

(1986) 03 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 8344 of 1985

Tirupur Cone Winding Owners Association

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1987) 13 ECC 275 : (1986) ECR 494 : (1986) 26 ELT 513

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : K. Doraiswami, for the Appellant; B. Jamal Haseem, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. When cotton yarn plain straight real hanks in loose form grey or dyed in various colours, is converted into cones, it is liable to payment of

Central Excise duty is the question for consideration in this petition. According to the Central Excise authorities, the conversion of cotton yarn

hanks in loose form into cones constitute "manufacture" and hence, Central Excise duty is attracted.

2. The petitioner-Association made a representation to the Collector of Central Excise, Coimbatore, to grant exemption to the members of its

Association from payment of excise duty on the cone yarn would on the Cone Winding machines. The petitioner-Association stated that its

members are getting dyed cotton yarn in loose form from the dyeing factories and then wind them into cones with the aid of power by means of

Cone Winding machines. The dyed cotton yarn is supplied to the manufactures of hosiery products. Some of the members being very poor, they

are doing cone winding on job-change basis on the loose dyed cotton yarn

supplied by the hosiery manufacturers.

3. The petitioner represented that on a plain reading of tariff item 18A read with Section 2(f) and sub-item (iv) thereof, of the Central Excises and

Salt Act, 1944 the process of manufacture enumerated therein would be applicable only in the case of cotton yarn in the grey stage and not to

dyed cotton yarns, as dyeing of cotton yarn is not included as a process of manufacture. It was further represented that since for the purpose of

dyeing, cotton yarn was received in loose form, it was supplied in the same loose form after being dyed to the members of the petitioner-

association for being wound into cones on their Cone Winding machines and hence, the process will not amount to "manufacture" attracting

payment of excise duty.

4. The Superintendent of Central Excise, Tirupur, sent a communication to the petitioner-association on 25.4.1984, informing the petitioner that the

cone yarn is liable to Central Excise duty. The letter is in the following terms:-

With reference to your representation on the above subject, you are hereby informed that your representation was duly considered by the Central

Board of Excise and Customs, New Delhi. The Board is of the opinion that cotton yarn plain straight reel hanks in loose form, grey or dyed in

various colours, when converted into cones is liable to Central Excise duty.

Hence, you are informed to instruct your members who are converting grey or dyed plain straight reel hanks into cones, to take out Central Excise

licences and adhere all the Rules and Regulations under Central Excise Laws.

5. Having failed to convince the Excise Authorities, that conversion of loose dyed yarn in hanks into cones will not attract excise duty, the petitioner

has filed this petition under Art. 226 of the Constitution praying for the issue of a writ of declaration to the effect that item 18-A of the Central

Excise Tariff in so far as it includes cones and the consequential steps taken by the second respondent for collection of excise duty under item 18-

A of the Central Excise Tariff including prosecution as ultra vires, unconstitutional, void, illegal and without jurisdiction in so far as they relate to the

members of the petitioner-association.

6. Propounding the case of the petitioner, Mr. K. Doraiswami, learned counsel argued that winding of yarn is restored to only to facilitate the

manufacture of hosiery and as such, the dyed yarn does not undergo any change, when it is wound into cones and that no manufacturing process is

also involved. He further argued that cones ought not to be included under item 18-A of the Central Excise Tariff. Consequently, the members of

the petitioner-association cannot be called upon to pay excise duty on the cones wound by them. The evaluate the argument of Mr. Doraiswami, it

is necessary to refer to item 18-A of the Central Excise Tariff. The relevant item reads thus:-

18. A. Cotton Yarn, all sorts -

Yarn, in which cotton predominates in weight and, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of

power -

(i) not containing, or containing not more than one sixth by weight of non-cellulosic fibre calculated on the total fibre contents;

(ii) containing more than one-sixth by weight of non-cellulosic fibre calculated on the total fibre content.

Explanation:-

1. "Cotton Yarn" shall include cotton twist and thread;

2. Cotton yarn, twist or thread, all sorts, whether sized or unsized, in all forms including skeins, hanks, cops, cones, bobbins, pirns, spools, reels,

cheeses, balls or on warp beams shall be deemed to be included under this item.

On a reading of this item, it may be seen that it is a comprehensive description and cotton yarn, twist or thread, all sorts, whether sized or unsized,

in all forms come within the ambit of item 18A and whether it be skeins, hanks, cops, cones, bobbins, pirns, spools, reels, cheeses, balls, or on

warp beams, all of them will come within the mischief of item 18A. Such being the case, it is prima facie not open to the petitioner to contend that

the inclusion of cones in item 18A is not just or legal. The word "manufacture" has been defined in Section 2(f) and it is in the following terms :-

2(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

(i)

(ii)

(iii).....

(iv) In relation to goods comprised in item No. 18A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods.

As per this definition, in so far as the goods comprised in item 18A of the First Schedule are concerned, seizing, beaming, warping, wrapping, winding or reeling, or any one or more of those processes, or the conversion of any form of the said goods into another form of such goods, would

amount to "manufacture". Undoubtedly, when dyed yarn in loose form in hanks, is wound into cones, the process of manufacture is involved and

there is a conversion of hank yarn into cone yarn. The process of winding as well as the conversion of the yarn from one form to another will

certainly amount to a manufacturing process as envisaged u/s 2(f)(iv) of the Act. In the face of this clear provision, I do not think there is any scope

for the petitioner to content that the winding of dyed yarn into cones, will not constitute a manufacturing process, and that there is no conversion of

the yarn from one form into another and hence, the inclusion of cones in item 18A should be struck down as being ultra vires and unconstitutional.

In the course of his argument, Mr. Doraiswami referred to two decisions, one of the Supreme Court and one of this Court and sought support

from the ratio therein to canvass the stand of the petitioner. The first case cited is Union of India (UOI) Vs. Delhi Cloth and General Mills, . What

arose for consideration in that case was, whether the manufacturers of Vanaspathi are liable to pay excise duty on the finished product alone, i.e.,

vanaspathi which is liable to excise duty as a vegetable product of manufacture from out of ground nut oil and til oil or whether they are also liable

to pay excise duty on the ground that in the course of the manufacture of Vanaspathi, they bring into existence at one stage, after carrying out some

processes with the aid of power, what is known to the market as refined oil, the said oil constituting vegetable non-essential oil and attracting

excise duty as such. In that context, the Supreme Court had to examine what will constitute "manufacture". The Court held as follows -

The word "manufacture" used as a verb is generally understood to mean "as bringing into existence" a new substance and does not mean merely

"to produce some change in a substance", however minor in consequence the change may be.

In that view of the matter, the Court held that excise duty was leviable only on the end-product Vanaspathi and not upon any intermediary product.

The second case cited is a decision of Padmanabhan J. in *Kwality Coated Products v. Govt. of India*, 1980 T.L.N.J. 383 1980 ELT 579 . What

fell for consideration in that case was, whether bitaminised water proof paper is liable to be assessed to excise duty under Entry 17(2) of the First

Schedule to the Central Excises and Salt Act, 1944. The learned Judge held that since bitaminised water proof paper was produced by treating

two layers of kraft papers with bitamen cannot be said to be a new kind of paper that is brought into existence and hence, quashed a notification

which called upon the manufacturer to pay excise duty on hitumini and water proof paper.

Controverting the arguments of Mr. Doraiswami, Mr. Jamel Haseem, Additional Central Government Standing Counsel referred to a recent

decision of the Supreme Court in *Empire Industries v. Union of India*, 1985 ELT 179 . The debate in that case related to the payment of excise

duty for job work operations of dyeing, bleaching and printing of cotton fabrics and man-made fibres. After reviewing various earlier authorities,

the Supreme Court held that those processes undoubtedly fall within the expression "manufacture" u/s 2(f) of the Act. It is observed in that case

that if by application of labour and skill, an object is transformed to the extent that it is commercially known differently, it will suffice to say that

"manufacture" has taken place for the purpose of central excise.

The authorities cited by Mr. Doraiswami cannot be of any avail to the petitioner, because, a combined reading of item 18A and item 2(f)(iv) would

show that there can be no doubt whatever that the conversion of dyed yarn in loose bundles into cone yarn will not only amount to a manufacturing

process, but will also attract levy of excise duty under item 18A. The tests to be applied have been sufficiently laid down in the decision in *Empire*

Industries v. Union of India, 1985 ELT 179 and in the present case, the tests are fully satisfied. Hence the petitioner is not entitled to seek a rule

from this court in terms of the prayer contained in the writ petition. Accordingly, the writ petition fails and will stand dismissed. No costs.