PETITIONER:
CANNANORE SPINNING AND WEAVING MILLS LTD.

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS AND CENTRAL EXCISECOCHIN AND ORS.

DATE OF JUDGMENT:
15/10/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 1950 1970 SCR (2) 830
1969 SCC (3) 112
CITATOR INFO :
RF 1971 SC1705 (4)
RF 1972 SC1804 (2,5)
R 1990 SC1579 (43)

ACT:
Central Excise & Salt Act, 1944--Excise duty-Notification exempting cotton yarn of particular count cleared out in 'hanks'-Explanation added with retrospective effect defining 'hank' to mean any coil of cotton yarn less than 768 metres length-Whether 'hank' used in the technical sense-Retrospective notification, validity of.

HEADNOTE:
The appellant was manufacturing cotton yarn of varying counts ranging from 20 to 32. In June, 1962 the government issued a notification which exempted from payment of excise duty cotton yarn of 17 counts or more but less than 35 counts, if cleared out of the factory in 'hanks'. In view of the notification the appellant objected to the demand of excise duty in respect of the single yarn produced by it and cleared out of the factory in coils during the period August 1962 to November 1962. During the pendency of the proceedings, in February 1963, by another notification an explanation 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". The notification was given retrospective effect. After unsuccessfully contesting the demand in departmental proceedings the appellant moved the High Court to quash the demand. The High Court accepted the contention of the department that the word 'hank' has been used in the relevant notifications to convey a special meaning i.e. a circular loop or coil of cotton yarn 840 yards (768 metres) in length and held that the appellant was not entitled to the exemption granted under those notifications because, the, length of the cotton yarn in the 'hanks' cleared out of the appellant's factory was admittedly Much more than 850 yards. Allowing the appeal to this Court,
HELD : The explanation given in the notification dated February 1963 does not accord with the meaning given to the word 'hank' in commercial circles. Any coil of cotton yarn

less than 768 metres in length according to that notification has also to be considered as a 'hank'. But according to the technical meaning acquired by the word 'hank' in commercial circles. the length of' the cotton yarn in the reel should be neither more nor less than 768 metres (840 yards). This notification makes it clear that when the government issued the notification dated June, 1962 it intended to give the word 'hank' the meaning 'a coil of yarn' and nothing more. Further, if the word 'hank' had been used in the way it was understood in commercial circles there was no point in giving retrospective effect to the explanation added by notification dated February 1963. [833 F-H ]
(ii) The rule-making authority had not been vested with the power under the Central Excise and Salt Act to make rules with retrospective effect. Therefore, the retrospective effect purported to be given to the explanation was beyond the powers of the rule making authority. [834 D]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No, 2346 of 1966,
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Appeal by special leave from the judgment and order dated November 22, 1965 of the Kerala High Court in Writ Appeal No. 158 of 1965.
M. C. Chagla, Sardar Bahadur, Yougindra Khushalani and Vishnu B. Saharya, for the appellant.
V. A. Seyid Muhammad, B. Dutta and S. P. Nayar, for the respondents.
The Judgment of the Court was delivered by
Hegde. J. The only question for decision in this appeal by Special Leave is whether the coils of cotton yarn cleared out of the appellant's factory during the period from 17-8-1962 to 14-11-1962 are exempt from excise duty in view of Exts. P. 2 and P. 3 which exempt from payment of excise duty cotton yarn of 17 counts or more but less than 35 counts, if cleared out of factory in 'hanks'.
The appellant is a company engaged in the manufacture and sale of cotton yarn. It has been manufacturing cotton yarn of varying counts ranging from 20 to 32. Under the provisions of the Central Excises and Salt Act, 1944, cotton yarn is liable to excise duty at the rate prescribed in the Sch. to the said Act. By s. 13(1) of the Finance Act, 1961 (Act XIV of 1961) all cotton yarns less than 35 counts were subject to excise duty at the rate of 10 Np. per Kg. This provision took effect from 1-3-1961; but the Government by its notification dated 24-4-1962 under rule 8 of the Central Excise Rules 1944 granted exemption to the cotton yarn falling under item 18A of the 1st Sch. to the Act from so much of the duty leviable thereon as was in excess of the duty specified in the corresponding entry in column (3) thereof. In view of this notification, the appellant became liable to pay duty at the rate of 3.5 per paise per Kg. on cotton yarn produced by it and cleared, out of the factory in 'hanks'. On 13-6-1962 yet another notification was issued by the Government under rule 8(1) (Exh. P-2) under which single cotton yarn between 17 to 35 counts whether grey or bleached and grey multiple, fold yarn cleared out of the factory in hanks were totally exempt from the payment of duty w.e.f. July 24, 1962. In view of this notification, the appellant did not pay any excise duty on the yarn produced by it and cleared out of the factory in coils during the period from 17-8-1962 to 14-11-1962.

The appellant's factory was inspected by the Dy. Superintendent of Central Excise Cannanore sometime in November, 1962. He wrote to the appellant on November 14, 1962 as follows

> "On a verification at your mill premises it was noticed that the single yarn produced are double the length of a
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> standard hank of 840 yards. As the exemption of duty on yam applies only to standard hanks of 840 yards in length, the double hanks produced by you will not be eligible for exemption".

In reply to that letters, the appellant informed the Dy. Superintendent, Central Excise that it may be supplied any notification defining 'hanks'. Thereafter as per his communication dated January 1, 1963, the Deputy Superintendent called upon the appellant to pay a sum of Rs. 46,647.85 np. as excise duty in respect of the single yarn produced by it and cleared out of the factory in coils. A further communication was sent to the appellant by the same Dy. Superintendent in respect of the same demand on January 2, 1963. The appellant objected to the demand but the appellant's objections were rejected by the Asstt. Collector on April 14, 1963. Thereafter the appellant unsuccessfully appealed to the Collector of Central Excise. During the pendency of the proceedings, the Government of India by its notification dated February 16, 1963 issued in exercise of its powers under rule 8 (1 ), amended its earlier notification of September 15, 1962 by adding one more Explanation to that notification to the effect that for the purpose of that notification the term 'hank' means 'hank' "which does not contain more than 768 metres of yarn in plain (straight) reel". It further stated that that notification shall be deemed to have taken effect from the 17th day of August, 1962. As per its notification dated September 28, 1963 a further amendment was made to the notification issued on September 21, 1963. That amendment reads :-

"Notwithstanding anything contained in explanation 1 and 2, the term 'hanks' shall mean from 1st day of October, 1963, hanks which do not contain more than 1000 metres of yarn in plain (straight) reel".

In the notifications issued under rule 8(1) either on June 13, 1962 or on September 15, 1962 (Exh. P-2 and P-3), the word 'hank' was not defined. One of the dictionary meaning given to the word 'hank' is 'circular loop or coil'. The stand taken by the department is that the word 'hank' had acquired a special meaning in commercial circles i.e. a circular loop or coil of cotton yarn 850 yards in length and we must give that meaning to the word 'hank' in Exts. P-2 and P-3.

After unsuccessfully contesting the demands made by the department in departmental proceedings, the appellant moved the High Court of Kerala under Art. 226 of the Constitution to quash the demand referred to earlier. Both the single judge as well
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as the appellate bench of that High Court rejected the prayer of the appellant, accepting the contention of the department that the word 'hank' in Exh. P-2 and P-3 has been used to convey a special meaning, i.e. a circular loop or coil of cotton yarn 850 yards in length; Hence the appellant was not entitled to the exemption granted under those notifications. In support of their conclusion that

the word 'hank' has acquired a precise technical meaning in commercial circles, the learned judges of the High Court referred to the definition given to the word 'hank' in Murray's New English Dictionary, "Mercury Dictionary of Textile Terms", "American Cotton Hank Book" and to some of the Government publications. Thereupon the appellant brought this appeal.

It may be taken that the word 'hank' has acquired a technical meaning in commercial circles and in the absence of any evidence to show contrary intention on the part of the authorities who issued Exts. P-2 and 3 we should have had no difficulty in accepting the contention of the department. Admittedly the length of the cotton yam in the 'hanks' cleared out of the appellant's factory was much more than 840 yards. Hence those 'hanks' cannot be considered as 'hanks' as understood in commercial circles. But then did the authorities who issued Exts. P-2 and P-3 intend to use the word 'hank' as understood in commercial circles or did they use the word in accordance with the dictionary meaning ? We have definite and positive evidence on record to show that the authorities who issued those notifications did not use the word 'hank' as understood in commercial circles. Otherwise the notification issued by the Government on February 16, 1963 becomes meaningless. That notification not only explains the term 'hank' as meaning a 'hank' which does not contain more than 768 metres of yarn in plain (straight) reel, it goes further and provides that the notification should be deemed to have taken effect from the 17th day of October, 1962. First the explanation given in the notification does not accord with the meaning given to the word 'hank' in commercial circles. It says that the word 'hank' means a coil of cotton yarn not more than 768 metres (840 yards) in length and not of 768 metres length. Any coil of cotton yarn less than 768 metres in length according to that notification has to be considered as a 'hank'. But according to the technical meaning acquired by the word 'hank' in commercial circles, the length of the cotton yarn in the reel should be neither more nor less than 768 metres (840 yards). This notification makes it clear that when the Government issued the notification Exh. P-2, it intended to give the word 'hank' the meaning "a coil of yam" and nothing more. Secondly if in Exh. P-2, the word 'hank' has been used in the way it is understood in commercial circles there was no point in

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giving retrospective effect to the explanation added to Exh. P-2 by the notification dated February 16, 1963. The rule making authority's intention is made further clear by the Government's notification dated September 28, 1963 which explains the word hank to mean a circular coil which does not contain more than 1000 metres of yarn in plain (straight) reel. It is true that it was within the competence of the rule making authority to define the word 'hank' as it though best. The, real question for our decision is whether it did use that word 'hank' to convey any technical meaning when it issued notification Exts. P-2 and P-3. For the reasons mentioned, above we are unable to agree with the department that in those notifications, the word 'hank' had been used in a technical sense.

By Seiyed Muhammad, learned Counsel for the department did not support the impugned demand on the basis of the retrospective effect purported to have been given to the explanation referred to earlier by the notification dated February 16, 1963 (Exh. P-12) for obvious reasons. The rule making authority had not been vested with the power

under the Central Excise and Salt Act to make rules with retrospective effect. Therefore the retrospective effect purported to be given under Exh. P-12 was beyond the powers of the rule making authority.

For the reasons mentioned above, we allow this appeal and quash the impugned demand-. The respondents shall pay the costs of the appellant both in this Court as well as in the High Court.

R.K.P.S.

Appeal allowed

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