(1996) 01 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 2163 of 1995

Bombay Mill Owners Association APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Citation : (1996) 83 ELT 278

Hon'ble Judges : M.B. Shah, J;A.V. Savant, J

Bench : Division Bench

Advocate : Mr. J.J. Bhatt, Ms. Anjali Chandurkar and Mrs. P.D. Shah, for the Appellant; Mr. M.I. Sethna and Mr. H.V. Mehta, for the Respondent

Judgement

1. Heard Mr. Bhatt for the petitioners and Mr. Sethna for the respondents.

2. The petitioners have challenged the validity of the proviso in the amending Notification - at Exh."C" added to the Notification at Exh."B", being Notification No. 35/1995. Central Excises, New Delhi, dated 16th March 1995. By the amending Notification at Exh."C", the following proviso has been added -

"Provided that the exemption contained hereinabove relating to S. No. 1 shall not apply to clearances of yarn from a factor having facilities (including plant and equipment) for producing single yarn".

The result is that the exemption enjoyed by the "Integrated Units" in the matter of payment of Excise duty of certain products has been withdrawn. The relevant facts are as under :-

3. The petitioners are the Bombay Mill Owners Association. Though some of their members have a unit producing single yarn, most of the members have "Integrated Units" which, apart from the production of single yarn, also carry on the processing of yarn such as doubling and/or mercerising. We are, in this case, concerned with the doubling process. While a person carrying on only doubling process is exempt from the levy of excise duty, if an "integrated units" carries on

both, the production of single yarn as also the process of doubling, it initially enjoined the exemption under Notification at Exh."B" dated 16th March 1995. It is pointed out that the said exemption was really meant only for small independent processors, who had spread over a large area and it was administratively inconvenient and was not practicable to bring all such small units and independent processors under the Excise control. Therefore, the interests of administrative convenience required to exempt this post spinning activity of doubling when it was carried out by independent processes. It was not the intention of the Government to exempt the value addition relating to these post-spinning activities undertaken by "integrated units" which carry on both the activities viz. manufacture of single yarn, as also the processing thereof, including doubling. In the case of an "integrated unit", it was administratively convenient and desirable to charge duty at the final stage. This is clear from the letter dated 26th December 1995, which is at Exhibit 4 to the affidavit of Shri Biswajit Datta, Addl. Commissioner of Center Excise, made on 12th January 1996. It is stated therein that the decision to charge duty on the post-spinning activities undertaken by an "integrated unit" was a conscious policy decision and it cannot be compared with independent processors of yarn who are generally small job workers and powerloom weavers. It was this class of independent processors of yarn, who are generally small job workers and powerloom weavers, who were entitled to exemption. In view of this, what has been done by adding the impugned proviso is that the exemption contained in the said notification at Exh."B" would not apply to clearances of yarn from a factory having facilities (including plant and equipment) for producing single yarn. If, therefore, the "integrated units" like most of the members of the petitioner association, who carry on the post-spinning processes, such as doubling, also have facilities (including plant and equipment) for producing single yarn, they would cease to enjoy the benefit of the exemption notification at Exh."B" by virtue of the added proviso which is challenged before us.

4. We have perused the two affidavits filed by the Additional Commissioner of Central Excise. It is clear to us that the withdrawal of the exemption in case of the "integrated units" viz. a factory having facilities (including plant and machinery) for producing single yarn as well, is not in any way arbitrary. Carrying on only a post-spinning activity like the doubling process, would stand on a totally different footing and would be entitled to the benefit of the exemption notification at Exh."B". The administrative convenience set out in the said two affidavits appears to be valid and it is not possible for us, sitting in writ jurisdiction, to question the wisdom of the said administrative policy, which is not at all arbitrary. It is clear from the second affidavit dated 22nd January 1996 that the initial exemption under the Notification at Exh."B" was conferred only on such doubling processors, who were popularly called as "Independent Small Processors". It was never meant to be intended for large composite mills referred to as "integrated units" who carry on both the activities viz. the production of single yarn, as also the post-spinning process, such as the doubling process.

Small processors are stated to be those who are not able to manufacture basic yarn which requires a huge capital investment and a project of a high cost. As against this, the small processors including those who do the only process of doubling require a much smaller capital investment.

5. In view of the above explanation tendered in the affidavits in support of the impugned proviso, we find no illegality or arbitrariness in clarifying that the exemption contained in the Notification at Exh."B" would not apply to clearances of yarn from an "integrated unit" referred to as a factory having facilities (including plant and equipment) for producing single yarn. The result of the impugned proviso would be that it would be only the processors carrying on the activity of processing alone who would be entitled to enjoin the exemption accorded by Notification No. 35/95 at Exh. "B" dated 16th March 1995. However, once it is found that the processor is not a processor simplicitor, but has an "integrated unit", having facilities (including plant and equipment) for producing single yarn, he would not be entitled to the benefit of exemption notification at Exh."B" in view of the impugned proviso added by Exh."C".

6. In this view of the matter, we find no merit in the Writ Petition, which is accordingly rejected.

