Supreme Court of India
The Ahmedabad Manufacturing And ... vs Union Of India (Uoi) And Ors. on 12 January, 1993
Equivalent citations: 1993 ECR 538 SC, 1993 (63) ELT 601 SC, (1993) 2 GLR 1751, JT 1993 (1) SC 85, 1993 (1) SCALE 63, 1993 Supp (2) SCC 7, 1993 1 SCR 142
Bench: J Verma, Y Dayal, N Venkatachala
JUDGMENT

1. This order will dispose of the aforesaid writ petitions under Article 32 of the Constitution of India. All these cases come under Item 18.I and/or 18.III and/or 188 of the Tariff contained in the schedule attached to the Central Excise and Salt Act 1944 (hereinafter referred to as 'the Act'). For facility of reference we are giving the facts of the case of Civil Writ Petition No. 3 of 1983.

2. This writ petition is stated to be covered by the decision of this Court in J.K. Cotton Spinning and Weaving Mills Ltd. and Anr. v. Union of India and Ors.: and the surviving prayer in the writ petition is to declare that the duty of excise in respect of Tariff Item Nos. 13 (A)(ii), 18(111)(ii) and 18E is to be levied and collected on the weight of the unsized yarn and not on the basis of the weight of the sized yarn.

3. Before we deal with the objections of the learned Counsel for the respondents, it would be useful to examine the points which were involved in the aforesaid case of J.K. Cotton Mills. The appellants in the said case had a composite mill wherein it manufactured fabrics of different types. In order to manufacture the said fabrics, yarn was obtained at an intermediate stage. The yarn so obtained was further processed in integrated process in the said composite mill for weaving the same into fabrics. The appellants did not dispute that the different kinds of fabrics which were manufactured in the mill were liable to payment of excise duty on their removal from the factory. They also did not dispute their liability in respect of yarn which was also removed from the factory. It was the contention of the appellants therein that no duty of excise could be levied and collected in respect of yarn which was obtained at an intermediate stage and, thereafter subjected to an integrated process for the manufacture of different fabrics. On a writ petition, by those appellants, the Delhi High Court by its judgment dated 16th October, 1980 held that yarn obtained and further processed within the factory for the manufacture of fabrics could not be subjected to duty of excise. It was the case of the appellants that inspite of the said decision of the Delhi High Court, the Central Board of Excise had wrongly issued a circular dated 24th September, 1980 purporting to interpret Rules 9 and 49 of the Central Excise Rules, 1944 (hereinafter referred to as the 'the Rules') and directing the subordinate excise authorities to levy and collect duty of excise in accordance therewith. In the said circular, the Board had directed the subordinate excise authorities that use of goods in manufacture of another commodity even within the place/premises that have been specified in this behalf by the Central Excise Officers in terms of the powers conferred under Rule 9 of the Rules, will attract duty". As the said circular was being implemented to the prejudice of the appellants, they filed the writ petition before the Delhi High Court, inter alia, challenging the validity of the said circular.

4. During the pendency of the writ petition in the Delhi High Court, the Central Government by Notification No. 28.82 C.E. dated 20th February, 1982 amended Rules 9 and 49 of the Rules. Section 51 of the Finance Act provides that the amendments in Rules 9 and 49 of the Rules shall be

deemed to have, and to have always had the effect on and from the date on which the Rules came into force i.e. 28th February, 1944. 'After the said amendments of the Rules with retrospective effect, the appellants amended the writ petition and challenged the constitutional validity of Section 51 of the Finance Act, 1982 and of the amendments to Rules 9 and 49 of the Rules.

5. The High Court came to the conclusion that Section 51 of the Finance Act, 1982 and Rules 9 and 49 of the Rules, as amended, were valid. It was further held that the retrospective effect given by Section 51 of the Finance Act, 1982 will be subject to the provisions of Sections 11A and 11B of the Act. It was further held that the yarn which is produced at an intermediate stage in the mill of the appellants therein and subjected to the integrated process of weaving the same into fabrics, will be liable to payment of excise duty in view of the amended provisions of Rules 9 and 49 of the Rules. But the sized yarn which is actually put into the integrated process will not again be subjected to payment of excise duty for, the unsized yarn, which is sized for the purpose, does not change the nature of the commodity as yarn. The writ petition was accordingly allowed in part, as stated aforesaid, and it was this decision which came up in appeal before this Court. This Court agreed with the Delhi High Court and upheld the vires of Rules 9 and 49 of the Rules as well as Section 51 of the Finance Act, 1982. This Court also agreed with the High Court that the retrospective effect given by Section 51 of the Finance Act, 1982 will be subject to the provisions of Sections 11A and 11B of the Act. This Court also agreed with the view of the High Court that the yarn which is produced at an intermediate stage in the mill of the appellants and subjected to integrated process of weaving the same into fabrics, would be liable to payment of excise duty in view of the amended provisions of the Rules. But, this Court further agreed with the High Court, the sized yarn which is actually put into the integrated process will not again be subjected to payment of excise duty for, the unsized yarn, which is sized for the purpose, does not change the nature of the commodity as yarn. This Court observed at pages 720 and 721 of the report as under:

In the instant case, the appellants are liable to pay excise duty on the yarn which is obtained at an intermediate stage and, thereafter, further processed in an integrated process for weaving the same into fabrics. Although it has been alleged that the yarn is obtained at an intermediate stage of an integrated process of manufacture of fabrics, it appears to be not so. After the yarn is produced it is sized and, thereafter, subjected to a process of weaving the same into fabrics. Be that as it may, as we have held that the commodity which is obtained at an intermediate stage of an integrated process of manufacture of another commodity, is liable to the payment of excise duty, the yarn that is produced by the appellants is also liable to payment of excise duty. In our view, the High Court by the impugned judgment has rightly held that the appellants are not liable to pay any excise duty on the yarn after it is sized for the purpose of weaving the same into fabrics. No distinction can be made between unsized yarn and sized yarn, for the unsized yarn when converted into sized yarn does not lose its character as yarn.

6. The petitioner herein on the other hand approached the Gujarat High Court and the Gujarat High Court by its judgment dated 30th July, 1981 had, before the issuance of the impugned circular dated 24th May, 1982, taken the view that not duty can be levied on the weight of sizing material contained in yarn, falling under Tariff Item No. 18-111 or 18-E and directed that the duty levied should be refunded because the duty has been levied not on the basis of yarn at the spindle stage,

but on the weight of the sized yarn. After the decision of the Gujarat High Court the Central Government had amended Rules 9 and 49 of the Rules and Section 51 of the Finance Act, 1982, had made them effective retrospectively.

7. The present writ petitions filed in this Court had inter alia pleaded that the retrospective amendment of Rules 9 and 49 of the Rules as well as Section 51 of the Finance Act, 1982 be declared as ultra vires of the Constitution. This Court upheld the validity of the Section as well as the retrospective applicability of the Rules but took the view that this would be subjected to the provisions of Sections 11A and 11B of the Act and at the same time declared that the appellants were not liable to pay excise duty on the yarn after it is sized for a purpose of weaving the same into fabrics.

8. It will be noticed that under items 18.I, 18.III and 18E the measure is per "kilogram". At this stage items 18.I, 18.III and 18E of the Tariff may be noticed:

18. I. Man-made fibres, other than mineral fibres:

(i) Non-cellulosic Eighty-five rupees per kilogram (II) Cellulosic Ten rupees per kilogram

18. III, Cellulosic spun yarn: Yarn, in which man-made fibre of cellulosic origin predominates in weight and, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power --

(i) not containing, any man-made fibres of non-cellulosic origin Six paise per count per kilogram

(ii) containing man-made fibres of non-cellulosic origin. Eighteen rupees per kilogram Explanation I: 'Count' means the size of grey yarn (excluding any sizing material) expressed in English Count.

18-E. Non-cellulosic Spun Yarn: Spun (discontinuous) yarn, in which man-made fibres of non-cellulosic origin, other than acrylic fibre, predominate in weight and, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Explanation: Explanation III under sub-item III of Item No. 18 shall, so far as may be, apply in relation to this Item as it applies in relation to that Item.

Twenty-four rupees per kilogram.

9. It will be noticed from the aforesaid items that the measure for imposition of excise duy is by weight "per kilogram" in all the three items, namely-18.I,18.III and 18>E. Therefore, the aforesaid decision in J.K. Cotton Mills will be applicable to all types of cases under Items 18.I, 18.III and 18E. After the decision of the Gujarat High Court, instead of granting the refund, the Superintendent of Central Excise, Range IV, Division V, Ahmedabad, issued impugned notices, collectively annexed as Annexures 'B' and 'C' to the present writ petition in pursuance of the directives dated 24th May, 1982 which are subject matter of challenge in the present writ petition.

10. On behalf of the respondents Mr. Ganguly learned Counsel submitted that this Hon'ble Court ought not to entertain the present writ petition under Article 32 of the Constitution. He, however, could not dispute that the matter is directly covered by the decision of this Court in the aforesaid case of J.K. Cotton Mills.

11. These petitions were admitted to hearing in view of the pendency of the aforesaid appeal in the case of J.K. Cotton Mills and in view of the decision of the Delhi High Court which was appealed against in the aforesaid case of J.K. Cotton Mills. Practically nine years have gone by now and the impugned show cause notices have been issued by virtue of the same directives which were subject matter of the aforesaid case of J.K. Cotton Mills. In view of this peculiar fact it would not be in the interest of justice if the parties are directed to contest the individual show cause notices issued by the respondents in view of the aforesaid directives. In order to avoid multiplicity of proceedings involving time and expense, we quash the impugned notices in all the cases.

12. The result is that all the aforesaid writ petitions are accepted and the impugned show cause notices are quashed. There will be no order as to costs.