(1991) 07 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 801 of 1982

Paragon Textile Mills Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Customs Act, 1962 — Section 12

Citation : (1991) 56 ELT 335

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri A. Hidayatullah and M.P. Baxi, instructed by M/s. Gagrat and Co, for the Appellant; Shri J.P. Deodhar and K.L. Sidhwa, for the Respondent

Judgement

Pendse, J.—The Petitioner No. 1 is a Private Limited Company registered under the Companies Act, 1956 and, inter alia, manufactures synthetic fibre fabrics, suitings, shirtings, sarees, etc. For the manufacture of the said fabrics, the Company imports polyester filament yarn of various deniers. The goods on importation are liable to customs duty u/s 12 of the Custom Act, 1962 at the rate specified under heading 51.01/03 of the First Schedule of the Customs Tariff Act, 1975. Section 3 of the Customs Tariff Act empowers levy of duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and this duty is known as countervailing duty. The goods imported by the Company are liable to additional duty or countervailing duty equivalent to the excise duty as levied on the like articles produced or manufactured in India.

2. The goods like the imported goods when manufactured in India are liable to Central Excise duty under Tariff Item No. 18 of the First Schedule to the Central Excises and Salt Act at the prevailing from time to time. In exercise of powers under Rule 8 of the Central Excise Rules, the Government of India by Notification dated March 1, 1975 exempted the goods from so much of the duty of excise

leviable thereon as is in excess of the duty specified in the Notification. By Section 37 of the Finance Act, 1978, a special duty of excise equal to five per cent of the amount so chargeable on goods chargeable with the duty of excise under the Excise Act is provided for. This special duty of excise is in addition to any duty of excise chargeable under the Excise Act or leviable under any other Act for the time being in force. Section 37(1) reads as under :

"37. Special duties of excise. - (1) In the case of goods chargeable with a duty of excise under the Central Excises Act as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to five per cent of the amount so chargeable on such goods."

3. By Ordinance No. 4 of 1978 called the Additional Duties of Excise (Textiles and Textile Articles) Ordinance, 1978, the President of India levied addition duties of excise on certain textile articles. The Ordinance subsequently became an Act. Section 3 of the Act provides for levy and collection of additional duties of excise on certain textile articles and sub-section (1) reads as under :

"3. Levy and collection of additional duties of excise on certain textile articles -

(1) When goods of the description mentioned in the Schedule chargeable with a duty of excise under the Central Excises and Salt Act, 1944 (1 of 1944) read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, are assessed to duty, there shall be levied and collected a duty of excise equal to ten per cent of the amount so chargeable on such goods."

4. Shri Hidayatullah, learned counsel appearing on behalf of the Company, submitted that the additional duty could not be levied under Tariff Act by including thereunder the rates of special duties of excise or the rates of additional duties of excise as levied by Finance Act, 1978 or under the Additional Duties Act respectively, on a true construction of the provisions of Section 3 of the Tariff Act read with the provisions of the notification. The learned counsel urged that special duty of excise as well as additional duty of excise are a duty of excise and form part and parcel of duty of excise leviable under the Excise Act and are, therefore, governed by the provisions of any exemption by way of notification which would be applicable to the rate of duty as prescribed in the First Schedule to the Excise Act. It is not possible to accede to the submission of the learned counsel. It was contended that the recovery of countervailing duty u/s 3 of the Tariff Act or levy of additional duty of excise on certain textile articles is permissible provided basic duty is payable in respect of the article manufactured in India. In other words, the submission is that when an exemption notification is issued by the Government as partially or totally exempting the payment of excise duty on the manufacture of the article, then such article not being chargeable to payment of duty, the countervailing duty and the additional duty of excise cannot be levied in respect of imported article. It is

not possible to accede to the submission because it proceeds on the assumption that when an exemption notification is issued by the Government, then the impost of charge for the purpose of excise duty does not accrue. The submission proceeds by overlooking that the concept of levy of charge on manufacture of an article is different from collection of duty. As soon as the process of manufacture is complete, the duty is levied and what exemption notification does is to exempt the manufacturer from payment of duty. Once, the concept of levy of duty and collection of duty is appreciated, then it is obvious that the contention of Shri Hidayatullah cannot succeed. In our judgment, the liability to pay countervailing duty as well as additional duty of excise cannot be disputed merely because the exemption notification provides for either partial or total exemption from payment of duty. The exemption notification does not dispense with the charge or levy of duty but merely exempts payment thereof.

5. Shri Hidayatullah submitted that expression "duty of excise" should be limited to basic duty of excise and cannot include special excise duty or additional duty of excise or auxiliary duty of excise and in support of the submission reference was made to the decision of the Supreme Court reported in Union of India (UOI) and Others Vs. Modi Rubber Ltd., . The Supreme Court was examining the ambit of the expression "duty of excise" referred to in two notifications issued in accordance with the provisions of Section 3(a) of Central Excise Laws (Amendment and Validation) Act, 1982. The Supreme Court held that at the time of issuance of the notification, there was no special duty of excise leviable and consequently, the exemption notification could not have intended to grant exemption from payment of special excise duty. We are unable to appreciate how the decision of the Supreme Court can support the claim of Shri Hidayatullah. In our judgment, there is no infirmity whatsoever in levy of countervailing duty and the additional duty of excise u/s 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. The petitioners are not entitled to any relief and the petition must fail.

6. Accordingly, rule is discharged with costs.