

PETITIONER:
MAFATLAL FINE SPINNING & MFG. CO. LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BOMBAY

DATE OF JUDGMENT 17/01/1989

BENCH:
VENKATACHALLIAH, M.N. (J)
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PATHAK, R.S. (CJ)

CITATION:
1989 AIR 784 1989 SCR (1) 204
1989 SCC (2) 446 JT 1989 (1) 160
1989 SCALE (1) 121

ACT:
Central Excises and Salt Act, 1944/Central Excise Rules, 1944: Section 39L/Rule 49A--Differential rates of interest on deferred payment of yarn duty depending on whether fabrics are cleared 'grey' or 'after processing'--'Grey' fabrics subjected to 'calendering' and 'shearing' before clearance--Whether cease to be 'grey fabric' and 'unprocessed'--Whether higher rate payable--Calendering and shearing--What are.

Words and Phrases: 'Calendering' and 'Shearing'--Meaning of.

HEADNOTE:

Rule 49A of the Central Excise Rules, 1944 provided for payment of different rates of interest on the excise duty on the yarn, payment of which was deferred at the option of the manufacturer till the manufacture and clearance of the fabrics made out of the dutiable yarn, depending on whether cotton fabrics were cleared 'grey' (unprocessed) or 'after processing'. When the fabrics were cleared grey the interest payable was 1 1/2% of the yarn-duty. But where the cotton-fabrics were cleared after 'processing', it was 3% of yarn duty.

Appellant-Company, engaged in the manufacture of cotton-fabrics, in its composite mills, opted for such deferment of payment of duty of excise. The cotton-fabrics cleared admittedly underwent the process of 'calendering' and 'shearing'. The Appellate Tribunal held that 'calendering' and 'shearing' were 'finishing processes' which rendered the 'grey' fabrics to cease to be 'unprocessed' and thus attracted interest at 3% of yarn duty.

In the appeal before this Court, it was contended on behalf of the appellant company that whether the fabric, after 'calendering' and 'shearing' ceased to be 'unprocessed' fabric would require to be 'resolved on the language of the Rule 49A itself and that the differentium for the attraction of the different rates of interest was whether the cotton-fabrics cleared were 'grey-fabrics' as known and understood in the textile industry, and that the condition for levy of 1 1/2% was not whether some process or processes were applied to the 'grey fabrics'

but whether such process or processes to which the grey-fabric was subjected had the effect of making such grey-fabric ceased to be 'greyfabric', and that actual processes or 'calendering' and 'shearing' involved in the present case were amongst the simplest of the processes and did not have the effect of bringing about any change in the 'greyfabric', as to take it out of Rule 49A(1)(b).

On behalf of the Revenue it was contended that the conditions for the choice of the different rates of interest were not envisaged in the context whether the process or processes amounted to 'manufacture' within the meaning of s. 2(f)(v) of the Act, but only in the context of estimating the extent of time consumed by the process or processes and that the test appropriate in this context was not whether the greyfabrics under-went any change in their nature or quality as a result of the processes but was whether any time consuming process, whatever be its nature, was resorted to by the manufacturer which, in turn, occasioned delays in the clearance of the cotton-fabrics and thereby delayed payment of the yarn-duty.

Allowing the appeals,

HELD: 1. Though the purpose of Rule 49A of the Central Excise Rules 1944, was to provide for rates of interest depending on the time consumed by the processing, the measure of the delay so as to attract one or the other of the rates is not in terms of any period of time specified, but is prescribed to be with reference to the nature of the processes. The measure of the delay in deferment of yarn-duty legislatively considered appropriate to attract higher rate of interest at 3%, is in terms of the processes that would be required to make the 'greycloth' cease to be greycloth. Any processing that can take a case out of Rule 49A(1)(b) must be a process which renders cotton fabric cease to be 'grey' fabric as commercially known and understood. That is why in Rule 49A(1) of the expression 'grey' is used while in Rule 49A(2), that word is omitted. [209E-F]

The matter has to be examined by those standards, which in turn, depends on the fact, whether the process or processes concerned were such as to change the nature of the 'grey-fabric'. [209G-H]

2.1 There is no dispute that before clearance the cotton fabrics were subjected to 'calendering' and 'shearing' which in the jargon of the textile industry are finishing processes. [207G]

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2.2 Both 'calendering' and 'shearing' involve an assortment and variety of processes, some of which might and some others might not affect or alter the nature of the fabric. Both the expressions, 'calendering' and 'shearing' are collective expressions representing number of sub-species of operations which, depending upon the nature of the particular operation, may or may not alter the nature of the 'greyfabric' as such. [212B-C]

2.3 These matters depend on particularities of the facts of each case and are to be decided on a case by case basis. [212E]

In the present case, the claim of the appellant before the authorities that the 'calendering' process employed by them was such as to give temporary finish by pressing the fabric is not controverted. No lasting change is brought about. There is no finding to the contrary. Likewise the claim as to the "shearing" which was only to trim protruding, stray fibres from the fabric. If these are the nature of the operations, the 'grey' fabric, in the facts of these cases, does not become new and commercially different com-

modity and cease to be 'grey' cloth. There is thus no justification to take it out of Rule 49A(1)(b). [212G-H; 213A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 369596 of 1988.

From the Judgment and Order dated 10.12.87 of Customs Excise and Gold Control Appellate Tribunal New Delhi in Appeal No. 1105/ 83-D (Order No. 961/87-B).

Soli, J. Sorabjee, S. Ganesh, C.M. Mehta P.G. Gokhale and R.B. Hathikhanawala for the Appellants.

A.K. Ganguli, Mrs. Sushma Suri and K. Swami for the Respondent.

The Judgment of the Court was delivered by

VENKATACHALIAH J. These two appeals under Section 35-L of the Central Excises and Salt Act, 1944 (Act) by Messrs Mafatlal Fine Spinning & Manufacturing Co. Ltd., arise out of and are directed against the common appellate-order dated 10.2.1987 of the Customs Excise & Gold (Control) Appellate Tribunal in Appeal Nos. 1105 of 1983 and 2540 of 1987 holding that in respect of the deferred duty on yarn appellant is liable to pay interest at 3 per cent of the duty under 207

Rule 49A(2) of the Central Excises & Salt Rules, 1944, as according to the Tribunal, the cotton-fabric cleared is not 'Grey' (unprocessed) cotton-fabric.

2. Appellant is engaged in the manufacture of cotton-fabrics in its composite mills and opted under Rule 49A for facility of payment of duty of excise payable on the yarn to be deleted until the clearance of the cotton-fabrics manufactured therefrom.

The said Rule 49A provides for payment of interest on the excise duty payable on the yarn which is deferred till the manufacture and clearance of the fabrics made out of the dutiable yarn. As such payment is deferred, at the instance of the option of the manufacturer, till completion of manufacture and clearance of fabrics out of the yarn and Rule 49A envisages that when cotton-fabrics are cleared 'grey' (unprocessed) the yarn duty shall be paid at the time of clearance of the fabrics along with 1 1/2% of the yarn-duty, by way of interest. But where the cotton-fabrics are cleared after 'processing', the interest payable on, and along with, the yarn-duty would, however, be 3% of the yarn-duty.

3. The question in these appeals is whether the interest-rate should be one & half per cent or three per cent which in turn depends upon whether the cotton-fabrics cleared are 'grey' (unprocessed) or they are cleared after 'processing'. The cotton fabrics cleared in this case, admittedly, underwent the process of 'calendering' and 'shearing'. The cognate and sequential question is whether these processes render the 'grey' fabric, a 'processed' fabric within the meaning of Rule 49A(2). The Appellate Tribunal has held that 'calendering' and 'shearing' are 'finishing-processes' and render the 'Grey' fabrics to cease to be 'unprocessed' so as to attract interest at 3%.

4. We have heard Sri Soli J. Sorabjee, learned Senior Counsel for the appellant and Sri A.K. Ganguly, learned Senior Counsel for the revenue.

There is no dispute that before clearance, the cotton-fabrics were subjected to 'calendering' and 'shearing' which, in the jargon of the textile industry are 'finishing-processes'. The Tribunal, accordingly, held that the cotton-fabrics cleared were not 'unprocessed' for pur-

poses of Rule 49A(1)(b). In regard to 'calendering', the Tribunal relied upon the views expressed by it in the case of Siddeshwari Cotton Mills Ltd. and Anr. v. Collector of Central Excise, Calcutta [1984] 18

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ELT 297. The relevant part of Rule 49A provides:

"(1) When the cotton fabrics are cleared grey (unprocessed), the yarn duty payable shall be--

(a) the appropriate duty payable on such cellulosic spun yarn or cotton yarn, or both, as the case may be; plus

(b) one and a half per cent of the duty payable on such cellulosic spun yarn or cotton yarn, or both, as the case may be, by way of interest on the amount of yarn duty;

(2) When the cotton fabrics are cleared after processing, the yarn duty payable shall be--

(a) the appropriate duty payable on such cellulosic spun yarn, or cotton yarn, or both, as the case may be; plus

(b) three per cent of the duty payable on such cellulosic spun yarn, or cotton yarn, or both, as the case may be, by way of interest on the amount of yarn duty:

Explanation--Omitted as unnecessary."

5. Sri Sorabjee contended that such controversy, as is raised, as to whether the fabric, after 'calendering' and 'sheafing' ceases to be 'unprocessed' fabric would require to be resolved on the language of the Rule 49A itself and that the differentium for the attraction of the different rates of interest was whether the cotton-fabrics cleared were 'grey-fabrics' as known and understood in the textile industry. The learned counsel emphasised the distinction between the expressions in Rule 49A(1) which refer to the expression "cotton fabrics are cleared grey (unprocessed)" on the one hand and the expression "cotton fabrics are cleared after processing" in Rule 49A(2) on the other, to demonstrate that the condition for levy of 1 1/2 % is not whether some process or processes were applied to the 'grey fabrics' but whether such process or processes to which the grey-fabric was subjected had the effect of making such 'grey-fabric' cease to be 'grey-fabric'.

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6. Sri Ganguly, for the revenue, urged that the conditions for the choice of the different rates of interest are not envisaged in the context whether the process or processes amounted to 'manufacture' within the meaning of Sec. 2(f)(v) of the Act, but only in the context of estimating the extent of time consumed by the process or processes as that is the criterion for the choice of the rate of interest. The purpose and intendment of the rule, says Sri Ganguly, is to provide for the rates of interest on the deferred yarn-duty depending on the time consumed by the processing. If 'grey-cloth' directly obtained from the loom--and that is what 'grey fabric' or 'greige' in textile parlance means--is cleared then a lesser rate of interest is attracted. But, where, as here, the 'grey fabric' is subjected to time-consuming processes the rate of interest, says Sri Ganguly, would be the higher rate of 3 per cent, taking note of the delays consequential upon such processing occasioned in the recovery of yarn-duty. Sri Ganguly, accordingly, submitted that the test appropriate in this context is not whether the grey-fabrics undergo any change in their nature or quality as a result of the processes but

is whether any time consuming process, whatever be its nature, is resorted to by the manufacturer which will, in turn, occasion delays in the clearance of the cotton-fabric and thereby delay payment of the yarn-duty.

7. Sri Ganguly is right in his submission as to the objects of Rule 49A in prescribing differential rates of interest on deferred yarn-duty. But the standards for assessment of the relative delays depending on which the different rates of interest are charged are themselves set by the rule making authority. The measure of the delay so as to attract one or the other of the rates is not in terms of any period of time specified but is prescribed to be with reference to the nature of the processes. The measure of the delay in deferment of yarn-duty legislatively considered appropriate to attract higher rate of interest at 3%, is in terms of the processes that would be required to make the 'greycloth' cease to be grey-cloth. That is why in Rule 49A(1) the expression 'grey' is used while in Rule 49A(2) that word is omitted. So the period of deferment of yarn-duty to attract higher interest 3% would, according to the wisdom of the rule-makers, be the delay incidental to converting 'grey fabric' into 'processed' fabric which ceases to be 'grey-fabric'. With this legislative estimate of the period of deferment appropriate to a situation attracting 3% interest, the matter has necessarily to be examined by those standards, which in turn, bring in the idea whether the process or processes concerned are such as to change the nature of the 'grey fabric'. This leads to the question whether 'calendering' and 'shearing', though by themselves are finishing processes, render the 'grey' fabric cease to be so.

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8. Sri Sorabjee submitted that the process of calendering is nothing more than mere pressing of the 'grey fabric' by running it through plain rollers to impart a better finish, which is a mere temporary finish. Sri Sorabjee referred to some of the notifications issued under Section 8(1) of the Act which say that calendering would not be treated as "processing". Learned Counsel contended that having regard to the very nature, the calendering does not bring about any change in the quality of the goods.

In Siddeshwari Cotton Mills' case, the Tribunal has referred to certain technical and scientific literature on the process of 'calendering'. Sri Sorabjee referred to some of them. In Modern Textiles (by Dorothy S. Lyle John Welay & Sons, N. York) under the caption "Finishes that provide Aesthetic Values", referring to "CALENDER FINISH" it is stated:

"This is the simplest of all finishes used to give a good appearance to the finished fabric. It consists of passing the fabric between the heated cylinders of a calendering machine. It is simply ironing a fabric to make it smooth and give it a lustrous surface. The round yarns are flattened, hence reflect more light. It is a temporary finish, since the yarns revert to their round shape with steaming, laundering, and dry cleaning. Examples of calendered fabrics the sheeting, poplin, and broadcloth, both cotton and wool".

Encyclopaedia Britannica has the following to say:

"Calendering--is a final process in which heat and pressure are applied to a fabric by passing it between heated rollers, imparting a flat, glossy, smooth surface, Lustre, in-

creases when the degree of heat and pressure is increased. Calendering is applied to fabrics in which a smooth, flat surface is desirable, such as most cottons, many linen and silks, and various man-made fabrics

..... Calendering is not usually a permanent process."

In "Glossary of Terms relating to treated fabrics I.S. 2244-- 1972 published by the Indian Standards Institution it is stated:

"Calender--A machine comprised of at least three heated rollers, used to produce film and sheet material".

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"Calendering--A mechanical method done by rollers to provide glaze, glossiness, hardness, lustre, shine and even embossed designs to fabrics. Calendering is usually done to impart a special finish to fabrics."

It is accordingly urged by Sri Sorabjee that calendering does not alter the nature of the 'grey fabric' and would not take cotton-fabric out of Rule 49(1)(b).

9. In regard to the process of "Shearing" Sri Sorabjee relied upon Fairchild's Dictionary of Textiles which says:

"SHEARING: 1. A process of cutting fleece from sheep generally by power-driven clippers or sometimes by hand shears. Properly sheared fleece will be removed in one solid sheet, which is rolled into a compact bundle with the wool on the inside. 2. A finishing operation in which uneven threads are mechanically cut or trimmed from the face of the fabric. Almost always employed for woollen and worsted and extensively employed on other fabrics. The amount of shearing on napped and pile fabrics varies according to the desired height of the nap or pile; on clearfinish fabrics like gabardine, a very close shearing is given. 3. A finishing operation in which floating portions of yarn are cut, e.g., in extra warp or extra filling figured fabrics. The method is similar to that employed in para 2, above."

In "Textile Terms and Definitions" 8th Edn. by the Textile Institute:

"SHEAR:

(1) To Cut the fleece from a sheep.

(2)

(3) To cut loose fibres or yarn from the surface of a fabric after weaving (also called crop)."

In Handbook on Glossary of Textile Terms (Bureau of Indian Standards):

"SHEARING Shearing indicates:

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(a) Cutting fleece from live sheep,

(b) Trimming nap or pile to the required uniform height, and

(c) Removing all protruding fibres from the surface of the fabric i.e. cropping."

10. Both 'calendering' and 'shearing' involve an assortment and variety of processes, some of which might and some others might not affect or alter the nature of the fabric. Both the expressions, 'calendering' and 'shearing' are collective expressions representing a number of sub-species of operations which, depending upon the nature of the particular operation, may or may not alter the nature of the

'grey fabric' as such.

Sri Sorabjee submitted that in the present case "calendering" was not done by 'grooved' rollers or cylinders but only by plain rollers and the "Shearing" operation was only to cut-off protruding stray fibres from the 'grey fabric', and that actual processes of 'calendering' and 'shearing' involved in the present case were amongst the simplest of the processes and did not have the effect of bringing about any change in the 'grey-fabric'.

11. These matters depend on particularities of the facts of each case and are to be decided on a case by case basis. The Tribunal proceeded on the basis that "Calendering" and "Shearing" amounted to process of finishing and that by itself, without more, satisfied the conditions that would take the case out of Rule 49 A(1). The test applied by the Appellate Tribunal, as well as by the authorities below, is not the appropriate one on the language of Rule 49A. Any processing that can take a case out of Rule 49A(1)(b) must be a process which renders cotton-fabric cease to be 'grey fabric' as commercially known and understood. The question whether 'calendering' and 'shearing', as actually carried out by the appellant has had the effect of taking the cotton fabric out of Rule 49A(1) should be decided in the light of this test.

12. In the present cases, the claim of the appellant before the authorities that the calendering process employed by them was such as to give temporary finish by pressing the fabric is not controverted. No lasting change is brought about. There is no finding to the contrary. Likewise the claim as to the "Shearing" which was only to trim

213 protruding, stray fibres from the fabric. If these are the nature of the operations, the 'grey' fabric, in the facts of these cases, does not become new and commercially different commodity and cease to be 'Grey cloth'. There is thus no justification to take it out of Rule 49A(1)(b).

Accordingly, these appeals are allowed, the appellate order, of the Tribunal and the decisions of the authorities below set-aside and the liability for payment interest is directed to be computed under Rule 49A(1)(b). No Costs.

N.P.V.

Appeals allowed.

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