

(1987) 08 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6661 of 1982 and 856 of 1983

General Industrial Society Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise, Visakhapatnam and
Another

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 6, 9(1)
Jute Manufactures Cess Rules, 1976 — Rule 2

Citation : (1988) 33 ELT 317

Hon'ble Judges : Rama Rao, J;A. Raghuvir, J

Bench : Division Bench

Advocate : V. Jagannadha Rao, for the Appellant; K. Nagaraja Rao, Standing
Council, for Central Government, for the Respondent

Judgement

Rama Rao, J.—Pursuant to the order of the Supreme Court in Civil Appeal Nos. 1267-68 of 1984 dated 28-10-1985, these writ petitions have come up for hearing. The Supreme Court set aside the judgment of this Court in *Nellimarla Jute Mills Ltd. v. Appellate Collector, Central Excise Madras 1984 (16) E.L.T. 100* and remanded the matter for fresh consideration in the light of the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad, .*

2. The petitioners challenged the levy of cess on jute yarn produced in the process of producing jute products. The cess is levied u/s 9(1) of the Industries (Development and Regulation) Act, 1951 which provides for levy and collection of cess on all goods manufactured or produced in scheduled industries as may be specified by the Central Government by an order. The proviso thereto restricts the rate of cess to 13 ps. per cent of the value of the goods. In exercise of the powers conferred u/s 9(1) of the Act, the Central Government issued notice No. 35/80 dated 4-3-1980 with regard to jute manufacture specifying the class of goods manufactured or produced wholly or part of the jute in the scheduled industry on which duty of excise shall be levied and collected as cess. In exercise

of the rule making power u/s 30 of the Act, the Central Government made rules called "Jute Manufacturers Cess Rules, 1976" wherein Rule 2(f) states that jute manufacture means "manufacturer of jute of all sorts including twist, yarn, thread or rope and twins etc. Before the Division Bench of this Court two-fold contention was raised viz., that Item 23 of the first schedule to the Act refers only to textiles made wholly or in part of the jute and it does not specify jute yarn and therefore, the Government has no power to levy cess on jute yarn and the jute yarn cannot be sold or marketed in that form and it is used in producing an end product. The first contention is negated on the ground that Item 23(2) refers to the industry engaged in the manufacture or production of textiles made wholly or in part of the jute including jute. Regarding the second contention this Court in 1984 (16) E.L.T. 100 SC (1 supra) held that the object of the Industries (Development and Regulation) Act, under which cess is levied is for the purpose of development and regulation of the industries is different from the Central Excise Act as the cess collected has to be handed over by the Central Government to a Development Council u/s 6 of that Act and the amount has to be utilised for promotion of scientific and industrial research and though jute yarn is an intermediary product, the cess can be levied. The Division Bench referred to levy on intermediary products held that the principles with regard to levy of excise duty under the Central Excise Act cannot be applied to the levy of cess u/s 9(1) of the Industries (Development and Regulation) Act. It is further held that jute yarn is known in the commercial parlance and it is article which can be sold by itself.

3. In Union of India (UOI) and Others Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad, the Supreme Court in the context of considering whether Calikut Special containing 46% of artificial silk at the intermediary stage and containing more than 60% of rayon silk at the finished product stage is liable to excise duty at intermediate stage held as follows :-

"Having regard to the process involved in the manufacture of "Calikut Special" by the respondent we are of the view that it is not possible to hold that the character of the goods at the intermediate stage of production could be taken into consideration for determining the liability under the Act. The processes involved in the instant case after the intermediate stage referred to about formed an integral part of the manufacture of the product in question and the classification of the manufactured product for purposes of excise duty should depend upon its nature and character at its final stage of production unless a contrary intention appears from the statute. It is seen from clause (vii) of Section 2(f) of the Act which is no doubt introduced subsequently that bleaching, heat setting etc., are incidental and ancillary processes necessary for the completion of the manufactured product falling under Item 22. This amendment has only attempted to explain the obvious and to put the question beyond dispute. Therefore even though the product in question might have fallen under Item 19 in the First Schedule to the Act at the intermediate stage of production, at the final stage when the duty became exigible it became exigible, it became

taxable under Item 22 only."

4. The learned standing counsel for the Central Government contended that in view of amendment of Rules 9 and 49 of the Excise Rules with retrospective effect from 28-2-1944 the intermediary products are dutiable under the Excise Act also and even otherwise the considerations for excise levy cannot be imported for the purpose of levy of cess.

5. Rules 9 and 49 of the Central Excise Rules before amendment prohibit the removal of manufactured goods from the place of manufacture and permit the postponement of levy of duty on intermediate goods till they are removed from the premises of the factory. In *Delhi Cloth & General Mills & Company Limited and Another v. Joint Secretary, Government of India & Others* - 1978 E.L.T. 121 the Delhi High Court construing Rules 9 and 49 held that the question of collection of duty does not arise until the goods are removed from the factory premises. In *Manaklal Harilal Spinning & Mfg. Co. Ltd., Ahmedabad v. Union of India* - 1978 of levy on the yarn held that yarn is removed from the spinning department to the weaving department for purpose of manufacture of end product cotton fabrics and yarn is marketable by itself and as such it is dutiable notwithstanding the fact that such intermediary product is consumed in the production of end product. The Gujarat High Court dissented from the view of the Delhi High Court holding that the factory is equivalent to the place where the goods are manufactured. Apparently to surmount this cleavage explanation is added to Rules 9 and 49 declaring that the intermediate goods used for manufacture of end products should be considered as goods removed out of the factory for consumption. This explanation is given retrospectively since 1944 by Section 51 of the Finance Act, 1982. The explanation sets at the doubt and divergence of opinion in view of the unequivocal declaration that the intermediary products should be considered as an excisable entity even though they are not removed from the factory and they are consumed in the manufacture of end products. By mere reason of absorption of intermediary products in the manufacture of end products within the precincts of the factory they are not immune from levy. It is sufficient if the intermediary product is an identifiable marketable commodity and the retention of such product within the premises of the factory for using the same in the manufacture of ultimate product does not alter the situation. The Karnataka High Court in *Davangere Cotton Mills Ltd. Vs. Union of India (UOI)*, held the intermediary products are exigible to levy under the unamended Rules 9 and 49 itself and the explanation is clarificatory and by way of abundant caution.

6. It is not in dispute that jute yarn is marketable and saleable by itself and therefore the levy of cess is sustainable under the amended Rules 9 and 49. The learned counsel for the petitioner contends that a new dimension as to the effect of amended Rules 9 and 49 should not be permitted to be projected at this stage. We are unable to appreciate this. We cannot gloss over the impact of amended provision introduced on 20-2-1982 with retrospective effect. The jute

yarn is an intermediary product utilised in the manufacture of end product and used for captive consumption within the factory of production. The manufactured commodity bearing excisable character by itself is exigible to levy and the removal of such commodity from the premises of the factory is not necessary. The jute yarn by itself is a marketable commodity and as such excisable entity exigible to duty in view of amended Rules 9 and 49 though jute yarn is utilised in the production of jute products within the precincts of the factory. In the result, writ petitions dismissed. No costs. Oral leave refused.