Before : J. S. Sekhon, J.

NEEL MANI KHEMKA AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA,—*Respondent.*

Criminal Misc. No. 3020-M of 1989

7th May, 1991.

Criminal Procedure, Code, 1973 (II of 1974)—S. 482—Central Excise and Salt Act, 1944—Ss. 2(f), 9 & 9AA—Central Excise Rules, 1944—Rls. 53, 173—G & 226—Excise officials seizing unpacked man-made fabrics from packing room—Such goods not entered in Column 16 of R.G.-I Register—Definition of Manufacture is exhaustive—Goods cannot be termed as fit for marketing—Petitioner—Whether guilty under law—Proceedings liable to be quashed.

Held, that it cannot be said by any stretch of imagination that the pieces of yarn seized in the case in hand which were yet to be cut to size, rolled and put in different packages were finished goods. On the other hand, in view of the definition of "manufacture" reproduced above, these pieces of cloth were still under the process of manufacture and had not reached the stage where it can be said that these were ready for marketing. If that is so, then the petitioners were not required to enter these goods in any of the registers including R.G.-I under the Central Excise Rules. Thus, it can be well-said that even if the entire allegations contained in the complaint are taken to be true, the petitioners had not committed the violation of any of the rules or the provisions of law punishable under section 9 of the Central Excise and Salt Act, 1944.

(Para 8)

Petition Under Section 482 of the Code of Criminal Procedure praying that for the reasons stated above the complaint Annexure P-1 and all proceedings taken thereafter by the Chief Judicial Magistrate, Amritsar be quashed.

It is further prayed that during the pendency of the petition the further proceedings, for which the next date of hearing is fixed for 21st of April, 1989 before the Chief Judicial Magistrate, Amritsar may be stayed.

U/S 9 and 9AA of Central Excise and Salt Act, 1944.

P. C. Goyal, Advocate, *for the Petitioner.*

A. Mohunta, Advocate, *for the Respondent.*

JUDGMENT

(1) The petitioners have invoked the inherent jurisdiction of this Court by filing petition under section 482 of the Code of Criminal Procedure, 1973, for quashing the complaint Annexure P.1 for offences under sections 9 and 9 AA of the Central Excise and Salt Act, 1944 read with Rules 53, 173-G and 226 of the Central Excise Rules, 1944, *inter alia*, on the ground that the man-made fabrics being still under process of manufacture and not fit for marketing, the petitioners had not committed any offence punishable under the above-referred sections of the Act and the Rules.

(2) The resume of facts given in the complaint Annexure P.1 reads as under :—

"1. That the complaint is being filed by the complainant in the discharge of his official duty and under whose administrative jurisdiction the offences complained against the accused have taken place.

2. The accused No. 1 is a Private Limited concern which is operating under the direct and immediate supervision of accused Nos. 2 and 3 who are the only Directors of the accused No. 1. All the managerial control, functions, operations are under the accused No. 2 and 3 who are responsible for each and every act and omission of accused No. 1. Accused No. 4 who is an authorised authority of the firm and accused No. 5 who is a Manager of the firm and also reponsible for the acts of commission and omissions as they manage, control and supervise the function of accused No. 1 are accomplice of accused No. 2 and 3.

3. That in pursuit of a general information, the Central Excise Pre. Staff, Amritsar visited the factory premises of accused No. 1 on 25th February, 1988 and scrutinised the Central Excise statutory records in respect of Cotton Fabrics and Man-made Fabrics being maintained by the accused firm and also conducted stock verification. As a result of this verification, the Central Excise Staff found 196 pieces of man made fabrics (processed) measuring 10,605.60 meters of Lot Nos. 262,276 and 281 in fully processed measured and folded conditions lying in the

Finishing/packing room which were not found entered either in the R.G.I. Register or in the Production Records or in the relevant columns of Grey Fabrics Register relating to the date of completion of process, number of pieces obtained after processing etc. On being asked, Shri Vijay Kumar Seth, the authorised representative of the firm disclosed that the above-said 196 pieces were processed, measured and folded 4.5 days back, by them and as per their practice, the entries were to be made in the R.G.I. Register and production records etc. after packing these goods in bales/wooden cases. This plea of the party was found to be on a wrong footing as such the above said 196 pieces of processed Man-made fabrics valued at Rs. 2,33,996.60 Np were seized by the Central Excise Prev. Staff under section 110 of the Customs Act, 1962 as made applicable to Central Excise cases,—*vide* Notification No. 68/63 C.E. dated 4th August, 1983 as amended on a reasonable belief that the same were liable to confiscation under Rule 173-G *ibid* for the contravention of the provisions of Rules 53, 173-G and 228 *ibid* as the accused had intentionally kept the above-said fabrics unaccounted for in the Central Excise statutory records with ulterior motive to clandestinely remove the same on opportune time without payment of Central Excise Duty. The various pleas put forth by the party during the department adjudication were duly considered by the adjudicating authority and were held to be not tenable specially in view of the legal position that the processed fabrics must be entered in statutory production records as soon as these are wilfully processed measured and folded condition which the party failed to enter and were held guilty and were penalised in adjudication proceedings. Photo copies of all these documents are attached herewith and form part of this complaint. Their contensive narration has been avoided for facility.

4. From the facts stated above, it is clear that the accused have committed offences punishable under sections 9, 9-AA of the Central Excise and Salt Act, 1944, by contravening the provisions of Rules 53, 173-G and 226 of the Central Excise Rules, 1944.

5. That the complainant is a public servant and is filing the present complaint in writing in discharge of his official

duties. It is, therefore, prayed that the examination under section 200 Cr.P.C. and enquiry under section 202 *ibid* may kindly be dispensed with.

6. That the complaint is being filed by the complainant in discharge of his official capacity and he is not a witness in the present case. His appearance on each and every date of hearing will result in absence from his public duties and will also not further the ends of justice. It is, therefore, prayed that his appearance on every date of hearing may be exempted and he be allowed to appear through Departmental counsel."

(3) I have heard the learned counsel for the parties besides perusing the record.

(4) A bare glance through the impugned complaint reproduced above reveals that the officials of the Central Excise Staff found 196 pieces of man-made fabrics (processed) measuring 10,605.60 metres of Lt. Nos. 262, 276 and 281, in fully processed, measured and folded conditions lying in the finishing/packing room and that these were not found entered in the R.G. 1 Register or in the Production Records or in the relevant columns of Grey Fabrics Register relating to the date of completion of process, number of pieces obtained from processing etc. Relevant provisions of section 9(1) (a) (b) and (d) of the Act read as under :—

"*Offences and penalties.*—(1) Whoever commits any of the following offences, namely :—

(a) contravenes any of the provisions of a notification issued under Section 6 or Section 8, or of a rule made under clause (iii) if sub-section (2) of Section 37;

(b) evades the payment of any duty payable under this Act;

(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;

(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

(d) attempts of commit, or abets the commission of any of the offences mentioned in clauses (a) and (b) of this Section.

(5) A bare glance through the above-referred provisions of section 9 leaves no doubt that this section envisages the contravention of any provision of a notification issued under Section 6 or of section 8 of the Act or of the rules made under clause (iii) of sub-section (2) of section 37 or evades the payment of any duty payable under this Act, or removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal or concerns himself in transporting, depositing, keeping, concealing, selling or purchasing or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder. Sub-clause (d) further makes attempts to commit or abets the commission of the above-referred offences figuring in clauses (a) and (b) also punishable. The provisions of section 9-AA relate to the liability of the Companies for such offences and provides that any person incharge of and responsible to the Company for the conduct of the business of the Company, as well as the Company shall be deemed to be guilty of the above referred offences, unless such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. In the complaint, it is averred that the goods were seized under section 110 of the Customs Act, 1962 as made applicable to the Central Excise cases,—*vide* Notification No. 68/63 C.E. dated 4th August, 1983 on the reasonable belief that these were liable to be confiscated under Rule 173-G for the contravention of the provisions of Rules 53, 173 G and 228 as the petitioners had kept the fabrics unaccounted for in the Central Excise statutory records with the ulterior motive to clandestinely remove the same at opportune time without payment of Central Excise Duty. Rule 53 of the Rules provides maintenance of stock account in such form as the Collector in a particular case or class of cases may require and enjoins the making of entry in such account daily qua the description of goods, opening balance, quantity manufactured, quantity deposited in the store-room or other place of storage approved by the Collector. Under Rule 47, quantity removed after payment of duty from such store-room or other place of storage or from the place or premises specified under rule 9, quantity delivered from the factory without payment of duty of export or other purposes, and the rate of duty and the amount of duty are required to be entered. Rule 173 G of the Rules provides the procedure for

maintaining current account of the exciseable goods in such form and manner as the Collector may require. Rule 226 of the Rules provides for the manner and maintenance of entry books, stock accounts and warehouse register.

(6) Thus, in the light of the above-referred provisions contained in the Act as well as in the Rules, it transpires that the sole controversy involved in this petition centres around the definition of "manufacture" figuring in section 2(f) of the Act. This definition is inclusive in nature and not exhaustive. The relevant portion of definition applicable to the manufacture of yarn figures in sub-clause (iv) of clause (f) of section 2 which reads as under:—

> "in relation to goods comprised in Item No. 18-A of the Schedule to the Central Tariff Act, 1985 includes sizing, beaming, warping, wrapping, winding or reeling or any one or more of these processes or the conversion of any form of the said goods into another form of such goods."

A bare glance through the same reveals that the process of manufacture includes sizing, beaming, warping, wrapping, reeling etc. or any one or more of these processes. This clause refers to the items comprised in Item No. 18-A of the Schedule to the Central Tariff Act, 1985 which reads as under:—

> "18-A. COTTON TWIST, YARN, AND THREAD ALL SORTS sized or unsized, in all forms, including skeins, hanks, cops, cones, bobbins, pirns, spools, reels, cheeses, halls or on warp beams, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power—
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> | | | |
> |---|---|---|
> | (1) of counts 29 or more | ... | One rupee per kilogram |
> | (2) of counts less than 29 | ... | Fifty paise per kilogram. |
>
> *Explanation*—(1) Count means the size of grey yarn express as the number of 1,000 metre hans per one half kilogram.

(2) For multiple fold yarn 'count' means the count of the basic single yarn.

(7) Thus, there is no doubt that Item No. 18-A cover the yarn as well as thread of all sorts. The only qualification for the applicability of this rule is that power should have been used for the manufacture of such cloth, yarn or thread. There is no dispute that the petitioners manufacture the yarn through powerlooms.

(8) In view of the above facts, it cannot be said by any stretch of imagination that the pieces of yarn seized in the case in hand which were yet to be cut to size, rolled and put in different packages were finished goods. On the other hand, in view of the definition of "manufacture" reproduced above, these pieces of cloth were still under the process of manufacture and had not reached the stage where it can be said that these were ready for marketing. If that is so, then the petitioners were not required to enter these goods in any of the registers including R.G.-I under the above-referred rules. Thus, it can be well-said that even if the entire allegations contained in the complaint are taken to be true, the petitioners had not committed the violation of any of the rules or the provisions of law punishable under section 9 of the Act. The decision of the Special Bench of the Tribunal in *Collector of Central Excise* v. *General Cement Products (P) Ltd.* (1), can be quoted with advantage in this regard. In that case the cement concrete poles meant for installing the lines of electricity were yet to go through the prescribed quality control test. Thus, it was held that if such poles are destroyed during the quality control test, the duty was not payable while remarking in para 3 of the judgment that unless the goods reach a stage where they are fit for delivery, these cannot be considered as fully manufactured goods. A similar view was taken by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in *Collector of Central Excise Indore* v. *M/s PCC Pole Factory* (2).

(9) For the reasons recorded above, as there are not even remote chances of conviction for the above-referred offences even if the entire allegations in the complaint are taken to be true, the prosecution of the accused on the basis of the complaint would certainly amount to abuse of the process besides resulting in harassment to the

(1) 1989 (39) E.L.T. 689.

(2) 1989 (22) E.C.R. 568.

parties and wastage of precious time of the Court. Therefore, the complaint Annexure P. 1 and the entire proceedings resulting therefrom are quashed by accepting this petition.

P.C.G.

(FULL BENCH)

Before : *M. R. Agnihotri, R. S. Mongia & B. S. Nehra, JJ.*

CHETNA SHARMA (MISS) AND OTHERS,—*Petitioners.*

versus

UNION TERRITORY, CHANDIGARH AND ANOTHER, —*Respondents.*

Civil Writ Petition No. 11995 *of* 1991.

5th September, 1991.

Constitution of India, 1950—*Arts.* 226/227—*Prospectus of Punjab Engineering College, Chandigarh for Session* 1991-92—*Admissions and evaluation of ranking of students—Weightage to sportsmen upheld—5 per cent seats allocated in different branches for sportsmen—Vacant seats to be allotted to general category.*

Held, (1) that so far as the challenge made to the criteria laid down by the respondents—Union Territory, Chandigarh Administration, and the Punjab Engineering College, Chandigarh, in their prospectus, regarding the weightage granted to the candidates applying for admission to the Bachelor of Engineering Course under the reserved category earmarked for sportsmen/sportswomen is concerned, the same is repelled and we uphold the criteria fixed by the respondents in their prospectus published by the Punjab Engineering College for the Session 1991-92; (2) so far as the grading for sportsmen/sportswomen by categorising their achievements is concerned, the respondents are directed to strictly comply with the direction already issued by this Court in the case of *Rajesh Kaushik v. Punjab Engineering College, Chandigarh and others*, C.W.P. No. 10022 of 1989, decided on 30th May, 1990 [1990 S.L.R. (5) 658], and to make admissions to the seats against the quota reserved for sportsmen/sportswomen accordingly; (3) so far as the grievance against the non-inclusion of the game/discipline of 'Shooting' for the purposes of admission against the reserved category of Sportsmen/Sportswomen is concerned, we do not consider it a matter for decision