

(1973) 02 DEL CK 0031

Delhi High Court

Case No: Civil Writ Appeal No. 513D of 1964

Ajudhia Textile Mills Ltd., Delhi

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision: Feb. 28, 1973

Citation: (1974) 10 DLT 52

Hon'ble Judges: Prithvi Raj, J

Bench: Single Bench

Advocate: R. Dayal, R.L. Tandon and Rajesh Tyagi, for the Appellant;

Judgement

Prithvi Raj, J.

(1) By this writ petition under Article 226 of the Constitution of India, the petitioners have prayed that the demand notice No. GL-Demand/63/353, dated the 8th March, 1965, Annexure " C , whereby respondent No. 2, Deputy Superintendent of Central Excise Bcm Morv Delhi, demanded the sum of Rs. 42,557.94 on account of duty payable on cotton yarn by the petitioners for having cleared 307904 kgs. of single cotton yarn above 16s but below 34s cleared in hanks from 17th August, 1962, to 26th November, 1962, and 9909 kgs. of single cotton yarn up to 163 cleared in hanks during the same period, be quashed as the same is illegal, ultra vires and void.

(2) The case of the petitioners is that the Finance Bill of 1961 provided for a duty of excise being levied on cotton twist, yarn and threads, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. The said provision was given effect to by the addition of entry No. 18-A to the first schedule to the Central Excise and Salt Act, 1934, (herein to be called "the Act") The petitioners, however, contend that at the time of discussion of the Bill in Parliament the then Finance Minister In his speech on the budget proposal of that year stated that that entry would not apply to yarn in hanks used in weaving on handlooms such as Dhoties, Sarees and other common varieties of cloth. Accordingly, pursuant

to the statement made by the Finance Minister the Government issued notification No. 48/61, dated the 1st March, 1961, exempting cotton yarn, if issued out of factory in hanks from the whole of the excise duty livable thereon. The petitioners stated that the above-said notification was followed by a series of notifications. The petitioners contend that the position in regard to levy of excise duty on cotton yarn immediately after the issue of notification No. 169/62, dated 15th September, 1962, Annexure "A" was that single yarn, whether grey or bleached and grey multiple fold yarn, if cleared out of the factory in hanks of 17 or more counts but less than 35 counts and yarn of less than 17 counts, was granted complete exemption from duty .It is further contended that the cotton yarn of that type, if cleared out of the Factory in any other form, was subject respectively to duty of 13.5 naye paise and 10 naye paise.

(3) The petitioners submit that the above position was adopted and followed by the Department right from 1st March, 1961, till about the middle of August, 1962, allowing a clearance of hank yarn either free of duty or on the concessional rates of duty depending on the terms of the particular notification in force at the time of the particular clearance, irrespective of the length of yarn on a particular hank or the type of reel, namely, whether plain or cross reeled .In other words, the case of the petitioners is that from 1st March, 1961, till about the middle of August, 1962, single yarn irrespective of the length of the yarn on a particular hank or the type of the reel was allowed to be cleared with out imposition of excise duty if the yarn was in hanks of less than 17 counts.

(4) The grievance of the petitioners is that sometime in the month of October, 1962, the department issued executive instructions to the effect that the exemption from duty or the concessional rate of duty at hank rate would be available only if the hank was of length of 768 meters or less while prior thereto no excise duty was levied on single yarn, whether grey or bleached and the multiple fold yarn, if cleared out of the factory in hanks of 17 or more counts but less than 35 counts and yarn of less than 17 counts, irrespective of the length of the yarn on a particular hank or the type of reel.

(5) On this the petitioners along with other I textile mills made a representation to the Central Board of Excise and Customs on 12th October, 1962, pointing out that great injustice was caused to the Mills by the aforesaid executive instructions which assigned a meaning to the word "hank" which was never defined in the notifications. The Government on the representation of the Mills issued another notification No. G.S.R 287 (No 24.63-Central Excise) dated the 16th February, 1963, Annexure "B", adding Explanation No. 11 in the following terms :-

"EXPLANATION Ii -- For the purpose of this notification the term "hank means hank which does not contain more than 768 00 metres of yarn in plain (straight) reel". Further the above-said notification. Annexure "B" directed that the same shall be deemed to have taken effect from the 17th day of August, 1962. The precise

contention of the petitioner is that notification Annexure "B" was by way of amendment of the earlier notification dated the 15th September, 1962, Annexure "A" and that the department by executive instructions could not enforce the notification, Annexure "B" with retrospective effect by amending the earlier notification as by giving retrospective effect to the latter notification, the department had claimed duty by the impugned demand notice, Annexure "C". Further, the challenge to the demand notice is grounded on the plea that according to the Mercury Dictionary of Textile Terms the length of yarn in hank varies for different Mills and for different purposes. According to the expert opinion yarn in banks refers to the form in which the yarn is presented for further process and not for a defined length and all reel yarn whether single or double, cross or plain, should be considered as bank yarn.

(6) To the above averments of the petitioners the reply of the department filed through Shri J. P. Sinha, Assistant Collector, Central Excise Division, New Delhi, is that vide notification dated 1st March, 1961, exception was granted to cotton yarn of counts exceeding 10 but not exceeding 40 and not of all types of yarn, if issued out of the factory in banks from whole of the duty livable thereon. It is further contended by the department that the term "hank" in relation to cotton yarn definitely stands for a reeled length of 840 yards; that Chambers's Technical Dictionary also describes the cotton yarn as 840 yards; the Chambers Twentieth Century Dictionary also describes "hank" as a coil or skein (840 yards) of cotton that the term "bank" has a specific meaning in the trade and refers to a coil of reeled length of 840 yards only. It is further contended that the term "hank" uses standard turn determining the count of yarn and the term count is used always to express the fineness of yarn. The department has further stated that the technical meaning of the expression "hank" has been well understood in the textile industry and having regard to the long usage this term has attained the significance of a term of art and was at all times understood to mean bank which contained the maximum of 768 metres of yarn in straight reel, which is equivalent to 840 yards. The department in particular denied that all yarn in hanks cleared by the petitioners was exempt from duty at the time of clearance of the goods irrespective of the length of yarn contained in the hanks, asserting that notification dated the 16th February, 1963, Annexure "B" simply clarified the position specifically stating that the term "hank" meant hank which did not contain more than 768 metres (840 yards of yarn) which position, the department asserts, was in fact always so understood even before the notification. The stand of the department is that notification Annexure "B" was by way of clarification only served to make explicit the meaning commonly assigned to the term "hank" in the trade. The department accordingly contends that there was no question of giving retrospective effect to the notification issued on the 16th February, 1963.

(7) On the averments of the parties, the following two contentions arise for determination :-

(I) whether the term "hank" means hanks which do not contain more than 768 metres (840 yards) or whether the term "hank" was understood to mean yarn irrespective of its length on a particular bank or the type of reel ;

(II) Whether notification dated the 16th February, 1963 Annexure "B" is by way of clarification only to make explicit the meaning commonly assigned to the term "hank" in the textile industry or whether it is by way of amendment of the earlier notification , Annexure "A" and thus cannot be given effect retrospectively .

(8) Taking up the first contention, Shri Rameshwar Dial, learned counsel for the petitioner, submitted that according to notification issued on 1st March, 1961, as stated in para 4 of the writ petition, the view taken was that the term "hank" did not embrace within its ambit any measure of length. He submitted that the term "hank" was understood to mean yarn irrespective of the length of the yarn. It was contended that if the contention of the department were to be accepted that the term "bank" always meant 768 metres (840) yards, where was then the occasion for amending notification, Annexure "A", by issuing the subsequent notification dated the 16th February, 1963, Annexure "B".

(9) It is futile for the petitioner to contend that the term "hank" means yarn on a particular hank or the type of reel irrespective "of the yarn as that was not the stand taken by the petitioners at the time when they filed representation against the impugned levy of excise duty. Annexure R/2 is a copy of the order dated 29th June, 1964, passed by Sbri Lachman Dev, Assistant Collector, on the representation of the petitioners against the Impugned levy. From the perusal of the said order, it is evident that one of the grounds on which the levy was imposed was that the yarn did not conform to the specification about the length in a bank not exceeding 768 metres. The said fact was borne out from some of the gate passes issued by the petitioners in respect of the yarn wherein it was declared by the petitioners that though normally the length of hank was 840 yards yet it was not strictly 840 yards. That being so, the department through its letter dated 13th January, 1963, gave a further opportunity to the petitioners to produce evidence that the length of the hanks cleared by them during the relevant period had not exceeded 768 metres. The reply of the petitioners was that during the relevant period it was universal practice with them to cross reel their yarn into hanks of 840 yards. The petitioners further contended that the reeling machines installed in their premises were so adjusted that their movement was controlled by a wheel of 80 teeth with a revolving wooden structure of 1" yards diameter ,which ensured that after a full round of the wheel one lea of 120 yards would be wound on the wooden structure and then by another motion the second lea would start. The petitioners claimed that the reeling machines were so adjusted that after completing seven rounds of the wheel, the revolving wooden structure would take its normal course so that mechanically every cross reeled bank would have 840 yards of length.

(10) From the plea taken before the department by the petitioners there can be no manner of doubt that the petitioners were aware of the fact that the "hank" meant 840 yards of yarn length or 768 metres. Besides, the petitioners themselves had declared .on the gate passes issued by them that the normal length of hank was 840 yards.

(11) There appears to be considerable force in the contention of the department that the term "hank" at all times was understood to mean in the textile trade and industry as a coil or skein (840 yards of cotton and having regard to the long usage this term had attained the significance of a term of art and was at all times understood to mean a bank which contained the maximum of 768 metres of yarn in a straight reel

The word "hank" is defined as under in some of the dictionaries and the Manual of Departmental instructions on Excisable Manufactured Products"" defined as under :-

" A general term for a reeled length of yarn. In calculating the counts of yarn, a definite length is assigned to the bank for each type of yarn. See counts of yarn".

""COUNTS of yarn" in the above said dictionary is defined at page 204 follows:-

"A Number which designates the size of a yarn. Usually a count represents the number of units of length contained In a unit of weight, but in certain classes of yarn the count represents the number of units of weight in a unit of length. The cotton hank- 840 yards; unit of weight 1 lb. The count is the number of hanks of 840 yards which weight 1 lb."" In the Mercury "Dictionary of Textile Terms", the word "count" is defined as under :

"The number of yarns is termed the "count", the cotton system is based on 840 yards to the bank, and the number of hanks that weight 1lb.....scales the count, thus 10" s cotton 10x840 yards per lb. There are numerous systems in use for the numbering or counting of yarn as given under "yarn count".

"In the ""Manual of Departmental Instructions on Excisable Manufacture ed Products"* page 218. "count of yarn" is defined as follows :-

"COUNT is the term used to express the fitness of yarn. The number of hanks (i.e. 840 yards each) of yarn each which weight 1 lb. is the count of the yarn. Thus, the finer the thread the lighter the weight of one hank, so that more hanks will require to make up 1 In. weight, and the higher will be the count..... In Chambers's Twentieth Century Dictionary, the word "hank" has been defined to mean" a coil or skein (840 yards of cotton ...)

(12) Thus it would be seen that the term ""hank"" as understood not only in the textile trade and industry but in the ordinary parlance means hank which does not contain more than 768 metres or 840 yards. Moreover, as already noted in an earlier

part of this judgment, the petitioners themselves had claimed before the department, as is noted in order Annexure R/2, that the normal length of a hank was 840 yards, which fact is borne out from some of the gate passes issued by the petitioners in respect of the yarn on which the impugned duty has been levied. Having themselves admitted that the normal length of hank was 840 yards it is too late in the day for the petitioners to contend that the word "hank" means yarn irrespective of the length on a particular bark or the type of reel, viz., whether plain or cross reel.

(13) This brings me to the second contention of the learned counsel for the petitioners that notification dated 16th February, 1963, Annexure "B", was issued by way of amendment of Annexure "A". That being so, the notification, Annexure "B" could not be given effect to retrospectively. There is no merit in this contention as well. I have gone through the contents of Annexure "A" the earlier notification. In the said notification duty was sought to be imposed on a single yarn, whether grey or bleached, and grey multiple fold yarn, if cleared out of the factory in hanks. The rate of duty livable on cotton yarn of Various counts is mentioned in the notification. The point to be noted is that in the said notification, the duty was sought to be imposed on cotton yarn cleared out of the factory in hanks, whether grey or bleached, and grey multiple fold yarn. It, Therefore, cannot be said that the duty was not livable on single cotton yarn issued in hanks. The duty was livable according to the rates on the cotton yarn issued in hanks of the various types of counts mentioned in column "description". Despite the fact that term "hank" was fairly understood in the commercial community and industry of textile goods, the petitioners and some other textile mills represented to the Central Board of Excise and Customs that the word "hank" was never defined in any of the notifications, as mentioned in para 3 of the petition. The petitioners have made a special reference of this representation in para 6 of the petition. It was probably on this representation and with a view to making the position explicit about the term "hank" as was generally understood in the textile industry to be implied in the said expression that notification, Annexure "B", was issued wherein the Explanation No. II was added to the effect that the term "hank" meant hank which does not contain more than 768 metres of yarn in plain (straight) reel. Since the term "hank" was also used in the earlier notification, Annexure "A" it at all times was understood to mean yarn with reeled length of 768 metres and having regard to the long usage the term "hank" had attained the significance of a term of art in the textile trade and industry and was always understood to mean hank which contained the maximum length of 768 metres of yarn on any straight reel, the department thought it advisable and rightly so to remove any doubt about the meaning of the term "hank". The grievance of the petitioners that the hank was defined for the first time by notification, Annexure "B", which the petitioners contend is an amending notification, is without any justification. Notification Annexure "B" in my opinion, was issued only to clarify the term "hank" and did not purport to impose any duty with retrospective effect. In this

view of the matter, it is not possible to sustain the contention of the petitioners that notification, Annexure "B" is by way of amendment of notification, Annexure "A", and has been made to operate retrospectively.

(14) For the reasons stated above the writ petition is without any merit and is dismissed with costs. Counsel's fee Rs. 200.00.