

(1978) 12 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 2294 of the 1973

Bombay Fancy Textiles

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 08-12-1978

Acts Referred:

Central Excise Rules, 1944 — Rule 96, 96ZH

Citation : (1984) 17 ELT 103

Hon'ble Judges : P.S. Shah, J; M.L. Pendse, J

Bench : Division Bench

Judgement

Shah, J.—This petition filed under Article 226 of the Constitution of India raises a short question about the interpretation of the Notification, dated May 14, 1968 issued by the Government of India, in pursuance of Rule 96 of the Central Excise Rules, 1944, whereby the Central Government fixed with effect from March 1, 1968 certain duties for embroidery machines employed for manufacturing embroidery. This Notification runs as under :-

"In pursuance of rule 96 of the Central Excise Rules, 1944, the Central Government hereby fixes with effect from the 1st March, 1968, for embroidery machines employed for manufacturing embroidery in the piece, in strips or in motifs on each variety of base fabrics specified in column (2) of the Table below, the rate of duty specified in the corresponding entry in column (3) thereof :-

Table

Provided that in respect of every embroidery machine installed prior to the 1st January 1955, the rates of duty as specified in column (3) of the Table above shall be reduced by twenty-five per cent.

Explanation :- For the purpose of this notification "shift" means a period of 8 hours duration irrespective of whether the machine was working for the full period or not."

The question raised is about the meaning of the work "shift" for the purpose of calculation of levy of excise duty.

2. The petitioners-factory carries on the business of manufacturing quality embroidered fabrics. Embroidery fabrics are excisable goods within the meaning of the Central Excises and Salt Act, 1944. The First Schedule to the said Act specifies the goods as being subject to a duty of excise under the said Act and embroidery fabrics are covered under Item Nos. 19 and 22 of the said Schedule. However, a special procedure has been provided by the provisions of Chapter V, Section F-IX and Rule 96-ZH of the Central Excise Rules, 1944 in the case of embroidery, in the piece, in strips or in motifs. The Manufacturer is entitled to opt for any of the procedures and in this case they opted for any of the procedures and in this case they opted for the procedure laid down in the Chapter V, section F-IX, and Rule 96-ZH of the Central Excise Rules, 1984. Under this rule the Government issued the said impugned Notification fixing the rate of excise duty in respect of embroideries on the basis of metre length of the machine. It is not disputed that in the case of the petitioner factory the first shift from 7.00 a.m. to 3.30 p.m. and the second shift from 3.30 p.m. to 12.00 midnight with half an hour rest, in the duration of each shift. The Central Excise Department, however, contended that in view of the explanation contained in the said Notification, which defines the word "shift" as a period of eight hours duration irrespective of whether the machine was working for the full period or not, the petitioner-factory must be deemed to have worked in the shifts because the total working hours of the petitioners comes to 17 hours as it exceeds the duration of 16 hours comprising two shifts. In view of this interpretation put upon the explanation three demand notices, dated October 19, 1968, October 24, 1968 to October 25, 1968 were served on the petitioners for the period from March 1, 1968 to October 13, 1968 on the basis that the factory had worked three shifts during this period. The Government issued a fresh Notification, dated December 7, 1968 and amended the previous Notification dated May 14, 1968. By this Notification the explanation contained in the earlier Notification was modified as under :-

"For the purposes of the notification, "shift" means a period not exceeding 8 hours working, exclusive of rest interval provided the work of the same kind is carried out by the same set of workers."

However the demand notices cover the period prior to the amended Notification.

3. Three demand notices were challenged by the petitioner factory by preferring an appeal and thereafter a revision application to the competent authorities. In the appeal, however, the demands made by the Department were modified to some extent. However, the principle adopted by the Department that the levy of excise duty must be based on the three shifts was upheld by the appellate authorities as well as by the Central Government in revision. The petitioner-factory has, therefore, filed this petition under Article 226 of the Constitution of India challenging the demand notices as well as the decisions rendered by the

appellate authorities and the Central Government.

4. Mr. G. E. Vahanvati, the learned counsel appearing for the petitioner factory, contended before us that the authorities have totally misconstrued the Notification because in fact the petitioners have the Factory only in two shifts. He submitted that under the provisions of section 55 of the factories Act, the employer was enjoined to fix the period of work in the factory each day, so that no period will exceed five hours - and that no worker shall work for more than five hours before he has had an interval of at least half an hour. He, therefore, pointed out that although the shift timings are from 7.00 a.m. to 3.30 p.m. they include a period of half an hour by way of interval as required by the provisions of section 55 of the Factories Act. Similar is the position with the second shift from 3.30 p.m. to 12.00 mid-night. He contended that having regard to these facts, it is impossible to hold that the working of the factory in the shift was for a period of 8 1/2 hours duration as contended by the department. We see considerable merit in this submission of learned counsel.

5. The explanation to the Notification clearly states that the shift means eight hours duration irrespective of whether the machine was working for the full period or not. Now, the shift if it has to work for eight hours must include further period of half an hour by way of interval of rest having regard to the mandatory provisions of section 55 of the Factories Act. This inclusion of half an hour duration cannot render the shift to be of a period of more than eight hours for the purpose of Notification. It would be ridiculous to say that by an addition of a period of interval of half an hour for each of the two shifts, the petitioner factory would be deemed to have worked the third shift for an hour which was really utilised for giving rest to the workmen as required by law. The Notification and the explanation contained therein will have to be reasonably construed and if so construed particularly in the light of the provisions of section 55 of the Factories Act, the factory had worked a third shift.

6. Mr. Sukthankar, the learned counsel appearing on behalf of the respondents tried to justify the Department's interpretation by contending that in the petition the petitioner-factory has specifically averred that fact the petitioner factory has given to its employees half hour's interval of rest as required by the provisions of section 55 of the Factories Act. There is no merit in this contention because in paragraph 9 of the petition, the petitioner-factory has specifically stated that the petitioners have also pointed out that from the documents submitted by them to the Superintendent of Central Excise, it was clear that the petitioner's shift timings were from 7.00 a.m. to 3.30 p.m. and 3.30 p.m. to 12.00 mid-night with half an hour rest and that the Excise authorities were fully aware of the same and had issued certificates to that effect. This averment in the petition has not been denied in the return. The position is also clear from the letter, dated November 14, 1968 by the petitioners to the Assistant Collector, Central Excise Department annexed to the petition. In view of these facts, we do not see any merit whatsoever in the connection raised by Mr. Sukthankar. In the view of the

matter, the demands made by the Department on the basis that the petitioners are running a third shift must be held to be illegal and improper and in contravention of the Notification, dated May 14, 1968 and all the three demand notices must be quashed and set aside.

7. In the result, the petition must succeed. The rule is made absolute. The three impugned demand notices, dated October 19, 1968, October 24, 1968 and October 25, 1968 and also the decision of the appellate authority, dated May 6, 1970 as also the order of the Central Government, dated January 15, 1973 holding that the factory worked in three shifts. In the circumstances of the case, there will be no order as to costs. The bank guarantee furnished by the petitioners-factory stands discharged.