A

HANSRAJ GORDHANDAS

v.

H. H. DAVE, ASSISTANT COLLECTOR OF CENTRAL EXCISE & CUSTOMS, SURAT & TWO ORS.

B *September* 27, 1968

[J. C. SHAH, V. RAMASWAMI, G. K. MITTER, K. S. HEGDE AND A. N. GROVER, JJ.]

Central Excises & Salt Act 1944—*Rules made under—Rule* 8 *giving power to Central Government to exempt excisable goods from duty—Exemptions under Notifications dated July* 31, 1959 *and April* 30, 1960 C *whether apply only to goods produced by a cooperative society for itself and not for others—Taxing statutes—Interpretation of—Relevance of object of giving exemption from duty.*

The appellant who was a dealer in textiles in Bombay entered into an agreement with a registered cooperative society for weaving yarn supplied by him into cotton fabrics on powerlooms owned by its members. The Society had obtained L-4 licence as required by the Central Excises and D Salt Act. 1944. Under Rule 8 of the Rules made under the Act, the Central Government was empowered to exempt any excisable goods from the whole or any part of duty payable on such goods. In exercise of the power under Rule 8, the Central Government by a notification dated July 31, 1959 granted exemption to "cotton fabrics produced by any Cooperative Society formed of owners of cotton powerlooms which is registered or which may be registered on or before March 31, 1961" sub- E ject to certain conditions set out in the notification. A subsequent notification dated April 30, 1960 granted exemption to "cotton fabrics produced on powerlooms owned by any Cooperative Society or owned by or allotted to the members of the Society which is registered on or before March 31, 1961". On the strength of these notifications the appellant sought exemption from excise duty in respect of the cotton fabrics which were manufactured for it on powerlooms by the Cooperative Society. The excise authorities did not accept the claim for exemption and in a writ F petition filed by the appellant, the High Court gave only partial relief. In appeal before this Court the question was whether the exemption granted under the notifications in question could be claimed only when the cotton fabrics were manufactured by a Cooperative Society 'for itself'.

HELD : On a true construction of the language of the notifications dated July 31, 1959 and April 30, 1960, it is clear that all that is re- G quired for claiming exemption is that the cotton fabrics must be produced on powerlooms owned by the Cooperative Society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the cooperative society on powerlooms "for itself". The appellant was therefore entitled to the exemption claimed. [259 D-E]

It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of words. A statutory notification may not be extended so as to meet a *casus omissus.* H It could be that the object behind the two notifications in question was to encourage the actual manufacturers of handloom cloth to switch over to powerlooms by constituting themselves into Cooperative Societies. But the operation of the notifications had to be judged not by the object which

the rule making authority had in mind but by the words which it had employed to effectuate the legislative intent. A

Applying this principle, the case of the appellant was covered by the language of the two notifications and the appellant was entitled to exemption from excise duty for the cotton fabrics. [259 E; 260 A-D]

Salomon v. *Salomon & Co.* [1897] A.C. 22, 38 and *Crawford* v. *Spooner,* 6 Moo P.C.C. 8, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1049 of 1965.

Appeal from the judgment and order dated July 31, 1964 of the Gujarat High Court in Special Civil Application No. 1054 of 1963. C

Soli Sorabjee, D. M. Damodar, B. Datta and *J. B. Dadachanji,* for the appellant.

V. A. Seyid Muhammad and *S. P. Nayar,* for the respondents.

D

P. R. Mridul, Janendra Lal and *B. R. Agarwala,* for intervener No. 1.

J. B. Dadachanji, for interveners Nos. 2 and 3.

Ramaswam, J. This appeal is brought by certificate from the judgment of the High Court of Gujarat, dated July 31, 1964 in Special Civil Application No. 1054 of 1963. E

The appellant is the sole proprietor of Messrs Gordhandas and Co. carrying on business as a dealer in textiles in Bombay. Under an agreement between the appellant on the one hand and the Gandevi Vanat Udhoog Sahkari Mandli Ltd. (hereinafter referred to as the 'Society') the Society manufactured cotton fabrics during the period between June, 1959 and September 1959 and from October 1, 1959 to January 31, 1961 for the appellant on certain terms and conditions which were later reduced to writing on October 12, 1959. Under these terms, the Society agreed to carry out weaving work on behalf of the appellant on payment of weaving charges fixed at 19 nP. per yard which included expenses the Society would have to incur in transporting yarn from Bombay and cotton fabrics woven by the Society to Bombay. The appellant was to supply yarn to be delivered at Bombay to the Society and the Society was to made its own arrangement to bring the yarn to its factory at Gandevi. Clause 11 provided that the yarn supplied by the appellant, remaining either in stock or in process or in the form of ready-made pieces would be in the absolute ownership of the appellant and the Society, as the bailee of the yarn, undertook to F G H

A take such care of it as it would normally take if the yarn belonged to it. The Society also undertook to have the yarn insured against fire, theft and all other risks including transit risks and further undertook to reimburse the appellant in case it failed to do so. The terms of the agreement though recorded on October 12, 1959 were to be deemed to be effective as from
B April 21, 1959 and the agreement was terminable by either party by giving one month's notice.

The Society was a cooperative society carrying on its work at Gandevi and was registered on or before May 31, 1961 and consisted of members who owned powerlooms. The Society started the weaving work for the appellant some time in May
C or June 1959 and supplied to the appellant between June 1, 1959 and January 3, 1961 cotton fabrics measuring 3,19,460 yards. The Society had obtained L-4 licence as required by the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Act'). By letters, dated August 29, 1959 and October 27, 1961 the Excise Department had granted exemption from excise duty
D payable on cotton fabrics manufactured by the Society under the notification issued by the Central Government. On November 10, 1961 the excise authorities issued a notice to the appellant demanding a sum of Rs. 1,69,263.44 payable as excise duty. It was alleged that the duty was payable by the appellant as it had got the goods manufactured through the Society and had
E got them removed from the Society's factory at Gandevi without payment of duty. On January 10, 1962 the Superintendent of Central Excise, Bulsar sent another notice to show cause why penalty should not be imposed upon the appellant for contravention of rule 9 and why duty should not be charged for the cotton fabrics so removed by the appellant. The appellant showed cause and on November 26, 1962 the Assistant Collector of Central
F Excise and Customs, Surat held that the appellant was liable to pay excise duty to the extent of Rs. 2,20,574.74, being the total amount of basic duty and a penalty of Rs. 250 was levied for contravention of rule 9. The appellant preferred an appeal to the Collector of Central Excise Baroda but the appeal was dismissed. Thereafter the appellant moved the High Court of
G Gujarat for grant of a writ under Art. 226 of the Constitution. The High Court dismissed the writ petition by its judgment, dated July 31, 1964 but gave a direction that the respondent was to work out the excise duty on the footing that the appellant was entitled to exemption from duty altogether in respect of goods supplied for the period from June 1, 1959 to September 30,
H 1959. As regards the two other periods *i.e.*, October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 31, 1961, the High Court dismissed the writ petition and directed the respondent to charge duty at the rate of 29.3 nP per square meter.

Clause (d) of s. 2 of the Act defines "excisable goods" as meaning goods specified in the First Schedule as being subject to a duty of excise. Item 19 in the First Schedule provides for excise duty at different rates depending upon the variety of cotton fabrics. Section 3 which is the charging section, provides for the levy and collection of duties specified in the First Schedule on all excisable goods which are produced or manufactured in India. Rule 8 authorises the Central Government to exempt any excisable goods from the whole or any part of duty payable on such goods. Clause (1) of rule 9 provides that no excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed. Clause (2) of that rule provides that if any excisable goods are, in contravention of sub-rule (1), deposited in, or removed from any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made by the proper officer and shall also be liable to a penalty which may extend to two thousand rupees and such goods shall be liable to confiscation. In pursuance of the power under rule 8, the Central Government issued notifications from time to time granting exemptions on cotton fabrics, though such goods were excisable goods under tariff item 19. The first relevant notification is dated January 5, 1957. By this notification certain classes of cotton fabrics were exempt from payment of excise duty. Of the items exempted the seventh item is as follows :

> "Cotton fabrics manufactured by or on behalf of the same person in one or more factories commonly known as powerlooms (without spinning plants) in which less than 5 powerlooms in all are installed;"

The next relevant notification is notification No. 74/59, dated July 31, 1959 which reads as follows :

> "G.S.R. 899—In pursuance of sub-rule (1) of rule 8 of the Central Excise Rules, 1944, as in force in India and as applied to the State of Pondicherry, the Central Government hereby exempted cotton fabrics produced by any cooperative society formed of owners of cotton powerlooms, which is registered or which may be registered on or before the 31st March, 1961 under any law relating to co-operative societies from the whole of the duty leviable thereon, subject to the following conditions :—

A (a) that every member of the co-operative society has been exempt from excise duty for three years immediately preceding the date of his joining such society;

(b) that the total number of cotton powerlooms owned by the co-operative society is not more than B four times the number of members forming such society;

(c) that a certificate is produced by each member of the co-operative society from the State Government concerned or such officer as may be nominated by the State Government that he is a *bona fide* member of the C society and that the number of cotton powerlooms in his ownership and actually operated by him does not exceed four and did not exceed four at any time during the three years immediately preceding the date of his joining the society, and that he would have been exempt from excise duty even if he had not joined the co-operaD tive society; ....."

The Central Government issued another notification, dated April 30, 1960 by which the earlier notification, dated July 31, 1959 was superseded. By this notification the Central Government exempted cotton fabrics produced on power-looms owned E by any co-operative society or owned by or allotted to the members of the society from the whole of the duty leviable thereon subject to the four conditions therein set out. The notification, dated April 30, 1960 is to the following effect :

"In pursuance of sub rule (1) of rule 8 of the Central Excise Rules, 1944, as in force in India and as F applied to the State of Pondicherry, and in supersession of the Notification of the Govt. of India, Ministry of Finance (Department of Revenue) No. 74/59 Central Excise, dated the 31st July 1959, the Central Government hereby exempts cotton fabrics produced on powerlooms owned by any cooperative society or owned by G or allotted to the members of the society, which is registered or which may be registered on or before the 31st March, 1961 under any law relating to cooperative societies, from the whole of the duty leviable thereon subject to the following conditions :—

(a) that every member of the cooperative society H who has been a manufacturer of cotton fabrics on powerlooms, has been exempt from excise duty for three years immediately preceding the date of his joining such society.

(b) that the total No. of cotton powerlooms owned by the cooperative society or owned by or allotted to its members is not more than four times the number of members forming such society.

(c) that each member of the cooperative society produces a certificate from the State Government concerned or such officer as may be nominated by the State Government that he is a *bona fide* member of the society and that the number of cotton power-looms owned by or allotted to him and actually operated by him does not exceed four and did not exceed four at any time during that three years immediately preceding the date of his joining the society and that he would have been exempt from excise duty even if he had not joined the cooperative society and....."

The main contention on behalf of the appellant is that the case fell within the language of the two notifications, dated July 31, 1959 and April 30, 1960 and the appellant was entitled to exemption from payment of excise duty on the cotton fabrics. The argument was stressed that the exemption applied to all cotton fabrics which were produced on power-looms owned by the Co-operative Society or on powerlooms allotted to its members and it was not a relevant consideration as to who produced or manufactured such fabrics, whether it was the Society itself or its members or even outsiders. It was conceded by the appellant that it was the owner of the cotton fabrics. But even upon that assumption the claim of the appellant is that it was entitled to exemption from excise duty as it was covered by the language of the two notifications already referred to. In our opinion, the argument of the appellant is well-founded and must be accepted as correct. The notification, dated July 31, 1959 grants exemption to "cotton fabrics produced by any Co-operative Society formed of owners of cotton powerlooms which is registered or which may be registered on or before March 31, 1961" subject to four conditions set out in the notification. In the next notification, dated April 30, 1960 exemption was granted to "cotton fabrics produced on power-looms owned by any cooperative society or owned by or allotted to the members of the society, which is registered or which may be registered on or before March 31, 1961" subject to the conditions specified in the notification. It was contended on behalf of the appellant that under the contract between the appellant and the Society there was no relationship of master and servant but the appellant supplied raw material and the contractor *i.e.*, the Society produced the goods. But even on the assumption that the appellant had manufactured the goods by employing hired labour and was therefore a manufacturer, still the appellant was entitled to

A exemption from excise duty since the case fell within the language of the two notifications, dated July 31, 1959 and April 30, 1960, and the cotton fabrics were produced on power-looms owned by the co-operative society and there is nothing in the notifications to suggest that the cotton fabrics should be produced by the Co-operative Society "for itself" and not for a third party before it B was entitled to claim exemption from excise duty. It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of co-operative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately C preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the D respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-E operative Society on the powerlooms "for itself". It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any sup-F posed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon* v. *Salomon & Co.*(1) :

> G "Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can H only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

(1) [1897] A.C. 22, 38.

It is an application of this principle that a statutory notification may not be extended so as to meet a *casus omissus*. As appears in the judgment of the Privy Council in *Crawford* v. *Spooner*(1).

> ".....we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."

Learned Council for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into Cooperative Societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications, dated July 31, 1959 and April 30, 1960 and the appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of *certiorari* to quash the order of the Assistant Collector of Central Excise of Baroda, dated November 26, 1962 and the appellate order of the Collector of Central Excise, dated November 12, 1963.

For the reasons expressed we hold that the judgment of the High Court of Gujarat, dated July 31, 1964 should be set aside, that Special Civil Application No. 1054 of 1963 should be allowed and that a writ in the nature of *certiorari* should be granted to quash the order of the Assistant Collector of Excise and Customs dated November 26, 1962 and the order of the Collector of Excise dated November 12, 1963. This appeal is accordingly allowed with costs.

R.K.P.S. *Appeal allowed.*

(1) 6 Mco. P.C.C. 8.