A

UNION OF INDIA & ORS.

v.

RAMACHANDRA SAMBHAJI KANDEKAR ETC

B

August 26, 1980

[P. N. BHAGWATI, A. P. SEN & E. S. VENKATARAMIAH, JJ.]

Central Excise Rules 1944—*Rule* 8(1) *Item* 7—*provisos—Scope of—*

C

Exercising the power of exemption conferred under rule 8(1) of the Central Excise Rules, 1944, the Central Government by a notification dated January 5, 1957 exempted certain varieties of cotton fabrics from the whole of the excise duty leviable thereon. Item 7 set out one of such varieties as under: "Cotton fabrics produced.....powerlooms ..... provided that the number of powerlooms producing cotton fabrics in such factories does not exceed four."

D

By a notification dated November 26, 1960 a proviso was added to this item stating that "this exemption shall not be applicable to a manufacturer who commences production for the first time on or after the December 1, 1960 by acquiring powerlooms from any other person who is or has been a licensee of a powerloom factory." From March 1, 1961 item 7 was substituted and from April 1, 1961 a proviso was added to item 7, the effect of both of which was that while from March 1, 1961 the benefit of exemption from excise duty was available only to those manufacturers who had not more than two power-looms in their factories, from and after April 1, 1961 even this limited exemption was withdrawn from manufacturers who commenced production for the first time on or after April 1, 1961 by acquiring powerlooms from any person who was or had been a licensee of powerloom factory.

E

From March 18, 1961 a second proviso to item 7 was added which provides "where a person employs not more than four powerlooms and the said power-looms are worked in not more than one shift no duty shall be payable in respect thereof".

F

From April 1, 1961 a third proviso was added stating "where a person commences manufacture of the said fabrics for the first time on or after April 1, 1961 by acquiring powerlooms from any other person who is or has been a licensee of powerloom factory the rate per shift per month per powerloom shall be the next higher rate if any".

G

The respondents had acquired powerlooms after April 1, 1961 from persons who were or had been licensees and were manufacturing cotton fabrics on those powerlooms prior to April 1, 1961. They claimed that since each of them had not more than four powerlooms which worked in not more than one shift he was exempt from payment of excise duty by virtue of the second proviso to item 7.

H

The Superintendent of Central Excise on the other hand contended that the third proviso carved out an exception from the second proviso and since

A each of the respondents commenced manufacture of cotton fabrics for the first time after April 1, 1961 he was not exempt from payment of excise duty but was liable to pay duty at the next higher rate provided in the amended notification of March 18, 1961.

Appeals of the respondents having been rejected by the Assistant Collector and the Collector they filed writs in the High Court challenging the levy of B excise duty. Their writ petitions were allowed by the High Court.

Allowing the appeals

HELD :(1) It is a well settled rule of interpretation applicable alike to the rule making authority as to the legislature that where there are two expressions which could have been used to convey a certain intention, but one of C these expressions conveys that intention less clearly than the other, it is proper to conclude that if the draftman used that one of the two expressions which would convey the intention less clearly, he does not intend to convey that intention at all. [523 A]

It is clear on a plain grammatical construction of the proviso under Item 7 of the Notification dated 5th January, 1957 that the prescription of the date D 1st April, 1961 has reference *only* to commencement of production of the cotton fabrics and *not* to the acquisition of the powerlooms. What is required is that the production of cotton fabrics must have been commenced by the manufacturer for the first time on or after 1st April, 1961 and not that the powerlooms also must have been acquired by him on or after that date. [520 C-D]

2 (a) Even though each of the respondents owned not more than four E powerlooms he would be liable to pay excise duty at the next higher rate under the third proviso to the notification dated March 18, 1961, if he started manufacture of cotton fabrics on his powerlooms for the first time on or after April 1, 1961, irrespective whether he acquired the powerlooms from a licensee before or after that date. [522 C-D]

(b) The exemption under item 7 is not applicable to a manufacturer who F has commenced his production of cotton fabrics for the first time on or after April 1, 1961, by acquiring powerlooms from another person who is or has been a licensee of a powerloom factory. Two conditions which must exist before the mischief of the proviso is attracted are : (1) the manufacturer must have commenced production of cotton fabrics for the first time on or after April 1, 1961 and (2) the powerlooms on which he manufactures cotton fabrics must have been acquired by him from a person who is or has been a licensee G of a powerloom factory. The event which attracts the applicability of the proviso is that the manufacturer should have commenced production of cotton fabrics on these powerlooms for the first time on or after April 1, 1961. If this condition is satisfied the proviso comes into play and withdraws the exemption which would otherwise have been available to the manufacturer under item 7. [519 H-520 B, E]

H (3) The language and structure of the third proviso being identical with the language and structure of the proviso under item 7 of the notification dated 5th January, 1957 the same view must govern the interpretation of the third proviso. [521 E]

The third proviso on its proper interpretation, enacts a substantive provision for payment of excise duty at the next higher rate in the cases therein specified and this substantive provision overrides the second proviso which exempts a manufacturer employing not more than four powerlooms and working not more than one shift from payment of excise duty in those cases which do not fall within the third proviso and where a case, is covered by the third proviso the second proviso would be inapplicable and the manufacturer would be liable to pay excise duty at the next higher rate. [522 A-B]

CIVIL APPELLATE JURISDICTION : Civil Apptal Nos. 1285-1296 of 1970.

Appeals by Special Leave from the Judgment and Order dated 6-3-1969 of the Mysore High Court in W.P. Nos. 2560-61/66 and 46, 47, 50, 51, 975, 1718, 1719, 1921, 1979 and 1980/67.

G. L. Sanghi, M. N. Shroff and *Miss A. Subhashini* for the Appellants.

R. B. Datar for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI, J.—These appeals by special leave are directed against the judgment of the Karnataka High Court allowing 12 writ petitions filed by different respondents. Each of the respondents owned at the material time not more than 4 powerlooms and carried on business of manufacturing cotton fabrics on those powerlooms. The case of the respondents was that each of them acquired his powerlooms from person who were or had been licencees and started manufacturing cotton fabrics on those powerlooms prior to 1st April, 1961. The respondents claimed that since each of them had not more than 4 powerlooms in his factory, no excise duty was payable on the cotton fabrics manufactured by him and this claim for exemption was based on a notification dated 5th January, 1957 issued by the Government of India in exercise of the powers conferred upon it by Rule 8(1) of the Central Excise Rules, 1944. The Superintendent of Central Excise, however, rejected the claim for exemption on the ground that though the powerlooms owned by each of the respondents were not more than 4, manufacture of cotton fabrics on them had started after 1st April, 1961 and none of the respondents was, therefore, entitled to exemption from payment of excise duty on the cotton fabrics manufactured by him. The excise duty was accordingly levied on each of the respondents by the Superintendent of Central Excise and this levy was confirmed in appeal by the Assistant Collector and in further appeal by the Collector of Central Excise. Each of the respondents thereupon preferred a writ petition in the Karnataka High Court challenging the levy of excise

A duty and praying that a writ of mandamus may be issued against the Excise Authorities directing them not to enforce the notice demanding excise duty. The writ petitions were allowed by the High Court and hence the Union of India preferred the present appeals after obtaining special leave from this Court.

B Before we proceed to examine the rival contentions of the parties in regard to the controversy arising in these appeals, it is necessary to set out briefly the relevant provisions of law having a bearing on this controversy. The Central Excise and Salt Act, 1944 by section 3 read with Item 19 provided for levy of excise duty on all varieties of cotton fabrics including cotton fabrics manufactured on powerlooms. C Section 37 sub-section (2) of the Act conferred power on the Central Government to make Rules providing for a number of matters including *inter alia* clause (xvii) which was in the following terms :

> "Exempt any goods from the whole or any part of duty imposed by this Act."

D The Central Government in exercise of this rule-making power made the Central Excise Rules, 1944 of which Rule 8 clause (1) provided that "the Central Government may from time to time by notification in the official Gazette exempt, subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of the duty leviable on such goods." In exercise of this E power of exemption conferred under Rule 8 clause (1), the Central Government issued a notification dated 5th January, 1957 exempting certain varieties of cotton fabrics from the whole of the excise duty leviable thereon and one of such varieties set out in Item 7 was as under :

F > "Cotton fabrics produced in factories commonly known as powerlooms (without spinning plants) provided that the number of powerlooms producing cotton fabrics in such factories does not exceed four."

This item was later substituted by another item by a notification of the Central Government dated 19th January, 1957 and the substituted G item was 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."

H The scope of the exemption granted under this item was restricted by the addition of the following proviso by a Central Government notification dated 26th November, 1960 :

"Provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after the 1st December, 1960 by acquiring powerlooms from any other person who is, or has been a licensee of powerloom factory."

There was a further change made by a notification issued by the Central Government on 1st March, 1961 and the then existing Item 7 was substituted by the following Item :

"(7) 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 3 powerlooms in all but not roller locker machine are installed."

The result was that the exemption granted under Item 7 was considerably narrowed down and the proviso taking away the exemption in certain cases was deleted. But again, by a notification dated 1st April, 1961, the Central Government introduced the following proviso under Item 7 :

"Provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after the 1st April, 1961 by acquiring powerlooms from any other person who is or has been a licensee of powerloom factory."

Thus from 1st March, 1961 the benefit of the exemption from excise duty was available only to those manufacturers who had not more than 2 powerlooms in all in their factories and from and after 1st April, 1961 even this limited exemption was withdrawn from manufacturers who commenced production of cotton fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from any person who was or had been a licensee of powerloom factory.

Now in the present appeals each of the respondents owned admittedly not more than 4 powerlooms, but it does not appear from the record before us as to whether any of them owned more than 2 powerlooms. If it is found that any of the respondents owned more than 2 powerlooms, he would not be within the exemption granted under Item 7 of the amended Notification dated 5th January, 1957 and excise duty would be payable on the cotton fabrics manufactured by him. But even if any of the respondents owned not more than 2 powerlooms and was, therefore, within the exemption granted under Item 7 of the amended notification dated 5th January, 1957, the question would still arise whether he forfeited the exemption by reason of the proviso to Item 7 introduced by the notification dated 1st

A April, 1961. The answer to this question would depend upon the true construction of the proviso and we shall presently consider this question, but before we do so, it is necessary to refer to some other notifications issued by the Central Government under the Central Excise Rules, 1944.

B On 1st March, 1961, the Central Government in exercise of the power conferred upon it under Rule 96-J of the Central Excise Rules, 1944 issued a notification providing for a compounded levy scheme for payment of excise duty on cotton fabrics. By this notification, the Central Government fixed different rates "per shift, per month, per powerloom employed by or on behalf of the same person in the C manufacture of cotton fabrics" depending upon the number of powerlooms employed by such person. The rates prescribed for a case where more than 2 but not more than 24 powerlooms were employed were Rs. 20 where medium and/or coarse fabrics were manufactured and Rs. 25 where the powerlooms were employed in the manufacture of superfine and/or fine fabrics. There was a proviso at the foot D of the notification (hereinafter referred to as the first proviso) which laid down as to how the computation should be made where roller locker machines were employed. The rates prescribed for a case where more than 2 but not more than 24 powerlooms were employed, were partially modified with retrospective effect by a subsequent E notification issued by the Central Government on 18th March, 1961 and the new rates were Rs. 10 and Rs. 12.50 in respect of the first 4 powerlooms and Rs. 20 and Rs. 25 in respect of the balance. The first proviso dealing with the case where roller locker machines were employed however, remained unchanged. Then came another notification of the Central Government dated 1st April, 1961 by which F the notification dated 18th March, 1961 was amended by substituting the words "where more than 2 but not more than 24 powerlooms are employed" by the words "where not more than 24 powerlooms are employed" and adding a further proviso (hereinafter referred to as the third proviso) after the existing first proviso :

G "Provided also that where a person commences manufacture of the said fabrics for the first time on or after the 1st April, 1961 by acquiring powerlooms from any other person who is, or has been, a licensee of powerloom factory, the rate per shift, per month per powerloom shall be the next higher rate, if any."

This was followed by a notification dated 20th April, 1961 issued by H the Central Government by which after the first proviso, the following proviso (hereinafter referred to as the second proviso) was inserted in the notification dated 18th March, 1961 :

"Provided further that where a person employs not more than four powerlooms and the said powerlooms are worked in not more than one shift, no duty shall be payable in respect thereof." A

The result was that from 18th March, 1961 upto 1st April, 1961, a manufacturer having more than two but not more than 24 powerlooms was liable to pay excise duty at the rates set out in the amended notification dated 18th March, 1961 and from 1st April, 1961 to 21st April, 1961, the position was that if such a manufacturer was found to have commenced manufacture of cotton fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from another person who was or had been a licensee of powerloom factory, the rate at which excise duty would be payable by him would be the next higher rate specified in the amended notification dated 18th March, 1961. So far as a manufacturer having two or less powerlooms was concerned, he was during the period from 18th March, 1961 upto 1st April, 1961 exempt from excise duty by reason of the notification dated 5th January, 1957, but from 1st April, 1961 to 21st April, 1961 this exemption stood withdrawn if it was found that the manufacturer had commenced manufacture of cotton fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from another person who was or had been a licensee of powerloom factory and in such a case a manufacturer would be liable to pay excise duty at the next higher rate prescribed in the amended notification dated 18th March, 1961. This was the position which obtained upto 20th April, 1961, when the second proviso was introduced exempting a manufacturer employing not more than 4 powerlooms and working even in not more than one shift from payment of excise duty. Each of the respondents had admittedly not more than 4 powerlooms and it was the case of the respondents that these powerlooms were worked in not more than one shift and hence the respondents claimed that they were exempted from liability for payment of excise duty by virtue of the second proviso. But the answer made on behalf of the Revenue was that the third proviso carved out an exception from the second proviso and since each of the respondents commenced manufacture of cotton fabrics for the first time after 1st April, 1961, he was not exempt from payment of excise duty, but was liable to pay the same at the next higher rate provided in the amended notification dated 18th March, 1961. B C D E F G

Now going back to the proviso under Item 7 of the notification dated 5th January, 1957, we find that the language of this proviso is clear and explicit and does not admit of any doubt or equivocation. It says in so many terms that the exemption under Item 7 shall not be applicable to a manufacturer who has commenced his production H

A of cotton fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from another person who is or has been a licensee of powerloom factory. There are two conditions which must exist before the mischief of the proviso is attracted. One is that the manufacturer must have commenced production of cotton fabrics for the first time on or after 1st April, 1961 and the other is that the power-
B looms on which he manufactures cotton fabrics must have been acquired by him from a person who is or has been a licensee of powerloom factory. It is clear on a plain grammatical construction that the prescription of the date, 1st April, 1961, has reference only to commencement of production of the cotton fabrics and not to the acquisition of
C the powerlooms. What is required is that the production of cotton fabrics must have been commenced by the manufacturer for the first time on or after 1st April, 1961 and not that the powerlooms also must have been acquired by him on or after that date. It is immaterial as to when the manufacturer acquired the powerlooms; he may have acquired them prior to 1st April, 1961; that is totally irrelevant. The
D only attribute that the powerlooms must satisfy is that they must have been acquired from a person who is or has been a licensee of powerloom factory and if this attribute is present, then it is of no consequence as to when the powerlooms were acquired by the manufacturer. The event which then attracts the applicability of the proviso is that the manufacturer should have commenced production of cotton fabrics on
E these powerlooms for the first time on or after 1st April, 1961. If this condition is satisfied, the proviso comes into play and withdraws the exemption which would otherwise have been available to the manufacturer under the main Item 7. If the intention of the Central Government in framing the proviso was that not only the production of
F cotton fabrics on the powerlooms should have commenced on or after 1st April, 1961, but that the powerlooms also should have been acquired by the manufacturer on or after that date, the Central Government could have easily expressed such intention by using appropriate language in the proviso. The Central Government could have transposed the words "on or after the 1st April, 1961" and put them at the
G end of the proviso. That would have clearly conveyed the intention of the Central Government that the powerlooms must be acquired by the manufacturer on or after 1st April, 1961 and if the powerlooms are acquired on or after 1st April, 1961, it must follow *a fortiorari* that the production of cotton fabrics on the powerlooms by the manufacturer would necessarily commence on or after that date. But the
H Central Government advisedly placed the words "on or after the 1st April, 1961" after the clause referring to commencement of production and before the clause relating to acquisition of powerlooms. It is a

well settled rule of interpretation applicable alike to the rule making authority as to the legislature that where there are two expressions which could have been used to convey a certain intention, but one of these expressions conveys that intention less clearly than the other, it is proper to conclude that if the draftman used that one of the two expressions which would convey the intention less clearly, he does not intend to convey that intention at all. Moreover, here the dictates of grammar as well as language compel us to take the view that the date 1st April, 1961 has reference only to commencement of production and not to acquisition of the powerlooms. It is to our mind clear that if a manufacturer is found to have commenced production of cotton fabrics on powerlooms for the first time on or after 1st April, 1961, he would fall within the mischief of the proviso and it would be entirely immaterial as to when he acquired the powerlooms, whether before or after 1st April, 1961, so long as the powerlooms are acquired from a person who is or has been a licensee of powerloom factory. The High Court was, therefore, clearly in error in construing the language of this proviso to mean that the powerlooms also must have been acquired by the manufacturer on or after 1st April, 1961 in order to attract the applicability of the proviso.

The same construction must obviously be placed on the third proviso introduced in the notification dated 18th March, 1961 by the notification of 1st April, 1961. The language and structure of the third proviso are identical with the language and structure of the proviso under Item 7 of the notification dated 5th January, 1957 and the same view must, therefore, govern the interpretation of the third proviso. It is unnecessary to repeat what we have said in the foregoing paragraph, because what we have said there applies fully and completely in regard to the interpretation of the third proviso and, therefore, in order to determine whether this proviso is applicable to any of the respondents, we have to consider whether the respondent concerned commenced manufacture of cotton fabrics on the powerlooms for the first time on or after 1st April, 1961, irrespective whether he acquired the powerlooms before or after that date. The only relevant inquiry necessary to be made is as to when the manufacturer of cotton fabrics on the powerlooms was commenced for the first time by the respondent. If it was on or after 1st April, 1961, the mischief of the third proviso would be attracted and the respondent would be liable to pay excise duty at the next higher rate. Of course, the second proviso introduced in the notification dated 18th March, 1961 with effect from 20th April, 1961 provided that where a person employs not more than 4 powerlooms and these powerlooms are worked in not more than one shift, no excise duty shall be payable in respect thereof,

A but the third proviso on its proper interpretation, enacts a substantive provision for payment of excise duty at the next higher rate in the cases therein specified and this substantive provision overrides the second proviso. The second proviso exempts a manufacturer employing not more than 4 powerlooms and working not more than one shift from payment of excise duty in those cases which do not fall within
B the third proviso and where a case is covered by the third proviso, the second proviso would be inapplicable and the manufacturer would be liable to pay excise duty, at the next higher rate. This is the only way in which the two provisos can be harmoniously construed in a manner which would give effect to both.

C We are, therefore, of the view that even though each of the respondents in the present case owned not more than four powerlooms, he would be liable to pay excise duty at the next higher rate under the third proviso to the notification dated 18th March, 1961, if he started manufacture of cotton fabrics on his powerlooms for the first time on or after 1st April, 1961, irrespective whether he acquired the power-
D looms from the licensee before or after that date. We must, therefore, set aside the judgment of the High Court and send the matter back to the High Court so that the High Court may decide the writ petitions of the respondents in accordance with law and in the light of the observations contained in this judgment.

E We accordingly allow the appeals, set aside the judgment of the High Court and remand the writ petitions to the High Court for disposal in accordance with the law. Though the appellants have succeeded, they will pay the costs of the respondents as provided in the order granting special leave.

N.K.A. *Appeals allowed.*