
(1978) 09 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 7833 (W) of 1976

Madura Coats Limited

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 01-09-1978

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 35
Constitution of India, 1950 — Article 226
Income (Investigation Commission) Act, 1947 — Section 8(5)

Citation : (1980) 6 ELT 582

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : P.P. Ginwala, Arijit Chowdhury, B.P. Banerjee and T.K. Pal, for the Appellant; D.K. Sen and Ranen Mitra, for the Respondent

Judgement

G.N. Ray, J.—In the instant writ petition the petitioner prays for issue of a writ in the nature of certiorari requiring respondents Nos. 1, 2 and 3 to transmit and certify the records of the proceedings before them to this Court in the matter of determining as to whether nylon and rayon wrap sheets produced by the petitioner company are excisable items and their orders made in such proceedings including the orders dated 24th March, 1975 and 6th February, 1976 so that they are quashed or set aside. The petitioner company also prayed for a writ in the nature of prohibition prohibiting respondents from treating nylon or rayon warp sheets produced by the petitioner company as excisable items and also prohibiting the respondents from demanding, levying or collecting any excise duty in respect of such nylon or rayon warp sheets. The petitioner also prayed for a writ in the nature of mandamus prohibiting the respondents from treating nylon or rayon warp sheets arranged or assembled by the petitioner company as excisable items and/or demanding, levying or collecting any excise duty in respect of such nylon or rayon warp sheets.

2. The petitioner's case, in short, is that the petitioner is required by some of its

customers to arrange nylon or rayon yarn supplied by such customers in parallel rows loosely held together by cotton yarn supplied by the petitioner company. Such arrangement of rayon or nylon is called a Tyre cord warp sheets. The petitioner states that to make a warp sheet, the petitioner first winds the nylon or rayon yarn supplied by its customers into bobbins. The yarn is then twisted in a twisting machine and thereafter used as a warp on a loom, cotton yarn being used at widely spaced intervals as a weft to hold the nylon or rayon yarn in position. According to the petitioner, a given length of warp sheets consists of 99.4% nylon and 0.6% cotton and excepting the process as stated hereinbefore, no manufacturing process is involved in making warp sheets and no new commodity known to commerce or industry comes into being when yarn is arranged or assembled to form a warp sheet. The petitioner also contends that under the definition given by the Indian Standards Institution, yarn is a generic term for an assemblage of fibre or filament, either natural or artificial twisted or laid together, to form a continuous strand suitable for use in weaving, knitting or otherwise inter-twisting to form textile fabrics. In the writ petition a sample length of such warp sheet was also annexed being Ext. "A". The petitioner contended that the nylon and rayon yarn are liable to a duty of Central Excise under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) and such yarn falls under Item 18 of the First Schedule of the Act. The cotton yarn is also liable to such duty and falls under Item 18A of the said First Schedule. According to the petitioner, the warp sheets being yarn and not any other commodity are not excisable once more. The petitioner also contended that as a matter of fact, the excise authorities also proceeded on such basis in connection with the warp sheets produced by the Madura Mills Company Limited at Madurai and the said view of the excise authorities will appear from a letter dated 5th of March, 1957 from the Inspector of Central Excise to Madura Mills Company Limited, a copy whereof is also annexed to the writ petition being marked as annexure T.

3. The petitioner company also contended in the writ application that Madura Mills Company Limited also made cotton warp sheets, which is cotton yarn instead of nylon or rayon yarn arranged or assembled in the same way, and such warp sheets were held to be yarn by the High Court at Madras in the case of Madura Mills Company Limited v. Government of Madras, reported in 25 Sales Tax Cases, page 407. The petitioner contended that despite the aforesaid position, the Excise Authorities in West Bengal wrongly proceeded on the footing with effect from March, 1975 that a nylon or rayon warp sheet was a separate item of manufacture and is liable to Central Excise under Item No. 68 of the First Schedule. The petitioner made a representation on or about 18 of April, 1975 to the Secretary, Central Board of Excise and Customs New Delhi, but no action was taken on such representation. Much controversy was raised by the respective parties in the Rule as to whether such representation constituted an appeal or not and I shall refer to such contention later on. As the Central Excise Authorities had been demanding payment of excise duty in respect of nylon and

rayon warp sheets which fell within Item 68 of the First Schedule and as such, was liable to 1% ad valorem excise duty, the petitioner had to pay under protest unjust demand of excise duty for the period between 24th March, 1975 and 7th May, 1975. The petitioner also contended that on or about 30th April, 1975, the respondent No. 4 issued a notification exempting goods falling under Item 68 of the First Schedule manufactured in a factory as a job work from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work. The said circular was annexed to the writ application being annexure "III". The petitioner stated that from 7th of May, 1975 up to the time of moving the instant writ application before this court, the petitioner company under protest had been paying the duty at the said rate of 1% of the conversion charges, that is, the amount it charges to its customers for arranging the nylon or rayon yarn in the manner stated hereinbefore. It appears from the writ petition that the respondents contended in or about November, 1975 that the petitioner was not entitled to pay duty on the aforesaid warp sheets on the basis that what was done by the petitioner company amounted to job work. But according to the respondents, in as much as 0.6% of the warp sheets consisted of cotton yarn, which was supplied by the petitioner, the said warp sheet could not be held as job work because all the raw materials or components of the finished product were not supplied by the customers of the petitioner and therefore, the petitioner was not entitled to the exemption on the basis of the said circular dated 30th April, 1975. It further appears that by the letter dated 6th of February, 1976 the respondent No. 2 rejected the contention of the petitioner that the petitioner was entitled to contend that warp sheet was not excisable and/or to pay duty on the basis of the job work. The petitioner's claim of refund of a sum of Rs. 95,648.16 was also rejected by the respondent No. 2.

4. In view of the said stand taken by the respondents and demands being made by the said respondents to pay excise duty on the said warp sheets under Item 68 of the First Schedule the instant writ application was made by the petitioner company on the prayers indicated hereinbefore. Mr. Ginwala the learned Counsel appearing for the petitioner company contended that the warp sheets was not any new product but the same was yarn, as the yarn had already been taxed under Item 18; there was no question of making any further payment of excise duty and in any event, the said warp sheets being nylon or rayon yarns squarely falling within Item No. 18 of the First Schedule, it could not be brought under Item No. 68 of the First Schedule for the purpose of levying excise. In this connection, Mr. Ginwala referred to the decision of the Supreme Court made in the case of Central Provinces Manganese Ore Company Ltd. v. State of Maharashtra reported in 1977 (I) S.C.C. 644. In the said case- manganese ores collected from different sources were mixed to get a standard percentage of manganese but the taxing authorities contended that by such mixture a new product was manufactured and as such tax could be imposed on such new product. It was held by the Supreme Court that formation of mixture by the

mere process of unloading did not involve any process of manufacture and there was no new process of manufacture by the assessee. Accordingly, the contention of the taxing authority was not accepted by the Supreme Court. Relying on the aforesaid decision Mr. Ginwala contended that the steps taken for getting the said warp sheets were fully described by the petitioner company in the writ petition and such operation for getting the said warp sheets was also accepted by the respondents in their affidavit-in-opposition. It is thus quite apparent from the said facts that warp sheets were no new material but the warp sheets were really rayon or nylon yarns arranged in a particular way by holding them loosely at a distance by cotton wefts.

Accordingly, on the admitted position by the parties, there was no occasion for the excise authorities to proceed on the footing that a new commodity was really manufactured or processed by the petitioner company so that such new commodity can be grouped under Item 68 of the First Schedule. Mr. Ginwala also referred to another decision of the Supreme Court in this connection, namely, the decision made in the case of *Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others*, . In the said decision, the manufacturing purpose within the meaning of Transfer of Property Act was considered by the Supreme Court and it was held by the Supreme Court that manufacture really implies a change but a mere change in the material is not manufacture. So to become a manufacture there must be such transformation that a new different article must emerge having a distinctive name, character or use. Relying on the said decision, Mr. Ginwala contended that in the instant case the nylon or rayon yarn remains as nylon or rayon yarn but the said yarn is arranged in a particular way with the help of cotton weft and in the commercial world the said item of goods is also not known to be a new item. Even with the aforesaid processes, the nylon or rayon yarns remain as nylon or rayon yarns and the distinctive character of the said yarns was not changed. Hence, the same cannot be considered to be a manufacture so that it can be reasonably contended by the excise authorities, that the nylon or rayon warp sheets were distinct manufactured products and as such could be grouped under Item 68 of the First Schedule. Mr. Ginwala also referred to another decision of the Supreme Court in this connection, namely, the decision made in the case of *Lt. Governor, Delhi and Others Vs. Ganesh Flour Mills Co., Ltd.*, . It was held by the Supreme Court that the fact that tin sheets or tin plates have to be subjected to the process of cutting and moulding into tin containers will not by itself take them out of the aforesaid category. The cutting and moulding of the tin sheets only facilitates the actual user in packing. But there was no change in the original product.

5. Mr. Ginwala next contended that even assuming that the warp sheets produced by the petitioner company really constituted different quality of goods manufactured by the petitioner company, the petitioner company was still entitled to the exemption under a circular and/or notification dated 30th of April, 1975, issued by the respondent No. 4. As to the import of this notification, the parties raised serious controversies. It is thus desirable to refer to this

notification at length for appreciating its" true import and implication. The notification is set out hereunder :

GOVERNMENT OF INDIA MINISTRY OF FINANCE (Department of Revenue & Insurance) New Delhi the 30th April, 1975 10th Vaisakha, 1978 (Saka) NOTIFICATION Central Excise

G.S.R. In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944(1 of 1944), manufactured in a factory as a job work, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work.

Explanation: For the purpose of this notification, the expression "job work" shall mean such item of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process on charging only for the job work done by him.

P.N. Malhotra, Under Secretary to the Govt. of India."

Mr. Ginwala contended that the petitioner company really did a job work on the materials, namely, the nylon and/or rayon yarns supplied by the customers to the petitioner company and charged for such job work only and as such in any event, the petitioner company was entitled to the exemption on the basis of the said notification. Mr. Ginwala contended that the cotton weft used for the purpose of holding the nylon and/or rayon yarns arranged in a particular way formed an insignificant part and no charge was made by the petitioner company for supplying the said cotton wefts and charge for the job work, was only made. Mr. Ginwala also contended that in any event, it is the specific case of the petitioner that the said cotton weft was supplied to the unit of the petitioner company at Serampore by the other unit of the petitioner company from Madurai and Amba Samudram on account of the said customers of the petitioner company and as such, it cannot be contended by any stretch of imagination that the unit of the petitioner company at Serampore supplied the said cotton wefts on its own account. Accordingly, Mr. Ginwala contended that no excise duty can be levied on the said cotton and/or nylon warp sheets which were nothing but duty paid cotton and/or nylon yams and as such the petitioner company was entitled to exemption in terms of the said notification dated 30th of April, 1975 and any contention to the contrary by the respondents was wholly unjustified and untenable in law.

6. Mr. Sen the learned Counsel .appearing for the respondents, besides making submissions on the merits of the case, also raised some preliminary objections as to the maintainability of the Writ application. As the very question of maintainability of the Writ application was raised in such preliminary objection it is desirable to refer to the said objections first of all. Mr. Sen contended that

against the imposition of duty by the respondents the company could prefer an appeal under the Act and when alternative remedy was available to the petitioner company, the petitioner company was not entitled to move the writ jurisdiction of this court on the face of such alternative remedy being available to the company. Mr. Sen contended that under the 42nd Amendment of the Constitution the availability of an alternative remedy must operate as a bar to move the constitutional Writ Jurisdiction of this court and on that score the Writ petition is liable to be dismissed. Mr. Sen also contended that the petitioner company as a matter of fact, preferred an appeal before the Central Board of Revenue on 21st of June, 1975 but wrongly stated that no appeal was preferred by the petitioner company but as a matter of fact, the petitioner company only made representation before the Central Board of Revenue, against the decision by the Collector that tarp sheets could be taxed under Item 68 of the First Schedule.

7. Mr. Sen produced the original records before this court and submitted that court-fee was affixed on the said representation and the alleged representation was nothing but an appeal under the Act. Mr. Sen then contended that even assuming that under the 42nd Amendment of the Constitution the alternative remedy by way of appeal did not operate as a bar to move the writ court in the facts and circumstances of the case, the petitioner company having availed of and elected for a particular remedy under the Excise Act should not be allowed to move the writ court without exhausting the said remedy. In this connection, Mr. Sen referred to a decision of the Supreme Court made in the case of *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, . It was held by the Supreme Court in the said decision that the appellants having availed of the remedy as provided for in Section 8(5) of the Investigation Commission Act and reference having been made to the High Court at Allahabad and such reference being pending decision, no interference should be made under Article 226 of the Constitution. Mr. Sen also referred to the decision of this Court made in the case of *P.C. Ray and Co. (India) Private Ltd. Vs. A.C. Mukherjee, Income Tax Officer and Another*, . It was held by Chakraborty C.J. that it would be odd indeed and inconvenient in the highest degree of this court while exercising jurisdiction under Article 226 to take one view of the matter in the same case and a division Bench of the same court while dealing with reference on the same point which might conceivably come up before this court in the chain of remedies under the Income Tax Act, took a different view. It was also observed in the said decision that quite apart from the fact that the appellant was disingenuous with the trial court, the pendency of an appeal preferred by it against the same order would be sufficient reason for not issuing a writ of certiorari even if the court was satisfied on the merit. Relying on the said decision Mr. Sen contended that as the petitioner preferred an appeal under the Statute, the writ court should not interfere in view of the fact that such appeal was pending decision and the competent authority could give its adjudication and if the petitioner was dissatisfied by such adjudication the petitioner could come before this court after exhausting such remedy. Mr. Sen further contended that there should be no

interference by the writ court in the special facts of the case. He submitted that it is quite evident and apparent that determination of the question as to whether there was manufacture of a separate product namely nylon or rayon warp sheets cannot be done without examining technical experts and without having expert technical opinion on the subject. Mr. Sen contended that whether the warp sheets really remained as Nylon and or Rayon Yarns, as contended by the petitioner, or whether a new product was really manufactured by the manufacturing processes stated hereinbefore cannot be decided by the Writ Court and for coming to any positive finding expert opinion by the technical experts are required to be taken. Mr. Sen also contended that the processes by which the warp sheets were made really constituted a manufacturing process but in any event whether the said process really constituted manufacturing process or not cannot also be determined by the Writ Court on the basis of the materials on record and in such circumstances, in the special facts of the case, there should be no interference by the Writ Court but the parties must be relegated to a different forum where all such questions can be properly decided. In this connection Mr. Sen referred to the decision made in the case of Delhi Cloth and General Mills Co. Ltd. and Others Vs. R.R. Gupta, Commercial Tax Officer, Jaipur and Another, . In the said case, dispute arose as to in what stage the Nylon and/or Rayon warp sheets become fabric and it was held by the Supreme Court that the question was really a technical question and in any case it was a question where two views were possible on apparent facts and neither of the two views could be rejected outright as untenable. It requires careful consideration of the technical processes of manufacturing of the composition of the Tyre-Cord fabrics and evaluation of the opinion of the experts on the question was necessary for the purpose of deciding the question satisfactorily. The Supreme Court held that in such circumstances, the High Court was quite justified in refusing to decide the said question in the constitutional Writ Jurisdiction, Mr. Sen also referred to another decision of the Supreme Court in this connection namely, the decision made in the case of D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, . It was held in the said decision that where basic facts are disputed and complicated questions of law and fact are involved depending on evidence, writ court is not the proper forum for seeking relief. Relying on the said decision, Mr. Sen contended that it is seriously disputed as to whether the processes for getting the warp sheets really constituted manufacturing process. There is also serious dispute as to whether the warp sheets is a separate product quite distinct from the cotton and/or rayon yarn and to solve the said disputes expert technical evidence is required to be taken and accordingly, the writ court is not the proper court where adjudication of such disputed questions should be made.

8. In reply to these contentions of Mr. Sen on the preliminary objection Mr. Ginwala contended that in the special facts of the case there was inherent lack of jurisdiction of the excise authorities to impose excise duty on the warp sheets and accordingly, the petitioner was quite entitled to move the writ court. Mr.

Ginwala also contended that the relief claimed in the Writ petition is wide and comprehensive in nature and the reliefs which the petitioner had prayed for and is entitled to get in this Rule could not have been given by the appellate authority under the Act and as such, it cannot be contended that there was really any alternative remedy and the petitioner not having availed of such remedy is not entitled to come before the constitutional Writ Jurisdiction of this court. Mr. Ginwala also contended that it will appear from the special facts and circumstances of the case that the excise authorities had been imposing excise duties on the footing that the goods in question were liable to excise duty under Item 68 of the First Schedule and the petitioner was also not entitled to any exemption under the aforesaid notification dated 30th April. Mr. Ginwala stated that it was a case of recurring cause of action and in such circumstances the petitioner cannot be asked to go on preferring appeals for successive periods and also go on paying unjust levy of excise duty under protests for all such periods, and wait for adjudication by Central Board of Revenue after a lapse of considerable length of time. Mr. Ginwala contended that the decision had already been taken by the excise authorities for which the petitioner was suffering continuously and for such succeeding period and as such, it was quite open to the petitioner to move the constitutional writ jurisdiction of this court so that the adjudication is made by this court and the parties get a final decision on the disputes raised. In this connection Mr. Ginwala also referred to a decision of the Supreme Court made in the case of Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others, . It appears from the said decision that the Raja Jagadambika Pratap was assessed for the income derived from a Mango grove for the Assessment Year 1939-40 by the Income tax authorities under the Income tax repelling the contention of the Raja that the income derived from such mango grove cannot be assessed under the Income Tax Act but such income was liable to be assessed under the Agricultural Income Tax Act. On the said basis that the said income was liable to be taxed under the Income Tax Act, assessments were made for all the successive years from 1940-41 to 1961-62. The Raja preferred appeals in respect of some years but did not move thereafter. From the assessment made for the years 1939-40 a reference was made to the Allahabad High Court under the Income Tax Act and adjudication on such reference was made sometimes in the year 1961-62 and the contention of the Raja was upheld by the Reference Bench. Thereafter a writ petition was moved by the Raja on erroneous basis for all these years, namely, from the Assessment years 1940-41 to 1961-62. The High Court refused to interfere because of inordinate delay in moving the High Court and the Supreme Court upheld, the said view of the High Court. Mr. Ginwala contended that in the special acts of the case the petitioner also ran similar risk. It is precisely for this reason that the petitioner company chose to move the constitutional Writ Jurisdiction to get a final adjudication of the matter and it cannot be contended that there was really any efficacious alternative remedy and/or such alternative remedy was availed or there was lack of candour and as such it is not desirable that the writ court should interfere. Mr. Ginwala contended that the representation made by the

petitioner company before the Central Board of Revenue cannot be treated as an appeal under the provisions of the excise duty even assuming that some stamp was affixed on such representation on misconception. Mr. Ginwalla contended that affixation of stamp cannot convert a representation to an appeal because appeal is the creature of the Statute and unless there is provisions for preferring an appeal from the -opinion formed by the Collector, the representation cannot be held to be an appeal. In this connection Mr. Ginwalla drew the attention of the Court to Section 35 of the Act and contended that there is no provision of appeal against an administrative decision or formation of opinion of the Collector. Mr. Ginwalla also contended that the facts of the case decided by the Supreme Court in K. S. Rashid's case are entirely different. In the said case there was a provision of appeal u/s 8 (5) of the Investigation Commission Act and the appellant had availed of the said remedy and there was also a reference to the Allahabad High Court under the said Act which was pending decision. It was precisely for the reason that the matter was pending adjudication before the Allahabad High Court, the Supreme Court was of the view that the interference in another jurisdiction by the said Court under Article 226 was not warranted. Mr. Ginwalla also submitted that the decision made by this Court in Ray & Company's case (supra) can also be distinguished in the facts and circumstances of the present case. Mr. Ginwalla contended that it will appear from the said decision that after moving the writ jurisdiction of this Court and appeal was preferred under the Income Tax Act, by the petitioner and the said fact was also not disclosed by the petitioner at any point of time. In such circumstances, this court proceeded on the footing that there was lack of candour on the part of petitioner and as there was a chance of reference to this court under the Income Tax Act, it was held by this court that there should not be conflict of the decision of this court exercising jurisdiction under Article 226 and thereafter exercising jurisdiction under the Income Tax Act as a reference Bench. Mr. Ginwalla contended that there was no question of any reference to this court under the Act and in any event, if the petitioner intends to come to this Court from the adjudication of the Revenue Authorities, the petitioner can come only under Article 226 and not under any Act and the petitioner having moved the writ application, so no exception can be taken on that score. Mr. Ginwalla also contended that there was no real dispute on the facts of the case for which an expert opinion is required to be taken. It cannot also be reasonably contended that without any expert technical opinion on the subject, the dispute cannot be resolved by the writ court. Mr. Ginwalla stated that the processes by which the Nylon and/or Rayon Yarns are held by cotton wefts were fully described by the petitioner and the said processes were also admitted by the respondents which will be evident from the affidavit-in-opposition filed by the respondents in the instant Rule. In this connection Mr. Ginwalla referred to the statements made in paragraph 7 of the writ petition and paragraph 8 of the affidavit-in-opposition and contended that there is no dispute as to the processes, by which the Nylon and/or Rayon yarns are held together by cotton wefts. Mr. Ginwalla contended that only for the sake of convenience and to specify a particular form of Nylon

and/or Rayon yarns, the expression "warp sheet" was used but there was no change in the constitution of the Nylon and/or Rayon yarn and the goods remained as Nylon and/or Rayon yarn. Mr. Ginwalla also referred to the report of the Chemical Examination which was obtained by the respondents themselves by sending a sample of the warp sheet. Mr. Ginwalla contended that it will also appear from the said ex pane chemical examination report that cotton wefts were just sufficient to held the Nylon or Rayon yarn. For such examination the tabbies were examined wherein the percentage of the cotton wefts were quite high but even chemical analysis of tabbies instead of all the remaining parts of the warp sheet, wherein percentage of cotton wefts were absolutely negligible, established the fact that cotton wefts were just sufficient to hold the Nylon or Rayon Yarn. Mr. Ginwalla contended that from a mere look of the warp sheet annexed to the writ petition it will appear that the main body is much thin and there is very thin cotton wefts placed at a sufficient distance only for the purpose of holding and as aforesaid the chemical examination report also substantiates the said contention of the petitioner company. Mr. Ginwalla contended that the aforesaid facts are really undisputed and the question of taking expert and/or technical opinion does not arise in the facts and circumstance"s of the case. Mr. Ginwalla also submitted that the facts involved in Delhi Cotton and General Mills Company Limited case (supra) are entirely different. In the said case there was a serious dispute as to when the goods in question become fabric. While the manufacturers contended that the goods were really fabric, the taxing authorities contended that it was no fabric and as such it was got to be decided whether the warps sheet really became fabric. In such circumstances, the Supreme Court held that a technical question was involved in the matter and on the said technical question, the two different views expressed by the parties were possible and none of the views could be rejected outright as untenable. In such circumstances it was held by the Supreme Court that without getting proper technical opinion by the Experts on the subject, it was not proper for the Writ Court to decide the said dispute. Mr. Ginwalla contended that in the instant case the simple process for holding the Nylon and/or Rayon yarn with the help of cotton weft has been admitted by the excise authorities and as such there is no difficulty on the part of the Writ Court to decide as to whether the warp sheets are nylon and/or rayon yarns and/or whether a new product was really created. Mr. Ginwalla also submitted that the warp sheets were also held as yarns by the Madras High Court in the said case of Madras Company Ltd., v. Govt. of Madras (25 S.T.C page 407).

9. Referring to the decision made in the case of V.V. Iyer of Bombay Vs. Jasjit Singh, Collector of Customs and Another, since cited by Mr. D.K. Sen. Mr. Ginwalla contended that it was held in the said decision that if the construction on the head of an entry was perverse, then the court was competent to interfere but the court had no jurisdiction to interfere merely because the other interpretation favourable to the subject, appeals to the Court as the better one to adopt. The Revenue Authority can adopt any of the view which is favourable to

the Revenue Authority and no interference on that score is called for. Mr. Ginwalla submitted that the facts decided in the said case are completely different. It appears from the case decided by the Supreme Court that the fodder in question did not lose the character of grass and if the said item of goods could be well brought under two different heads, namely, as cattle fodder and as grass on the basis of different users, it was open for the taxing authority to place it under any of the items and no exception can be taken. Mr. Ginwalla submitted that in the instant case the Yarn could not be grouped under any other head because yarn has been classified under item 18. As the goods in question in the instant application remain yarn after the job work done by the petitioner company, the said goods could not be grouped under item 68 which is a residuary item. Hence, according to Mr. Ginwalla, the decision made in the said case of V.V. Iyer has no manner of application in the facts of the present case.

10. After considering the respective submissions of the learned Counsels appearing for the parties it appears to me that the scope and ambit of the instant writ application is wider than the scope in the appeals preferred against the refusal to refund a sum of rupees ninety five thousand paid under protest as excise duty on some specified periods as mentioned hereinbefore. It also appears to me that all the reliefs which are set forth in the instant writ application could not be obtained in any of the appeals preferred under the Act. In the special facts and circumstances of the case it cannot also be contended that there was really any efficacious alternative remedy. It also does not appear to me that the petitioner company really elected to an efficacious alternative remedy and thereafter did not pursue such remedy but moved the instant writ application and for such election on the ground of expediency, the writ court should not exercise its discretionary jurisdiction. Accordingly I am of the view that the writ application is not liable to be dismissed in limit on the aforesaid grounds. So far as the non-maintainability of writ petition on the ground of disputed question of facts is concerned, it may be stated that there is, however, no absolute bar for the writ court to entertain a writ application where some disputed questions of fact are involved. But as unlike in suits, witnesses are not examined in a writ proceeding and the case is decided on affidavits of parties, it has been held by Supreme Court and the different High Courts that on the ground of expediency writ petition containing disputed questions of fact and title should not be entertained because such disputes may not be properly adjudicated in a writ proceeding. In my view however, when such dispute is raised, extreme care and caution should be taken by the writ court to find out as to whether there is really such serious disputed questions of fact which cannot be properly adjudicated in a writ proceeding otherwise a respondent may steal a march over the petitioner by raising some disputed questions of fact and contending that the jurisdiction of the writ court should not be exercised there by frustrating the writ application to serious loss and prejudice of the petitioner. It will appear from the facts and circumstances of the instant case that there is no dispute as to the nature of the operation undertaken by the petitioner company to process the rayon and nylon

yarns for conversion into warp sheets. But there is a dispute as to whether by such processes a new article has really been manufactured or not. The petitioner company contends that no new article was really manufactured and the goods in question remained nylon and/or rayon yarn even after the aforesaid processes and it was also contended in the writ petition that in commercial world, the goods still remain to be known as cotton or nylon yarn. As stated hereinbefore, Mr. Ginwalla drew the attention of the Court that even in the report of the chemical examiner obtained by the respondents the goods were also described as nylon and/or rayon yarns loosely held by cotton wefts at distances. Although in the affidavit-in-opposition there was a general denial of the statements made in the writ petition no specific denial was made to the averment that even after such conversion the goods in question are known in the commercial world as nylon and/or rayon yarns. It is also to be noted that the Madras High Court in the aforesaid decision reported in 25. S.T.C. held that the warp sheets were yarns. It appears to me that the intricate technical questions involved in the case decided by the Supreme Court in the case of Delhi Cotton and General Mills Limited are not really involved in the instant case. The Supreme Court found in the aforesaid case that both the views expressed by the petitioner and the respondents appear to be possible on apparent facts and as such, it requires careful consideration of the opinion of the experts. In the instant case, however, it does not appear to me that there is any dispute as to the process for conversion of nylon and/or rayon yarns into warp sheets. The fact that the nylon and/or rayon yarns have been held loosely by cotton wefts is an admitted position and the only dispute is as to whether by such holding loosely nylon and/or rayon yarns by cotton wefts the said nylon and/or rayon will lose its character and will become a new product. In the facts and circumstances stated hereinbefore, it appears to me that the contention of the petitioner that the warp sheets are cotton and/or nylon yarns and no new product is justified and I am inclined to accept the same. Accordingly the Excise authorities are not entitled to treat the warp sheets unspecified and distinct and separate manufactured product to be classified under the said residuary Item No. 68. Even assuming that warp sheets are excisable goods under Items No. 68 it appears to me that for conversion of nylon and/or rayon yarns into warp sheets the petitioner is also entitled to exemption in terms of the said notification dated 30th of April, 1975. It will appear from the explanation under the said notification" that "the expression job work" shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker by the supplier and that article is returned by the job worker to the supplier, after the articles have undergone the intended manufacturing process, on charging only for the job work done by him." From the materials on record, it appears to me that the criteria under the said explanation have been fulfilled. The petitioner company received the goods, namely, nylon and/or rayon yarns supplied by the clients of the petitioner company and no charge has been made-by the petitioner company for supply of the cotton wefts required for such job work done by the petitioner company. It does not appear from the explanation that for the purpose of doing the job work

no article necessary for doing such job work can be supplied by the firm or company undertaking the job work. It may be necessary to affix some articles for the job work e.g. nails, glue, paste, thread etc. and supply of such article is but incidental to the job work undertaken. The conditions under the said explanations that the goods on which job work should be done should be supplied by the other person to the job worker and the said article should be returned by the job worker to the supplier. Mr. Sen the learned Counsel appearing for the respondents contended, in this connection, that in a Taxing Statute intendment was not consideration and the plain meaning of the Taxing Statute should be adhered to. For this proposition he has referred to the decision made in the case of Hansraj Gobordhandas v. H.S. Dave, reported in A. I. R. 1970 765. Relying on the said decision Mr. Sen contended that it was the case of the petitioner that only negligible percentage of cotton yarn was used by the petitioner company for using as cotton wefts to hold the nylon or rayon yarns but whether the percentage of such cotton yarn was negligible or not is of no consequence because if all the goods were not supplied by the clients of the company for getting the job work done on such materials the petitioner company is not entitled to exemption and the plain meaning of the notification should be taken and there should not be any consideration of necessary intendment. I have already indicated that the explanation does not forbid supply of any material for doing the job work and as such on the plain reading of the notification along with the explanation thereunder the petitioner company is entitled to claim relief for the job work done by the petitioner company on the said rayon and/or nylon yarn under the said notification, even assuming that such rayon and/or nylon yarn underwent some changes due to the aforesaid processes and became a new product. It may also be noted, in this connection, that the goods in question, namely the warp sheets were not the properties of the petitioner company and as such saleable by petitioner company in view of the fact that the nylon and/or rayon yarns all along belonged to other concerns who supplied such yarns to the petitioner company for having the job work done on the same.

11. Accordingly, this Rule must succeed and the same is made absolute. All interim orders are vacated. But I make no order as to costs in the facts and circumstances of the case.

12. The petitioner will be entitled to withdraw the deposits made by the petitioner company in terms of the interim order passed by this Court in this Rule on 7th of June, 1976.

13. Mr. Mitra the learned Counsel appearing for the. respondents prays for stay of the operation of this judgment so as to enable the respondents to prefer an appeal. The prayer is allowed and it is directed that there will be a stay of the operation of this order till one week, after the re-opening of this Court after the long Puja Vacation.