

(1981) 06 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 3813 of 1978

Madura Coats Ltd.

APPELLANT

Vs

Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 30-06-1981

Acts Referred:

Citation : (1981) 1 ECR 415 : (1982) 10 ELT 370

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Judgement

T. Sathiadev, J.—This petition is filed for issue of writ of mandamus to direct the first respondent to grant the necessary exemption under

Notification No. 119/75-C.E. dated 30-4-1975 (hereinafter called the notification) in respect of the job work done by it for the third respondent.

2. In the affidavit, it is stated that in respect of Tariff Item No. 68 of the Central Excises and Salt Act, 1944 while levying duty, certain exemptions

are provided by the notification above referred to and as per notification only job work had been done by the petitioner and no new product

having been manufactured by it, quite different from what had been supplied by third respondent, the petitioner is not liable to pay duty under Tariff

Item No. 68 as claimed by respondents 1 and 2. First respondent by trade Notice No. 273/77 dated 30-11-1977 claimed that ""Fenaplast yarn

produced by twisting different types of duty paid filament and spun yarn material, is assessable to duty under Tariff Item No. 68 of the Act and that

the exemption claimed would not be available. By further letter dated 17-3-1978 first respondent again reiterated that as the nylon yarn itself is not

returned to the customer but is is twisted with duty paid cotton yarn belonging to

the petitioner, and the resultant product returned to the buyer

being a new product, the manufacture cannot be considered as a job work within the scope of the explanation to Notification No. 119/75-C.E.,

dated 30-4-1975, and hence exemption cannot be granted.

3. On 7-4-1978, the first respondent was informed by the third respondent stating that duty paid cotton yarn which is combined with nylon yarn

does not belong to the petitioner herein, but only processed by them. In spite of such clarifications, since duty was demanded as payable under

Tariff Item No. 68, the present petition had come to be filed.

4. The petitioner claims as follows : Fenner imports 12 Lea spun nylon yarn and 840 Denier filament nylon yarn from abroad under actual user's

licence granted to it and purchases locally 6s cotton yarn. Fenner supplies to the petitioner these three types of yarn namely :-

(1) 840 Denier filament nylon yarn,

(2) 12s Lea spun nylon yarn, and

(3) 6s cotton yarn.

For the specific purpose of performing a particular job work, namely, combining the three yarns together so as to make the three types of yarn into

a single yarn, namely 6/2/4 yarn. The three types of materials which Fenner supplies are the absolute property of Fenner the third respondent. For

the conversion effected Rs. 7.02 per kilogram is charged and third respondent also required combining of 840 denier filament nylon yarn into 6

plies of the same type of filament yarn and this job is also carried out by petitioner for which the petitioner charges a sum of Rs. 9/- per kilogram.

5. The main contention of the petitioner is that the three types of materials above referred to are combined together by being twisted, and what

transpires is only a change in the physical form and the three materials are still identifiable. Whatever materials that had been given, by the third

respondent, are returned in toto, without the petitioner supplying any material to form part of what is returned. Therefore, the petitioner comes

within the scope of the exemption covered by the notification.

6. Mr. V.K. Thiruvengkatachiar, learned counsel for the petitioner, to further substantiate this contention, relies upon the decision reported in

Madura Coats Limited v. Collector of Central Excise, West Bengal (1980) E.L.T.

582 wherein pertaining to the same notification relief was

granted to the petitioner company in respect of the job work undertaken by it to arrange nylon or rayon yarn supplied by the customers to it to be

loosely held together parallelly by cotton yarn supplied by the petitioner. Such arrangement of rayon or nylon is called tyre cord warp sheets. In that

process, the petitioner company had to supply certain incidental materials. Even then it was held that it would not deprive the petitioner company to

get the exemption under the notification.

7. In *Kawality Coated Products v. Government of India* and another 1980 E.L.T. 579, this court in respect of bituminised waterproof paper held

that when the work done is to get together the layers of kraft paper with bitumen, such job work of bonding the papers would not attract

imposition of duty.

8. Mr. K.N. Balasubramaniam, the learned counsel for the respondents submits that notification is confined only to such of those cases where "an"

article is supplied by the customer in respect of which a job work is carried out, and the same article is returned whereas in the instant case three

articles are supplied by the third respondent and what is ultimately returned by the petitioner after twisting the yarns is a new product bearing a

different name.

9. His second contention is that the emphasis to be laid is not about the absolute property of third respondent in the articles handed over, but the

nature of job work rendered and the resultant product that comes out before the product is returned. According to him when the end-product is

not the same which had been handed over for carrying out job work, the exemption sought for should come strictly with the scope of the

notification.

10. As for the two decisions relied upon, he would state that as against the decision 1980 ELT, 579, the matter has been taken upto Supreme

Court. Regarding the other decision, there has been a failure to correctly appreciate the scope of the notification which would apply only in such of

those limited cases where only one article is handed over for carrying out job work and not to cases where more than one article is supplied.

11. In the instant case, three materials are supplied by the third respondent which have been subject to duty and after the job work is effected,

once again duty is sought to be levied under Tariff Item No. 68. The entitlement to claim exemption depends upon the correct interpretation put

upon the notification. In the Explanation, the expression "Job work" is amplified to mean that (1) the article must be handed over by the supplier,

(2) the manufacturing process must be carried out, (3) the article must be returned to the supplier, and (4) only for job work, charges can be

levied. There is no area of dispute that all the three types of materials handed over by third respondent belong to it absolutely. The petitioner

company did not add any material of its own while carrying out the process of twisting. Whatever quantity had been handed over by third

respondent, had been returned fully by the petitioner. The purchase orders produced, also show that job work to be done and the rate is Rs. 7.02

being the conversion charges and in respect of nylon filament, the rate is Rs. 9/- per kilogram. The one and the only process carried out by the

petitioner is to twist the three materials, and thereby they undergo only a change in their physical form but are still identifiable and bear the same

character in which they have been supplied by the third respondent. If during the manufacturing process, the materials supplied by third respondent

lose their identity and the product that is handed over to the supplier is entirely different, in which the articles supplied cannot be identified and the

product that is handed over to the supplier is entirely different, in which the articles supplied cannot be identified, the concession contemplated in

the notification would not be available. After the twisting job is effected, the converted product produced before the court shows that all the three

articles supplied by third respondent are even perceivable to naked eyes. When the entire quantity supplied by third respondent is returned and not

even incidental materials are added while the job work is carried out and all the three articles are found in combination in a particular proportion, it

cannot be said that a new product, justifying imposition of duty under Tariff Item No. 68 of the First Schedule of the Act, has come into existence.

12. The other contention of Mr. K.N. Balasubramanian that the notification is confined only in respect of instances where a single article undergoes

job work, cannot be acceded to, because what was contemplated under the notification was to exempt goods falling under Tariff Item No. 68,

manufactured in a factory as a job work, and "an" article would not limit it to instances wherein a single article alone is handed over for job work,

but would also include instances where more than one article is supplied by the supplier. The ordinary rule of construction is where "singular" is used, it will also include "plural" unless otherwise specifically stated. Therefore for the reasons above stated, the petitioner, who carries out only a conversion job and nothing more, would be entitled to avail of the exemption contemplated under the notification. Hence as prayed for, a writ of mandamus would issue. Rule Nisi is made absolute. No costs.