PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
AHMEDABAD MANUFACTURING AND CALICO PRINTINGCO. LTD. (CALICO

DATE OF JUDGMENT12/08/1985

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1986 AIR 121 1985 SCR Supl. (2) 537
1985 SCC (3) 693 1985 SCALE (2)233

ACT:
Central Excise and Salt Act, 1944, Tariff Item No.19 and 22, First Schedule - Excise duty - Whether leviable at intermediate stage of production or at final stage.
Processed fabric - "Calikut Special" - Excise duty - leviability of.

HEADNOTE:
The respondent was manufacturing processed fabrics known as "Calikut Special" since 1965. At the intermediate stage of the production, the said fabrics contained 46 per cent of synthetic fibres (Art Silk) and the cotton content was about 54 per cent. Due to further processing, when goods reached the final stage of production, the cotton contents of the said goods was reduced to about 38.48 per cent and 61.52 per cent to the fabrics consisted of Artificial Silk. having regard to the cotton content of the final product, which was less than 40 per cent the said goods were being treated all along as Artificial Silk Fabrics and excise duty was being levied under item No. 22 of the First Schedule to the Central Excise & Salt Act, 1944.
In 1967 the Excise Department issued a Notice to the respondent to show cause why the "Calikut Special' should not be subjected to excise duty under Item No. 19 because in the intermediate stage of production the cotton content was more than 40 per cent while Artificial Silk content was less than 60 per cent. After considering the explanation of the respondent, the Assistant Collector, Central Excise held that the goods in question were liable to payment of excise duty under Item No. 19 and not under Item No.22. The respondent questioned the validity of the said order of Assistant Collector under Article 226 and the same was quashed by the High Court.
Dismissing the appeal of the Union of India,
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HELD:- 1. If the product manufactured by the respondent contained cotton and less than 60 per cent by weight of Rayon or
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Artificial Silk it would fall outside Item No.22 because Item No.22 excludes such product from its scope and it would be cotton fabrics as stated in Item No.19. [540 G-H]

2. In the instant case, having regard to the process involved in the manufacture of "Calikut Special by the respondent it is not possible to hold that the character of the goods at the intermediate stage of production could be taken into consideration for determining the liability under the Act. The processes involved after the intermediate stage formed an integral part of the manufacture of the product in the question and the classification of the manufactured product for purposes of excise duty should depend upon its nature and character at its final stage of production unless a contrary intention appears from the statute. [541 E-F]

Clause (vii) of section 2(f) of the Central Excises and Salt Act, 1944 introduced subsequently, shows that bleaching, heat setting etc. are incidental and ancillary processes necessary for the completion of the manufactured product falling under Item No.22. This amendment is only clarificatory in nature. Therefore, even though the product in question might have fallen under Item No. 19 in the First Schedule to the Act at the intermediate stage of production, at the final stage when the duty became exigible it became taxable under Item No.22 only. [541 G-H, 542 A]

Vijay Textiles a Partnership Firm at Plot No.4. Nerol Abendaly v. Union of India, 1979 E.L.T.(J 181) held over-ruled.

Empire Industries Ltd. & Ors. v. Union of India & Ors. [1985] (20) E.L.T. 179 (S.C.) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 259 (N) of 1972.

From the Judgment and Order dated 30.4.1970 of the Gujarat High Court in S.C.A. No. 67 of 1968.

Govind Das and R.N. Poddar for the Appellant.

Soli J. Sorabjee, A.N. Haksar, Ravindra Nath, R.K.Ram and Miss Ratna Kapur for the Respondent.

The Judgment of the Court was delivered by

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VENKATARAMIAH, J. This appeal by special leave is filed against the judgment dated April 30, 1970 of the High Court of Gujarat at Ahmedabad in special Civil Application No. 67 of 1968. The only question which arises for consideration in this appeal is whether the goods called Calikut Special manufactured by the respondent, the Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills) Ahmedabad, were liable to excise duty under the Tariff Item No. 19 in the First Schedule to the Central Excises and Salt Act, 1944 (Act No.1 of 1944) (hereinafter referred to as 'the Act') or under Tariff Item No. 22 thereof as they stood during the relevant time. The material part of Item No.19 in the First Schedule to the Act read as follows:-

> "19. COTTON FABRICS -
> "Cotton Fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads, counter-panes, table-clothes but do not include any- such fabrics.....
> (c) if it contains 60 per cent or more by weight of rayon or Artificial Silk:..... "

The material part of Item No.22 in the First Schedule to the Act read as follows:-

> "22. RAYON OR ARTIFICIAL SILK FABRICS -
> "Rayon or artificial silk fabrics" includes

varieties of fabrics manufactured either wholly or partly from Rayon or Artificial Silk but do no include any such fabrics ....
(iii) If lt contains cotton and less than 60 per cent by weight of Rayon or Artificial Silk; or....."

The respondent was the manufacturer of the processed fabrics known as "Calikut Special" from the year 1965. At the intermediate stage of their production, the said fabrics contained 46 per cent of synthetic fibres (Art Silk) and their cotton content was about 54 per cent. The said goods were subject to further processing such as bleaching, heat setting etc. and at the time when goods reached the final stage of production the cotton content of the said goods was reduced to about 38.48 per cent and
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61.52 per cent of the fabrics consisted of Artificial Silk. Having regard to the cotton content of the final product which was less than 40 per cent, the said goods were being treated all along as falling under item No. 22 of the First Schedule to the Act as Artificial Silk Fabrics and excise duty was being levied on that basis. However, the Superintendent, Central Excise, Ahmedabad by his letter dated November 25, 1967 proposed to treat the above goods as falling under Item No. 19 thereof as cotton fabrics on the ground that at the intermediate stage of production the cotton content was more than 40 per cent while the Artificial Silk content was less than 60 per cent. The respondent repudiated the claim made by the Superintendent, Central Excise, Ahmedabad by its reply dated November 25, 1967. On December 11, 1967 the Superintendent, Central Excise, Ahmedabad, formally issued a Show Cause Notice to the respondent to show cause why the "Calikut Special" variety of goods referred to above should not be subjected to excise duty under Item No.19. The respondent sent its reply on December 12, 1967 reiterating its stand that since at the final stage the product consisted of less than 40 per cent, of cotton and of more than 60 per cent of Artificial Silk, the goods in question were liable to be taxed only under Item No. 22. After taking into consideration the explanation given by the respondent the Assistant Collector, Central Excise, Ahmedabad Division - I, Ahmedabad by his order dated December 29, 1967 held that the goods in question were liable to payment of excise duty under Item No. 19 and not under Item No. 22. Aggrieved by the above decision the respondent filed a writ petition under Article 226 of the Constitution on the file of the High Court of Gujarat questioning the validity of the said order. The High Court after hearing the parties agreed with the contention of the respondent and allowed the writ petition quashing the order dated December 29, 1967 passed by the Assistant Collector, Central Excise, Ahmedabad Division - I, Ahmedabad and restraining the Central Excise Department from levying excise duty under Item No. 19 in the First Schedule to the Act. The High Court directed the Central Excise Department to levy excise duty under Item No. 22. This appeal by special leave is filed by the Union of India against the judgment of the High Court.

There is no dispute that if the product manufactured by the respondent contained cotton and less than 60 per cent by weight of Rayon or Artificial Silk it would fall outside Item No. 22 because Item No. 22 excludes such product from its scope and it would be cotton fabric as stated in Item No. 19. It is not
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disputed in this case by the Central Excise Department that the final product called "Calikut special" which was manufactured by the respondent contained cotton and more than 60 per cent by weight of Rayon or Artificial Silk and that only at the intermediate state of its production it contained less than 60 per cent of Rayon or Artificial Silk. The question for consideration in this case is whether merely because the goods in question contained less than 60 per cent of Rayon or Artificial Silk at the intermediate state they were liable to be taxed under Item No. 19 which imposed a heavier duty than the duty payable under Item No. 22.

Shri Govind Dass, learned counsel for the Union of India, in support of its contention relied upon the decision of High Court of Gujarat in Vijay Textiles a Partnership Firm at Plot No.4, Nerol Abendaly v. Union of India [1979] E.L.T. (J 181). 'the petitioner in that case claimed before the High Court that the goods involved therein were liable to excise duty at the intermediate stage itself and excise duty was leviable under Item No. and not under Item No. 19 or Item No.22 perhaps because the total liability under Item No. 68 when compared with the excise duty either under Item No. 19 or under Item No. 22 was less at that stage. The High Court accepted the contention of the petitioner in that case. But in Empire Industries Ltd. & Ors. v. Union of India & Ors. [1985] 20 E.L.T. 179 (S.C.), this court has disapproved the decision in Vijay Textiles case (supra). L

Having regard to the process involved in the manufacture of "Calikut special" by the respondent we are of the view that it is not possible to hold that the character of the goods at the intermediate state of production could be taken into consideration for determining the liability under the Act. The processes involved in the instant case after the intermediate stage referred to above formed an integral part of the manufacture of the product in question and the classification OF the manufactured product for purpose of excise duty should depend upon its nature and character as its final stage of production unless a contrary intention appears from the statute. It is seen from clause (vii) of section 2(f) of the Act which is no doubt introduced subsequently that bleaching, heat setting etc. are incidental and ancillary processes necessary for the completion of the manufactured product falling under Item No. 22. This amendment has only attempted to explain the obvious and to put the question beyond dispute. Therefore, even though the product in question might

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have fallen under Item No. 19 in the First Schedule to the Act at the intermediate state of production, at the final stage when the duty became exigible it became taxable under Item No.22 only. We are, therefore, in agreement with the decision of the High Court that the goods in question fell under Item No.22 and not under Item No. 19 in the First Schedule to the Act for purposes of payment of excise duty under the Act.

The appeal, therefore, fails and it is dismissed with costs.

A.P.J. Appeal dismissed.

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