Darshan Hosiery Works Vs Union of India

None

Court: Gujarat High Court

Date of Decision: April 11, 1980

Acts Referred:
Central Excise Rules, 1944 â€" Rule 8, 8(1)#Central Excises and Salt Act, 1944 â€" Section 35

Citation: (1980) 6 ELT 390 : (1981) 22 GLR 533

Hon'ble Judges: S.L. Talati, J; S.H. Sheth, J

Bench: Division Bench

Judgement

S.H. Sheth, J.
The petitioners in all these cases are engaged in the business of manufacturing under garments and body-supporting

garments like ""Banians"" (upper-underwear) and ""Jangias"" (lower-underwears). They have been required by the Central excise authorities to take

out licence for manufacturing ""Banians"" and ""Jangias"". They are challenging in this group of petitions the notices issued by the central excise

authorities to them to take out the licence.

The petitioners in all these petitions, therefore, contend that ""Banians"" and ""Jangias"" are not excisable articles at all and that, therefore, there is no

obligation on them to take out the licence.

2. Before we examine the contention raised by Mr. Bhatt on behalf of the petitioners, it is necessary to deal with the preliminary objection which

Mr. Vakil has raised to the maintainability of these petitions. According to him, these petitions are not maintainable because the petitioners have

been merely directed to take out licence under the Central Excises and Salt Act, 1944. According to the does not give rise to a cause- of-action

which secondly, he has argued that appeal against such the Collector, Central Excise, u/s 35 of the Central Excise and Salt Act, 1944. It would

have been betters if the petitioners had exhausted the remedy of appeal. But merely because they have not exhausted the remedy of challenging the

impugned notice in appeal under Sec. 35, it cannot be said that these petitions are not maintainable because failure or omission on the part of the

petitioners to take out the licence leads to prosecution against them. Secondly, if these articles which they have been manufacturing are not

excisable articles, then there is no obligation whatsoever on them to take out the licence. If, therefore, a notice has been served upon a petitioner to

do a certain thing or to desist from doing a certain thing and if that notice has no foundation whatsoever in law under which it purports to have been

issued, then such a notice can be challenged in a petition under Art. 226 of the Constitution because failure or omission to comply with such a

notice results into penal consequences. The preliminary objection raised by Mr. Vakil, therefore, fails and is rejected.

3. The second contention which he has raised is that irrespective of whether Item 22D in the First Schedule to the Central Excises and Salt Act,

1944, is attracted or whether Item 68 in that Schedule is attracted, it is necessary for the petitioners to take out the licence. The proposition which

Mr. Vakil has advanced is too fallacious to be accepted. If an article falls within the ambit and scope of one Item or another specified in the first

Schedule to the Central Excises and Salt Act, 1944, then the argument which Mr. Vakil has raised will be well founded. But if an article which a

manufacturer manufactures does not fall under any of the Items specified in the said Schedule, it is not necessary to take out the licence.

4. In that behalf, he has invited our attention to the decision of the Supreme COurt in Healthways Dairy Products Company Vs. The Union of India

(UOI) and Others, . It was a case of skimmed milk and the question which arose was whether it was necessary for the manufacturer in that case to

take out the licence. In that behalf, the Supreme Court has observed that since skimmed milk or condensed skimmed milk is a milk preparation

within the meaning of Item 1B in the First Schedule, a licence to manufacture such milk is required to be taken out. It has further been observed by

the Supreme Court that if any goods specified in the First Schedule are exempted from the levy of excise duty by the Central Government in

exercise of their power under rule 8(1) of the Central Excise Rules, it cannot affect the provision which requires licence to be taken out for the

manufacture of the said goods. The principle laid down by the Supreme Court in that decision has no application to the instant case because

exemption of an article from payment of excise duty by a notification issued under rule 8(1) of the Central Excise Rules presupposes the basic

liability to pay excise duty on that article under the statute. It is that basic liability which the statute casts upon the manufacturer and which is

removed for the time being by the Central Government in exercise of its power under Rule 8(1) of the Central Excise Rules. Thus an article which

is otherwise excisable is exempted from payment of excise duty be issuing a notification under Rule 8(1) of the Central Excise Rules, 1944. The

removal of liability to pay excise duty in such a case is only temporary and can be revived at any time by withdrawing the notification. Exemption

from payment of excise duty under a notification issued under Rule 8(1) is very much different basically and qualitatively from the statutory

exemption from payment of excise duty granted under the statute. If the statute grants the exemption in respect of a particular article; that article is

not excisable at all. If the notification issued under Rule 8(1) grants exemption, them though the article is excisable, liability to pay excise duty is

removed for the time being. Therefore, the principle laid down in the aforesaid decision has no application to the instant case. issued under Rule 5.

The principle contention which Mr. Bhatt has raised in support of the petitions is based upon the conjoint reading of Item 22D and Item 68 in the

First Schedule to the Central Excises and Salt Act, 1944. In order to appreciate the argument which he has raised, it is necessary to reproduce

Items 22D and 68 and understand their scheme. They read as follows :

Item No. Description of goods Rate of duty

---

(1) (2) (3)

22D Articles of ready to wear apparel Ten per cent ad

(known commercially as ready-made- valorem.

garments), including undergarments

and body-supporting garments but

excluding articles of hosiery, in

relation to the manufacture of

which any process is ordinarily

carried on with the aid of power.

Item 68 is the residuary Item and it read

as under :

All other goods, not elsewhere

specified, manufactured in a

factory but excluding

* * * * *

The three exclusions which has been specified in sub-items (a), (b) and (c) of Item 68 are not relevant for the purpose of the present case. The

expression ""Articles of Ready-to-Wear Apparel"" appears to us to have much wider width than the expression ""articles of hosiery"". ""Articles of

ready-to-wear apparel"" will ordinarily include ready made shirts, bush-coats, bush-shirts, trousers, shirts and even coats. Undergarments and

body- supporting garments which have been included in the expression ""Articles of Ready-to-Wear Apparel"" may be tailor-made articles or may

not be tailor-made articles. We have no doubt in our minds that the ""articles of ready-to-wear apparel"" not only include tailor-made articles but

also articles which are produced by the machine and which may be straightaway used for wearing without applying to it any tailoring process after

they have been produced by the machine. It is clear, therefore, that whereas the ""articles of ready-to-wear apparel ""constitute the genus, ""articles

of hosiery"" constitute a species. It is this species which has been statutorily excluded from the genus so far as its taxability under Item 22D is

concerned. Worded as it is, Item 22D leaves no doubt in out minds that articles of hosiery which would have otherwise been included in the

articles of ready-to- wear apparel"" have been statutorily exempted expressly from taxability under Item 22D.

6. The question which Mr. Bhatt has raised before us is, therefore whether the Parliament after having granted statutory exemption to ""article of

hosiery from taxability under Item 22D in the First Schedule to the Central Excises and Salt Act, 1944, intended to include them for the purpose of

taxability in the residuary Item- Item 68.

On first principles, it is difficult to imagine that what has been expressly excluded from taxability under Item 22D is included in the residuary Item

and if the Parliament wanted to do it by back-door. The language of Item 68 also does not permit us to adopt the construction which Mr. Vakil

has advanced before us and, according to which, whatever is not specified is the preceding Items or whatever has been specified therein for

exemption is included for taxability in the residuary Item. The expression which has been used in Item 68 is ""Not Elsewhere Specified"". Does this

expression necessarily mean ""not elsewhere specified"" for the purpose of taxability, or does it mean ""not elsewhere specified"" either for the purpose

of taxability or for the purpose of exemption ? In our opinion, the simple expression ""not elsewhere specified"" which the Parliament has used in

Item 68 means total omission on failure to specify either for the purpose of taxability or for the purpose of exemption from taxability. Once an

article or goods are found specified in any of the preceding entries, irrespective of the purpose for which they are specified, Item 68 does not come

into play and does not render such goods taxable.

The view which we are expressing can also be tested by approaching the question from a different angle. Item 68 we are told, was enacted in

1975. Item 22D was enacted in 1971. Between 1971 and 1975 Item 68 was not there. During the period during which Item 22D operated

without there being in the field Item 68, did ""articles of hosiery"" attract exemption or not ? Without any fear of contradiction, it can be said without

hesitation that ""article of hosiery"" attracted exemption during that period. When Parliament enacted Item 68- the residnary Item - did it mean to

take away the statutory exemption granted to ""articles of hosiery"" under Item 22D ? If the Parliament wanted to do it, nothing would have been

easier for it than to delete the ""articles of hosiery"" from Item 22D. Therefore, even though the Parliament enacted Item 68 without in an manner

whatsoever touching Item 22D, the ""articles of hosiery"" enjoyed exemption under Item 22D and were not intended to be brought within the fold of

Item 68.

7. There is one more aspect which has a bearing upon the construction which we are placing upon Item 22D. On 16the March 1976, the Central

Government, in exercise of the powers conferred upon it by sub-rule (1) of rule 8 of the Central Excise Rule, 1944, issued a notification exempting

articles of ready-to-wear apparel"" falling under Item 22D in the First Schedule to the Central Excises and Salt Act, 1944 from the whole of the

duty of excise leviable thereon. The position, therefore, is this. Whereas ""articles of hosiery"" have been enjoying statutory exemption from payment

of excise duty, other ""articles of ready- to-wear apparel"" have been exempted under rule 8(1) by issuing a notification. We are aware of the fact

that we cannot construe a statutory Item with reference to a notification issued under a statutory rule. Even then, it is necessary to note what result

would follow if we adopt the construction which Mr. Vakil has canvassed before us. The following will be the result if the construction placed by

him upon Item 22D is accepted. Whereas ""articles of ready-to-wear apparel"" other than ""articles of hosiery"" will continue to be exempted from

payment of excise duty by virtue of the said notification ""articles"" of hosiery which have been enjoying a statutory exemption under Item 22D will

not enjoy that exemption by virtue of the fact that they are said to be included in the residuary item. Therefore, whatever has been exempted by an

administrative notification will continue to remain exempted and what has been exempted statutorily will cease to be so exempted statutorily will

cease to be exempted. We do not think we can place such a construction upon Item 22D. Though we have supported our conclusion by certain

analogies, the view which we are expressing is basically rounded upon the construction of expression ""NOT ELSEWHERE SPECIFIED"" used in

Item 68. According to us, that expression means not elsewhere specified either for the purposes of taxability or for the purpose of exemption. In

other words in order to attract Item 68, there must be a total omission of specification of goods in any of the Item preceding Item 68.

8. Mr. Bhatt has invited our attention to certain principles of construction of statues. In P.V. Nasik and Others Vs. State of Maharashtra and

Another, , a Division Bench of the Bombay High Court was dealing with a case under Maharashtra Zilla Parishada and Panchayat Samitis Act,

1962. In paragraph 24 of the report, it has been observed by the learned Judges that it is well settled that when a specific provision in a statute is

applicable to a particular set of facts, any other general provision in respect of the same matter in the same statute cannot be held to be applicable

to those facts. The matter must be held to be governed by the specific provision. The applicability of the principle has been canvassed by Mr.

Bhatt by arguing that since the exemption specified in Item 22d makes a specific provision for exempting ""articles of hosiery"" from taxability under

the Act, they cannot be held to be included in the residuary Item which is a general provision in relation to Item 22D. He has also invited our

attention to the Interpretation of Statutes by N. S.Bindra, sixth Edition. At page 137, the following principle of interpretation of statutes has been

stated:

General words to not derogate from special provisions, or special provisions will control general provisions - Generalia specialibus non derogant.

He has also invited our attention to paragraph 11.2 in Legislation and Interpretation by Swarup, 1974 Edition. The principle of construction of

statutes which has been stated therein is that when there is a law generally dealing with a subject and another dealing particularly with one of the

topics comprised there in the general law is to be construed as yielding to the special in respect of matters comprised therein. Where there are two

provisions in an Act, one of which is specific or of a special character and the other of a general character the specific of special character and the

other of a general character the specific of special provision qualifies the general one and ought to be applied in preference to and unaffected by the

general one. Thus, when there is a specific provision in an Act which covers a particular case, it is not proper to apply another general provision,

the application of which is not free from doubt. In other words where a special provision deals with a particular thing or class of things a more

general provision even though its terms would cover the particular thing or class of things is excluded from application thereto by reason of the

particular provision.

9. It has been argued by Mr. Vakil that if a special provision applies, it cannot be said that a general provision does not apply. The argument which

Mr. Vakil has advanced is misconceived and indefensible. If a special provision is applicable, than a general provision in respect of the same

subject matter cannot apply because the special provision carves out an exception inasmuch as special treatment is given to the subject-matter of

the special provision. In the instant case, to say that both Items 22D and 68 come into play is to place them in juxtaposition with the object of

contradicting them and of nullifying the special provision. Such an interpretation will militate against all canons of construction.

10. The last argument which Mr. Vakil has raised is that the expression ""NOT ELSEWHERE SPECIFIED"" has been used in several Item in the

First Schedule to the Central Excises and Salt Act, 1944. He has in that behalf invited our attention to Items 1B, 9, 14, 18B, 22A, 22AA, 22B,

33B, 33C, 34A, 37A, 46, and 68. The expression ""not elsewhere specified"" used in all these Item except Item 68 indeed refers to residuary Items

belonging to the particular groups. All these Items indeed provide for the taxability of the residuary Items falling under those groups. But, merely

because they so provide, we cannot say that express statutory exemption granted to :articles of hosiery"" by Item 22D is either nullified or

obliterated from the field. The question which we are deciding relates to the interpretation of residuary Item 68 in the context of the statutory

exemption enacted in Item 68 in the context of the statutory exemption enacted in Item 22D. Therefore, the considerations which prevail are

different and ought to be different from the considerations which would prevail with us if we are merely to construe the expression ""not elsewhere

specified"" without any reference to any statutory exemption in light of the final residuary item.

11. The next question which must be answered is whether ""Banians"" and ""Jangias"" are ""articles of hosiery"". The Oxford English Dictionary, Vol. V

defines ""hosiery"" at page 405 in the following terms : ""Hose collectively : extended to other frame- knitted articles of apparel, and hence to the

whole class of goods in which a hosier deals.""! This meaning makes it abundantly clear that frame-knitted articles of apparel which can be used

without the intervention of any tailoring process for supporting human body are articles of hosiery. There is no doubt or dispute before us that

Banians"" and ""Jangias"" are both frame- knitted articles which can be used for supporting human body without any interventien of the tailoring

process. Therefore, they are included in the ""articles of hosiery"".

He has in this behalf invited our attention to the decision of the High Court of Rajastan in Pareek Hosiery Products v. Deputy Commissioner of

Sales Tax (Appeals), Jaipur and others (1962) 13 STC 722. What is included in the hosiery goods has been elucidated in that decision. Hosiery

goods are ""garments"" and include cotton vests, underwears, mufflers and ""topas"".

In Commissioner of Sales Tax, Lukhnow v. Verma Hosiery, Rakabganj, Lukhnow (1972) 30 STc 606(All), the Allahabad High Court has

observed that ""garment"" means as article of clothing and that it is a very wide term which includes everything that can be called an article of

clothing. It has been further observed that the term ""hosiery"" originally meant knitted garments like socks and stockings which were meant to cover

the feet and the legs. However, this term has now come to acquire a wider meaning and means knitwear. ""Topas"" and mufflers are knitted

garments and, as such, would fall in the category of hosiery goods. Reference in that decision has been made to the earlier unreported decision of

that Court in Ram Lal and Brothers v. Commissioner of Sales Tax, U.P., in which it has been held that ""hosiery"" means an underwear or

underclothing i.e. articles which are used next to the skin. The Allahabad High Court in that decision has also referred to the decision of the

Rajasthan High Court in Jaipur Hosiery Mills v. State of Rajasthan (1967) 19 STc 416. The Rajasthan High Court has in that decision held that

hosiery"" means machine-knitted garments. 12. We are, therefore, not impressed by the arguments which Mr. Vakil has raised before us. We are

of the opinion that ""Banians"" and ""Jangias"" which are ""articles of hosiery"" are statutorily exempted from payment of excise duty under Item 22D

and, therefore, do not attract any provisions of the Central Excises and Salt Act, 1944, and we declare accordingly.

13. In some of these petitions, applications for amendment have been made. The principal contention which the petitioners seek to raise by the

proposed amendments relates to violation of Article 14 of the Constitution. In light of the view which we have expressed, it is not necessary to

grant the proposed amendments.

14. In the result, all the petitions succeed. It is declared in each of the cases that ""articles of hosiery"" in or in relation to the manufacture of which

any process is ordinarily carried on ""with the aid of power"" are exempted from the provisions of the Central Excises and Salt Act, 1944. It is not in

dispute before us that all the petitioners have been manufacturing ""Jangias"" and ""Banians"" with the aid of power"". Therefore, the impugned notices

are quashed. Rule is made absolute in each case with costs. In light of the reasons which we have stated, all applications for amendment are

rejected.