Bajrang Gopilal Gajabi vs M.N. Balkundri & Ors on 15 July, 1986

Equivalent citations: 1986 AIR 1752, 1986 SCR (3) 181, AIR 1986 SUPREME COURT 1752, 1986 TAX. L. R. 2095, (1986) JT 242 (SC), 1986 SCC (TAX) 567, 1986 UPTC 1266, 1986 CRILR(SC MAH GUJ) 377, (1986) 10 ECC 160, (1986) 25 ELT 609, (1986) 8 ECR 690, 1986 (3) SCC 424

Author: V. Balakrishna Eradi

Bench: V. Balakrishna Eradi, G.L. Oza

PETITIONER:
BAJRANG GOPILAL GAJABI

Vs.

RESPONDENT:
M.N. BALKUNDRI & ORS.

DATE OF JUDGMENT15/07/1986

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
OZA, G.L. (J)

CITATION:
1986 AIR 1752 1986 SCR (3) 181
1986 SCC (3) 424 JT 1986 242
1986 SCALE (2)72

ACT:
Central Excise, exigibility to-Yarn supplied by an agent for and on behalf of the appellant to private powerloom owners who were paid only labour charges for weaving the yarn into cloth-Wether the appellant or the powerloom owners "manufacturers" of the cloth sold by the appellant for exigibility to Central Excise Duty.

HEADNOTE:
While dismissing, by its order dated 8-4-71, the writ petition filed by the appellant challenging the findings of the appellate and revisional orders passed by the Collector of Central Excise, Bombay and the Government of India respectively holding that the appellant had been rightly

assessed and called upon to pay excise duty in respect of cloth manufactured in some powerlooms and purported to have been purchased by him from the owners of those powerlooms, the Bombay High Court, by its order dated 12th January, 1972 granted certificate of fitness to appeal under Article 133(1)(a) against the said judgment.

Dismissing the appeal, the Court,

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HELD: 1. The books of accounts produced by the appellant before the excise authorities contained clear evidence of the fact that the appellant himself was the owner of the yarn alleged to have been sold by Tejpal to the powerloom owners and that the appellant got back that very yarn in the shape of cloth after it was woven into cloth. Consequently the appellant himself was the manufacturer of the cloth in question and liable to excise duty in respect of the cloth so got manufactured in the powerlooms of private owners. [182G-H; 183D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2124 of From the Judgment and order dated 8.7.1971 of the Bombay High Court in S.C.A. No. 148 of 1967.

Rajinder Sacher, P.K. Ram, R.D. Suverna and D.N. Misra for the Appellant.

Anil Deo Singh, Mrs. Sushma Relan and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. We find no merit at all in this appeal which has been filed on the strength of a certificate granted by the High Court of Bombay by its order dated January 12, 1972 under Article 133(1)(a) of the Constitution of India against the judgment of the High Court dated April 8, 1971 dismissing the Special Civil Application No. 148 of 1967 filed by the appellant.

The appellant is the sole proprietor of the Navbharat Trading Company, carrying on business in cloth at Ichalkaranji in Kolhapur. The challenge raised by him in the Writ Petition filed in the High Court was against the appellate and revisional orders passed by the Collector of Central Excise, Bombay and the Government of India respectively holding that the appellant had been rightly assessed and called upon to pay excise duty amounting to Rs.53,190 in respect of cloth manufactured in some powerlooms and purported to have been purchased by him from the owners of those powerlooms. The Assistant Collector of Central Excise, as well as the Appellate and Revisional Authorities have concurrently found that yarn had been supplied to the powerlooms by one Tejpal for and on behalf of the appellant, that the cloth in question was manufactured by the powerloom owners for and on behalf of the appellant himself and that the powerloom owners received only an amount equal to the labour charges. Though, these were findings on pure question of fact, they were challenged by the appellant before the High Court on the ground that they were

not supported by any material and were perverse. On that basis it was contended before the High Court that the appellant should be held not to be the manufacturer of the cloth in question and hence not liable for payment of excise duty.

The High Court after a detailed consideration of all the aspects of the case found that the books of accounts produced by the appellant before the Excise Authorities contained clear evidence of the fact that the appellant himself was the owner of the yearn alleged to have been sold by Tejpal to the powerloom owners and that the appellant got back that very yarn in the shape of cloth after it was woven into cloth. After referring to the details of the evidence, the High Court observed:

> "These particulars and details go to show that there was clear and cogent evidence on the record of the department to enable the assessing authorities to make inferential findings that the transactions of alleged sale of yarn by Tejpal to the powerloom owners and the transactions of alleged purchase of cloth by the petitioner from the powerloom owners were camouflage for the petitioner to get powerloom cloth manufactured by himself by employing powerlooms of the powerloom owners."

We see no scope at all for interference with the aforesaid conclusion of fact reached by the High Court. The consequential position that emerges is that the appellant himself was the manufacturer of the cloth in question and he must be held to have been rightly assessed to excise duty in respect of the cloth so got manufactured in the powerlooms.

The appeal accordingly fails and is dismissed with costs.

S.R. Appeal dismissed.