

(1994) 12 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No's. 8195 and 8196 of 1988

Vareli Textile Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1), 265, 300A
Customs Act, 1962 — Section 12, 3(1)
Customs Tariff Act, 1975 — Section 3
Textiles Committee (Cess) Rules, 1975 — Rule 2
Textiles Committee Act, 1963 — Section 5A, 5A(1)

Citation : (1997) 91 ELT 279 : (1996) 2 GLR 134

Hon'ble Judges : J.N. Bhatt, J; A.P. Ravani, J

Bench : Division Bench

Advocate : Mihir H. Joshi, for K. S. Nanavati, for the Appellant; H.M. Mehta, Sr. Central Govt. Standing Counsel and J.D. Ajmera, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

A.P. Ravani, J.—The petitioners are mill companies engaged in the business of manufacture of synthetic fabric. For the purpose of their

business they import yarn called polyester filament yarn from different countries. On this imported item, the respondents are levying and collecting

cess on textiles at the rate of 0.05% ad valorem. This cess is levied on the additional duty of customs which is being levied and collected as

provided under the Customs Tariff Act, 1975.

2. Petitioner of Special Civil Application No. 8195 of 1988 contends that an amount of Rs. 30,757.69 ps. (Rupees thirty thousand seven hundred

fifty seven and paise sixty-nine only) has been unlawfully recovered as and by way of cess on textiles. The petitioner of Special Civil Application

No. 8196 of 1988 contends that an amount of Rs. 2,70,989.11 ps. (Rupees two

lakhs seventy thousand nine hundred eighty-nine and paise eleven

only) has been unlawfully recovered in the same way as contended by the petitioner of Special Civil Application No. 8195 of 1988. Further,

contention of the petitioners is that under the provisions of the Customs Tariff Act, 1975 levy of additional duty or countervailing duty of customs

calculated at certain percentage of basic custom duty can be levied. It is further contended that Customs Tariff Act, 1975 does not provide for levy

of any cess. On the aforesaid basis, it is contended that the levy of cess on textiles at the rate of 0.05% ad valorem is unauthorised, violative of

Arts. 19(1)(g), 265 and 300A of the Constitution of India. Therefore, it is prayed that levy of cess on the yarn imported by the petitioners at the

rate of 0.05% ad valorem be declared as having been imposed and collected without authority of law. It is further prayed that an appropriate writ,

order or direction be issued restraining the respondents from levying and collecting any cess on the yarn imported by the petitioners. The

petitioners have also prayed for appropriate direction for refunding the amount of ""cess"" so collected.

3. The respondents have filed affidavit-in-reply in both the petitions. It is contended that the cess is levied under the provisions of the Textiles

Committee Act, 1963. Section 5A(1) of the said Act reads as follows :

Imposition of cess on textiles and textile machinery manufactured in

India. - (1) There shall be levied and collected as a cess for the purpose of this Act a duty of excise on all textiles and on all textile machinery

manufactured in India at such rate, not exceeding one per cent, ad valorem as the Central Government may, by notification in the Official Gazette,

fix :

Provided that no such cess shall be levied on textiles manufactured from out of handloom or powerloom industry.

The Textile Committee (Cess) Rules defines the term ""cess"" under Rule 2(c). As per this definition ""cess"" means the duty of excise leviable under

sub-section (1) of Section 5A. In view of the aforesaid provisions of the Act it is contended that by whatever nomenclature it is called, it is in

essence the duty of excise.

4. The contention that the Customs Tariff Act, 1985 provides for levy of customs duty and it does not provide for levy of excise duty and,

therefore, the imposition of cess which is in the nature of excise duty is illegal and void cannot be accepted. Such a question was raised before the

Hon"ble Supreme Court in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, . Therein

contention was raised that on the brass scrap imported, additional duty of customs was levied which was popularly known as countervailing duty

of excise. The Supreme Court has in terms held that it is nothing but additional duty of customs leviable u/s 12 of the Customs Act, 1962. Simply

because it is popularly known as countervailing duty of excise it does not cease to be customs duty. It becomes evident that Section 3 of the

Customs Tariff Act provides that on any article imported into India, in addition to customs duty, additional duty of customs is leviable, which well

be equal to the excise duty for the time being leviable on the like article if produced and manufactured in India. Thus, what is provided by the Act is

the measure of customs duty to be imposed upon certain articles. In this connection the Hon"ble Supreme Court has inter alia observed that the

measure of tax or duty cannot determine its nature or character. The words ""equal to excise duty"" occurring in Section 3(1) of the Customs Act

only provides the measure of additional duty. The aforesaid decision has been followed by Division Bench of this Court in the case of Maheshwari

Mills Ltd. Vs. Union of India, . It is not disputed that under the provisions of the Textiles Committee Act, 1963 cess is levied on certain articles

manufactured in India. If such articles are imported into India the provisions of the Customs Tariff Act, 1975 would be attracted. Once the

provisions of the Customs Tariff Act, 1975 are attracted to the import of any article, it would become exigible to levy of customs duty, the measure

of which would be commensurate with the excise duty leviable on such articles, if manufactured in India. It is not disputed that if polyester filament

yarn is manufactured in India it would be subject to excise duty. The basic duty and excise duty is provided under the provisions of the Textiles

Committee Act, 1963, i.e., cess on textiles. In view of this position, when polyester filament yarn is imported, the same measure of duty is levied

from the importer as provided under the provisions of Section 3 of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, 1962.

5. It is specifically averred in the affidavit-in-reply that appropriate notification has been issued u/s 5A of the Textiles Committee Act, 1963

imposing levy of cess on textiles at the rate of 0.5% ad valorem. Thus, the levy is imposed in accordance with the provisions of the Textiles

Committee Act, 1963.

6. Our attention is drawn to a decision of CEGAT in the case of 1992 (42) ECR 80 . Before the CEGAT the same question was raised. Therein

the CEGAT has taken the same view following the decision of the Hon''ble Supreme Court in the case of Khandelwal Metal (supra). We approve

the reasons and the conclusion arrived at by the CEGAT in the aforesaid decision. Thus, the position of law is well settled. Therefore, the

contention raised in the petition is liable to be rejected.

7. On May 3, 1989, Division Bench of this Court (Coram : G. T. Nanavati, J., as he then was & K. J. Vaidya, J.) passed the order in both the

petitions as follows :

Rule, Ad-interim relief in terms of Para 13(B)''''.

In Para 13(B) of the petition, the petitioners prayed for injunction restraining the respondents from levying and collecting any cess on the yarn

imported by the petitioner-company. Thus, by the aforesaid interim order the respondents have been restrained from levying and collecting cess on

the yarn imported by the petitioners in each case. The petitioners have availed of the protection of the aforesaid interim order and have not paid the

amount of customs duty equivalent to cess. The petitioners will be liable to pay the same within a period of thirty days from the date of intimation

with sufficient particulars from the Department. In turn the Department is directed to compute the amount and give intimation to the petitioners

latest by January 31, 1994. On receipt of such intimation, the petitioners are directed to pay the amount to the concerned authority within a period

of one month from the date of receipt of the intimation. If the amount is not paid within one month from the date of receipt of the intimation, it shall

carry interest at the rate of 18% per annum from the date of this order.

8. Subject to the aforesaid observations and directions both the petitioners are rejected. Rule discharged, with no order as to costs.