
(1983) 01 GUJ CK 0020
In the Gujarat High Court
Case No : First Appeal No. 1485 of 1981

Union of India

APPELLANT

Vs

Tata Chemicals, Mithapur

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 4, 4(4)

Citation : (1984) 2 ECC 91 : (1983) ECR 467D : (1983) 12 ELT 776

Hon'ble Judges : V.V. Bedarkar, J;A.P. Ravani, J

Bench : Division Bench

Advocate : H.M. Mehta and S.D. Shah, for the Appellant; R.J. Joshi and B.H. Antia and K.S. Nanavati, for the Respondent

Judgement

V.V. Bedarkar, J.—We have heard the main appeal with Civil Application No. 391 of 1983. Since in our view, the said Civil Application

for adjournment of hearing of the appeal was nothing but an attempt to stall the hearing of this first appeal, which was fixed for being heard on 24-

1-1983, we have rejected the same by a separate order and detailed reasons thereof are recorded in the order passed therein.

2. So far as the facts are concerned, they are as follows :

The respondent-company (original plaintiff) filed a suit, being Special Civil Suit No. 50 of 1980, against the Union of India and others (present

appellants) in the Court of the Civil Judge, Senior Division, Jamnagar, for recovery of an amount of Rs. 1,02,46,701.52 paise on the ground that

this amount represented excise duty which was illegally collected by the Excise department from the plaintiff-company. The plaintiff-company has a

factory at Mithapur in Jamnagar District and it manufactures Soda Ash. This commodity falls under Tariff Item No. 14-A in the First Schedule to

the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act"). The case of the plaintiff was that excise duty was charged on the packing material. It was the contention that Section 4 of the Act was substituted by Section 2 of Act No. XXII of 1973 and it came into force from 1-10-1975. It provided that where under the said Act duty of excise is chargeable on any excisable goods with reference to value each value shall be subject to the provisions of that section. We shall be considering this section in extenso when we shall be discussing the merits. The case of the plaintiff-company was that the excise duty on the packing material recovered by Government was not justified, and therefore, demand of refund of excise duty was made. The suit was decreed. The main ground for decreeing the suit was the consideration of the decisions of a Division Bench of this Court in *Golden Tobacco Co. Ltd. v. Union of India* 22 GLR 440 : 1980 ELT 311 and in *Alembic Glass Industries Ltd. v. Union of India*, 1979 Excise Law Times 444. This judgment and decree is challenged by the appellants by way of this appeal.

3. The material ground for challenging the decree of the trial court is on the strength of the Full Bench decision of this Court in *Ahmedabad*

Manufacturing and Calico Printing Co. Ltd. v. Union of India 24(1) GLR 1 : (1982 ELT 821 (Gujarat). Therein the Full Bench took a decision that

the cost of packing shall be included in the manufacture of goods which will be excisable.

4. The dispute involved in this appeal is only about the excise duty on the packing material. The main dispute centres round the provisions of

Section 4 of the Act. We would adopt the mode in which this Section 4 of the Act was considered by the Full Bench of this Court in case of

Calico Mills (Supra) by placing both the old as well as new sections in juxtaposition. They are as follows :

Section 4 :

Before amendment After amendment which

became effective as and

from 1st October, 1975.

(1) (2) (3)

4. Determination of value for the 4. Valuation of excisable
purpose of duty goods for purposes of
charging of duty of excise.

Whereunder this Act, any article (1) Where under this Act, the
is chargeable with duty at a rate duty of excise is chargeable
dependent on the value of the on any excisable goods with
article, such value shall be deemed reference to value, such
to be - value shall, subject
to the other provisions
of this Section, be
deemed to be -

(a) the wholesale cash price (a) the normal price
for which an article of thereof, that is
the like kind and quality to say, the price
is sold or is capable of at which such goods
being sold at the time of are ordinarily sold
the removal of the article by the assessee to
chargeable with duty from a buyer in the
the factory or any other course of wholesale
premises of manufacture trade for delivery
or production for delivery at the time and
at the place of manufacture place of removal,
or production or if a where the buyer is
wholesale market does not exist not a related person
for such article at such and the price is the
place, at the nearest sole consideration
place where such market for the sale :
exists, or

* * * *

(4) For the purpose of
this Section

(b) where such price is not * * * *

ascertainable, the price

at which an article of the (d) "Valud" in relation
like kind and quality is excisable goods.

sold or is capable of being

sold by the manufacturer * * * *

or producer, or his agent,

at the time of the removal (i) Where the goods are

of the article chargeable delivered at the

with duty from such factory time of removal in

or other permisses for a packed condition

delivery at the place of includes the cost

manufacture or production, or if of such packing

such article is not sold or is except the cost of the

not capable of being sold at packing which is of a

such place, at any other place durable nature and

nearest thereto. is returnable by the

buyer to the assessee.

Explanation. - In determining Explanation. - In this

the price of any article under sub-clause "packing"

this Section, no abatement or means the wrapper,

deduction shall be allowed container, bobbins,

except in respect of pirn, spool reel or

trade discount and the amount warp, beam, or any

of duty payable at the time of other thing in which

the removal of the article or on which the

chargeable with duty from the excisable goods are

factory or other premises wrapped, contained
aforesaid"" . or wound.

5. The main consideration is about packing, and for that Section 4(4)(d)(i) would be material. This provision provides that if the goods are delivered at the time of removal in a packed condition then the cost of goods of such packing shall be included in the cost of manufacture of goods, except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

6. We may have a quick look at the basis of the claim made by the plaintiff-company in its plaint. The plaintiff-company averred that, having regard

to the definition of the word "value" given in Section 4(4)(d) of the Act and as it was also levied and collected by the defendants on such basis,

they paid the excise duty on the cost of packing materials and charges for branding, packing and stitching of various kind of Soda Ash under a

mistaken belief that the same formed part of value of Soda Ash falling under T.I. No. 14-A. It is further averred that as per the decision given by

this Court in Alembic Glass Industries Limited v. Union of India 21 GLR 524 : 1979 ELT 444 (Supra), the cost of packing enjoys the character of

post-manufacturing expenses. The plaintiff-company came to know of the said decision for the first time sometime in January 1980 and on a

reading thereof the plaintiff discovered that the cost of packing materials, i.e. jute bags and charge for branding, packing and stitching in respect of

bags of Soda Ash of various kinds which were delivered in packed condition at the place of removal, did not form part of the value of Soda Ash

cleared from 1st October, 1975 onwards. Hence, according to the plaintiff, the impost of duty on the cost of packing materials and the charges for

branding, packing and stitching was ultra vires and that Soda Ash fully and completely manufactured before the same was packed in gunny bags.

7. Thus, the very basis of the suit was a decision of this High Court in the case of Alembic Glass Industries (Supra). It appears that another

decision of this High Court popularly known as Second Golden Tobacco case, 22 Gujarat Law Reporter 440 1980 ELT 311, was pressed into

servic at the time of argument before the trial Court. The trial Court based its decision on the aforesaid two decisions of this Court and held that the

Excise Authorities were not empowered to levy the excise duty on the cost of packing materials, that is, gunny bags.

8. It is submitted on behalf of the appellants that during the trial, questions were put to the plaintiff's witness Harjivandas Odhavji Ex. 43, who is

Duties and Taxes Officer of the plaintiff-company, and in paragraph 17 he has specifically stated that process of packing, branding, stitching, etc. is

carried out in the factory itself and the goods are being sent out in packed condition. It is also despatched after it is ready and packed. We are

referring to the deposition of this witness at this juncture because an argument was advanced before us that sometimes this Soda Ash could be sold

in loose condition. On facts, so far as the evidence of this witness is concerned, though he stated that this commodity can be sold in loose

condition, he specifically stated that they sell the material only in packed condition, and since year 1975 to 1980 (the period relevant for the

purpose of this appeal) no goods were sold in loose condition. Then so far as provisions of Section 4(4)(d)(i) of the act are concerned, a specific

question was put to this witness, and in paragraph 19 of his deposition he has categorically deposed that they are recovering from the customers

the charges in respect of packing, etc. and the excise duty paid thereon. Admittedly, this packing is done in jute bags, and witness has specifically

stated that those jute bags are not returned by the purchasers. It is therefore, very clear that on facts, exception to Section 4(4)(d)(i) of the Act

would not be applicable because these are not the goods, packing of which is of a durable nature and also in returnable by the buyer to the

assessee.

9. The Full Bench of this Court in case of Calico Mills (Supra) specifically considered the provision of Section 4(4)(d)(i) of the Act in paragraph

15 by observing that the amended provision (Section 4) reproduced earlier by us) in relation to excisable goods which would "includes the cost of

packing" where the goods are delivered at the time of removal from the factory gate in a "Packed condition". An argument was advanced before

the Full Bench hat notwithstanding Section 4(4) and notwithstanding the Explanation which makes it explicit that cost of packing material will be

includible in determining the valuation for the purposes of computation of duty (unless the packing is of durable nature and returnable by the buyer

to the seller) cost of packing should be deducted from the wholesale price at the factory gate even when goods are sold in a packed condition. The

Full Bench negated this argument observing that when the relevant section expressly provides for inclusion, unless the section is held to be ultra

vires to the extent it so provides, effect must be given to it. Vires of this section were challenged before the Full Bench, which challenge was also

negated. This decision of the Full Bench clearly postulates that excise duty would be chargeable on the materials in packed condition including the

cost of packing. This judgment of the Full Bench was not before the learned Civil Judge, Senior Division and, therefore, relying on the earlier

decisions he gave the judgment in favour of the plaintiff-company. After discussing the reasons in detail the Full Bench of this Court did not agree

with the reasoning of the Division Bench in the earlier two cases of Alembic Glass Industries and Second Golden Tobacco (Supra) and held as

follows :

With due respect to the Division Bench concerned in the aforesaid two cases we are unable to agree that Section 4(4)(d)(i) can be read down so

as to obliterate the provision which expressly makes the cost of packing material includible. When the Parliament has in so many words enacted

the provision and made it includible, we cannot erase it by giving the exercise the label of "reading down". The doctrine of reading down cannot be

invoked in order to paste a blank paper over the provision or scoring it off with ink and pen in the course of interpreting it. When we interpret it the

body of the provision must remain intact though its looks may be altered. But we cannot obliterate the body of the provision. It amounts to virtual

repeal of a legislation by the Court. Now the Court can hold the provision to be unconstitutional. The Court cannot "repeal" it for the obvious

reason that the power of "enacting" and "repealing" a legislation is within the exclusive domain of the Legislature not that of the Court. We are,

therefore, regretfully unable to agree with the view taken in Alembic Glass Co. Ltd. and Second Golden Tobacco in the aforesaid two cases.

Once the law laid down in the earlier two decisions is held to be no longer a good law by the Full Bench of this Court, the very basis on which the

decree in favour of the plaintiff-company is passed does not exist.

10. On behalf of the respondent-company, an attempt was made to show that

the facts of this case are some what different from the facts which were considered by the Full Bench. In facts, there is no difference. it is the clear case that at the factory-gate goods are sold in packed condition. It is not the case of the respondent-company that these packings are of durable nature and customers return them so as to take advantage of the provisions of Section 4(4)(d)(i) of the Act which provides for an exception that the cost of packing which is of a durable nature and is returnable by the buyer to the assessee would not be included.

11. Now, it is submitted before us that Soda Ash can also be sold in loose condition. For that, first our attention was drawn to Ex. 58, a bill bearing No. 46400 in the name of M/s. Shree Durga Glass Works Pvt. Ltd. It is dated 22-11-1976. Therein on the first page, charges for Soda Ash - Bulk - including handling and loading charges with excise duty, etc. are mentioned. While on the second page of the bill, charges of jute bags, branding, packing and stitching and excise duty thereon are mentioned. It is the submission that as these charges are separately mentioned, they should not be included in the excise duty charged on packing. It is not understood how this argument would help the respondent-company that the entire price mentioned in both the sheets does not represent the factory-gate price. In fact, it is an admitted position, as considered from the evidence of Harjivandas Ex. 43, that goods are delivered in packed condition and the price of goods recovered from the customers also includes the price of packing material. Therefore, it would certainly be excisable in view of the provisions of law mentioned above.

12. In order to show that sometimes this Soda Ash also can be sold in loose condition reliance was placed on the observations made by Kirk-Othmer In Encyclopaedia of Chemical Technology, 2nd Edition, Volume 1, Therein, at page 720, process of Storing and Shipping of Product (Soda Ash) is mentioned, It is stated that the hot Soda Ash from the discharge end of the calciner is cooled and then stored either in rooms or cylindrical silos designed for large-scale mechanical handling of the material. From the silos or storages the product is screened and packed for shipment in paper or burlap bags and barrels. The further sentence on which reliance is placed shows that much of it is shipped in bulk. In the instant case we are concerned with the fact, and the fact found from the

evidence is that this Soda Ash, though can be sold in loose condition, is actually sold in packed condition by the respondent-company who claims refund of excise duty.

13. Our attention is also drawn to the observations made by Te-Pang Hou in his book *Manufacture of Soda with Special Reference to the*

Ammonia Process, 2nd Edition. Therein, at page 209 in para 2, there is mention about packing of Soda Ash. It has been mentioned therein that

Rotary cooling conveyors with inside spirals deliver coaled ash to screens and packing bins, from which the ash is either packed in bags by means

of screw packers, or loaded by means of pneumatic conveyor into enclosed railway cars and shipped in bulk, or conveyed into great concrete

silos from which it can be retrieved by conveyors, as the case may be. This aspect also would not be helpful to the respondent-company in view of

the fact considered by us on the evidence from which it is very clear that the respondent-company sells Soda Ash in packed condition.

14. Another argument advanced is that the process of manufacturing is complete the moment Soda Ash is put into silos and, therefore, packing

would not cover manufacturing process. This argument is advanced by relying on some hypertechnical meaning of word "manufacture". For this,

reliance is placed on the evidence of plaintiff's witness Shambhunath Bhattacharya Ex. 59. He was working as Research and Development

Manager of the plaintiff-company. He had deposed that Soda Ash is produced from the combination of lime stone and salt. Lime stone and salt

pass through various chemical processes and thereafter they are filled in silos. At that time all the chemical process are complete. It is in view of this

evidence that it is submitted that the manufacturing process is complete the moment Soda Ash is put into silos.

15. Further reliance is placed on letter of January 1974, Ex. 34, from the Assistant Collector of Central Excise. This was in reference to refund of

excise duty on consumption of Soda Ash in steamtube drier or calciner. It has been stated in this letter that since Soda Ash contained in silos is

fully manufactured, request for refund was not granted. Therefore, it was stated that this manufacturing process being over, packing material cannot

be covered as goods on which would be paid. Now this argument overlooks the specific provisions of Section 4(4)(d)(i) of the Act which

provides that where the goods are delivered at the time of removal in a packed condition, then the excise duty chargeable includes cost of such

packing. In fact, there is no need to consider what is the meaning of word "manufacture" and "manufactured goods", because irrespective of final

manufacturing process or process having been over, the provisions of law have clearly provided for the levy of excise duty. If the goods are

delivered at the time of removal in packed condition then it would include cost of such packing so far as charges of excise duty are concerned. This

section is held intra vires by the Full Bench of this Court.

16. It is the case that once Soda Ash is manufactured, all the costs incurred thereafter should not be included for the determination of assessable

value of the article. This contention appears to have been based on the notion that for determination of the assessable value of excisable goods,

nothing but the manufacturing cost and manufacturing profit can be taken into consideration. The argument is rooted in confusion between the

incidence of taxation and the machinery provided for the collection thereof. What is excise duty ? Excise duty is a tax on manufactured goods (See

: Ramkrishna Ramnath v. Kampae Municipal AIR 1960 SC 14 , para 11). Again in case of R.C. Jall Vs. Union of India (UOI), , in para 7

thereof the Supreme Court, after considering the decision of the Federal Court and the Privy Council has observed as follows :

..... It is an indirect duty which the manufacturer or producer passed on to the ultimate consumer, that is, its ultimate incidence will always be on

the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so

long as the character of the impost, that is, it is a duty on the manufacture or production is not lost. The method of collection does not affect the

essence of the duty, but only relates to the machinery of collection for administrative convenience.....

Now, surely the method of realising the duty must be left to the wisdom of the legislature. A duty of excise may be collected at such time, in such

manner and from such person as may be convenient or most beneficial to the Revenue. So far as the duty in question is shown to be in relation to

goods until they assume a saleable form and enter the stream of trade, the duty should be considered as a duty of central excise. It is inconceivable

that an activity of packing, branding, and stitching of the goods, such as Soda Ash in this case, can ever be said to be an activity not connected

with the manufacturing of the articles in question. All those expenses are incurred in order to put the article in a marketable condition at the factory

gate so as to introduce it in the stream of goods. The expenses incurred in that connection enter the cost structure of the product just as the cost of

raw materials, labour and other inputs enter the cost structure. It is the packed article which is sold to the wholesaler at the factory gate and the

value paid by the wholesaler for the packed article is the value for the computation of the duties. Once the legislature has provided the basis for the

determination of assessable value in Section 4 of the Act and that is the wholesale or normal price at the factory gate at the time of removal of the

goods, there is no warrant for marking deviation from this basis and for deducting the so-called packing expenses.

17. Therefore, no challenge can stand to this provision, but in order to rely on the word "manufacture" a very hair-splitting argument was advance

on the strength of some observations made by the Full Bench of this Court in Calico Mills case (Supra). The Full Bench, which considering

whether Section 4(4)(d)(i) of the Act is ultra vires, observed in paragraph 18 of the judgment that the levy in essence retains its nexus with the

manufacture of the excisable article only. This was considered because it was argued before the Full Bench that this would be a tax on sale of

packing. Therefore, this Court considered that it is not a levy on the sale of the packing material. The taxing event is "manufacture" of excisable

article but valuation for the purpose of crystallisation of the burden includes the value of packing. Because an argument was advanced that levy of

excise duty partakes of the character of sales tax, the Full Bench considered that so far as excise duty is concerned, levy is on "manufacture" and

not on "sale", and then observed that even if packed goods are not sold excise levy is attracted. Then it is further observed that packing goes with

the article because it is not marketable otherwise. Till the excisable article is packed its manufacture as a marketable product is not complete. It is

an integrated inseparable part of the process of manufacture of the excisable article. Because the Full Bench observed that packing is an integrated,

inseparable part of the process of manufacture of the excisable article, the argument was advanced before us that if the respondent-company could

show that manufacturing process was complete before packing, then the packing would not be integrated inseparable part of the process of manufacture of the excisable article and, therefore, excise duty should not be charged. Then as we have already said, is a hair splitting argument and also a curious way of reading the judgment. In order to show that packing is an integrated inseparable part of the process of manufacture of the excisable article, the Full Bench considered various aspects, and then observed that till the excisable article is packed its manufacture as a marketable product is not complete. Therefore, even though an article might be manufactured in a chemical and commercial term at a particular stage, so far as levy of excise duty is concerned, manufacture of that article as a marketable product is not complete unless and until it is packed and, therefore, it is considered to be an integrated inseparable part of the process of manufacture, and that it should invariably be a process of actual manufacturing. The Full Bench considered that packing is also an intergrated inseparable part of the process of manufacture of the excisable article and, therefore, duty was leviable. The Full Bench further observed that the cost element of the packing enters into the cost of the end product which is marketable and excisable. As it is a part of the cost structure of the excisable goods there is no question of treating it as a separate sale of packing material. We would again emphasise that it is not the case of the respondent-company that Soda Ash was ever sold in loose condition during the relevant period, as considered earlier, on the strength of evidence of Harjivandas Ex. 43. Nothing is shown to us which would show that the observations made by the Full Bench would not be applicable in the instant case where Soda Ash is sold to wholesalers in packed condition. If that is so, the excise duty levied in packing charges is quite justified. We may mention here that reliance has been placed on the aforesaid Full Bench decision of this Court to show that packing is considered an integrated part of manufacturing process. But even irrespective of that decision, a mere reading of section 4(4)(d)(i) amply clarifies that the packing charges are includible in the excise duty unless the packing is such as excepted in the section [i.e. Section 4(4)(d)(i) of the Act].

18. It was argued before trial Court that the gunny bags used for packing purposes were purchased by the plaintiff-company and excise duty was

paid by the plaintiff-company on those gunny bags. Therefore, when the price of gunny bags was included to double taxation of the same

commodity. No such argument is advanced before us. But in order to complete the picture, we may advert to this aspect of the question also. The

argument appears to be that the manufactured article is Soda Ash and not gunny bags. What is manufactured is Soda Ash and, therefore, Soda

Ash alone can be the subject-matter, i.e. gunny bags in the instant case. This argument overlooks the facts that at the factory gate when goods are

cleared, excise duty becomes leviable. At the factory gate what is cleared is "Soda" Ash" packed in gunny bags and not gunny bags. If empty

gunny bags are cleared from the factory gate no excise duty can be levied thereon. When the cost of packing material (i.e. gunny bags in this case)

is added in the assessable value of the excisable article (i.e. Soda Ash), what is being valued is Soda Ash with the added cost of packing for the

purpose of determination of the basis of the levy or excise duty. Thereby incidence of the duty is enhanced; but the nature of the tax, i.e. tax on

manufactured goods, is not changed. It may be noted that it is permissible for the legislature to levy excise duty on the basis of quantity of

commodity. If the duty is assessed on the basis of quantity, say for one bag of 50 kgs. of Soda Ash, particular amount of duty, say Rs. 25/- (or

which may be enhanced further), is leviable, how can it be said that is not an excise duty and it is duty on packing material. Similarly, this is merely

a mode of computation of assessable value for the purpose of levying excise duty. The Full Bench of this Court in Calico Mill's case (Supra) has

discussed this aspect in paragraph 18 of its judgment and has observed as follows :-

..... The extent of the duty in the sense of the burden of duty is not justiciable. It is not for the Court to say how heavy the burden should be, it

being within the powersphere of the Legislature. Since neither the Constitution nor the Act prescribes any upper limit of the burden of levy,

Parliament can impose levy of such an order so is deemed appropriate by it. An illustration will make the point clear. Say the ad valorem rate is

10% of the value of excisable goods the valuation being made by including cost of packing material. Can the Parliament not levy 20% and exclude

the cost of packing ? 10% cost of article plus packing might be much less than 20% of value sans cost of packing. In other words the mode of

computation in so far as the value of packing material is included serves only to enhance the burden of levy. But the levy is essence retains its nexus

with the manufacture of the excisable article only. It is not a levy on the sale of the packing material.

19. Now, a word or two about the claim made by the plaintiff-company in the suit. It is an admitted position that the plaintiff-company has passed

on the incidence of the tax to the consumer (see para 19) of the deposition of Harjivandas Excise 43 (P.W. 1). The company claims refund of this

amount of excise duty which is more than a crore of rupees on the ground that it paid the amount of excise duty in question under mistake of law.

According to the plaintiff-company the mistake was discovered after the judgment of this Court in case of Alembic Glass Industries (Supra)

sometime in January 1980 and hence, the claim of refund for the duty so paid on the value of packing materials commencing from 1-10-1975 to

30-6-1980. The plaintiff-company reserved its right to claim such refund for the period subsequent thereto. Admittedly, the consumer has been

made to suffer the heavy burden of about a little over a crore of rupees by way of excise duty. What the consumer was made to pay should now

be refunded to whom ? Not to the consumer but to the company ? Why ? Because it collected the same under mistake of law. What is the fault of

the consumer and why is he made to suffer the burden of such a heavy duty ? We confess, we are unaware of any judicial system which tolerates a

situation wherein a consumer is allowed to be robbed of and the intermediary who collected the tax is allowed to be benefited by a windfall, an

unjust enrichment. One who suffers, injury is not awarded compensation but compensation is awarded to one who became an instrument in

inflicting injury upon the consumer, "X" (i.e. the company, which has collected the excise duty from the consumer) has not suffered the wrong but

claims compensation for the wrong done to "Y" (i.e. the consumer, on whom the burden of excise duty is passed on). The position in the foremost

leading capitalist countries of the world, that is, England, America and Australia is quite different. There a tax payer has no right to ask for the

refund of the amount of tax paid under a mistake of law. This is understandable since the amount of tax collected for the immediate expenditure for

the common good. Therefore, it would be unjust and unfair to require the State to make its repayment after a number of years.

20. In *S.P. Gupta Vs. President of India and Others*, , D. A. Desai J., in his separate judgment, in para 735, inter alia said that class which has

benefited enormously by this justice delivery system has come into existence, and then remarked. ""Both the judges and the lawyers failed to

suitably revise the system to suit the needs of a Republican form of Government and Egalitarian Society with emphasis on socio-economic justice"".

One wonders and poses a question as to whether the framers of the Constitution would have ever conceived ever in their wildest possible

imagination that in free India, though the justice delivery system, it should be possible for the fortunate few (i.e. manufacturers) to commit a

mistake, and for that mistake hard pressed middle lass citizens and under privileged, half clad starving poor millions of the country should be made

to suffer. Since that question does not arise in this case, we do not propose to deal with the same in detail.

21. In view of the observations made above, the appeal is allowed with costs. The judgment and decree of the trial Court are set aside and the suit

of the respondent-plaintiff-company stands dismissed with costs.

22. The respondent-company has filed cross-objections claiming 18 per cent interest on the amount awarded as against 12 per cent granted by the

trial Court. As the main suit claim stands negatived, the cross-objections for interest do not survive and they are dismissed with costs.

23. At this stage Mr. Nanavati prays for a certificate of fitness for preferring an appeal to the Supreme Court under Article 132(1) and also under

Article 133 of the Constitution of India. It is already brought to our notice that the very questions involved in the present appeal and the decision of

the Full Bench of this Court in case of *Calico Mills (Supra)*, to which we have referred, are before the Supreme Court. The Full Bench also

granted certificate under Article 131(1) and Article 133 of the Constitution of India. As this case also involves substantial questions as to

interpretation of Constitution of India and also substantial questions of law of general importance, which needs to be decided by the Supreme

Court, we grant the certificate as prayed for on behalf of the respondent-company.

24. Status quo to continue for two weeks from the date on which the certified copy of this judgment is delivered.