A THE COLLECTOR OF CENTRAL EXCISE, BARODA

v.

M/S. THE GAEKWAR MILLS LTD.

OCTOBER 11, 1996

B [S.P. BHARUCHA AND SUHAS C. SEN, JJ.]

Central Excise Tariff, Item 19 and 22—Whether fabric containing 33% polyester, 32% viscose and 35% cotton is classifiable under Item 19 or Item 22—Fact that fabric not known in the market as cotton but as man-made C *fabric not disputed by the Revenue—Held, fabric classifiable as man-made fabric; cotton not shown to be predominant fibre percentage wise or weight-wise.*

The respondent manufactured a variety of fabric which contained D **33% polyester, 32% viscose and 35% cotton. The case of the Revenue was that the product was cotton fabric classifiable under Item 22 of the Central Excise Tariff Schedule. However, the CEGAT took the view that it was man-made fabric and fell under Item No. 19 of the Tariff Schedule. The Revenue appealed to this Court.**

E **Dismissing the appeal, this Court**

HELD : 1.1. The fact that the fabric was not known in the market place as cotton fabric but as man-made fabric was not disputed by the Revenue. An excise entry has to be understood in the sense in which it is F **understood in the market place unless there was a special definition to the contrary. There is no such definition or rule which laid down that even if a fabric was comprised of only 35% cotton, it would have to be treated as cotton fabric. [476-D]**

Collector of Central Excise **v.** *Rajasthan Spg. & Wvg. Mills Ltd.*, **[1993]** G **Supp. 1 SCC 420, referred to.**

1.2. Either percentage-wise or weight-wise, cotton has not been found to be the predominant fibre as a matter of fact. There is no law that, in such a situation, cotton must be deemed to be the predominant fibre and H **the fabric must be treated as cotton fabric. [477-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1601 of 1985. A

From the Judgment and Order dated 17.9.83 of the Customs, Excise and Gold (Control) New Delhi in Order No. 602/83-D in A. No. E.D. (SB) No. 882 of 1983-D. B

N.K. Bajpai and C.V.S. Rao for the Appellant.

Ms. Amrita Mitra for the Respondent.

The Judgment of the Court was delivered by C

SEN, J. This is an appeal by the Collector of Central Excise against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The controversy in this case is about the classification of a particular variety of fabric known as Sort No. 89225 manufactured by the Gaekwar Mills Limited, the respondent herein. There is no dispute D regarding the composition of this fabric which contains 33% polyester, 32% viscose and 35% cotton. Polyester is a non-cellulosic man-made fibre, while viscose is a cellulosic man-made fibre. The case of the Collector of Central Excise is that the fabric falls under Item 19 of the Central Excise Tariff Schedule, whereas the CEGAT has taken the view that it falls under Item E No. 22 of the Tariff Schedule.

Relevant extracts from the aforesaid Tariff Items are given below:

"Item No. 19. Cotton Fabrics.

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"Cotton Fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, Chadders, bedsheets, counterpanes, tableclothes, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other G artificial plastic materials, if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both:

.... H

A Explanation II : Where two or more of the following fibres, that is to say,

(a) man-made fibre of cellulosic origin

(b) cotton

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(c) wool

(d) silk (including silk noil)

(e) jute (including Bimilipatnam jute or mesta fibre)

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(f) man-made fibre of non-cellulosic origin

(g) flax

(h) ramie

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in any fabric are equal in weight, then such one of those fibres the predominance of which would render such fabric fall under that Item (hereafter in this Explanation referred to as the applicable item) among the Item Nos. 19, 20, 21, 22, 22A and 22AA, which read with the relevant notification, if any, for the time being in E force issued under the Central Excise Rules, 1944, involves the highest amount of duty, shall be deemed to be predominant in such fabric and accordingly such fabric shall be deemed to fall under the applicable Item.

Item No. 22. Man-Made Fabrics.

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"Man-made fabrics" means all varieties of fabrics manufactured either wholly or partly from man-made fibres or yarn and includes embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, in each of which G man-made (i) cellulosic fibre or yarn, or (ii) non-cellulosic fibre or yarn, predominates in weight:

Provided that in the case of embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with H preparations of cellulose derivatives or of other artificial plastic

materials, such predominance shall be in relation to the base fabrics which are embroidered or impregnated, coated or laminated, as the case may be.

....

Explanation II : This Item does not include glass fabrics or fabrics falling under Item No. 19 or Item No. 21.

Explanation III : Explanation II under Item No. 19 shall, so far as may be, apply in relation to this item as it applies in relation to that item."

The Tariff Entries are quite clear and there is no ambiguity as to their meaning. In order to bring the fabric manufactured by the respondent within "Cotton Fabrics", the Collector will have to establish that in such fabric cotton predominates in weight or such fabric contains more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both. Neither of the two conditions has been fulfilled in this case. It is not the case of the Collector that even though only 35 per cent of the fabric is made out of cotton, such cotton exceeds the combined weight of polyester or viscose fibre which account for 65 per cent of the fabric. "Predominates in weight", in this context, must mean weight in excess of the combined weight of the other two types of fibres. There can be a second type of case where any fabric may contain more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibre (polyester in this case) or yarn or both. In such a case, even though cotton does not predominate, the fabric will be treated as cotton fabric. That is a legal fiction which does not come into play in this case because the fabric contains only 35 per cent cotton and 33 per cent polyester (non-cellulosic fibre). It is not the case of the Department that the weight of cotton is more than 40 per cent of the fabric and the weight of non-cellulosic fibre is 50 per cent or more.

It was specifically argued on behalf of the assessee before the Tribunal that in order to predominate in weight, cotton must be more than 50 per cent in weight. This was not the case here. The facts were not disputed by the Revenue but a legal argument was advanced that if a fabric comprised of three or four types of fibre, it was enough if the cotton was the largest constituent of the fabric. The predominant fibre of the fabric

A would be cotton. Therefore, the fabric will have to be treated as cotton fabric. The Tribunal rejected this argument by pointing out that this contention, if upheld, would lead to absurdity. Even if a fabric was composed of five different fibres of which cotton was only 22 per cent in weight, even then, it will have to be held that cotton was the predominant fibre and the fabric will be cotton fabric. The Tribunal held that the B predominance in Tariff Items 19 and 22 should be absolute predominance, i.e., equivalent to more than 50 per cent in weight. That being the position in fact, there could not be any doubt that the fabric in dispute in this case was not cotton fabric.

C There is considerable force in the view taken by the Tribunal. But we need not express any final opinion on this point. This case can be disposed of on another ground. It was pointed out on behalf of the assessee before the Tribunal that this fabric was not known in the market as cotton fabric. This fact was not disputed by the Revenue. It is well settled that an excise entry must be understood in the sense in which it is understood in D the market place unless there is a special definition to the contrary. There is no such definition or rule in the Excise Act which lays down that even if a fabric comprises of only 35 per cent cotton, it will have to be treated as cotton fabric.

E It was asserted before the Tribunal on behalf of the assessee that the fabric under consideration was known in the trade as "man-made fabric". This again was not disputed by the Revenue.

On behalf of the appellant, our attention was drawn to the case of F *Collector of central Excise* v. *Rajasthan Spg. & Wvg. Mills Ltd.*, [1993] Supp. 1 SCC 420. In that case, the dispute was about classification of three types of yarn containing polyester, viscose and acrylic fibre. The question was how to classify such mixed yarns. It was found for a fact that in all the three types of yarn manufactured by the assessee, the percentage of acrylic fibre was 40 per cent as compared to the other two fibres which were either 24 G per cent and 26 per cent or 45 per cent and 5 per cent. It was held that acrylic fibre must be held to predominate in weight in the composite yarn manufactured by the assessee. The reason given was that Explanation III to sub-item (iii) under Tariff Item No. 18 made it clear that where a composite yarn contained various types of yarn which were all equal in H weight, then the yarn which attracted the highest amount of duty shall be

deemed to be predominant. Because of this explanation, it was held that even though the percentage of acrylic fibre weight-wise was only 50 per cent of the yarn, by virtue of the explanation it must be treated to be the dominating yarn because it attracted the highest amount of tax. In such a situation, by legal fiction, acrylic fibre was held to be the predominant fibre and the yarn was classified accordingly.

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The appellant cannot derive any assistance from this decision. It merely lays down that in the case of composite yarn even though acrylic fibre constituted 50 per cent in weight, it will be deemed to be the predominant fibre by virtue of the specific statutory provisions to that effect contained in Explanation III to sub-item (iii) under Tariff Item No. 18. The case before us is in respect of fabric and not yarn. Either percentage-wise or weight-wise, cotton has not been found to be the predominant fibre as a matter of fact. There is no law that in such a situation, cotton must be deemed to be the predominant fibre and the fabric must be treated as cotton fabric.

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In view of the aforesaid and also having regard to the facts of the case, this appeal must fail and is hereby dismissed. There will be no order as to costs.

S.M. Appeal dismissed.