

(1982) 08 MAD CK 0016

In the Madras High Court

Case No : Writ Appeal No's. 166 and 167 of 1977

Collector of Central Excise, Madurai

APPELLANT

Vs

Madura Coats Ltd.

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q

Central Excises and Salt Act, 1944 — Section 4, 4(1)

Citation : (1984) 2 ECC 196 : (1986) 23 ELT 157 : (1983) ILR (Mad) 321

Hon'ble Judges : Venugopal, J;K.B.N. Singh, J

Bench : Division Bench

Advocate : K.N. Balasubramanian, Central Government Standing, for the Appellant; S. Govind Swaminathan, for King and Patridge, for the Respondent

Judgement

Venugopal, J.—The respondent-writ petitioner is a manufacturer of textiles having composite mills both for spinning and weaving. It

manufactures, among other things, cotton nylon duck made out of nylon and cotton and used in the manufacture of P.V.C. belting which in turn is

used as a conveyer belt in coal mines. This product is manufactured in accordance with the specifications and requirements of a few customers

among whom Dunlop India Ltd., and National Rubber Manufacturers Ltd. (hereinafter to be referred to as principal purchasers) are the principal

purchasers. They used to enter into contracts with the respondent-writ petitioner for the supply of nylon cotton belting duck. The percentage of

nylon content in the belting duck will range between 10 and 60, and the nylon was supplied by Dunlop India Ltd. by importing them under actual

user's licence whereas National Rubber Manufacturers Ltd. supplied indigenous nylon. Both the nylon and cotton are blended together according

to the specifications of the purchaser to make the belting duck. The belting duck fall under Item 19(1)(i) of the First Schedule to the Central

Excises and Salt Act, 1944 (hereinafter to be referred to as the Act), and the duty payable is 15 per cent ad valorem plus handloom cess and

auxiliary duty of 33 1/3 percent. The respondent-writ petitioner, while filing the price list u/s 4 of the Act, for the purpose of payment of excise

duty, without including the cost of nylon yarn contained in the belting duck, declared in the price list only the conversion charges for the nylon and

the cost of cotton and paid excise duty on such declared price. On 11th July, 1970 the Central Government issued a Notification No. 144/70

providing that the cotton fabrics falling under Item 19(1)(i) in the First Schedule to the Act shall be exempted from so much of excise duty and the

additional duty of excise leviable thereon as is in excess of the duty and the additional duty calculated on the basis of the price fixed under the

relevant contract between the manufacturer and the buyer, provided the conditions laid down in the notification are duly satisfied. As a result of this

Notification No. 144/70, exemption was available for basic duty and additional excise duty as is in excess of the duty and the additional duty

calculated on the basis of the price fixed under the relevant contract between the manufacturer and the buyer for the sale of such fabrics. The

respondent, by its letter dated 3rd September, 1970, opted for the procedure laid down under this notification by filing the relevant contract and

orders by the ""principal purchasers"". The exemption granted under the said notification was withdrawn on the ground that the transactions entered

into with the ""principal purchasers"" are only works contract and not a contract of sale, and the cost of nylon has not been included in the declared

price. The third appellant issued a show cause notice on 28th September, 1974, calling upon the respondent to show cause as to why penalty

should not be imposed under rule 173-Q and why the differential duty amounting to Rs. 2,07,428.50 on the quantity and value of the cotton nylon

duck manufactured and removed by the respondent during the period 1st October, 1973 to 30th June, 1974, should not be demanded from them.

A second show cause notice was issued on 27th February, 1975, covering the period 1st March, 1969 to 31st July, 1969, and demanding a sum

of Rs. 74,615.06 and a further demand of Rs. 9,51,992.00 for the period 1st August, 1969, to 30th September, 1973. Against these two show

cause notices the respondent herein filed two writ petitions for a writ of prohibition, prohibiting the second and third appellants from taking further steps or action in pursuance of the show cause notices, inter alia contending -

(1) The relationship between the respondent-writ petitioner and the ""principal purchasers"" is that of ""seller and buyer"" and the transactions entered into with them are only contracts for sale.

(2) The price of nylon supplied by them cannot be included in the price since the respondent-writ petitioner is not the owner and the declared price

consists of the price of cotton and conversion charges of the nylon and there is no violation of any of the conditions mentioned in Notification No.

144/70, dated 11th July, 1970.

2. In defence it was contended that the respondent-writ petitioner itself treated the transactions as only works contract and not a contract of sale,

and the cost of nylon should have been declared and included in the price which forms the basis of collection of excise duty.

3. A learned single Judge of this Court who heard the writ petition held that the value of cotton which went into the manufacture and the actual

charges of conversion of nylon and other incidental charges were reflected in the price list which alone formed the consideration for the sale and the

price of nylon need not be included by the respondent as it was supplied by the dealers, and there is no violation of conditions 3, 4 and 5 of

Notification No. 144/70. The learned Judge further held that merely because the attorney for the respondent took a stand that the contracts in

question were only for charges for work done, it does not mean that the statement is conclusive and it is for the appellants to find the correct facts

and establish the same. On these findings the learned Judge issued a writ of prohibition, prohibiting the appellants from taking further steps in

pursuance of the show cause notice. Against this judgment of the learned Judge, the present appeals have been filed.

4. The main contention of the appellants are :

(1) The transactions entered into by the respondent with two of its ""principal purchasers"" are works contract and not contract for sale, and it

cannot get the benefit of Notification No. 144/70, dated 11 July, 1970.

(2) Whether the respondent incurred expenditure or not for the nylon, one of the raw materials for the manufacture of cotton duck, the value of the

raw material has to be taken into account for the purpose of determining the real value of the manufactured goods.

5. u/s 4 of the Act, excise duty is levied on ""wholesale cash price"" of the article at the time of its removal from the factory, or the place of

manufacture or production. The learned counsel for the respondent contended that there is no market in the physical sense of the term, at the place

of manufacture where the cotton nylon duck could be sold by wholesaler to traders, and if the respondent has entered into agreements for the

wholesale"" sale of cotton nylon duck manufactured by it on certain terms and conditions, the price mentioned in the contract should be taken to be

the ""wholesale cash price"" for purposes of Section 4(1)(a) of the Act. It is further contended that the respondent manufactured cotton nylon duck

out of the nylon supplied free of cost of two of its ""principal purchasers"" and the manufacturing cost and profit which alone are the criteria for

Section 4 of the Act, cannot include the cost of nylon.

6. The agreements that the respondent has entered into with its ""principal purchasers"" have not been produced, or considered by the appellants, as

even at the stage of show cause notice, writ petitions came to be filed and writ of prohibition was issued prohibiting them from taking further action

in pursuance of the show cause notice. Whether the price mentioned in those agreements can be taken as ""wholesale cash price"" and what are the

other terms and conditions in the agreement and whether the wholesale dealings of the respondent are at arm's length, are matters which can be

considered only after the respondent submits its explanation to the show cause notice and produces the necessary documents and records in

support of its contention. The further question whether the contracts which the respondent has entered into with its ""principal purchasers"" are

works contracts or contracts of sale is again a question which has to be considered on sufficient data and material after applying the various tests

laid down by courts. If it is a works contract and the raw material, viz., nylon, was supplied by the purchasers, it can be contended for the

respondent that the real value of the goods manufactured on a works contract is only manufacturing cost and profit and the value of the raw

material supplied by the purchaser should be excluded while computing the assessable value of the goods u/s 4 of the Act. If the respondent

succeeds on that contention, then it cannot avail of the benefit of Notification No. 144/70. These issues, intricate and complex as they are, cannot

be resolved without the respondent submitting its explanation in reply to the show cause notice and producing all the materials and documents in

support of its contention.

7. A Division Bench of this Court in *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious*

Endowments, Madras and Others, held :

A writ prohibition lies to prevent an inferior tribunal from exceeding its jurisdiction or even from assuming a jurisdiction which does not vest in it

under law. It also lies if a provision of a statute is contravened by the tribunal or even if any principles of law are contravened.

8. A writ of prohibition is not the appropriate remedy when there is no inherent lack of jurisdiction for the appellants to take further action in

pursuance of the show cause notice issued by them. Such a writ cannot be issued where the appellants, in exercise of the powers vested in them,

are in the fact-finding stage. Their exercise of jurisdiction depends upon the existence of certain facts, and a writ of prohibition cannot be issued

before they had the opportunity of considering the jurisdictional facts. The learned Judge held that the stand taken by the respondent's attorney

that the contracts in question are works contract is not conclusive and it is for the appellants to ascertain the correct facts and establish the same. It

is precisely for the same reason the show cause notices were issued to the respondent. As there is no absence or excess of jurisdiction or any

contravention of law established at this stage, a writ of prohibition cannot be issued.

9. In the result, the appeals are allowed with costs, and the appellants are at liberty to take further proceedings accordance with law, in pursuance

of the show cause notices issued by them. Counsel's fee Rs. 250 one set.

(After the judgment the Court made the following orders) :

10. The Order of the Court was made by Singh, C.J. - After judgment was delivered in the above case, an oral prayer has been made by the

learned counsel for the respondent for certificate of appeal to the Supreme Court under article 133(1) of the Constitution of India. After hearing

the learned counsel, we are not satisfied that any substantial question of law of

general importance arises in this case, which in our opinion, needs to be decided by the Supreme Court. The oral prayer for certificate is accordingly refused.