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Date: 19/10/2025

Vadilal Embroidery Unit and Another Vs Union of India and Others

Writ Petition No. 3545 of 1987

Court: Bombay High Court

Date of Decision: Feb. 7, 1996

Citation: (1996) 65 ECR 34 : (1996) 85 ELT 235

Hon'ble Judges: M.B. Shah, C.J; A.V. Savant, J

Bench: Division Bench

Advocate: Mr. K.R. Bulchandani, instructed by M/s. Kamal and Co, for the Appellant; Mr. R.V. Desai and Mr. H.V. Mehta, for the Respondent

Judgement

Shah, C.J.
Petitioner No. 1 is a registered partnership firm carrying on the work of embroidery on cotton fabrics. The petitioners bring

cotton fabrics into their factory from other factories by following the procedure prescribed under Rule 96DD of the Central Excise Rules, 1944

(hereinafter referred to as ""the Rules"") without payment of duty, for the purpose of embroidery subject to the observance of procedure prescribed

under the Rules. It is submitted that Rule 96DD of the Rules permits removal of cotton fabrics from one factory to another factory for embroidery

without payment of excise duty after compliance with the procedure under Rule 156A.

2. It is the contention of the petitioners that for the purpose of carrying out embroidery work they bring into their factory premises cotton fabrics

which may be either duty-paid or non duty-paid. After the embroidery work is over, if the petitioners intend to remove the said fabrics for home

consumption they pay duty on the base fabrics under AR-1 and if the goods are to be exported, they remove it under bond AR-4.

3. Under Rule 96ZI of the Rules, excise duty liability on embroidery is discharged under compounded levy system. The duty liability on embroidery

is discharged by debit entry before the starting of the shift when the base fabric is issued for embroidery. The duty liability is to be calculated at

appropriate rate fixed under Notification No. 211/82 dated 31st August, 1982.

4. It has been contended that in 1985, for the first time since 1968, the Department required the petitioners to pay duty on base fabrics before start

of the shift along with duty on embroidery on the ground that Proviso (1) to Notification No. 211 of 1982 provides so. On that basis the

Department has issued Show Cause Notice dated 24th September, 1985 alleging that the petitioners have not discharged duty liability on base

fabrics at the time of issue of base fabrics for embroidery and that goods have been cleared for export under rebate claim under Rules 12/13 and

96ZK(2) without payment of duty on base fabrics and, therefore, the petitioners were called upon to show cause why excise duty on base fabrics

issued for embroidery should not be recovered. By order dated 8th June, 1987 (Exhibit "I"), the Assistant Collector of Central Excise confirmed

the said demand. Against that order the petitioners preferred an appeal before the Collector of Central Excise (Appeals). That appeal was also

dismissed by order dated 9th October, 1987 (Exhibit "K"). It is submitted that on the basis of the said orders, letter dated 14th October, 1987

(Exhibit "L") threatening to enforce the demand under Rule 230 of the Rules was written and the petitioners were compelled to pay Rs. 48,809.50

under protest.

5. Those orders are challenged by filing this Petition. After filing of this Petition, the Petitioners received another order dated 19th October, 1987

(Exhibit "N") passed by the Assistant Collector of Central Excise on balance of the two Show Cause Notices. It is also pointed out that thereafter

the Department has also issued four more Show Cause Notices.

6. The question involved in this Petition is mainly with regard to interpretation of Notification No. 211 of 1982 dated 31st August, 1982 issued in

pursuance of Rule 96ZI of the Rules. Rule 96ZI empowers the Central Government to fix from time to time the rate of duty leviable on production

of embroidery. The relevant part of Rule 96ZI is as under :-

96ZI. Discharge of liability for duty on payment of certain sum. -

(1) Having regard to the average production of the embroidery per machine, and any other relevant factor the Central Government may, by

Notification in the Official Gazette, fix from time to time, the rate per metre length of such machine, per shift, or per day, or per week, subject to

such conditions and limitations as it may think fit to impose, and may fix different rates for such machines employed in the manufacture of different

varieties of the embroidery or of the embroidery done on different varieties of base fabrics or for machines working at different speeds or for

machines installed during different-periods; and if a manufacturer whose application has been granted under the Rule 96ZI pays before the

commencement of any shift a sum calculated according to such rate, in the manner and subject to the conditions hereinafter laid down, such

payment shall be full discharge of his liability for the duty leviable on his production of the embroidery during the said shift :

Provided.....

7. On the basis of the said Rule, Notification No. 211 of 1982 is issued and which is amended by Notification No. 20 of 1986 dated 10th

February, 1986. The entire controversy is based upon interpretation of Proviso (1) to the said Notification. The relevant part of the said

Notification is as under :-

Compounded levy rates for textile fabrics :-

In pursuance of Rule 96ZI of the Central Excise Rules, 1944, and in supersession of the Notification of the Government of India in the Ministry of

Finance (Department of Revenue and Insurance) No. 85/71- CE, dated the 29th May, 1971, the Central Government hereby fixes for embroidery

machines utilised for manufacturing from each variety of fabrics specified in Column (2) of the Table below, embroidery in the piece, in strips, or in

motifs, the rate of duty specified in the corresponding entry in Column (3) thereof.

THE TABLE

Provided that -

(1) the aforesaid rate of duty per metre length of such machine per shift shall be in addition to the duty leviable under Chapters 50, 51, 52, 54 and

55, as the case may be, of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) on the base fabrics used in the manufacture of

embroidery in the piece, in strips or in motifs :

(2) ....

1(3) ....

The said Notification fixes rate of excise duty payable for embroidery machines utilised for manufacturing from cotton base fabrics at Rs. 13.15 per

metre length of the machines per shift.

8. Further, the Proviso only mentions that the said rate of duty on embroidery per metre length of machine per shift shall be in addition to the duty

leviable under Chapters 50, 51, 52, 54 and 55 on the base fabrics used in the manufacture of embroidery in the piece, in strips or in motifs.

Reading this Notification as a whole, it would mean that on embroidered fabrics excise duty is levied at the different rates mentioned in the Table.

The rate is fixed on the basis of Rule 96ZI of the Rules. Rule 96ZI, as stated above, empowers the Central Government to fix such rate from time

to time. Rule 96ZI or the Notification issued thereunder nowhere provides that excise duty on cotton fabrics or man-made fabrics, silk fabrics or

woollen fabrics is to be paid at the time of removal of the fabrics embroidered. Proviso (1) to Notification No. 211 of 1982 only clarifies that levy

of excise duty on embroidered article shall be in addition to the duty leviable under Chapters 50, 51, 52, 54 and 55 but nowhere it is stated that

the said duty is to be paid at the time of removal of the said article or that it is to be paid simultaneously while paying excise duty on the

embroidery.

9. It also nowhere provides that Rule 96DD, which permits removal of cotton fabrics from one factory to another factory for embroidery without

payment of duty, would not be applicable. Rule 96DD prescribes the procedure for removal of cotton fabrics for embroidery from one factory to

another factory without payment of excise duty. Sub-rule (1) of Rule 96DD, inter alia, provides that cotton fabrics may be removed without

payment of duty from one factory to another factory for the purpose of embroidery. Sub-rules (1) and (3) of Rule 96DD, which are relevant for

our purpose, read as under :-

96DD. Procedure for removal of cotton fabrics from one factory to another without payment of duty for embroidery. -

(1) Cotton fabrics may be removed without payment of duty form one factory to another factory for the purpose of embroidery, subject to the

observance of the procedure hereinafter prescribed.

(2) .....

(3) If cotton fabrics, after being embroidered, are cleared for home consumption from the embroidery factory, the duty payable at the time of such

clearance and such other dues that may be payable in respect of such goods may be paid either by the owner of the embroidery factory or by the

owner of the originating factory.

10. In view of the aforesaid Rules, cotton fabrics can be removed without payment of duty from one factory to another factory for the purpose of

embroidery and if the goods are cleared after being embroidered for home consumption from the embroidery factory, the duty payable at the time

of such clearances is required to be paid either by the owner of the embroidery factory or by the owner of the originating factory. Considering the

aforesaid provision it is apparent that if cotton fabrics are removed for home consumption after being embroidered, excise duty is payable thereon.

With regard to the embroidery, excise duty is required to be paid as provided under Rule 96ZI and in the present case excise duty is admittedly

paid on embroidery before commencement of any shift as the Petitioners application was granted under Rule 96ZI.

11. However, the question is, if the goods are removed not for home consumption but are to be exported, whether the Petitioners are required to

pay excise duty on the cotton fabrics or not. With regard to goods for export, Rule 13 of the Rules, inter alia, provides as under; -

13. Export under bond of goods on which duty has not been paid. -

(1) Goods other than tea falling under Heading No. 09.02 (except packed tea falling under sub-heading Nos. 0902.11, 0902.12 or 0902.13 of

the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), instant tea, salt and vegetable non-essential oils falling respectively under Heading

Nos. 21.01, 25.01 and 15.03 of the said Schedule, may in like manner be exported outside India except to Nepal or Bhutan, without payment of

duty, from a warehouse or a licensed factory, provided that export is made in accordance with the procedure set out in the relevant provisions of

Chapter IX of these Rules and the owner enters into a bond in the proper Form, ...

Thus, Rule 13, inter alia, gives facility to the manufacturer of the goods to export the goods outside India, except Nepal and Bhutan, without

payment of duty from a warehouse or a licensed factory, provided the said export is made in accordance with the procedure set out in the relevant

provisions of Chapter IX of the Rules and the owner enters into a bond in the proper Form. In the present case, the petitioners have exported

embroidered cotton fabrics by executing a bond as provided in Rule 13. Now, once the bond as provided in Rule 13 is executed, then it cannot be

said that the Petitioners would be required to pay excise duty on the cotton fabrics which were removed by following the procedure prescribed

under Rule 96DD. The main purpose of Rule 13 is to grant exemption from payment of excise duty if the goods are to be exported. It specifically

provides that goods may in like manner be exported without payment of duty from a warehouse or a licensed factory, provided that export is made

in accordance with the procedure set out. This Rule 13 is not subject to Rule 96DD or Rule 96ZI. Moreover, proviso (1) to Notification No.

211/82 dated 31st August, 1982 does not provide that the benefit of export of goods without payment of duty under a bond should not be given.

12. In this view of the matter, in our view, the interpretation given by the Excise authorities in the impugned orders dated 8th June, 1987, 9th

October, 1987 and 19th October, 1987 (Exhibits "I", "K" and "N" respectively to the Petition) that duty on cotton base fabrics has to be paid in

addition to duty on the embroidery and also that it is required to be paid on the base fabrics before the fabrics are taken on embroidery machines

is against the aforesaid statutory Rules.

13. It is also to be noted that subsequently the Central Excise Collectorate, Bombay, has issued Trade Notice No. 46(MP) dated 20th/23rd May,

1988 wherein it has been clarified that base fabrics duty in respect of cotton fabrics brought under Rule 96DD should be collected only after the

embroidery of such fabrics and at the time of clearance of such fabrics for home consumption or for export. The said aspect is further clarified by

the Central Excise Collectorate, Bombay, by issuing a fresh Trade Notice bearing No. 94(MP) dated 10th November, 1988 which, inter alia,

provides that -

(i) the base fabrics duty should not be payable before the start of the shift when compounded embroidered duty is payable;

(ii) the liability on base fabrics duty arises only when the embroidered fabrics are cleared either for home consumption or for export;

(iii) in the case of exports under claim for rebate, base fabrics duty would be payable at the time of clearance of the embroidered fabrics; and that

(iv) in case of export under bond, no base fabrics duty would be payable, provided the procedure prescribed for export under bond is complied

with.

In view of the aforesaid clarifications issued by the Trade Notices mentioned above, in our view, the stand taken by the Department is wholly

unjustified and is against the statutory Rules.

14. However, it has been further pointed out in the impugned orders that the Petitioners are getting more rebate than the excise duty paid by them.

In our view, this consideration is totally irrelevant. The Petitioner is not claiming rebate on base fabrics but the rebate is claimed and given on

embroidered cotton fabrics. The rebate of duty on goods exported is on the basis of Rule 12 of the Rules which specifically empowers the Central

Government to grant rebate of duty paid on excisable goods, if exported outside India, to such an extent, and subject to such safeguards,

conditions and limitations as regards the class of goods, destination, mode of transport, and other allied matters as may be specified therein. In this

context it will be necessary to refer to Rule 96ZK(2) which provides that except in accordance with such special terms, conditions and limitations

as the Central Board of Excise and Customs may thereafter by notification specify in this behalf, no rebate of excise duty shall be paid under Rule

12 in respect of any embroidery exported out of India out of the stock produced by such manufacturer during such period. Under the said sub-rule

(2) the Central Government has issued Notification No. 162/69-CE, dated 9th June, 1969 as amended by Notification No. 212/82-CE, dated

31st August, 1992. By the said Notification, procedure for grant of rebate of excise duty in respect of embroidery, in piece, in strips and in motifs

produced by the manufacturers paying duty at compounded rates under the provisions of the procedure set forth in Section E-IX of Chapter V of

the Central Excise Rules is prescribed by the Central Government. For cotton fabrics, the rebate is prescribed at the rate of Rs. 0.87 per square

metre. The rate of rebate of duty is prescribed per square metre and the duty on the embroidery is fixed and levied in rupees per metre length of

the machines per shift. Hence, if some more rebate is given, it cannot be said that the Petitioners are at fault. The rebate is fixed per metre on the

embroidered cotton fabrics and other fabrics mentioned in the said Notification. It is not provided that rebate would be particular percentage of the

excise duty paid.

15. The result of the aforesaid discussion is :

(a) The impugned orders holding that Petitioners were required to pay excise duty on base fabrics at the time of removal of cotton fabrics for

export are totally unjustified. Proviso (1) to Notification No. 211/82 dated 31st August, 1982 nowhere provides to that effect. The said proviso

provides that the duty payable on embroidered fabrics would be in addition to the duty leviable under Chapters 50, 51, 52 54 and 55, as the case

may be;

(b) Nowhere it is provided that the benefit under Rule 13 of exporting goods without payment of duty from warehouse or licensed factory would

not be applicable in a case where embroidered cotton fabrics are exported;

(c) Rebate of duty on embroidered goods exported is granted on the basis of Notification No. 162/69 dated 9th June, 1969 which provides for

rates of rebate in rupees per square meter on embroidered (i) man-made fabrics; (ii) cotton fabrics; (iii) woollen fabrics; (iv) silk fabrics and laces

and is not linked with duty payable on embroidered articles.

(d) This aspect is also finally clarified by Trade Notice No. 46(MP) dated 20th/23rd May, 1988.

16. In the result, the Petition is allowed. The impugned orders dated 8th June, 1987, 9th October, 1987 and 19th October, 1987 (at Exhibits `I'',

`K'' and `N'' respectively to the petition) are hereby quashed and set aside. The Respondents are restrained from taking any further action on the

basis of the impugned Show Cause Notices dated 18th January, 1988, 17th May 1988, 10th August, 1988 and 25th August, 1988 (Exhibits `C'',

`E'', `G'' and `I'' to the affidavit in support of Notice of Motion No. 2453 of 1988) and the said Show Cause Notices are also hereby quashed and

set aside.

17. Rule is accordingly made absolute with no order as to costs.

18. Issuance of certified copy of this judgment is expedited.