
(1972) 09 GUJ CK 0015
In the Gujarat High Court
Case No : Second Appeal No. 88 of 1968

Petlad Bulkhidas Mills Co. Ltd.	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 9(2)

Citation : (1972) 09 GUJ CK 0015

Hon'ble Judges : Mohanlal Ujamshi Shah, J

Bench : Single Bench

Advocate : K.S. Nanavaty, for the Appellant;

Judgement

1. The appellants herein are the Petlad Bulkhidas mills Co. Ltd., who were the original plaintiff in regular Civil Suit No. 224 of 1964 of the Court

of the Joint Civil Judge (S.D.), Nadlad, which was a suit filed against the present respondent No. 1 the Union of India and the present respondent

No. 2 - Collector of Central Excise as co-defendants for recovery of an amount of Rs. 3,864.67 p. with interest thereon and costs of the suit. The

claim related to the recovery of the amount as excise duty payable under entry No. 18-A to the Schedule of the Central Excise and Salt Act,

1944, for the period between 1-3-61 and 8-5-61 on folded yarn on hanks. The duty was leviable under entry 18-A which was newly added in the

Schedule to the Act and the duty was leviable for the first time with effect from 1st March 1961. Doubts were expressed as to the interpretation of

the-language used in the entry with particular reference to the levy of excise duty on yarn of certain kinds on hanks. A reference was made to the

Collector of Central Excise, Baroda, seeking clarification by the Federation of Gujarat Mills and Industries and a reply was received that a folded

yarn up to the count of 405 was totally exempt from the levy of excise duty as was alleged by the plaintiff in the plaint relying upon a copy of a

letter from the authority. Demand notice Ex. 28 dated 11-5-1961 was, however, issued by the competent authority demanding the recovery of the

duty on the yarn and the duty was paid under protest. It is for the refund of this duty amount paid under protest that the suit was filed. The trial

Court decreed the suit. The lower Appellate Court has in Civil Appeal No. 385 of 1965 dismissed the suit on taking the view that the demand was

made under Rule 9(2) of the Central Excise and Salt Rules, although it was competent under Rule 10 of the said rules and that the substance has to

be looked into rather than mere to the form and that it was issued by a competent authority and within time. The learned Judge followed the ratio

of the decision of a division Bench of this High Court in Jamnadas Chhotalal Desai v. C. L. Nangia, Deputy Collector, Central Excise, (1965) 6

G.L.R. 137. If the authority has incorrectly mentioned in the order a portion of the of the section, no prejudice is caused to the person liable to

make the payment and the court would not strike down such an order for that reason only. It has been observed in that decision that the court

would look at the substance rather than mere form and if it finds that the order has been made with jurisdiction though there is an error in citing a

particular part of the section and no prejudice is caused to the petitioner, the court would not interfere and set aside the order. The learned District

Judge thus allowed the appeal before him and set aside the decree of the trial court. It is against this decision that this second appeal is directed.

Mr. K. S. Nanavaty, learned Advocate appearing on behalf of the appellant plaintiff, has not disputed the aforesaid proposition of law laid down

by this court in 6 G.L.R. 137. His only contention is that the finding of the learned District Judge that the duty has escaped payment due to error of

misconception or exemption notification is not supported by any evidence inasmuch as the Inspector who had been alleged to have committed the

error is not examined. There is no merit in this contention. The learned District Judge has observed in paragraph 9 of his judgment as under :-

Before proceeding further in this connection, it must be made distinctly clear that it is not the plaintiff's case that as a fact excise duty was not

leviable on the yarn cleared by the plaintiff from the place of manufacture as entered in register AR-1 Exhibits 35 to 50. It is not the plaintiff's case

that since after the clarification issued by the Union of India this yarn cleared by the plaintiff would be exempt from the payment of duty. In fact,

parties proceeded on the basis that excise duty is certainly payable on the yarn cleared by the plaintiff between 1st March, 1961 and 8th May,

1961 in respect of which the duty was not recovered under the belief of the officers of the Central-Excise Department that the yarn was exempt

from the payment of duty. Mr. Shah for the respondent conceded that the court should proceed on the assumption that the duty was payable on

this yarn and if the court comes to the conclusion that the demand notice is legal, the plaintiff's suit is liable to be dismissed. Thus, it is crystal clear

that the yarn in respect, of which excise duty was not collected is the yarn on which duty was payable on a proper and correct interpretation of

entry 18-A.

2. The only contention that appears to have been urged before the learned District Judge was that the demand notice under Rule 9(2) is bad. The

non-examination of the Inspector was not material for the purpose. The authority that had passed the order had the jurisdiction to pass it. It was

only a mere wrong reference of the power under which the action is taken by the officer which was in challenge. But, this would not vitiate the

action done if it can be justified under some other power that the action can lawfully be taken. In the instant case, the duty could have been

demand from the plaintiff under Rule 10. If the sector officer could justify the demand legally, then a wrong reference would not invalidate the

notice. The demand notice has thus been held to be not illegal or invalid. The notice was not attacked on any other ground on behalf of the present

appellant in the trial court. Mr. Nanavaty's contention in this behalf cannot thus be accepted.

3. In the result, the appeal fails and is dismissed with costs.