2025 INSC 1374

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3405-3407 OF 2012

COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE & SERVICE TAX,
RAJKOT **APPELLANT**

VERSUS

NARSIBHAI KARAMSIBHAI GAJERA & ORS. **RESPONDENT**

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. This appeal under Section 35-L (b) of the Central Excise Act, 1944 (for short, "the Act of 1944") as it stood prior to its amendment by Act 25 of 2014 takes exception to the Order dated 5.10.2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (for short, "the CESTAT"). By the said order, the CESTAT has set aside the Order-in-Original dated 27.09.2006 passed by the Commissioner of Customs and has discharged the show cause notice dated 14.07.2003 that was issued to the respondent Nos. 2 and 3 herein.

2. It is the case of the appellant that on the basis of information received by its intelligence agency, Bhagyalaxmi Processor Industry

(hereinafter, Unit No.1) and Famous Textile Packers (hereinafter, Unit No.2) were processing cotton fabrics with the aid of power but without following any of the procedures laid down under the Act of 1944 as well as the Rules framed thereunder. The preventive staff carried out a search of both the Units on 21.01.2003 and executed a panchnama. It was noted that the factory premises of both the Units were situated in a common premises within the same compound. Both the Units were having industrial electricity connection as well domestic lighting connection. In Unit No.1, a bail packing machine with an electric motor, a mercerizing machine as well as bleaching machinery were found installed. In the premises of Unit No.2, a squeezing machine with electric motor as well as a stentering machine fitted with oil engine and driers operated with the aid of electric power were found. In the electric room, there were five electric meters of which two electric meters were for industrial connection, two other meters were for domestic lighting purposes while one meter was for the diesel generator set. After taking a stock and recording the statements of the partners of Unit Nos.1 and 2 along with other employees of both the Units, the Commissioner, Customs and Central Excise issued show cause notice dated 14.07.2003 on the premise that both the Units were not entitled to exemption from paying customs duty. He made a

demand of excise duty under Section 11-A(1), interest on the amount of duty under Section 11 A B and penalty under Section 11 A C of the Act of 1944. Both the Units were called upon to submit their reply to the same.

3. Reply to the show cause notice was submitted on 15.12.2005 denying the contents thereof. It was asserted that cotton fabrics were being processed without the aid of any power and hence the Units were entitled to exemption in view of Entry No.106 of Notification No.5/98-CE. The Commissioner of Central Excise considered the entire material and vide Order dated 29.07.2004 held that both the Units were jointly and severally liable to pay the amount of duty with interest as well as penalty under the Act of 1944.

The said Units being aggrieved by the aforesaid order preferred an appeal before the CESTAT. Vide its order dated 01.07.2005, the CESTAT held that the joint and several liability of each Unit could not have been fixed. It therefore set aside the Order-in-Original dated 29.07.2004 and remanded the proceedings to the Commissioner for reconsideration.

4. After remand, the Commissioner, Central Excise reconsidered the entire material. After assessing the evidence on record, he held that the statements recorded on 21.01.2003 were sought to be

retracted by the partners of Unit Nos.1 and 2 after a period of almost six months. There was no protest lodged by the noticees immediately after the said statements were recorded and hence the retraction was by way of an afterthought. He further found that the presence of electric motors had been noted in the panchnama and that there had been high consumption of electricity and fuel by Unit No.1. There was no explanation furnished by Unit No.1 in that regard. It was thus held that Unit No.1 was receiving grey cotton fabrics for processing. The said fabrics were being bleached and mercerized by Unit No.1 with the aid of power. The mercerized and bleached fabrics in wet condition were transferred to Unit No.2 where the fabrics were squeezed for removing extra water and thereafter were processed for stentering. Thereafter, the fabrics were again brought back to the premises of Unit No.1 for bailing/folding on the machines installed at Unit No.1 that was operated with the aid of electric motor. On the completion of this process, the fabrics were packed and returned to the customers. Since the entire process from receiving the fabrics till their bailing/folding was a continuous process, the same was completed with the aid of electricity. Hence, the Units were not entitled to claim any exemption under the said Notification. The liability to pay duty on the finished fabrics while removing the same after the process

of bailing and folding was of Unit No.1. The show cause notice was accordingly adjudicated against Unit No.1 and the demand as made therein was confirmed against Unit No.1. The Commissioner also imposed penalty on it under Section 11 AC of the Act of 1944.

5. Both the Units being aggrieved by the said adjudication again approached the CESTAT by filing two appeals. Both the appeals were heard together and the CESTAT by its judgment dated 28.09.2011 proceeded to hold that when the wet fabrics were cleared from Unit No.1 and sent to Unit No.2, the said activity was non-excisable. It further held that distinct activities of mercerizing and bleaching were being carried out at Unit No.1 while the activities of stentering and hydro extraction/ drier was carried out at Unit No.2. Both the Units were distinct partnership concerns and the clubbing of their activities was not justified. It therefore held that the finding recorded by the Commissioner that the processes undertaken at Unit Nos.1 and 2 were liable to be clubbed for deciding accessibility and liability of Unit No.1 to pay duty was incorrect. It further held that the subsequent affidavits retracting the statements made during the panchnama ought to have been taken into consideration. It thereafter held that the allegation that there was usage of power during the process of mercerizing at Unit No.1 was incorrect. On that basis, the CESTAT

proceeded to set aside the order of the Commissioner and allowed both the appeals. Being aggrieved, the Commissioner of Customs, Central Excise and Service Tax has come up in appeal.

6. Mr. Raghavendra P. Shankar, learned Additional Solicitor General appearing for the appellant submitted that the CESTAT misread Entry No.106 of the Exemption Notification dated 02.06.1998 for arriving at the conclusion that grey fabrics had been processed to cotton fabrics without the aid of power by Unit No.1. According to him, the grey fabrics were initially bleached and mercerized at Unit No.1. Thereafter the fabrics in wet condition were shifted to Unit No.2 and subjected to squeezing and stentering. The dry fabrics were thereafter returned to Unit No.1 where they were bailed and packed after which the cotton fabrics were cleared. The conversion of grey fabrics to a finished product was subjected to "process" with the aid of power. Referring to the decisions in ***CCE Vs. Rajasthan State Chemical Works***[1] and ***Impression Prints Vs. CCE***[2], it was submitted that if there was use of any power at any of the numerous processes that were required to convert the raw material into a finished article, the manufacture would be with the use of power. Each

[1] 1991 INSC 235
[2] 2005 INSC 377

of the activities carried out at Unit Nos.1 and 2 were integrally connected leading to the final product and hence it could not be said that the cotton fabrics were manufactured without the aid of power. The CESTAT had failed to be taken into consideration the various processes undertaken on the initial grey fabrics till the time of the final product was prepared. Referring to the Panchnama that was prepared by the Inspection team, it was submitted that the use of power during the course of stentering was clearly admitted. Even the CESTAT did not disturb the said finding. However, by wrongfully holding that the process undertaken at Unit No.2 was not connected to the process undertaken at Unit No.1, it proceeded to arrive at a wrong conclusion. It was thus clear that the benefit of exemption was not available specially when the process of stentering was integrally connected with the manufacture of cotton fabrics from grey fabrics. As the conclusion drawn by the CESTAT was contrary to the legal position settled by this Court, it could not be said that it had taken a possible view of the matter. A case was therefore made out to interfere with the findings recorded by the CESTAT. Reliance was also placed on the decision in ***Standard Fireworks Industries, Sivakasi and another Vs. Collector of Central Excise***[3]. It was thus urged that the

[3] (1987) 1 SCC 600

order passed by the CESTAT be set aside and the Order-in-Original passed by the Commissioner be restored.

7. On the other hand, Mr. Ashish Batra, learned counsel for the respondents supported the order passed by the CESTAT and submitted that the benefit of the Exemption Notification dated 02.06.1998 had been rightly granted to Unit No.1. He submitted that Unit No.1 and Unit No.2 were independent in their activities and were merely carrying out respective job works. There was no unity of ownership of the two Units. Though show cause notice was issued to both the Units, the Commissioner proceeded to uphold the demand only against Unit No.1. Even if it was presumed that there was use of power in the process of stentering at Unit No.2, as the show cause notice against it had been dropped, the activities in question carried out at Unit Nos.1 and 2 could not have been clubbed. The CESTAT rightly held that insofar as Unit No.1 was concerned, there was no use of power. It was then submitted that the statements alleged to have been recorded during the course of recording the Panchnama had been retracted by filing affidavits. The CESTAT rightly ignored the earlier statements and recorded a correct finding that there was no use of power during the entire process of manufacture. The CESTAT being the final fact finding authority and the conclusion recorded by it

being one based on the material on record, there was no case for interference with the said findings. To substantiate this contention, the learned counsel relied upon the decision in ***Steel Authority of India Ltd. Vs. Directorate General of Anti-Dumping & Allied Duties***[4]**.** It was thus submitted that there was no merit in the appeal as filed and the same was liable to be dismissed.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the documentary material on record. Having given due consideration to the same, we are of the considered view that the CESTAT fell in error while coming to the conclusion that the conversion of grey fabrics to cotton fabrics did not include an integral process of stentering undertaken with the aid of power and thus the benefit of the Exemption Notification was available to Unit No.1.

9. At the outset, it would be necessary to refer to the definition of the expression "manufacture" as defined in Section 2(f) of the Act of 1944 prior to its amendment by Act 18 of 2017. The same reads as under:-

> "2(f) 'Manufacture' includes any process:-
> (i) incidental or ancillary to the completion of a manufactured product;

[4] 2017 INSC 356

> (ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture; or
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> (iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;
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> and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

Since, Unit No.1 seeks the benefit of Notification No.5/1998-CE and especially Entry No.106 therein, the same is reproduced hereunder:-

S.No.	Chapter or heading no. or sub heading no.	Description of goods	Rate	Conditions
106.	52.07, 52.08 or 52.09	Cotton fabrics processed without the aid of power or steam Explanation – For the purpose of the cotton fabrics subjected to the process of colour fixation by passing steam over such fabrics shall be deemed to have been processed without the aid of steam		

10. Before adverting to the factual aspects, it would be necessary to bear in mind the settled legal position on the aspect "manufacture" and "process" in the context of Exemption notifications under the Act of 1944. In ***Standard Fireworks Industries, Sivakasi and another (supra),*** the manufacturers of fireworks sought to claim refund of duty

on the ground that they were exempted from its payment as the manufacturing process was carried out without the aid of power. It was found that during the course of manufacture of fireworks, no power was used. Power was however used for the shredding of paper and cutting of steel wires. The steel wires as well as the paper were part of the manufacturing process and used while preparing the fireworks. In that context, this Court held that the Exemption Notification was applicable only when in relation to the manufacture of the goods, no process was ordinarily carried on with the aid of power. The cutting of the steel wires and the treatment of paper were processes adopted during the manufacture of the fireworks. These processes were carried on with the aid of power, though outside the factory. On that basis the appellants therein were held not entitled to the exemption from payment of duty.

A Bench of three learned Judges in ***Collector of Central Excise Jaipur (supra)*** considered a similar Exemption Notification that granted exemption when no process of manufacture was carried on with the aid of power. Therein, the issue pertained to the process of manufacture of common salt from brine in the salt pans. During the course of manufacture, brine was pumped into the salt pans using

diesel pumps. After referring to the definition of the expression "manufacture" under the Act of 1944, it was observed as under:-

> "13. Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to (*sic* that the) manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.
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> 14. The natural meaning of the word 'process' is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to a certain stage. According to *Oxford Dictionary* one of the meanings of the word 'process' is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result". The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to (*sic* effect) its conversion to some particular stage. There is nothing in the natural meaning of the word 'process' to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture.
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> 20. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a

> process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture."

The decision in ***Standard Fireworks Industries, Sivakasi and another (supra)*** was referred to and a similar view of the matter was taken.

11. From the aforesaid decisions, it can be seen that manufacture has been held to involve a series of distinct processes. It is the cumulative effect of the various processes to which the raw material is subjected after which the manufactured product emerges. The requirement is that the individual process should be integrally connected with each other leading to the ultimate final product. But for each individual process, the manufacture or processing of the goods would be impossible. A particular activity may be subordinate but related to the further process of manufacture. Manufacture thus is the end result of one or more processes through which the original commodity passes and then becomes the final product.

In the present case, the show cause notice indicates that Unit No.1 was receiving grey fabrics which were thereafter bleached and mercerized at the said Unit. The fabric in wet condition was then shifted to Unit No.2 and subjected to squeezing and stentering. The

dry fabrics were thereafter returned to Unit No.1 where they were bailed and packed. It was thereafter that the cotton fabrics were finally cleared. The CESTAT while allowing the appeals preferred by both the Units came to the conclusion that the distinct processes carried out at Unit Nos.1 and 2 could not have been clubbed together. It held that both the Units were independently working on their own account and thus their activities were not liable to be clubbed together. For reaching that conclusion, the CESTAT was impressed by the fact that there was no commonality between the partners of both the Units, the machinery employed in both the Units were different, the job work bills were separately raised by both the Units and that the payments were separately made by them.

12. In our view, the CESTAT misdirected itself while emphasizing upon the distinct identities of the two Units and in the process ignoring the fact that both the Units were together involved in the process of manufacture of cotton fabrics from grey fabrics. It has come on record that after the grey fabrics were bleached and mercerized at Unit No.1, they were taken to Unit No.2 which was an adjoining Unit within the same premises. After the wet fabrics were subjected to squeezing and stentering at Unit No.2, the dry fabrics were brought back to Unit No.1 for being bailed and packed. When all these activities commencing

from bleaching and mercerizing thereafter leading to squeezing and stentering and culminating into the product being bailed and packed being integral processes in the conversion of grey fabrics into cotton fabrics, the fact that the Units undertaking these processes were exclusive to each other would hardly make any difference. What is to be seen is whether the distinct processes undertaken by the two Units formed part of a continuous chain that culminated into the final product or not? If the various processes were so interlinked with each other that the end product in the form of cotton fabrics could not be brought about without undertaking each individual process to which the final product was subjected to, it would be clear that the entire activity of undertaking the various processes amounted to "manufacture" for the purposes of Section 2(f) of the Act of 1944. Viewed in this context, it is clear that Unit No.1 received grey fabrics which were thereafter subjected to various processes by Unit Nos.1 and 2 cumulatively resulting in the final product which was then cleared by Unit No.1.

13. The CESTAT while considering the aspect of use of power by the two Units has observed that the process of stentering at Unit No.2 with the use of power would not make any difference as the demand had not been confirmed against it. This approach ignores the fact that

the entire process of manufacture has to be taken into consideration with the end product falling into the hands of Unit No.1 after it was subjected to an integrated process at Unit No.2. The demand against Unit No.2 not being confirmed would not be relevant in these facts when it is clear that the process of manufacture was cumulatively undertaken at Unit Nos.1 and 2 and that the final product was being cleared from Unit No.1. We therefore find that even on this count, the order passed by the Commissioner did not call for any interference as it had taken a correct view on the basis of the material on record. The CESTAT thus committed an error in bifurcating the continuous process of manufacture to come to the conclusion that each Unit though undertaking a distinct process of manufacture, the activities of one Unit could not be clubbed with the other. The Order-in-Original rightly considers the entire process of manufacture which is conversion of grey fabrics into cotton fabrics for being cleared by Unit No.1 as one and has thus fastened liability on it. A case for interference under Section 35-L (b) of the Act of 1944 has thus been made out. In these facts therefore the ratio of the decision in ***Steel Authority of India (supra)*** cannot be made applicable to the case in hand.

14. For the aforesaid reasons, the order passed by the CESTAT dated 05.10.2011 is quashed and set aside and the Order-in-Original passed by the Commissioner, Central Excise dated 27.09.2006 stands restored. The Civil Appeal is thus allowed leaving the parties to bear their own costs.

……..J.
[PAMIDIGHANTAM SRI NARASIMHA]

……..J.
[ATUL S. CHANDURKAR]

NEW DELHI,
DECEMBER 02, 2025.