on that date when the sample was taken, and, on the basis of the Chemical Examiner's report for that sample, goods

manufactured in future could not be levied the same rates. In this case, it is true that the first occasion on which the sample was taken was on 30-

12-1974 and the second sample was taken on 22-4-1975, and the assessment had been made for the entire period from 28-12-1974 to 21-4-

1975, and that could not have been validly done. We may first mention that 28-12-1984 is taken as the date because the samples taken on 30-

12- 1974 related to the goods manufactured as and from 28-12- 1974. This point need not detain us further because it is now concluded by a

Division Bench of this Court in Ramalinga Choodambikai Mills Ltd. Vs. The Government of India and Others, , to which again one of us was a

party. In respect of similar contention raised, the Bench held :

The second ground of attack is that the result of the test reports can be applied only to the quantity of yarn manufactured on the date when the

sample was taken and not for the entire period between 14-9- 1966 and

20-10-1966. The contention of the petitioner is that it cannot be assumed that the count of yarn manufactured by the petitioner on subsequent days was the same as one found on 14-9-1966 and that the test report based on a sample of 840 yards cannot be taken to represent the entire 386.38.2kgs produced during the period. It must be remembered that the department cannot be expected to take samples every day and for every bale. It is seen that a sample is taken periodically at regular intervals and the test result of such a sample is taken to govern production of yarn made by the petitioner till the next drawal of the sample. If the petitioner's contention is accepted that the sample drawn on particular day can be taken to represent a count of yarn produced only on that day, it becomes necessary for the department to take the same sample everyday or even every hour to be more accurate. Such a procedure is quite impossible to be followed and it will also lead to unnecessary waste of time. If the petitioner in a particular case shows that after the taking of the sample the machinery has been attended to and the yarn produced is of different count than the one produced on the day when the sample was taken the officers cannot base the test results on the sample for the entire goods manufactured during the period till the next sample is taken. But in this case the petitioner has not shown that anything has been done between 14-9-1966 and 20-10-1966. We are not therefore inclined to accept the petitioner's contention that the test reports cannot be taken to represent the count of yarn for the entire quantity manufactured between 14-9-1966 and 20-10-1966".

This decision was followed by a Division Bench of the Andhra Pradesh High Court on similar facts in *Government of India v. The Chirala Co-operative Spinning Mills Ltd.* 1980 E. L. T. 174 A. P.. In the circumstances, there are no grounds to interfere on this ground either.

4. The points raised in the other appeal also are the same and, in the foregoing circumstances, both the appeals are dismissed. there will be no order as to costs.