

(1986) 02 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 1548 of 1977

Natwar Rubber Product

APPELLANT

Vs

G.S. Kagzi and Others

RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2(F)

Citation : (1987) 12 ECC 333 : (1987) 27 ELT 216 : (1986) 2 GLR 199

Hon'ble Judges : S.A. Shah, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : J.U. Mehta, for the Appellant; S.D. Shah, Central Government Standing Counsel, for the Respondent

Judgement

Shah, J.—The petitioners herein were at the relevant time doing the job-work of twisting wires of M/s. Bharat Wires Industries, Udhna, and by this petition they have among other orders passed by the subordinate Excise Authorities challenged the order dated 2.3.1976 (Annexure "I" to the petition) of the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue and Insurance, passed in revision application, whereby the petitioners were required to pay excise duty on the ground that they had manufactured excisable goods. The said order appears to have been passed under rule 9(2) of the Central Excise Rules, 1944 (hereinafter referred to as "the Rules").

2. In order to appreciate the various contentions raised by the petitioners, it would be relevant to reproduce short facts. It is not disputed that the petitioners were doing the job-work of twisting wires of M/s. Bharat Wires Industries, Udhna. The petitioners received notice dated 26/27.3.1971 from the Superintendent, Central Excise, Range "C" Surat, purported to have been issued under rule 9(2) of the Rules, to show cause as to why the duty as specified therein should not be recovered from them, and also to produce all evidence on which they intend to rely in support of their defence, against the proposed action to be taken for payment of duty on the twisted wires for the period from

3.11.1967 to 31.12.1970, which was estimated in the said notice at Rs. 6,323.22 paise. This notice is at Annexure "D". The petitioners also received similar show cause notice dated 21.12.1971 under rule 9(2) of the Rules for the payment of duty of Rs. 2,575.56 paise for the period from 1.4.1962 to 2.11.1967 (Annex. "B").

3. The petitioners vide their reply dated 29.5.1972 (Annexure "C") stated that the petitioners were doing only the job work of twisting wires of Ms. Bharat Wires Industries since 1962, but the records in regard to the same were not available. It was further stated therein that the petitioners were receiving untwisted bare copper wire from M/s. Bharat Wire Industries, Udhna which were returned to them after twisting, and the duty on the said finished product was payable by M/s. Bharat Wire Industries. It was further stated that since the petitioners have not manufactured the said wires, no duty was payable by them. It was also averred that after the job work was done, the goods were still in a semi-finished state and not excisable because such wires were not marketable in that condition. It was further stated that the petitioners were not the owners of the said wires and, therefore, liability to pay duty cannot be attached to them.

4. The Assistant Collector, Central Excise Surat who was competent to hear the dispute, heard the petitioners and passed an order dated 30.8.1972 (Annexure "E") holding that the duty demanded by the Superintendent, Central Excise, Surat, vide show-cause notice dated 27.12.1971 was correct. He, therefore, confirmed the said demand and directed the petitioners to pay the differential amount of duty accordingly. Similar order dated 30.8.1972 was also passed in respect of demand made in show-cause notice dated 27.3.1971.

5. Being aggrieved by the said orders, the petitioners filed Appeals before the Appellate Collector, Central Excise, Bombay. The appellate Collector by his order dated 27.7.1974 (Annexure "G") held that he did not agree with petitioners that the twisted/stranded wires do not fall within the scope of Tariff Item No. 33-B of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act") and observed that the petitioners were not able to produce any evidence in support of their contention that the twisted/stranded wires were not marketable in the form in which they were cleared from the petitioners' factory, and on the contrary, it was well-known that even without insulation, the wires and cables are marketed and used for electric conductivity. In the aforesaid view of the matter, the appellate authority held that so far as the demand for Rs. 6,323.22 paise for the period from 3.11.1967 to 27.3.1968 was concerned was time-barred under the general law of limitation. However, for the demand for the period 28.3.1968 to 31.12.1970 he directed the petitioners to pay central excise duty as determined by the authority below.

6. Being dissatisfied with the said order of the appellate Collector, the petitioners filed revision application before the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue and Insurance, New Delhi. The Joint Secretary by his order dated 2.3.1976 (Annexure "I") held that the decision of

the Appellate Collector regarding limitation was incorrect, and that the provisions of the Limitation Act cannot be applied by the officers functioning under the Act. It was further held that "the Copper Wires in uninsulated condition as cleared by the petitioners were correctly classifiable under Tariff Item 33-B(ii) and accordingly were chargeable to duty which was payable at the time of their removal from the place of manufacture" and, therefore, the petitioners were required to pay excise duty under both the notices.

7. Being aggrieved by the aforesaid decision of the Government of India, the petitioners have filed this petition.

8. Mr. J.U. Mehta, learned Advocate for the petitioners, has raised several contentions regarding the levy of excise duty after a lapse of nine years. However, it is not necessary to reproduce all the contentions of Mr. Mehta, since this petition can be decided on narrow issue as to whether the job work of twisting wires done by the petitioners after bringing them from the factory of M/s. Bharat Wire Industries is "an activity of manufacture attracting levy of excise duty under Tariff Item 33-B(ii) of the First Schedule to the Act."

9. In order to decide the aforesaid issue, it will be necessary to refer to the relevant provisions of the Act, as they stood at the relevant time. Section 2(f) of the Act defines "manufacture" as under :-

"2. In this Act, unless there is anything repugnant in the subject of context,

(f) "Manufacture" includes any process incidental or ancillary to the completion of manufactured product, and

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff;

(1a) in relation to manufactured tobacco, includes the labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of salt-petre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence;

(iii) in relation to patent or proprietary medicines as defined in Item No. 14E of the First Schedule and in relation to cosmetics and toilet preparations as defined in Item No. 14F of that Schedule, includes the conversion of power into tablets or capsules, the labelling or re-labelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the produce marketable to the consumers;

(iv) In relation to goods comprised in item No. 18A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or

more of these processes, or the conversion of any form of the said goods into another form of such goods;

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

Tariff Item No. 33-B of the First Schedule to the Act reads as under :-

"Item No. Description of Goods Rate of Duty -----
----- 33B. Electric Wires and Cables All sorts, not otherwise specified (i) Insulated wires and cables of copper, Seventeen aluminium or other metals and alloys, and a half whether sheathed or unsheathed, the per cent conductor of any core of which, not ad valorem being one specially designed as a pilot core, has a sectional area not exceeding 1.5 square millimetres in the case of copper, or not exceeding 2.5 square millimetres in the case of aluminium or of not more than equivalent conductivity as of copper in the case of other metals and alloys. (ii) All others Ten per cent ad Explanation :- The expression "electric valorem. wires and cables, all sorts" used in this item shall not include square or rectangular conductors, whether insulated or not."

Section 3(1) of the Act, which is a charging section gives power to levy and collect duty of excise on all excisable goods other than salt which are produced or manufactured in India.

10. Therefore, the question that arises is whether the petitioners manufactured any excisable goods by doing the job work of twisting copper wires. It is not disputed that M/s. Bharat Wire Industries, Udhna were manufacturing insulated copper electric wires which were liable to excise duty under Tariff Item No. 33-B of the First Schedule to the Act. There is also no dispute that M/s. Bharat Wire Industries were sending copper wires to the petitioners for twisting, and after the said job work was done, the twisted wires were sent back to M/s. Bharat Wire Industries for further process of insulation, and the final product of insulated copper wires was prepared by the said Company, and the said company was paying duty on the said goods under Tariff Item No. 33-B(1). Mr. Mehta, therefore, submitted that the petitioners were not manufacturing any excisable goods. The copper wires which were already manufactured were sent to the petitioners for the purpose of twisting, and after the work of twisting was done, the same were sent to M/s. Bharat Wire Industries, and the final product of insulated copper wires was manufactured by the said Company. The process of twisting the copper wires would not come either under the provisions of Tariff Item No. 33-B(i) or 33-B(ii) of the First Schedule to the Act, because the copper wire was already manufactured by M/s. Bharat Wires Industries, or M/s. Bharat Wire Industries might have purchased the said wire from the market. The petitioners were only doing the work of twisting and, therefore, no final product can be said to have come into existence by twisting the wires received by the

petitioners from M/s. Bharat Wires Industries.

11. Mr. Mehta further submitted that before any process can be said to be a "manufacture", there should be a transformation into a new commodity which is commercially known as a distinct and separate commodity, having its own character, use and name in the market. Twisting of wire cannot be said to be a transformation into a new commodity in the market. It has no separate character or name in the market. Mr. Mehta has, therefore, invited our attention to the following observations made in paragraph 33 by the Supreme Court in *Empire Industries Limited v. Union of India*, (1985) 3 Supreme Court Cases 314 = 1985 (20) E.L.T. 179 (S.C.) :

"It may be noted that the taxable event in the context of Sales Tax Law is "sale". The taxable event under the Excise Law is manufacture. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes "manufacture" take place and liability to duty is attracted".

The Supreme Court has referred to the decision in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, , and observed as under :

"Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of "manufacture". Any process or processes creating something else having a distinctive name, character and use would be manufacture."

In the instant case, the Excise Department is not able to show that the twisting of a copper wire creates a new commodity having a distinctive name, character and use. A copper wire is a conductor. Similarly, twisted copper wire is also a conductor. By twisting wires it cannot be said that a new commodity has been created having a distinctive name, character and use which would amount to "manufacture" of a new commodity.

12. Mr. Mehta then cited before us the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills)*, Ahmedabad, , wherein question arose whether the goods called "Calikut Special" manufactured by the respondent-Mill were liable to duty under Tariff Item 19 to 22 of the First Schedule to the Act. Tariff Item No. 19 applies to cotton fabrics of all varieties which contain 60 per cent or more by weight of Rayon or Artificial Silk. Whereas, Tariff Item No. 22 of the First Schedule to the Act is in respect of Rayon or Artificial Silk fabrics which contain Cotton and Less than 60 per cent by weight of Rayon or Artificial Silk. In short, if Cotton contains 60 per cent or more of Rayon or Artificial Silk in weight, it will attract higher duty under Tariff Item No. 19, otherwise lower duty under Tariff Item No. 22. The Department in that case contended that though the final product "Calikut Special" contained Cotton and More than 60 per cent of Rayon

or Artificial Silk in weight, at the intermediate stage of its production it contained less than 60 per cent of Rayon or Artificial Silk only at final stage, therefore, the said product was liable to duty at the intermediate stage under Tariff Item No. 19, and was accordingly. The Supreme Court, ultimately observed as under :

"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 process involved in the instant case after the intermediate stage referred to above formed an integral part of the manufacture of the product in question and the classification of the manufacture product or 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".

Relying upon the aforesaid observations of the Supreme Court, Mr. Mehta has argued that in the instant case copper wire was already a manufactured item which was given to the petitioners for twisting and twisting was only an intermediate stage of the said product for finally manufacturing insulated copper wires. Therefore, twisting of such wires can, by no stretch of imagination be said to be a manufactured goods within the meaning of the definition of "manufacture" given in section 2(f) of the Act, and was not liable to any Excise Duty. In our opinion, argument of Mr. Mehta shall have to be accepted because the Department is not in a position to show that by the aforesaid process any new commodity commercially known as a distinct and separate commodity having its own character, use and name had come into existence. In our opinion it is one of the process for manufacture of insulated copper wires which are ultimately manufactured by M/s. Bharat Wires Industries, and we are told, who had paid the duties under Tariff Item No. 33-B(i) of the First Schedule to the Act. The petition, therefore, succeeds.

13. In the result, therefore, the petition is allowed. The impugned order dated 2.3.1976 (Annexure "I" to the petition) and the orders of the subordinate authorities assessing excise duty against the petitioners are hereby quashed and set aside. Duty, if any, paid by the petitioners, be refunded to them within four weeks of the receipt of the writ of this Court. Rule is made absolute with costs.