
(1970) 08 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Petition Appeal No's. 346 and 347 of 1969

Dayal Weaving Factory

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-1970

Acts Referred:

Citation : (1970) ILR Delhi 357

Hon'ble Judges : Narain Andley, J; Jagjit Singh, J

Bench : Division Bench

Advocate : Hajarnavis, N.M. Ghatate, Balakrishnan, B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

S. N. Andley, J.

(1) This judgment will dispose of Civil Writs Nos. 346 and 347 of 1969. The petitioner in the former is the Dayal Weaving Factory and the petitioner in the latter is the Vinod Textiles. Petitioners are seeking the issuance of a writ etc. for quashing the order dated March 1, 1969 of the Central Excise Inspector, Panipat, directing the petitioners (1) to maintain Rg I and Ed 4 account; (2) not to clear the stock under manufacture without payment of duty on Ar I at the rate of 12"% basic 2"% additional ad valorem and (3) to clearly segregate the units and get the store room within the factory approved immediately. The petitioners have also prayed for quashing the Central Excises and Salt Act, 1944, as set out in clauses 30(xii) die Central Excises and Salt Act, 1944, as set out in clauses 30(xii) and 33(ii) of the Finance Bill, 1969. It is necessary only to mention the facts in Civil Writ No. 346 of 1969 as the facts in Civil Writ No. 347 of 1969 are similar.

(2) The petitioners have alleged that they are self employed small scale industrialists with an investment of Rs. 20,000.00 manufacturing cotton fabrics, particularly "tapestry and bed sheets".

(3) The petitioners' factory is being run under a license issued under the Central

Excises and Salt Act, 1944, hereinafter referred to as "the Act". The manufacture of these commodities is being done on four handlooms. Cotton fabrics were subject to a duty of excise on the rates specified in the first schedule of the Act under item 19. Before the Finance Bill of 1969, the relevant part of entry 19 in the first Schedule of the Act read :-

"19.COTTON FABRICS- "Cotton fabrics" mean all varieties of fabrics manufactured either wholly or partly from cotton, and include dhoties, sarees, chadders, bed-sheets, bed-spreads, counterpanes and table-cloths, but do not include any such fabric- (a) if it contains 40 per cent, or more by weight of wool; (b) if it contains 40 per cent, or more by weight of silk; or (c) if it contains 60 per cent, or more by weight of rayon or artificial silk;

(1) Cotton fabrics, superfine-that is to Eighty paise per square metre. say. Fabrics in which the average count of yarn is 48s or more. (2) Cotton Fibrils, fins-that is to say. Eighty paise per square metre. fabrics in which the average count of yarn is 35s more but is less than 48s. (3) Cotton fabrics, medium-that is to say. Sixty paise per square metre. fabrics in which the average count of yarn is 17s or more but is less than 35s. (4) Cotton fabrics, coarse-that is to say. Sixty paise per square metre. fabrics in which the average count of yarn if less than 17s. (5) Cotton fabrics, not other wise specified Eighty paise per square metre.

A special procedure was prescribed for, inter alia, cotton fabrics produced on powerlooms by rules 96-1 and 96J of the Central Excise Rule. By these Rules, manufacturers who produced, inter alia, cotton fabrics in factories commonly known as powerlooms could make an application to the Collector for applying the special provisions to them and having regard to the average production of cotton fabrics in India per day per powerloom in such factories and any other relevant factor, the Central Government could fix, from time to time, the rate of excise duty per powerloom per quarter or per year. The petitioners made applications under these Rules and a fixed rate of Rs. 25.00 per power- Icon was fixed in substitution of the duty of excise livable under item 19 in the first Schedule to the said Act. Then came the Finance Bill of 1969 (Bill No. 17 of 1969) on February 28, 1969. Entry 19 in the first Schedule to the Act and entry 19 in the first Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 were substituted. The relevant part of the substituted entry 19 in the first Schedule to the Act read :

"19.COTTON FABRICS- "Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads, counter-panes, table-cloths, embroidery in the piece..... 1. Cotton fabrics other than (i) embroidery in the piece, "in strips or in motifs, and (ii) fabrics impregnated or coated with preparations of cellulose derivatives or other artificial plastic materials-

(1) Coating, suiting, tussors, corduroy. Twelve and a half per cent ad gabardine, bed-ford, stain, denim, valorem. lappet, lace knitted fabric, tapestry, furnishing

fabric including jacquard curtain cloth, gadlapet mattress fabric, terry towel including turkish towel, terry towelling cloth including turkish towelling cloth, blanket, canvas, duck, filter cloth, tracing cloth and bukram cloth. (2) Others- (a) Cotton fabrics, super fine-that Eighty paise per square metre- is to say, Fabrics in which the average count of yarn is 48s or more. (b) Cotton fabrics, fine-that is to Eighty paise per square metre. say, fabrics in which the average count of yarn is 35s or more but is less than 48s. (c) Cotton fabrics, medium-A-that Sixty paise per square metre. is to say, fabrics in which the average count of yarn is 26s or more but is less than 35s. (d) Cotton fabrics, medium-B-that Sixty paise per square meter. is to say, fabrics in which the average count of yarn is 17s or more but is less than 26s. (e) Cotton fabrics, coarse-that is to Sixty paise per square metre say, fabrics in which the average count of yarn is less than 17s. (f) Cotton fabrics, not otherwise Eighty paise per square metre. specified.

The relevant part of the substituted entry 19 in the first Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, read -

"19.Cotton Fabrics :- 1. Cotton fabrics other than (i) embroidery, in the piece, in strips or in motif, and (ii) fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials :-

(1) Coating, suiting, tussors. Corduroy, Two and a half percent advalorem. gaberdine, bed-ford, satin, danim, lappet, lace, knitted fabric, tapestry, furnishing fabric, including jacquard curtain cloth, gadlapet, mattress fabric, terry towel including turkish towel, terry towelling cloth including turkish towelling cloth, blanket, canvas, duck, filter cloth, tracing cloth, and bukram cloth. 2 Others :- (a) Cotton fabrics, super fine 15.5. paise per square metre. (b) Cotton fabrics, fine 9.6 paise per square metre. (c) Cotton fabrics, medium-A 4.8 paise per square metre. (d) Cotton fabrics, medium-B 4.8 paise per square metre. (e) Cotton fabrics, coarse , 3.6 paise per square metre. (f) Cotton fabrics not otherwise 15.5 paise per square metre. specified.

The material difference was that tapestry and furnishing fabric including jacquard curtain cloth, amongst other cotton fabrics, attracted a duty of excise at the rate of 12"% per cent ad valorem under the substituted entry 19(1) (1) in the Schedule to the Act and an additional duty of excise under the said 1957 Act of 2" per cent ad valorem under the substituted entry 19(1) (1). But what really hit the petitioners was the notification dated March 1, 1969 issued by the Central Government in exercise of powers conferred by section 37 of the Act whereby the Central Excise (Second Amendment) Rules, 1969 were made. The amendment was to the effect that "in the Central Excise Rules, 1944 in rules 96-1 and 96-J for the expression "cotton fabric" wherever it occurs, the expression "cotton fabrics falling under sub-item I(2) of Item No. 19 of the First Schedule to the Act" shall be substituted. The result of this amendment to the Rules was that the petitioners could not take advantage of the special procedure prescribed by Rules 96-1 and 96-J in respect of the cotton fabrics, namely, tapestry and bed-sheets manufactured by them and these cotton fabrics became

subject to the aforesaid duty of excise and additional duty of excise aggregating 15 per cent ad valorem. Two further notifications dated April 9, 1949 were issued by the Central Government whereby the excise duty and the additional excise duty were reduced to 5% and 1-1/4% ad valorem respectively in the case of cotton fabrics not exceeding Rs. 2.50 per square metre in value but if the value was in excess of Rs. 2.50 per square metre, only the duty of excise was reduced to 10% ad valorem.

(4) The result of the Finance Bill and of the aforesaid notifications was that instead of what may be called the compounded duty of excise at the rate of Rs. 25.00 per handloom, the petitioners became liable with effect from March 1, 1969, to pay a duty of excise and an additional duty of excise at the rate of 5% and 1-1/4% ad valorem respectively if the value of the cotton fabrics manufactured by them was not exceeding Rs. 2.50 per square metre and a duty of excise and an additional duty of excise at the rate of 10% and 2% ad valorem respectively, if the value of the cotton fabrics manufactured by them exceeded Rs. 2.50 per square metre. According to the petitioners, they became liable to pay excise duty and additional excise duty to the extent of Rs. 60,000.00 per year in place of Rs. 100.00 per year.

(5) The petitioners' submission in the writ petitions is that the aforesaid amendments have inflicted an exorbitant and an unreasonable burden on them so as to bring their business to a stand still. It is contended that the excise duty of Rs. 60,000.00 which is now payable on their factories in which the total amount of capital investment is only Rs. 20,000.00 amounts to confiscation of their property by an indirect method under the garb of levying excise duty the incidence whereof is so burdensome and inequitable that if it is levied, the petitioners will be forced to close down their establishments. It is further contended that small scale manufacturers like the petitioners have been forced to close down the sale side of their business creating scarcity in the cotton fabric market and that if this taxation scheme is implemented, the small scale industry will be wiped out. As an instance, it is mentioned that the Haryana Government had extended financial facilities for 1400 powerlooms in the State but no one has taken advantage of these facilities by reason of the said amendments which have discouraged industrial expansion in the field of small scale cotton fabric industry all over the country. Article 14 of the Constitution is also invoked on the ground that the Finance Bill, 1969 gives arbitrary authority to the taxing authority to make arbitrary discrimination without affording any guide-line as units manufacturing bed sheets are exempted from the imposition of the aforesaid tax but units manufacturing bed covers and tapestry are subject to this tax and no standard has been prescribed to distinguish between bed covers and bed sheets or fabrics meant for bed sheets and tapestry. It is further submitted that the impugned provisions suffer from the defect of creating a distinction where there is none and not making a distinction where there ought to be one.

(6) Mr. Hajarnavis, learned counsel for the petitioners, has first argued that the

result of the amendments is the creation of a monopoly which is violative of Article of the Constitution and reliance is placed on *Saghir Ahmad Vs. The State of U.P. and Others*, . The argument appears to us to be misconceived because we do not find any averment in the petition about the creation of a monopoly in favor of any person or persons or in favor of the State. All that has been stated in the petition is that "increase in revenues, the proposed amendment seeks to bring by imposing crushing taxation on small-scale fabric industrialists is microscopic in view of revenue earning from large- scale cotton fabric manufacturers, and is totally unreasonable in light of unemployment and economic dislocation it will cause." This averment cannot be understood as an averment regarding the creation of any monopoly either in favor of large scale manufacturers of cotton fabrics or the State. No facts have been disclosed in the petition to show that the said amendments will result in the creation of any monopoly.

(7) The next argument is that the said amendments are confiscatory in nature. In support of this argument, the only facts disclosed in the petitions are that the petitioners' factory was started with an investment of Rs. 20,000.00 and they will now be required to pay an excise duty of Rs. 60,000.00. It is true that an allegation has been made that the petitioners will have to close their factory as a result of the, new levies but no facts have been disclosed by the petitioners to prove the allegation. If the allegations were true, the petitioners should have disclosed facts and materials regarding their total production; their cost of production; their selling price and their profits. In the absence of such particulars, it is not possible for this Court to come to the conclusion that the incidence of excise duty now levied is such that the petitioners will not be able to run their business except at a loss. It is no doubt true that a taxing statute can be struck down as unconstitutional but before doing so, the Court has to be satisfied that the statute directly or indirectly is confiscatory in nature. It has been so held by the Supreme Court in *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, and *Rai Ramkrishna and Others Vs. The State of Bihar*, . But as stated already, no material has been placed by the petitioners on the record to enable this Court to come to that conclusion. Upon the own showing of the petitioners that the incidence of excise duty would be Rs. 60,000.00, their production of the cotton fabrics in question must be between 4 to 5 lacs of rupees per year. Taking into consideration the fact that the incidence of the new excise duty would ultimately fall on the consumer, we have no hesitation in rejecting the argument that the proposed amendments are confiscatory in nature.

(8) The last argument urged on behalf of the petitioners is that by removing the exemption granted under rules 96-1 and 96-J of the said Rules, the petitioners have been discriminated against. Reliance is placed upon the observation of the Supreme Court in *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, that a statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. We fail to see how this observation can help the petitioners. All

manufacturers of cotton fabrics have to pay the same duty of excise. The exemption which was earlier granted to the petitioners in respect of their products has been removed. The grant of the exemption was in the discretion of the Central Government. The exemption is still available in respect of cotton fabrics which are specified in the substituted item 19(T)(2) but is not now available with reference to the cotton fabrics specified in the substituted item 19(I)(I). This provision is applicable uniformly to all. No case has been made out in the petitions to show that the exemption in respect of the cotton fabrics in the substituted item 19(1) (1) should be continued except a bare averment that the petitioners are small scale industrialists and the incidence of the new excise duty is so heavy that they will have to close down their business. For the reasons stated already, this allegation has not been made good and the petitioners cannot, Therefore, rely upon the aforesaid observation of the Supreme Court.

(9) A subsidiary argument of discrimination is that the amended provision gave arbitrary power to the taxing authority to make arbitrary discrimination without affording any guide-lines and as an example it is stated that units which are manufacturing bed sheets are exempted from the imposition of the aforesaid tax but units which manufacture bed covers and tapestry are subject to the aforesaid tax and there are no standards laid down by which the taxing authority could effect a distinction between bed covers and bed sheets or fabrics meant for bed sheets and tapestry. This argument appears to us to be entirely misconceived. Entry 19 relates to cotton fabrics and varying duties of excise are livable according to the class in which a particular cotton fabric falls. Entry 19(1) (1) covers, inter alia, tapestry and furnishing fabric including jacquard curtain cloth. Entry 19(I)(2) covers other cotton fabrics depending upon the count of yarn employed for its production. We fail to see how bed sheets are exempted while bed covers" are not. If the product is tapestry or furnishing fabric including jacquard curtain cloth be it used by the consumer as a bed sheet or bed cover, it will attract the excise duty under entry 19(I)(I). In fact, bed sheets are specifically included in the definition of cotton fabrics in the opening part of entry 19. Entry 19 refers to the quality of the cloth produced in the generally accepted name which is given to such cloth and it has no relation to the ultimate shape that may be given to such cloth or the use to which it may be put by the ultimate consumer. We, Therefore, do not see any scope for factual discrimination at the hands of the taxing authority and this argument must also fail.

(10) In the result we do not find any substance in these writ petitions which are dismissed with costs. One set of counsel fee of Rs. 200.00 in both the petitions.