

(1991) 07 BOM CK 0085

In the Bombay High Court

Case No : Appeal No. 1231 of 1986 in Writ Petition No. 1438 of 1981

Union of India

APPELLANT

Vs

Swan Mills Ltd.

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1991) ECR 383 : (1991) 56 ELT 44

Hon'ble Judges : S.P. Bharucha, J;M.F. Saldhana, J

Bench : Division Bench

Advocate : Mr. J.P. Devadhar, for the Appellant; Mr. P.D. Ghandy, instructed by Crawford Bayley and Co., for the Respondent

Judgement

Bharucha, J.—The complaint of the writ petitioners was that in respect of classification lists submitted by them in respect of yarn after sizing which was sold by them. The excise authorities, who are the appellants before us, were approving the classification lists with the illegal and wrongful condition that the excise duty was to be levied again on the weight of the sizing material. No affidavit in reply was filed by the excise authorities. The learned single Judge noted that the contention raised in the petition was covered by a decision delivered on 4th September, 1981 in Writ Petition No. 455 of 1979. He also noted that a Division Bench of the Gujarat High Court in SLP No. 2114 of 1976, decided on 30th July, 1981 had taken a similar view, and that the SLP preferred by the excise authorities there against to the Supreme Court had been summarily dismissed on 19th April, 1982. In view of these facts and the consistent view of this court in several writ petitions mentioned by the learned Judge, he passed an order allowing the writ petition and quashing the impugned order and show cause-cum-demand notice.

2. The excise authorities are in appeal.

3. It was contended by Mr. Ghandy, learned counsel for the respondents, that the appeal did not lie in view of the fact that the order that was passed by the

learned single judge was virtually on a concession. We have, however, elected to hear the appeal on merits because a concession on a point of law cannot be treated as binding upon the appellants. Mr. Devadhar, learned Counsel for the appellants, drew our attention to the judgment of the Delhi High Court in J.K. Cotton Spinning and Weaving Mills and another Vs. Union of India and others, . The Court said in paragraph 30 that the only other point which remained to be dealt with was with regard to sized yarn or un sized yarn being liable to levy of duty in factories where spinning and weaving was done in a composite mill having a continuous integrated process of manufacture. To the Division Bench of the Delhi High Court the position admitted of no doubt. They said, "The goods that come into existence after spinning is yarn which is un sized. Merely because the goods are sized the nature of the goods is not changed. Sizing is only a process in manufacturing fabrics and does not amount to manufacturing new goods. Sized yarn is not new goods which come into existence. We clarify, if un sized yarn is cleared from the factory or a place specified under Rule 9 or goes into the main stream of the market, then the un sized yarn would attract duty. Similarly, if sized yarn is cleared in the same way then sized yarn would attract duty. The question before us is whether sized or un sized yarn would be liable for duty in an integrated process of manufacture," What Mr. Devadhar stressed is the sentence "Similarly, if sized yarn is cleared in the same way then sized yarn would attract duty." Mr. Devadhar fairly drew our attention to the fact that this judgment of the Delhi High Court was taken in appeal to the Supreme Court and while upholding it no view was expressed by the Supreme Court that can have any bearing on the question that is now raised in the appeal.

4. Mr. Ghandy pointed out that Pratap J. had dealt with the point in issue in Shreeniwas Cotton Mills Ltd. and another Vs. Union of India and others, , concerning the same J.K. Cotton Spinning & Weaving Mills Co. Ltd., where the process of sizing was so described. The learned Judge also referred to the Judgment of Kurdukar J. in Writ Petition No. 455 of 1980, decided on 14th July, 1981, reported in Morarji Gokuldas Spinning Weaving Co. Ltd. and another Vs. Union of India and others, , where it was held that the distinction sought to be drawn before him between sized yarn consumed internally as against sized yarn sold outside was a distinction without any difference to the fundamental question, viz., when was the manufacture of yarn complete. The ratio of the judgment of Kurdukar J. was that it complete at the spindle stage. The process of sizing did not, therefore, constitute a process which rendered the sized yarn liable to excise.

Having regard to the clear description of the process of sizing set out in the Delhi High Court judgment in J.K. Cotton Spinning and Weaving Mills Co. Ltd. and another Vs. Union of India and others, , we are inclined to agree with the view taken by Pratap J. We do not think that the observations of the Delhi High Court in the later case in J.K. Cotton Spinning and Weaving Mills and another Vs. Union of India and others, can assist the excise authorities for here also it is said that sizing did not amount to the manufacture of new goods. If, in these

circumstance, the sentence. "Similarly, if sized yarn is cleared in the same way then sized yarn would attract duty" is to be treated as indicating that sized yarn would be liable to duty on the basis of the weight of the sizing material, then the sentence is clearly obiter dicta for as the Delhi High Court itself said the only point it was considering was with regard to sized yarn or un sized yarn being liable to levy of duty in factories where spinning and weaving was done in a composite mill having a continuous integrated process of manufacture.

In the result, the appeal is dismissed. There shall be no order as to costs.