
(1985) 07 CAL CK 0042
In the Calcutta High Court
Case No : Civil Order No. 7624 (W) of 1985

Delta Jute and Industries Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 09-07-1985

Acts Referred:

Customs Act, 1962 — Section 3
Jute Manufactures Cess Rules, 1984 — Rule 12, 13, 13(2), 3, 4
Jute Manufactures Development Council Act, 1983 — Section 3(1), 3(4), 4, 7

Citation : (1993) 49 ECR 599 : (1991) 55 ELT 510

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : R.N. Bajoria, J.P. Khaitan, A.P. Agarwalla and A.K. Pal, for the Appellant; N.C. Roy Chowdhury and B.B. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Suhas Chandra Sen, J.—Delta Jute & Industries Limited, the petitioner No. 1 herein, carries on business of manufacturing jute and jute yarn. The case of the company is that on or about December 31, 1980 the Government of India introduced a scheme in public interest and for the purpose of earning foreign exchange for setting up 100% export oriented units. Under that scheme, the Government of India decided to give 100% export oriented units concessions in the matter of payment of excise duty provided the condition of the scheme were complied with the main feature of the scheme was that a 100% export oriented unit would undertake to manufacture in bond and export its entire production for the period ten years ordinarily and five years in the case of products involving high degree of technological change. The Scheme provided that the import of capital goods, components and raw materials would be permitted for the said units and would be exempted from import duty. Indigenously manufactured capital goods, components and raw materials would be allowed to be purchased by such units without payment of any central excise duty. The Scheme provided that finished products manufactured in such a unit would be exempted from

excise and other central levies. All the units intending to set up industries under the said scheme had to make applications to the secretariat for Industrial approvals, Ministry of Industry, Department of Industrial Development, New Delhi, in the relevant forms. The scheme was given wide publicity and the case of the petitioners is that the petitioners set up a 100% export oriented unit in terms of the resolution dated December 31, 1980 of the Ministry of Commerce, Government of India. The products manufactured by the petitioners have enjoyed the concessions in payment of excise duty since setting up of the unit. The petitioners' case is that on June 1, 1983 the Export Commissioner granted to the company a "green card" bearing No. 013 certifying that the unit of the company was a 100% export oriented unit. In the "green card" it was stated that the unit of the company had been approved under the said scheme of the Government of India as a 100% export oriented Unit. It was further stated that the said unit was entitled to top priority treatment from all concerns, Central and State Government Departments and other organisations in all matters relating to the said unit.

2. In 1983 Jute Manufactures Cess Act, 1983 (hereinafter described as the Jute Act) was passed to provide for levy and collection by way of cess, of a duty of excise on jute manufactures. The Jute Act came into force with effect from May 1, 1984.

3. The first contention of the writ petitioners is that the Jute Act provides for levy and collection of a duty of excise. Therefore, it is entitled to exemption under the scheme formulated by the Government of India.

4. The Jute Act is stated to be "an Act to provide for the levy and collection by way of cess of a duty of excise on jute manufactures for the purpose of carrying out measures for the development of production of jute manufactures and for matters connected therewith. The Jute Act seeks to impose a tax on every article of jute manufactures specified in column 2 of the schedule to the Act. Section 3 is the charging section and provides: -

"3. Levy and collection of cess on jute manufactures produced in India. -

(1) There shall be levied and collected by way of cess for the purposes of the jute manufactures Development Council Act, 1983 on every article of jute manufacture specified in column 2 of the schedule and produced in India a duty of excise at such rate not exceeding the rate specified in the corresponding entry in column 3 thereof, as the Central Government may, by notification in the official Gazette, specify:

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate specified in the corresponding entry in column 4 of the Schedule.

(2) The Duty of excise levied under Sub-section (1) shall be in addition to the duty of excise leviable on jute manufactures under the Central Excises and Salt

Act, 1944 or any other law for the time being in force.

(3) The duty of excise levied under Sub-section (1) shall be payable by the producer of a jute manufactures.

(4) The provisions of the Central Excises and Salt Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of the duty of excise on jute manufactures under this Act."

5. In the Schedule to the Act, the articles of jute manufacture on which cess is to be imposed have been enumerated.

6. The avowed purpose of the Act is to collect money for the purpose of the Jute Manufactures Development Council Act, 1983 (hereinafter described as the Development Act). That Act and the Jute Act were introduced and passed by the Parliament on the same date, i.e. on 7th September 1983. The Development Act sought to establish a Council for the development of production of jute manufactures by increasing the efficiency and productivity in the jute industry, the financing of activities for such development and for matters connected therewith.

7. The Council that was being set up under the Development Act had to discharge various functions enumerated in Section 7 of that Act for the purpose of increasing the efficiency and productivity in the jute industry; among various objects of the council were:

(d) suggesting norms of efficiency for jute industry with a view to eliminating waste, obtaining optimum production, improving quality and reducing costs;

(e) promoting standardisation of jute manufactures.

(f) maintenance and improvement of existing markets and development of new markets outside India for jute manufactures and devising marketing strategy in consonance with the demand for such manufactures outside India;

(h) ensuring stabilisation of price of jute manufacturers in and outside India."

8. The question that arises for consideration is whether the Jute Manufactures Cess Act, 1983 seeks to employ only an additional duty of excise and whether the petitioner being a 100% export oriented unit is liable to pay duty under the Jute Act. The contention of the petitioners is that the petitioner is entitled to get the benefits of Section 3(4). The unit of the petitioner company enjoys exemption from excise duty under the rules that have been framed under the Central Excises and Salt Act, 1944 and those rules have clearly been made applicable under the Jute Act. My attention was drawn to the rules framed under the Jute Act and in particular, to Rules 3 and 4. It was argued that Rule 3 which provides that cess shall be payable on finished jute manufactures for sale subsequent sale by the producer for export and abroad ultra vires the Act. It was argued that if the Act has not provided for levy of cess in clear terms on jute

meant for export, the rule could not provide for such levy.

9. On behalf of the respondents, my attention was drawn to the Central Excise Laws (Amendment and Validation) Act, 1982, Under that Act, it was provided, inter alia:

(3) Where any Central law providing for the levy and collection of any duty of excise makes the provisions of the Central Excises Act and the rules made thereunder applicable by reference to the levy and collection of the duty of excise under such Central Law, then -

(a) it shall be necessary for the purpose of granting, by any notification or order, any exemption from any duty of excise or fixing, by any notification or order, any rate of duty, leviable under such Central law to expressly refer to the provisions of the said Central law in the preamble to such notification or order, or to state by express words in such notification or order that the exemption provided for, or the rate of duty fixed by such notification or order is an exemption from or the rate of duty under, such Central Law."

10. The argument of the petitioners is that the duty that has been imposed under the 1983 Act is nothing but an additional excise duty. The Act itself recognises that. In any event, the duty which has been described as "cess" is a central levy and, therefore, comes within the wording of the resolution of Government of India dated 31st December 1980 by which it was notified that finished products shall also be exempted from excise and other central levies".

11. The contention of the petitioner is that the cess that has been imposed under the 1983 Act comes squarely.

12. Although this argument was attractively presented, I am unable to uphold this contention for a number of reasons. The immunity from duty that was granted was from excise and other central levies that were in existence at the time when the resolution was published or when the notification granting exemption was issued. The resolution did not have the effect of making the 100% export oriented units exempt from all excise or other central taxation laws for all times to come. The Jute Act of 1983 was passed to provide funds for the working of the Jute Manufactures Development Council. u/s 4 of the Jute Act, the proceeds of the duty of excise levied by Section 3(1) of the Act had to be credited to the consolidated fund of India and the amount was to be utilised for the purpose of Development council. The Development council was set up to ameliorate the conditions of the Jute industry which included the jute manufacturers engaged in export of jute. This is a special Act which has imposed a special levy on all jute manufacturers so that the proceeds of the levy can be utilised by the development council which was set up for the benefit of all jute manufacturers including jute manufacturers like the petitioners who were exporting their products.

13. Section 3(4) is an enabling section and makes provisions of the Central

Excises and Salt Act, 1944 and the rules made thereunder applicable "in relation to the levy and collection of the duty on jute manufacturers under this Act". This provision, however, does not in terms make the notifications granting exemption of reliefs to various units from excise duty applicable to the duty that is sought to be imposed by Section 3 of the Act. In my opinion, Section 3(4) does not create a legal fiction by which the duty that is imposed by Section 3 is treated as if it was the duty imposed under the Central Excises and Salt Act, 1944. This has not been done by clear wording of the statute and I am unable to accept the contention that by implication it should be held to be so.

14. In any event, the Central Excise Laws (Amendment and Validation) Act, 1982 Section 3(a) rules out granting of such exemption by implication.

15. The petitioner is right in its contention that Rule 3 of the Jute Manufactures Cess Rules, 1984 cannot limit the scope of the Act nor can it enlarge the scope of the charge of the Jute Act. Rule 3 in so far as it makes cess payable on finished jute manufactures meant for export chargeable with the duty under the Jute Act is ultra vires if the charge has not been levied by the Jute Act itself. But the Jute Act has not exempted the Jute manufacturers from the scope of charge u/s 3. Rule 3 merely provides that the rate at which the cess shall be payable and Rule 4 deals with refund of cess. If the Jute Act specifically or by necessary implication provided for refund of duty or provided for exemption of jute manufactured for export, then the rules might have been ultra vires. But having regard to the scope of the Act, I am unable to hold that the rules are ultra vires or contrary to the provisions of the Act.

16. In this context, it is also to be noticed that under the Central Excises and Salt Act, 1944 and the Rules framed thereunder, Rule 12 lays down the procedure for granting rebate of duty on goods exported and Rule 13 deals with export under bond of goods on which duty has not been paid. Rule 13(2) provides that the Central Government may, from time to time by notification in the official Gazette, permit export of specified excisable goods under bond without payment of duty subject to certain conditions. Therefore, it is to be seen that the rules by themselves do not grant any exemption. It enables the Central Government to issue notification for the purpose of granting exemption. Section 3(4) of the Jute Act has not made the notifications issued under the Excise Rules applicable to the levy imposed by Section 3 of the Jute Act.

17. There is also another aspect of this matter. Section 3 of the Central Excises and Salt Act, 1944 declares that there shall be levied and collected, in such manner as may prescribe duty of excise on all excisable goods at the rate set forth in the first schedule to that Act. The Jute Act of 1983 provides a Schedule of its own. In the schedule of the Jute Act 1983 the articles of jute manufactured as well as the maximum rate at which the duty of excise may be collected have been set out. The Jute Act has not imposed an additional excise duty or a surcharge to the rate of the Central Excises and Salt Act. The purpose of the Act is to create a fund for providing financial help to the Development Council for

betterment of the jute industry. The cess has been levied for realising monies for a specific purpose. Neither by clear words nor by necessary implication can the scope of the levy be whittled down by any notification that may have been issued under the Central Excises and Salt Act.

18. My attention was drawn to several judgments of various High Courts on this point. It is not necessary specifically to deal with those judgments. It appears that one of the judgments went up to the Supreme Court. That was the case of *Kathayee Cotton Mills Ltd, etc, v. Union of India* a copy of the unreported judgment was handed up in Court. It appears that in the case of *Kathayee Cotton Mills Ltd. etc. v. Union of India etc.* SLPC No. 3734 of 1984, a Bench comprising of O. Chinnappa Reddy, A.P. Sen and E.S. Venkataramia JJJ. Specifically uphold the reasoning given by the Kerala High Court, in the case of *Kathayee Cotton Mills Ltd. and Raja Lakshmi Mills Ltd. and Ors. v. Union of India and Ors.*

19. In the case of *Raja Lakshmi Mills Ltd. and Ors. v. Union of India and Ors.*, a Division Bench of the Kerala High Court had to consider a customs" notification whereby import of viscose staple fibre and viscose tow falling within Chapter 56 of the First Schedule to the Customs Tariff Act was exempted from duty which was in excess of 10% ad valorem. This exemption was granted provided certain conditions set out in the notification were fulfilled. The argument of the writ petitioners in that case that they were not liable to pay the additional levy u/s 3 of the Customs Act and further levy under the Finance Act. It was argued that the exemption was for the entire duty of customs subject to the limits mentioned in the notification.

20. This argument was rejected by the Kerala High Court. It was held that whenever revenue granted exemption from the additional levy Act, they did so in clear words. A Division Bench judgment of the Madras High Court in the case of *Sree Ayyonar Spinning and Weaving Mills Limited v. Union of India* (W.P. No. 7225 of 1982 -1983 ECR 199 D) was relied on. In that case, a Division Bench of the Madras High Court held -

"It is true that the notification in this case does not say or indicate that basic duty alone is the subject of exemption. Nor does it expressly exclude the additional duty from the purview of the exemption. But the pertinent reference in the notification to the "First Schedule of the Tariff Act" only means and implies a coverage of exemption restricted to the basic ad valorem duty and does not include the countervailing duty."

21. An unreported judgment of the Delhi High Court in Civil Rule No. 2117 of 1982 was also noted by the Kerala High Court in that judgment wherein it was held that merely because auxiliary duty may be connected or related with customs duty. It would not follow that when exemption is granted in respect of payment of any amount of customs duty chargeable under the Customs Tariff Act, 1975, there would automatically be an exemption of auxiliary duty.

22. These cases were decided under the Customs Tariff Act. But the principles

underlying these cases must also apply. The Central Excises and Salt Act specifically imposes a duty on the excisable items set out in the first Schedule to that Act. Certain notifications have been issued granting exemptions to certain items of manufacture from time to time. The Jute Act is an independent Act. Although in the charging section the cess that is sought to be imposed has been described as an additional excise duty, it is an independent levy. The rates of taxes and the excisable items have been set out in schedule attached to that Act. If any exemption is to be granted, it is to be done by specific provisions or notifications. Merely because some notifications have been issued under the Central Excises and Salt Act granting exemption, those notifications cannot be made applicable to the levy made under the Jute Act by virtue of the provisions of Section 3(4) of the Act which does not refer to any notification at all.

23. An argument was made that a case is really a tax and by the Jute Act it was being imposed as an additional excise duty. Reliance was placed in support of this proposition a judgment of the Supreme Court in the case of Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad and Others Vs. State of Gujarat and Others, . There can be no doubt that a "duty of excise" was being levied by virtue on the Jute Act. But this levy cannot be equated to the levy that is imposed under the Central Excises and Salt Act. The object of the levy is to finance the Development Council which will ensure to the benefit of all jute manufacturers including those like the petitioner units who are engaged in export trade. Moreover Schedule 1 to the Jute Act is quite different from the Schedule annexed to the Central Excises and Salt Act. Although the levy has been described as an additional Excise duty, the nature and contents of this levy is quite different from the one imposed by the Central Excises and Salt Act.

24. It was next argued that the petitioner company set up its export unit on the strength of the assurance of the Government of India that the finished products of the units shall be exempted from excise and other certain levies. Even if it is held that the petitioner is liable to pay cess under the Jute Manufactures Cess Act, 1983, it was incumbent upon the Government to issue a notification or make a rule exempting 100% export oriented units like the petitioner's unit from the ambit of the Jute Act. In support of this proposition, the petitioner relied upon a judgment of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . There a company relying on the representation of the Government that its vanaspati factory would be entitled to exemption from sales tax in respect of sales of vanaspati effected in Uttar Pradesh for a period of three years from the date of commencement of production, borrowed monies, purchased plant and machinery and set up a factory at Kanpur. It was held by the Supreme Court that the Government was bound to carry out its representation and exempt the appellant from sales tax in respect of sales of vanaspati effected by it in Uttar Pradesh for a period of three years from the date of commencement of productions. The Government was bound on the principle of promissory estoppel to make good the representation made by it.

25. But the principle laid down in that case cannot be applied to the facts of the instant case. The goods exported by the petitioner has been exempted from the excise duty and other central levies. The facts of this case are entirely different. The Government has not sought to impose excise duty inspite of the promise held by it as would be done in the case before the Supreme Court. In the case before the Supreme Court, having induced the company to set up a factory on the strength of an assurance that its products would be free of sales tax for a period of three years, the Government went on to levy the sales tax on the products of the company within the stipulated period of three years. In this case, promised exemption was granted by the Government but the question is whether the legislature is entitled to pass an Act imposing a tax on the goods manufactured by the petitioner company.

26. The Jute Act and the Development Act were passed by the Government for a definite purpose. These are special legislations to benefit the jute industry as a whole. The object of the legislation is to set up a Development Council for the benefit of the jute industry and also for development of export trade. In order to finance this project, a cess has been imposed to finance the work of the Development Council. It is not an Act to augment the Government revenue as such. The purpose of this Act is quite different. Although in Section 3 of the Act, the cess that is being imposed has been described as an excise duty, the nature and purpose of this levy is quite different from the levy that has been made by the Central Excises and Salt Act. There cannot be any question of any promissory estoppel against passing of a legislation by the legislature. Moreover, in a case like this the Government cannot be compelled to issue a notification granting exemption to 100% export oriented units from the ambit of a special legislation which will also ensure to the benefit of such units.

27. In view of the aforesaid, this writ petition fails and is dismissed. Interim order, if any, is vacated.

28. There will be no order as to costs.

29. On the oral prayer made on behalf of the petitioners let the operation of the order passed today be stayed for a period of two weeks from date.