(1978) 12 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 1899 of 1976

Yarn and Cloth Processing Centre	APPELLANT
Vs	
The Assistant Collector of Central Excise and Another	RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:
Central Excise Rules, 1944 — Rule 10
Constitution of India, 1950 — Article 226

Citation : (1979) CENCUS 218 : (1979) 4 ELT 175

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Natarajan, J.—The petitioner''s prayer is for the issue of a writ of certiorari or any other appropriate writ, order or direction to quash the

order of the second respondent confirming the order of the first respondent and calling upon the petitioner to pay differential excise duty amounting

to Rs. 48,812 - 27 under Rule 10 of the Central Excise Rules, 1944.

2. The writ petition lies within a narrow compass. The petitioner is a processing centre at Erode and it receives cotton fabrics woven out of

bleached/ dyed yarn for purposes of processing. Such goods were entered by it in its records as ""bleached and/or dyed, but not printed fabrics"" in

the Pt. I register at the time of entry into the factory. Excise duty on the fabrics processed at the centre was being paid at the rates specified in Sl.

Nos. 10(a) and 10(b) of the second Table to the Notification No. 88/69, dated 1-3-1969.

3. By a notice dated 18-12-1971, the Superintendent of Central Excise, Erode, called upon the petitioner to show cause why fabrics processed in

its factory should not be treated as grey fabrics and re-assessed at the rates laid down in Sl. Nos. 5(a) and 5(b) of the second table to the

Notification No. 88/69 and why the difference in duty payable ï¿½on such re-assessment should not be recovered under Rule 10 of the Central

Excise Rules.

4. The petitioner submitted its explanation stating that the fabrics received by it for Evaset process were woven out of bleached and/or dyed yarn

and as such, they cannot be called or treated as grey fabrics at the time of entry into the processing centre and consequently, the fabrics would

attract impost only under Sl. Nos. 10(a) and 10(b) and not under Sl. Nos. 5(a) and 5(b).

5. The first respondent adjudicated the matter and held that the fabrics have to be classified only as grey fabrics and as such, they are liable to

impost under Sl. Nos. 5(a) and 5(b). Accordingly, the petitioner was called upon to pay the differential duty of Rs. 48,812 - 27. An appeal to the

second respondent proved unfruitful and hence the present writ petition.

6. The petitioner contends that impost of duty under Sl. Nos. 5(a) and 5(b) would be attracted only when grey yarn was used for making the

fabrics and the yarn had not undertaken any processing. He further says that fabrics made out of bleached and/or dyed yarn will have to be treated

as processed fabrics and as such, liable to levy of excise duty as per rates contained in Sl. Nos. 10(a) and 10(b).

7. The respondents controvert the case of the petitioner and state in the counter-affidavit that fabrics are of two kinds, viz., (i) grey and (ii)

bleached and/or dyed. Lesser rates of excise duty have been stipulated in Sl. Nos. 10(a) and 10(b) only to cover fabrics which have been

processed, i.e., bleached and/or dyed. As such, fabrics made out of bleached and/or dyed yarn cannot be treated as processed fabrics in that the

fabrics have not undergone any processing after they have been woven and therefore, such fabrics can be treated only as grey or unprocessed

fabrics which attract higher impost of duty under Sl. Nos. 5(a) and 5(b). The respondents, therefore, take the stand that the petitioner is statutorily

bound to pay the differential duty claimed from it. Another objection raised by the respondents is to the maintainability of the writ petition that the

petitioner has an alternative remedy of revision and without exhausting that remedy, it should not have invoked the jurisdiction of this court under

Article 226 of the Constitution.

8. Having regard to the nature of the controversy between the parties, the only question for consideration is whether fabrics woven out of bleached

and/or dyed yarn can be classified as grey fabrics and as such, attracting excise impost under Sl Nos. 5(a) and 5(b) of the second table to the

Notification. While the petitioner would say that since the fabric was woven out of bleached and/or dyed yarn, it will not be grey fabric, the

Revenue would say that since the fabric had as such not undergone the process of bleaching and/or dyeing when it reached the petitioner''s factory,

the fabric would, undoubtedly, be grey fabric and not processed fabric. It is apposite to mention here the dictum of the Supreme Court in C.I.T. v.

Ajax Products Ltd., 1965 1 I.T.J. 623, that there cannot be any presumption in construing a taxing statute and the subject is not to be taxed unless

the charging provision clearly imposes the obligation. Yet another principle to be borne in mind is that if, with reference to a taxing statute, two

views of construction are possible the view which is favourable to the assessee must be accepted, vide Commissioner of Income Tax, Punjab Vs.

Kulu Valley Transport Co. P. Ltd., .

9. Now, let us consider what the textile experts have to say on this matter. Whatever may have been the position originally, it is now common

knowledge that the process of dyeing has been successfully extended to various kinds of yarn and fabric. In the Encyclopaedia of Science and

Tecnology Mc. Graw-Hill (Vol. 5) page 270, it is stated as follows :

With the invention and development of synthetic dye-stuffs, the process of dyeing cotton both in the yarn and fabric became a technological

triumph of rapidity, uniform colouring and control

In the Standard Handbook of Textiles, by A.J. Hall, 8th Edn. at page 216, there is reference to dyeing of cotton yam etc. and the advantages of it

in the following words --

Quite considerable amounts of cotton, wool, silk and linen yarns are scoured preparatory to dyeing. These yarns are either sold later for home-

knitting or are used by weavers and knitters who wish to produce colour patterned fabrics which could not so easily be obtained by dyeing or printing methods.

Edward Miller, in his book, ''Textiles - Properties and Behaviour'' (revised edition 1973) has adverted to the various stages at which dyeing can

take place. At page 142, the author has stated thus --

The application of dye-stuffs to fabrics: - In Chapter I, a table outlining the sequence of textile fabric production is given. This shows that dyeing

can take place at any one of three stages --

(1) The fibre can be dyed before or during preparation for spinning.

(2) The yarn can be dyed after spinning, but before fabric construction.

(3) The fabric can be dyed after construction, during finishing processes.

As contrasted with the dyeing of yarn before it is woven, there is reference in the ''Standard Handbook of Textiles'' to the dyeing method for

fabric. At page 260, the following sentence occurs --

Dyeing fabric in a jiggar : - It will probably be most satisfactory to consider first the dyeing of a plain ''woven cotton fabric''. (underlining by me)

I may also refer to the definition of ''grey or griege yarn'' and ''grey goods'' as found in the Modern Textile and Apparel Dictionary by George E.

Livton, IV Edn. 1973 --

Grey or Griege yarn : unprocessed yarn received from the spinning mills to be bleached, dyed, finished or otherwise processed.

Grey goods (grey, griege, griege) : --

Clothes irrespective of tax colour that have been woven in a loom, but have received no dry or wet finishing operations. Grey goods are taken to

the perch for chalk marking of all defects, no matter how small. These blemishes must be remedied in finishing of the cloth. Materials converted

from the grey goods condition to the finished. Dry finishing operations may include perching, measuring, burling, specking, marding, sewing,

experienced sewing, shearing, happing, gigging, pressing, packing, wrapping and so on.

10. From the above definition and extracts, it may be noticed that on account of the developments and progress of textile science and technology,

cotton yarn can be subjected to the processes of bleaching and/or dyeing and then woven into fabrics and the process of bleaching and/or dyeing

need not wait for the fabric being woven. In such circumstances, can the

Revenue be heard to say that notwithstanding the fabrics having been

woven out of bleached and/or dyed yarn, they can still be classified only as grey fabric and subjected to excise duty at the rates contained in Sl.

Nos. 5(a) and 5(b). I think not. Let us examine the Revenue''s contention from another angle. If an order is placed for grey fabrics, can the order

be satisfactorily met by supply of fabrics woven out of bleached and/or dyed yarn. In other words, will textile trading circles understand grey

fabrics as including fabrics woven out of bleached yarn or dyed yarn ? The answer must be clearly in the negative. I am therefore of opinion that

the petitioner is justified in contending that merely because the fabric had not undergone the process of bleaching or dyeing in the form of fabric, the

revenue cannot classify the goods as grey fabrics and demand higher excise duty. Viewed dispassionately fabrics woven out of d leached or dyed

yarn would fall more aptly in the category of processed fabric Jather than grey fabric. I may only refer to the dicta of the Supreme Court in some

relevant cases. The manufacturers of vegetable products known as Vanaspathy cannot be called upon to pay excise duty on refined oil obtained

from raw oil in an intermediate stage in the process of manufacturing Vanaspathy. Union of India (UOI) Vs. Delhi Cloth and General Mills, .

Carbon di-oxide contained in kiln gas obtained by a sugar manufacturer in the process of carbonation cannot be levied excise duty, as what was

obtained was not carbon di-oxide as understood in the market South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, . In

construing the words found in a taxing statute, their popular meaning and the manner of their acceptation by the trade should commend itself to the

taxing authority. (Vide Dunlop India Ltd. v. Union of India, AIR 1977 S.C. 597; S. Zoraster and Co. (Supplies) Pvt. Ltd. Vs. The Union of India

(UOI) and Others, ; Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills, and State of Uttar Pradesh and Others Vs. Indian Hume

Pipe Co. Ltd., . The pronouncements in all these cases clearly lend support to the petitioner''s contention that fabrics woven out of bleached and/or

dyed yarn cannot be treated by the Revenue as grey fabric and levied excise duty on that basis. In view of this conclusion, the impugned order

warrants quashing.

11. With regard to the stand of the Revenue that the petitioner should exhaust

the remedy of revision available to him under the Act, I do not think

it proper to sustain this technical contention at this late stage of matters i.e. j after having kept the writ petition on file for over two years. Therefore,

this objection has to fail.

12. In the result, the petition will stand allowed with costs and the rule nisi will be made absolute. Counsel''s fee is fixed at Rs. 150.

