

(1974) 11 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 3280/71

Tamil Nadu (Madras State) Handloom Weavers Co-Operative
Society Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 12-11-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 10A, 8

Central Excises and Salt Act, 1944 — Section 2(a), 2(d), 3

Citation : (1978) 2 ELT 57

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—The petitioner is a society registered under the Tamil Nadu Co-operative Societies Act LIII of 1961. It has a

manufacturing unit at Cudilore in which cotton fabrics are woven. It has also another unit called the yarn and cloth processing centre at Erode.

Under the Central Excises and Salt Act, 1944, manufacture of cotton fabrics is liable to excise duty. But Notification No. 47 of 1962, dated 24th

April 1962, the Central Government exempted unprocessed cotton fabrics falling under Item No. 19 of the First Schedule to the Central Excises

and Salt Act if manufactured on a handloom, from the whole of the duty leviable thereon. The petitioner, Society, as one manufacturing handloom

fabrics falling under Item No. 19, therefore, under the said Notification, was exempt from excise duty in respect of cotton fabrics, woven in the

Cuddalore unit. By two other Notifications No.111 and No. 112 of 1962, dated 13-6-1962, the Central Government, in exercise of their powers

under Rule 8 of the Central Excise Rules, 1944, provided for levy at concessional rate in respect of processed fabrics made from grey fabrics

when processed by an independent processor. The concession consisted of two parts. In respect of the first 20,000 sq. metres of cotton fabrics

cleared, the goods were exempt from the whole of excise duty; and in respect of those in excess of 20,000 sq. metres, a concessional rate of duty

at four fifths of the normal rate was levied. But these these notifications were subject to the condition that the processing was done by an

independent processor." The words "independent processor" is defined in the Notification as meaning a manufacturer, who is engaged exclusively

in the processing of cloth with the aid of power, and who has not proprietary interest in any factory engaged in the spinning of yarn or weaving of

cotton fabric. There is no dispute that petitioner society is engaged in processing of cloth with the aid of power. But the only dispute is whether the

petitioner-society has any proprietary interest in any "factory".

2. The Assistant Collection of Central Excise, Erode considered that the existence of its factory in Cuddalore, where weaving cotton fabrics is

done, would disentitle, the petitioner-society to the concessional levy. He accordingly issued a notice to the petitioner on 27th April, 1966, stating

that since the petitioner-society is not an "independent processor" Within the meaning of the definition in the Notification, it would not be entitled to

the concessional levy and that the levy and collection of excise duty at the concessional rate was a mistake. He accordingly demanded the

difference between the normal rate of duty and the amount collected at the concessional rate from the petitioner-society for the period from

14.6.1962 to 4.3.1963, which amounted to Rs. 1,32,767.10, be paid by the petitioner. He also ordered that the petitioner-society is liable to pay

duty at the normal rate from 5.3.1966;

3. So far as difference in the levy for the period from 14.6.1962 to 4.3.1963 is concerned, it has now been held that Rule 10A is not applicable

and that the difference could not also be collected under rule as it is barred by limitation.

4. So far as the subsequent period is concerned , the petitioner had paid duty at the normal rate under protest and claimed the benefit of the

Notifications. The Assistant Collector of Central Excise held that since handloom

fabrics which are woven in the Cuddalore factory of the

petitioner-society are excisable goods coming under Item No. 19 of the First Schedule to the Act, the petitioner is not an "independent processor

within the meaning of that term in the Notification and that, therefore, it is not entitled to concessional levy. That order of the Assistant Collector

was confirmed by the Collector of Central Excise and by the Government of India ultimately.

5. In this writ petition, the Learned Counsel for the petitioner contends that the factory at Cuddalore owned by the petitioner will not come within

the definition of the term in the Act and that, therefore, the petitioner should be deemed to be an "independent processor" in respect of the

processing unit at Exode. "Factory" is defined in Section 2(a) of the Act as follows:

Factory" means any premises, including the precincts thereof wherein or in any part of which excisable goods other than salt are manufactured of

wherein or in any part of which any manufacturing process connected with the production of there good is being carried on or is ordinarily carried

on.

The term "excisable goods" is defined in Section 2(d) of the Act as the following:

Excisable goods" means goods specified in the First Schedule as being subject to a duty of excise and includes salt.

6. It is the contention of the learned Counsel for the petitioner-society that on the exemption of cotton fabrics by Notification No. 47, dated

24.4.1962, the goods ceased to be "Excisable goods" within, the meaning of the term in Section 2(d), According to the learned Counsel, in order

to be satisfied in the First Schedule, they should also be subject to a duty of excise. He also contends that any other construction will make the

words "as being subject to a duty of excise" redundant, and it would have been enough to define excisable goods specified in the First Schedule.

In other words, specification of the goods as an Item in the First Schedule as also subjecting them to a duty of excise are to be satisfied as

cumulative conditions in order to bring the goods within the definition of "excisable goods". The Learned Counsel relies upon the Notification

exempting goods from the levy of excise duty as amounting to taking away the

goods from the category of "excisable goods".

7. We are unable to agree with the contention of the learned Counsel. We are of the view that the words "as being subject to a duty of Excise" in

the definition of the term "excisable goods" are only descriptive of the goods specified in the First Schedule, and have no reference to the factum of

their Liability to duty. In fact, it is seen that some of the rate of duty as "NIL". It could not be contended that these goods are not "excisable

goods". In this connection, we may also refer to Section 3, which is the charging section, which provides for the levy and collection of excise duty

on all excisable goods. Produced or manufactured in India at the rate set forth Schedule, thereby showing that excisable goods in the, definition in

the section refer only to the description of the goods in column (2) of the First Schedule, and not to the rate of duty in column (3) of that Schedule.

The exemption granted by the Notification of the Central Government made on 24.4.1962. only exempts handloom fabrics from the levy of

excisable duty and it does not change the nature and character of the goods as excisable goods within the meaning the Act. The Notification

proceeds on the assumption that the handloom fabrics are excisable goods. If the handloom fabrics are not excisables goods, there was no need or

occasion for exempting the same from the levy of excise duty. We are unable to agree with the learned Counsel for the petitioner that once the

handloom fabrics are exempted from excise duty, they cease to be excisable goods. As we have already pointed out, the character as excisable

goods does not depend on the actual levy of duty, but on the description as excisable goods in the First Schedule to the Act. We are, therefore,

unable to interfere with the orders of the respondents.

8. The writ petitioner accordingly fails and it is dismissed. The rule nisi is discharged. But there will be no order as to costs.