

(1976) 07 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 559 of 1973

The Metro Readywear Company

APPELLANT

Vs

The Collector of Customs And Central Excise (Central Excise Wing), Willingdon Island, Cochin-3 and Another

RESPONDENT

Date of Decision : 06-07-1976

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12, 2
Customs Act, 1962 — Section 110

Citation : (1976) 5 CTR 357

Hon'ble Judges : Balakrisna Eradi, J

Bench : Single Bench

Judgement

Balakrisna Eradi, J.—The Metro Readywear Company, Palghat, which is a firm engaged in the business of manufacture of womens undergarments known as brassieres, is the writ petitioner before us. On 3-2-1973 a team of Central Excise Officers led by the Range Officer of Central Excise, Palghat (M.O.R.) 2nd respondent-inspected the business premises of the petitioner and seized the entire stock of brassieres consisting of 40,800 numbers packed in 3400 boxes. Ext. P2 is the mahazar evidencing the said seizure. The seized articles were entrusted to the custody of Shri S. M. Syed Mohsin, a partner of the said firm, after obtaining an undertaking from him. On the same date the 2nd respondent issued to Shri Syed Mohsin the order Ext. P3 purporting to be one u/s 110 of the Customs Act, 1962 read with Section 12 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) prohibiting him (Syed Mohsin) from removing, parting or otherwise dealing with the seized goods deposited with him without the previous permission of the Central Excise Authorities. The Writ petition has been brought by the petitioner seeking to quash Exts. P2 and P3.

2. By an amendment introduced in the Act by the Finance Act of 1971. Item 22D was introduced in the First Schedule to the said Act whereby ad-valorem excise duty at 10% was made leviable in respect of articles of ready-to-wear apparel, known commercially as ready-made garments, including undergarments and

body supporting garments but excluding articles of hosiery in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. The ground stated in Exts. P2 and P3 for the seizure and detention of the stock of brassieres kept in the petitioners business premises is that the manufacture of the brassieres without obtaining a Central Excise licence constituted an offence under the Act and the Rules and hence the 2nd respondent had reason to believe that the goods were liable to confiscation. The petitioner contends that the brassiers manufactured by it will not fall within the ambit of item 22D of the First Schedule to the Act and that hence there was no necessity for the petitioner to obtain a licence for carrying the manufacture of the said article. On this basis it is urged on behalf of the petitioner that the action taken by the respondents in seizing the entire stock of brassiers kept in the petitioners business premises as per the mahazar Ext. P2 and in issuing the prohibitory order Ext. P3 u/s 110 of the Customs Act, 1962 is illegal and without jurisdiction.

3. The brassiers are undoubtedly undergarments falling with the description "articles of ready-to-wear apparel (known commercially as ready made garments) including undergarments" and hence excise duty will be leviable in respect of them, if in relation to their manufacture, any process is ordinarily carried on with the aid of power.

4. The process employed in the petitioners factory for the manufacture of brassieres has been explained as follows in Ext. P1 :-

We manufacture brassieres. We started a manufacturing this ready-to-wear apparel in 1964. We have a factory in Pattikkara Street, Palghat with 9 sewing machines where these brassieres are stitched. Cutting is done in our premises in Market Road, Palghat. After cutting to sizes the cloth, tape, elastics and label are given to the workers in the factory who return the finished brassieres to us. The cloth, tape, elastics and label are also distributed to about 30 outworkers who stitch them in there houses and return the finished brassieres to our premises in Market Road, Palghat. These finished brassiers are ironed with electric iron in our premises in Market Road and then it is packed in card board boxes.

All the work up to the stage of ironing is carried out without the aid of electric power. But, after the process of stitching is over the stitched brassieres are ironed in the petitioners factory using electric irons before they are packed in boxes. The contention of the petitioner is that the process of manufacture of the brassieres was complete before the stage of ironing and therefore, it cannot be said that electric power has been used by the petitioner in relation to the process of manufacture of the brassieres. Various decisions dealing with the connotation of the expression manufacture were cited before us by the petitioners counsel as lending support to the above contention. It was argued that manufacture involves a transformation in the commercial identity of an article and any process that does not bring about such a change of identity cannot be regarded as a process of manufacture. In our opinion, it is unnecessary for the purpose of this case to consider the broad question as to whether it is essential that every item

of work carried out or process applied to an article should by itself bring about a change in its identity in the commercial sense at that very stage in order that such work may be regarded as a process carried on in relation to the manufacture of such article. We say so because for the purposes of the Act the expression manufacture has been given a special definition in Section 2(f). Under that definition manufacture includes any process incidental or ancillary to the completion of a manufactured product. The scope of this definition came up for consideration before Gujarat High Court in *Extrusion Process P. Ltd. vs. N. R. Jadhav* 1974 TaxLR 1655. The question that arose for decision in that case was whether under Item 27 (e) of the First Schedule of the Act which subjects to payment of excise duty extruded pipes and tubes of aluminium, the levy of duty is attracted when a person, who has purchased plain extruded tubes that have been manufactured by others and which were already subjected to excise duty, applies to those tubes a process of printing and lacquering. It was held by the Division Bench of the Gujarat High Court that under Item 27(e) of the First Schedule the levy of duty is on the manufacture of tubes of aluminium by applying the process of extrusion. After pointing out that the word extrusion in relation to tubes means the process of forming the tube from a metal slug or dump the learned Judges held that the said process had already been applied fully when the plain extruded aluminium tube purchased by the petitioner were originally manufactured. Dealing with the scope of the definition contained in Section 2(f) the learned Judges held that any process that is incidental or ancillary to completion of a manufactured product, however unessential it may be, will fall within the compass of the expression manufacture. But, in order that any process can be regarded as incidental or ancillary to the completion of a manufactured product it must have some relation to the manufacture of finished product. On the facts of that case the learned Judges came to the conclusion that the printing or lacquering could not be said to be incidental or ancillary to the completion of the process of manufacture referred to in Item 27 (e) of the First Schedule since the said item takes in only a manufacture of tubes by application of the process of extrusion. This decision is, in our opinion, of little assistance to the petitioner because the conclusion of the learned Judges that Item 27 (e) of the First Schedule authorises the levy of excise duty only if there is a manufacture of pipes or tubes of aluminium by the application of any process of extrusion. It was because that process of manufacture had been completed prior to the stage of the purchase of the tubes by the petitioner in that case that the learned Judges held that the work of printing and lacquering carried out by the petitioner in relation to those tubes could not be said to be incidental or ancillary to the completion of the process of manufacture referred to in Item 27 (e).

5. In the present case, Item 22D of the First Schedule with which alone we are concerned, authorises the levy of 10% ad valorem duty on articles of ready-to-wear apparel including undergarments and body supporting garments in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Since the definition contained in Section 2(f) of the Act includes all

processes that are incidental or ancillary to the completion of a manufactured product the only question to be considered by us, in the present case, is whether the process of ironing applied to the stitched brassieres can be regarded as incidental or ancillary to their completion. In our opinion, the process of ironing that was applied to the stitched brassieres prior to their packing was a process incidental to the completion of the brassieres as a manufactured product since the said process was obviously intended to give a finishing touch in order to render them marketable as ready-to-wear undergarments. In as much as the said process was admittedly being carried out with the aid of power, liability for payment of duty under Item 22D gets attracted. The contention to the contrary put forward by the petitioner cannot therefore be accepted.

6. The original petition therefore fail and is dismissed but in the circumstances without any order as to costs.