

(1990) 08 GUJ CK 0012
In the Gujarat High Court

Case No : Criminal Revision Application No. 186 of 1982

K.S. Jhala

APPELLANT

Vs

N.H. Hokabaj

RESPONDENT

Date of Decision : 10-08-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 5A, 9

Citation : (1993) 49 ECR 234 : (1991) 55 ELT 176 : (1991) 1 GLR 191

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Advocate : B.B. Naik, for the Appellant; U.N. Joshi, of Trivedi, Gupta and Dave, for the Respondent

Judgement

1. The petitioner is the original complainant who has filed this Revision Application from the order passed by the learned Chief Metropolitan

Magistrate, Ahmedabad in Criminal Cases No. 461 of 1981.

2. The facts of the present case are that the petitioner filed a complaint against the original accused on 18-4-1981 on the allegations that the

accused had contravened the provisions of the Central Excise Act and the Rules because they had evaded the payment of excise duty.

Departmental proceedings were held and the show cause notice dated 18-7-1977 was issued to the accused. The accused filed their reply and

thereafter adjudication proceedings were held and the adjudication order was passed on 5-5-1980. According to the department, the accused did

not file the prescribed D-3 declarations before the Central Excise Authorities within the stipulated time and they had also not made any entry in

their statutory record in Form IV in respect of the consignment of the grey power loom fabrics received by them before 2-2-1977. Hence 373

Takas of the cloth measuring approximately 19,210.75 metres valued at Rs. 40,167.83ps. were seized. It was the case of the department that the accused did not account for 293 Takas valued at Rs. 39,750/- which were received for processing and were in their possession. It was also the case of the department that the accused removed 8,47,650.20 meters of the fabrics after processing without payment of duty of excise leviable thereon and without maintaining any account in the statutory R.G. 1. Register and without issuing gate passes and in manner contrary to law.

According to the department, out of the total quantity of the above-stated fabrics, some bales of power loom cotton fabrics were seized from the godown of Textile Traders Co-operative Bank, Maskati Market, Ahmedabad and M/s. Sitaram Dwarkadas, situated at 271, New Cloth Market, Ahmedabad. According to the Department, one more bale of processed power loom cotton fabric was seized from Rikhabchand Harakhchand and Company, Ahmedabad. Thus, according to the Department, there was contravention of Rules 5A, 9 read with 173F and 173G(1) and 52-A read with 173G(1) and all read with 173Q of the Central Excise Rules, 1944 and, therefore, offence was committed by the accused u/s 9 of the Act.

3. Process was issued by the Court of the learned Chief Metropolitan Magistrate, Ahmedabad on the complaint being filed i.e. Criminal Case No.

461 of 1981. The prosecution had examined also the complainant and other officers.

4. After recording the evidence, the learned Chief Metropolitan Magistrate, Ahmedabad, by his judgment and order dated 7-12-1981 discharged the accused u/s 245(2) of the Criminal Procedure Code. Notice was also issued against the complainant to show cause why compensation should not be paid to the accused for having filed a complaint against them without reasonable ground.

5. The petitioner-original complainant has, therefore, filed this Revision Application challenging the order passed by the learned Chief Metropolitan Magistrate, Ahmedabad.

6. Mr. B. B. Naik appeared on behalf of the petitioner and Mr. U. N. Joshi for M/s. Trivedi, Gupta and Dave appeared on behalf of the respondents and Mr. S. R. Divetia, learned Addl. Public Prosecutor appeared on

behalf of the State.

7. Mr. B. B. Naik appearing on behalf of the petitioner submits that the whole judgment of the learned Chief Metropolitan Magistrate in

discharging the accused was based on the judgment of the Gujarat High Court delivered in Special Civil Applications Nos. 1552 and 1553 of

1977 dated 24-1-1977. The question which was involved in the said Special Civil Applications was whether the grey cloth in case of cotton

fabrics which comes out from the production by power looms or other weaving textile mills which have no processing houses of their own one

which is processed by independent processors, can be said to be newly manufactured cotton fabric or man-made fabric, as the case may be, and

whether it is processed by the processing house either by bleaching, dyeing or printing carried in the processing house, so as to attract the

imposition of the excise duty. The High Court in the aforesaid matters answered the question in the negative. Mr. Naik further submitted that this

necessitated the promulgation of an Ordinance by the Union Government and certain amendments were made in the Central Excises and Salt Act,

1944 and the said Amending Act is known as the Central Excises and Salt and Additional Duties of Excises (Amendment) Act, 1980 passed by

the Parliament. Now, by this Amending Act, a sub-item was added to Item No. 19 in the Schedule and by this addition, the levy became valid.

The learned Chief Metropolitan Magistrate held that the goods were not subject to levy of excise duty before coming into force of this Amending

Act and, therefore, non-payment of excise duty on such fabrics or dealing with them in any manner did not amount to any offence under the Act. It

was also observed by the learned Chief Metropolitan Magistrate that it is only the recovery of this levy which has been validated by giving

retrospective effect to the legislation, but nothing which was not an offence prior to the coming into force of the Amending Act has been made into

an offence by the Amending Act. The learned Chief Metropolitan Magistrate also held that he was not inclined to agree with the submission that

the prosecution is malicious, but he held that there was no reasonable ground for filing the complaint and, therefore, he also issued a notice to the

complainant to show cause why compensation should not be paid to the accused. Thus, the learned Chief Metropolitan Magistrate, Ahmedabad,

by the aforesaid order, discharged the accused and also ordered to issue notice to the complainant to show cause why compensation should not

be paid to the accused for having filed a complaint against them without reasonable ground.

8. Mr. Naik submitted that this very judgment cited above, delivered by this High Court along with other group of matters was challenged by the

Department in the Supreme Court and now the Supreme Court has given a judgment on 4-11-1988, which is reported in : 1988 (38) ELT 535

(SC) : 1990 (1) G.L.R. 560 (M/s. Ujagar Prints & Ors. v. Union of India and others). Mr. Naik submitted that by the said judgment, the Supreme

Court has revised the decision of this High Court given in Special Civil Applications Nos. 1552 and 1553 of 1977. Mr. Naik submitted that before

the Supreme Court, one of the contentions urged was whether the processes of bleaching, dyeing, printing, sizing, shrink-proofing etc. carried on in

respect of cotton or man-made "grey-fabric" amount to "manufacture" for purposes, and within the meaning of Section 2(f) of the Central Excises

and Salt Act, 1944 prior to the amendment of the said Section 2(f) by Section 2 of the Amending Act 6 of 1980. In Para 43 of the judgment, the

Supreme Court has observed as under :-

On a consideration of the matter, we are persuaded to think that the view taken in the Empire Industries case that "grey fabric" after they undergo

the various processes of bleaching, dyeing, sizing, printing, finishing etc. emerges as a commercially different commodity with its own price

structure, custom and other commercial incidents and that there was in that sense a "manufacture" within the meaning of Section 2(f), even as

unamended, is an eminently plausible view and is not shown to suffer from any fallacy. Indeed, on this the Referring Bench did not disagree or have

any reservations either. It is to be noticed that if the amending law is valid, this aspect becomes academic.

Thus, the Supreme Court rejected the aforesaid contention raised by the learned Counsel. Thus, according to the Supreme Court, "grey fabric"

after they undergo the various processes of bleaching, dyeing, sizing, printing, finishing, etc. emerges as a commercially different commodity with its

own price structure, custom and other commercial incidents and that there was in that sense a "manufacture" within the meaning of Section 2(f),

even as unamended. Thus, the Supreme Court has set aside the view taken by the Gujarat High Court in Special Civil Applications Nos. 1552 and 1553 of 1977.

9. In view of the above decision of the Supreme Court the judgment and order of the trial Court will have to be set aside. Mr. Joshi on behalf of

the respondents also could not point out anything contrary to what Mr. Naik submitted.

10. In the result, the judgment and order dated 7-12-1981 passed by the learned Chief Metropolitan Magistrate, Ahmedabad is quashed and set

aside and the matter is remanded to the trial Court to proceed further in accordance with law. This Criminal Revision Application is allowed to the

aforesaid extent. Rule is made absolute to the aforesaid extent.