

(1980) 02 DEL CK 0037

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 3 of 1979

Union of India

APPELLANT

Vs

Bharat Carpets Limited

RESPONDENT

Date of Decision : 12-02-1980

Acts Referred:

Citation : (1981) 8 ELT 57

Hon'ble Judges : V.S. Deshpande, C.J

Bench : Single Bench

Judgement

V.S. Deshpande. C.J.

1. The respondent-company manufactures tufted carpets. The excise duty was levied on the said carpets manufactured by the petitioner under Item 21 of the Schedule to the Central Excises and Salt Act on the ground that these carpets were covered by the following relevant description of the excisable article :

"Woollen Fabrics means, all varieties of fabrics manufactured wholly of wool or which contain 40 per cent, or more by weight of wool and includes blankets, lohis, rug, shawls and embroidery in the piece, in strips or in motifs."

2. In pursuance of the orders levying the duty the respondent paid various amounts of duty. A summary of the treasury challans of duty paid by the respondent is at Annexure "A" annexed to the plaint in Suit No. 142 of 1973. It is found that payments of which Serial numbers are 1 to 55 were made up to 12-1-1970. The payments of Serial numbers 56 to 183 were made from 24-1-1970 to 20-04-1972.

3. Suit No. 142 of 1973 was filed by the petitioner on the 26th March, 1973 claiming a refund of all these amounts from the Excise Authorities on the ground that Item No. 21 of the Schedule to the Central Excises and Salt Act relating to "woollen fabrics" was not applicable to the carpets manufactured by the plaintiff and, Therefore, the duty of excise was illegally recovered from the plaintiff. It

was also pleaded that Section 40 of the Central Excises and Salt Act which is a bar to the filing of suit against anything which is done or intended to be done in good faith in pursuance of the Act or any rule made there under does not apply inasmuch as the levy of duty against the plaintiff being illegal could not said to have been done under the Act at all. The suit was decreed in full by the learned Single Judge. Hence, this appeal.

4. The learned counsel for the appellant in this appeal has mainly argued on the assumption that the levy of duty was not warranted by Item No. 21 of the Schedule to the Act. The suit was governed by Article 113 of the Schedule to the Limitation Act and the period of limitation for filing the suit was three years from the date on which the right to sue accrued to the plaintiff. The main question, Therefore, is when the right to sue for recovery of the amount paid by the plaintiff accrued to him. The contention of the appellant is that each time the illegal payment had to be made by the plaintiff the right to recover it back from the respondent accrued to the plaintiff and the time began to run from that date. It was further submitted for the appellant that each payment constitute a separate cause of action and the limitation of three years has to be counted from the date of each payment for the suit for the recovery of that payment. Even though all these causes of action can be combined in this suit because they involve a common question of law and the suit is against the same respondent this fact should not make us forget the basic nature of the cause of action on which each of the claim for refund rests. There are, Therefore, as many causes of action as there were payments. This contention in our view is correct.

5. The learned counsel for the respondent has argued that what the plaintiff was concerned with was the basic question whether the article manufactured by the plaintiff was excisable or not. The plaintiff, Therefore, filed departmental appeal and revision under the provisions of the Excise Act against the enforcement of an illegal payment against him by the respondent by order dated 4th November, 1968. Ultimately in the revision to the Central Government it was decided on 14th April, 1972 that the article manufactured by the plaintiff was not liable to excise duty. It is argued for the respondent that it is only then that the plaintiff could really be said to have a cause of action for this suit. Had any suit been filed prior to that date he could have met with the objection that such a suit is barred by Section 40 of the Act.

6. In our view the argument of the respondent does not stand scrutiny. If any of the payments was illegal then the suit was maintainable as not being barred by Section 40. It was not necessary for the plaintiff to wait for any decision of the Taxing Authorities including the decision by the Central Government in revision in favor of the plaintiff. The cause of action for the suit is that the individual payment concerned was illegal and, Therefore, the plaintiff is entitled to recover it back. The cause of action for the suit is that the individual payment concerned was illegal and, Therefore, the plaintiff is entitled to recover it back. The cause of action is not that in the revision Central Government has held that the carpets

made by the plaintiff were not taxable and, Therefore, the plaintiff was entitled to refund. The difference between these two may not be at once apparent but for the purpose of limitation it has to be grasped and understood. The period of limitation under Article 113 is three years plus the period of two months which is available to the plaintiff because he has to give a notice u/s 80 of the CPC before filing a suit. On this view the suit is within limitation only for the recovery of those payments which were made from 24-1-1970 onwards and are described as Serial numbers 57 to 183. The total amount of these payments comes to Rs. 5,85,932.08 subject to any mistake in arithmetical calculations. The suit is within time only for this amount. The amount of payments up to Serial numbers 1 to 56 comes to Rs. 1,45,221/- recovery of which is barred by time.

7. On merits, in view of the order passed by the Central Government is revision in favor of the plaintiff as also in view of the Supreme Court decision, in Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills, , it is clear to us that "Woollen fabrics" do not include the "tufted carpets" made by the petitioner inasmuch as they are not woven and are not a fabric.

8. The appeal is allowed. The decree of the learned Single Judge is modified to Rs. 5,85,932.08 and the suit in respect of the other amount of Rs. 1,45,221/- is dismissed. Since the appeal has succeeded mainly on the plea of limitation but not on the merits of the case, no order is made for costs.