

(1980) 12 GUJ CK 0015
In the Gujarat High Court

Rainbow Surgical Dressing Mfg. Co.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-12-1980

Acts Referred:

Citation : (1980) 2 GLR 632

Hon'ble Judges : S.H. Sheth, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—The petitioners have been manufacturing gauzes and bandages. The process of manufacture has been described in paragraph 1. 1 in the petition. The petitioners have averred that they purchase grey powerloom cotton fabrics which are suitable for being processed into surgical absorbent gauzes and surgical roll bandages. These, grey power-loom cotton fabrics are treated by them in their factory and the end-product which comes into existence is the absorbent gauzes or roll bandages. The treatment which they impart in their factory to grey powerloom cotton fabrics consists of the following factors:

- (1) Absorbency.
- (2) Removal of foreign matters.
- (3) Minimising the souring loss.
- (4) Natural whitening free from optical whiteners.
- (5) Control of ash contents.
- (6) Maintenance of the measurements of surgical absorbent gauze and surgical roll bandages.
- (7) Folding, rolling and cutting of gauzes and bandages.
- (8) Packing of gauzes and bandages.

That the petitioners have been purchasing grey powerloom cotton fabrics from

the market and that they have been imparting to them the treatment as shown in paragraph 1. 1 in the petition is not in dispute. In paragraph 3 of the affidavit-in-reply filed on behalf of the respondents by Mr. Gautam Ray, Assistant Collector of Central Excise, it is admitted that the petitioners have been purchasing grey powerloom cotton fabric from the market. It is also admitted that the petitioners have been subjecting these cotton fabrics to the process of bleaching, stentering and other processes which are mentioned by the petitioners in paragraph 1. 1 of the petition. The next averment which has been made in paragraph 3 of the affidavit-in-reply is that the surgical dressings and bandages manufactured by the petitioners are not medicated. However, they are required to be sterilized before use. The final product which emerges is known as drug and exempted under Notification No. 55/75 dated 1st March 1975 as amended by Notification No. 62/78 dated 1st March 1978. The next averment which has been made is that this exemption is available only with effect from 1st March 1978. For the period prior to 1st March 1978, the petitioners are liable to pay excise duty upon these gauzes and bandages, both under Tariff Item 19 and Tariff Item 68 in Schedule to the Central Excises and Salt Act, 1944.

2. With regard to the manufacturing process, the Appellate Collector has stated in his order as follows:

The judgment cited by them is not applicable to their case, as their final product is not the factor to determine whether the cloth used by them has undergone processing or not.

In paragraph 2 of the affidavit-in-reply filed by the Assistant Collector, Central Excise, this is what he has stated:

I state that the petitioners are processing cotton fabrics which are then used by them for the production of, inter alia, surgical absorbent gauze and surgical roll bandages.

The last averment to which reference has been made by Mr. Bhatt is in paragraph 5 of the affidavit-in-reply. It reads as follows:

However, I admit that the final product is drugs falling under T.I. 68 and exempted from payment of duty with effect from 1-3-78.

Tariff Item 19 has been amended by Central Act 6 of 1980. The amended sub-item (1) of item 19 reads as follows:

Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials:

(a) cotton fabrics, not subjected to any process Five per cent ad valorem.

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes.

Sub-section (2) of Section 5 of the Amending Act, Central Act 6 of 1980, provides as follows:

Any rule or notification or any action or thing made, issued, taken or done or purporting to have been made, issued, taken or done under a Central Act referred to in Sub-section (1) before the date of commencement of this Act, with respect to or in relation to the levy of duties of excise on-(a) "cloth", "cotton cloth" or, as the case may be, "cotton fabrics,"

shall for all purposes be deemed to be, and to have always been, as validly and effectively made, issued taken or done as if the provisions of this section had been in force at all material times and, accordingly, notwithstanding any judgment, decree or order of any court, tribunal or other authority:

(a) all duties of excise levied, assessed or collected or purported to have been levied, assessed or collected, before the date of commencement of this Act, on-(i) "cloth", "cotton cloth" and "cotton fabrics" subjected to any process, (ii) "woollen fabrics" subjected to any process, (iii) "rayon or artificial silk fabrics" and "man-made fabric" subjected to any process,

under any such Central Act shall be deemed to be. and shall be deemed always to have been, as validly levied, assessed or collected as if the provisions of this section had been in force on and from the appointed day.

"Appointed day" has been defined in relation to "cotton fabric" as 1st day of March 1955. In relation to "cotton cloth" it has been defined to mean 28th day of February 1954. It has been defined in relation to "cloth" as 1st day of January 1949. It is clear, therefore, that so far as cotton fabrics are concerned, the amending Act operates retrospectively from 1st day of March 1955.

3. There is no doubt about the fact that, in view of amended tariff item 19(1), ordinarily a cotton fabric which is subjected to the process of bleaching or which is subjected to any other process will amount to the manufacture of a different type of cotton fabric.

4. The question, therefore, which has arisen before us is whether the petitioners who are manufacturing gauzes and bandages from grey powerloom fabrics are liable to pay excise duty under Tariff Item 19 because the grey cotton fabric is subjected to bleaching which is an intermediate process and again under Item 68. When bandages and gauzes are finally produced.

5. Mr. J.C. Bhatt who appears on behalf of the petitioners has argued that when there is a single, continuous and integrated process of manufacturing gauzes and bandages, the intermediate process of bleaching the grey cotton fabric cannot be taxed under Tariff Item 19, According to him, it is not a product at all. It is only a part of the manufacturing process under which gauzes and bandages are manufactured. He has further argued that bleached grey cotton fabric is neither removed nor marketed by the petitioners. He tried to tell us that the bleached grey cotton fabric was used by the petitioners or, consumed by them for the

purpose of manufacturing gauzes and bandages. In other words, according to him, the bleached grey cotton fabric was used for home consumption. The argument which Mr. Bhatt has raised can be appreciated better if we bear in mind that subjecting grey cotton fabrics to bleaching process is merely one of the processes applied to those fabrics for the purpose of bringing out the final product in the shape of gauzes and bandages. It is difficult to say that bleached the grey cotton fabrics are, in the present context, a product at all. If it is not a product at all, the question of home consumption does not arise.

6. In this context, we may refer to the two decisions to which he has invited our attention. The first decision is in *J.K. Cotton Spinning & Weaving Mills Co. Ltd v. Union of India* 1980 CEN-CUS 635D. A Division Bench of the Delhi High Court in that case has laid down the principle that if there is a single process of manufacture, and at some stage during the process an excisable commodity emerges, it will not be liable to duty unless it is removed, consumed or sold. It was a case of spinning yarn which was produced in the first instance and then fabrics were manufactured out of it. It can be said with some justification that where there is a composite mill which spins yarn and manufactures fabrics out of them, yarn and fabrics may be regarded as independent excisable commodities. In the instant case, the situation is altogether different. The petitioners do not have a composite factory. Secondly, they do not have two independent manufacturing processes. Thirdly, they neither remove nor use or consume the bleached grey fabrics which represent an intermediate process in the manufacture of gauzes and bandages. Though the decision of the Delhi High Court referred to above cannot be much marshalled to the aid of the petitioners for all purposes, we may refer to some of the observations made in that decision. They broadly represent our thinking. "It is contended that on a proper construction of the Central Excise Act and Rules no excise duty is leviable in respect of a product which emerges at an intermediate stage in a continuous, uninterrupted and integrated process of manufacture unless there is a removal either for the purpose of sale or for the purpose of consumption." Proceeding further, the Delhi High Court has observed as follows:

On the other hand, if there is one single process of manufacture then the mere fact that at some stage during that process an excisable commodity emerges will not make it liable to excise duty unless it is removed for the purpose of consumption or sale.

7. The next decision to which reference has been made is also of Delhi High Court in *Modi Carpets Limited and Another v. Union of India* and Ors. 1980 E.L.T. 320. It was a case in which the question which arose was whether wool top silver obtained by the petitioners as an in-process material in the manufacture of woollen yarn was separately liable to pay excise duty. The principle which has been laid down is as under:

No excise duty can be levied and recovered on silver obtained by the petitioners if it is consumed within the very premises in which it is manufactured because in

such cases there is no removal of sliver from the place of manufacture as envisaged by Rule 9 read with Rule 49 of the Central Excise Rules.

The observations made by the Delhi High Court in the aforesaid two cases broadly support the argument which Mr. Bhatt has raised before us.

8. "As against these two decisions, Mr. Mehta who appears on behalf of the central excise authorities has invited our attention to the decision of this Court in *Maneklal Harilal Spg. & Mfg. Co. Ltd, Ahmedabad and others v. Union of India and Ors.* 1978 Excise Law Times (J.) 618. 21 G.L.R. 753) it was a composite Mill in that case which carried on spinning as well as weaving activities. The question which arose before this Court was whether yarn spun by the petitioner in that case was liable to pay excise duty even though it was consumed for manufacturing fabric on which the petitioners in that case indeed paid duty. This Court upheld the contention raised on behalf of the central excise authorities that the petitioners in that case were liable to pay duty both on yarn as well as on the fabric. The principle laid down in that decision does not help Mr. Mehta in establishing in the present case that the petitioners before us are liable to pay duty on the bleached grey cotton fabrics under Tariff item 19 and upon gauzes and bandages under Tariff Item 68 if they are otherwise taxable. The facts in *Maneklal Mills case* (supra) show that the petitioners in that case held two separate licences-one for the manufacture of yarn and another for the manufacture of cotton fabrics. Secondly, yarn which they manufactured was itself an end-product. It did not matter, therefore, whether that end-product was again used for the purpose of manufacturing cotton fabric or marketed outside. Thirdly, it was a composite mill which manufactured under two separate licences at two different places-may be in the same compound-two end-products-yarn and fabrics. Since both of them were end-products for the purpose of the central excise duty, the home consumption of the yarn manufactured by the petitioners in that case did not make any difference.

9. We have already observed above that, in the instant case, the petitioners' factory is not a composite factory. They do not hold two licences to manufacture two different commodities, Thirdly, there is one single, continuous and integrated process of manufacturing gauzes and bandages out of grey cotton fabrics. Therefore, petitioners manufacture only one end-product--gauzes and bandages. They do not manufacture bleached grey cotton fabric which represents only a part of the manufacturing process applied to the production of gauzes and bandages. Since it is one continuous and integrated process of manufacture there is neither production or manufacture of bleached grey cotton fabric nor is there any removal of it within the meaning of the law on central excises. Since bleached grey cotton fabric represents an intermediate stage in the process of manufacturing gauzes and bandages or since it is only a part of manufacturing process and is not a product at all, it cannot be subjected to tax under the Central Excises and Salt Act, 1944.

10. We are, therefore, of the opinion that the petitioners have not been

manufacturing bleached grey cotton fabrics. The further question, therefore, whether they remove it either for home consumption or for any other purpose does not arise.

11. For the reasons which we have given, we uphold the contention which Mr. Bhatt has raised on behalf of the petitioners. In our view, the petitioners are not liable to pay central excise duty under Tariff Item 19 because they manufacture only gauzes and bandages which are admittedly known as "drug" so far as the law on central excises is concerned.

12. In the result, we allow the petition, quash the impugned orders at Annexures "A" and "B" and make rule absolute with costs. A writ of mandamus shall issue directing the respondents to desist and forbear from levying and collecting from the petitioners excise duty under Tariff Item 19 (1). They are further directed to refund to the petitioners within a period of three months from to-day a sum of Rs. 4, 07, 210-29 P. which they have recovered unlawfully in terms of this judgment. There is no dispute about this amount. Whatever amount the petitioners have deposited in a Nationalized Bank in pursuance of the interim order which this Court made in this petition representing the excise duty payable under Tariff Item 19 (1) shall be finally released to them without any condition. The respondents shall further pay to the petitioners interest at the rate of 9% per annum on the amount of Rs. 4, 07, 210-29 P. which we have ordered the respondents to refund to the petitioners. The interest shall be calculated for the period commencing from the date or dates of the payment of the said amount till its repayment to the petitioners.

Mr. H.M. Mehta on behalf of the respondents applies for certificate of fitness under Article 133 (1) of the Constitution in order to enable the respondents to appeal against this decision to the Supreme Court. This case raises for the first time the question of interpreting amended Tariff Item 19 (1). It is a question of all-India importance. We, therefore, think that this is a fit case for the Supreme Court to decide. We accordingly grant to the respondents certificate of fitness under Article 133(1) of the Constitution.