

(1995) 01 SC CK 0095

In the Supreme Court Of India

Case No : Civil Appeals No. 1714 Of 1984 With Nos. 1808 And 284 Of 1987

Collector of Central Excise, Baroda

APPELLANT

Vs

Surat Cotton Spinning and Weaving Mills Pvt. Ltd.

RESPONDENT

Date of Decision : 17-01-1995

Acts Referred:

Citation : (1997) 92 ELT 313 : (1996) 7 SCC 264

Hon'ble Judges : A. M. Ahmadii, C.J;S. C. Agrawal, J;N. P. Singh, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. The facts in this batch of appeals brought by the Revenue, briefly stated, are that under Notification No. 132/77-C.E., dated 18th June, 1977 yarn used by composite textile mills in the manufacture of cotton fabrics was wholly exempted. The said Notification was, however, withdrawn on 15th July, 1977. On the midnight of 14/15th July, 1977 the respondents in the various appeals had some used quantity of cotton yarn as well as some cotton yarn contained in cotton fabrics in stock. The Revenue attempted to collect duties on both these types of yarn in terms of the proviso to the Notification dated 15th July, 1977. The rate of duty for fabrics under the proviso was in two parts - namely, cotton fabrics duty and yarn duty. The validity of the proviso was challenged on the ground that it gave retrospective effect to yarn duty earlier exempted under the Notification of 18th June, 1977. In that connection reliance was placed on two decisions of the High Courts of Gujarat and Bombay reported in the cases of Aryodaya Spinning and Manufacturing Co. Ltd. v. Union of India and Ors. 1981 (8) E.L.T. 274 and Shreeram Mills Ltd. and Anr. v. Union of India and Ors. . The Department had preferred appeals against the aforesaid two judgments of the High Courts of Gujarat and Bombay. The Tribunal placing reliance on the aforesaid two decisions of the High Courts allowed the appeals against the Revenue with consequential reliefs. It is against the same orders that the present appeals are filed. It seems to us that these appeals by the Revenue must succeed.

2. In *Wallace Flour Mills Co. Ltd. v. Collector of Central Excise, Bombay* this Court held that even though the taxable event is the manufacture or production of an excisable Article, the duty can be levied and collected at a later stage for administrative convenience. It was pointed out that the scheme of the Act read with the relevant rules, and in particular Rule 9A, clearly reveals that the taxable event is the fact of manufacture or production of an excisable article, but the payment of duty is related to the date of removal of such article from the factory. In the instant case the Revenue does not claim any duty on the cotton yarn already used in the manufacture of cotton fabrics. The claim is limited to the cotton yarn which was lying with the assessee in the mill premises on the night of 15/16th July, 1977 or thereafter. Since the Notification granting exemption had already been withdrawn, the said cotton yarn became liable to duty under the extent provisions and could be recovered at a date subsequent to the date of manufacture as held in *Wallace Flour Mills case (supra)*. Therefore, in the circumstances, the decisions of the High Courts of Gujarat and Bombay cannot help the assessee.

3. In the result, the assessee is liable to pay duty on cotton yarn in stock with the assessee and not already used in cotton fabric on the date the Notification granting exemption was withdrawn. The appeals of the Revenue are allowed to that limited extent. There will be no order as to costs.