1980 (1) GLR 753 : 1978 (2) ELT 618

GUJARAT HIGH COURT

Hon'ble Judges:B.J.Divan and D.P.Desai JJ.

Maneklal Harilal Spg.And Mfg.Company Limited Ahmedabad Versus Union Of India

SPECIAL CIVIL APPLICATION No. 707 of 1978 ; *J.Date :- AUGUST 10, 1978

- CENTRAL EXCISE ACT, 1944 Section - 4
- CENTRAL EXCISE RULES, 1944 Rule - 175, 9

CENTRAL EXCISE AND SALT ACT, 1944 - S. 4 - CENTRAL EXCISE AND SALT RULES, 1944 - R. 9, 175 - consideration of scheme of licence under chapter-VIII - liability to pay excise duty - removal of goods within meaning of R. 9 - removal of goods from spinning department to weaving department - rules for collection of duty - held, manufacturer of every excisable article mentioned in or other of Items of Schedule has to have licence - it is because of there requirements each of petitioners in instant case has got separate licence for manufacturing cotton yearn and separate licence for manufacturing polyester yarn - removal from place mentioned in licence is material - excise duty has to be collected and paid by manufacturer when yearn is removed from spinning department to weaving department - petitions dismissed.

Imp.Para: [7] [12] [13]

Cases Referred To :

1. Delhi High Court In Delhi Cloth And General Mills Co. Ltd. V/s. Joint Secretary Government Of India, 1978 0 ELT 121
2. South Bihar Sugar Mills Ltd. V/s. Union Of India, AIR 1968 SC 922
3. Union Of India And Another V/s. Delhi Cloth Mills Co. Ltd., AIR 1963 SC 791

Equivalent Citation(s):

1980 (1) GLR 753 : 1978 (2) ELT 618
JUDGMENT :-
B.J.DIVAN, J.

1 Both these special civil applications involve common questions of law and fact and hence we will dispose both of them by this common judgment.

2 Both the petitioners in these two matters are what are known as composite mills that is they manufacture cotton yarn or polyester yarn from raw materials, cloth from yarn and also process the cloth manufactured by them. The petitioners in each of these matters manufacture cotton textiles and polyester carbonised textiles. Licences have been issued to the two petitioners under Chapter VIII of the Central Excise Rules for manufacturing cotton yarn cotton fabric's polyester yarn, and polyester fabrics. Each of these licences is a separate

licence for cotton yarn and cotton fabrics and polyester yarn and polyester fabrics. In Special Civil Application No. 707 of 1978, in paragraphs 6.1 and 6.2, the process of manufacturing cotton textiles and polyester carbonised textiles respectively have been set out. The process of manufacturing cotton textiles is described as below:

> "Cotton purchased from the market is received in the form of bales. The bales are and the cotton is processed in the Blow Room. Laps are prepared out of the cotton. The laps are then fed into the carding machine, and converted in the form of slivers. The slivers, are then fed into the Drawing Machine, and are thereafter again put on the Lap Former Machine and the slivers are reconverted into laps. The laps are then fed into the Combing Machine and converted into individual slivers. The slivers, after being processed through roving machine are fed into the Ring Frame Machine where the yarn is spun which is wound on the bobbins. After the yarn is subjected to the further processes like sizing, bleaching etc. the bobbins are put on the weaving machine where the fabric is woven."

The affidavit in reply filed on behalf of the central excise authorities makes it clear that in the weaving department, yarn is put on beams for length wise use and bobbins are used for weft and thus with the warp and the weft, that is, length-wise and widthwise use of yarn through machinery cotton fabric is prepared. The process of weaving is the same either for the cotton fabrics or polyester carbonised textiles.

3 The material from which polyester yarn is made is received in the form of bales. First, this material is converted into the form of laps in the blow room. The laps are then converted into slivers on the Carding Machine and are mixed in the required percentage with cotton in the drawing machine. The mixed slivers are then fed into the roving machine and thereafter yarn is spun on the Ring Frame machine. The yarn is wound on the bobbins and the bobbins are put on the weaving machine where ultimately the polyester carbonised fabric is woven.

4 It is the case of the petitioners that different processes of preparing laps, slivers, weaving of yarn and weaving of fabrics are carried out on different machines and the movement of material from one machine to another is done through human intervention by manual labour. According to the petitiones, the process of manufacturing fabrics from cotton upto the final stage of preparation of cloth is not a continuous process. According to the petitioners, no machine has yet been invented, so far as petitioners are aware, by which, at one end of machine cotton is fed and at the other end by continuous process the manufactured ultimate product, namely, fabric, comes out. The petitioners point out that even after laps or slivers or yarn are prepared, the same are not ultimately processed into the next stage without loss of tine. Quality of laps, slivers or yarn is not affected by passage of time and these different articles do not get deteriorated by storage or being kept in stock. The petitioners contend that though different articles like laps slivers yarn etc. come into existence at different stages of process of manufacture of fabrics none of these articles is ever removed from the factory premises of the petitioner concerned and none of them is ever sold in the market. The entire quantity of these articles which are produced in the petitioners textile mills is used in the manufacture of textiles within the factory premises. The question which the petitioners in these petitions have raised is whether, in law the central excise authorities can collect excise duty on the yarn which comes into existence at the intervening stage during the course of manufacturing cloth if such yarn is not removed out of the factory premises but is used for consumption within the factory premises for manufacturing the end product namely cotton fabrics or polyester carbonised fabrics. It is the contention of the petitioners that looking to

the Scheme of the Central Excises and Salt Act, 1944 and the Central Excise Rules framed under the Central Excises and Salt Act, 1944 (hereafter referred to as the Act) the respondents have authority in law to collect excise duty only at the time of removal of the goods from the factory premises and if the goods are shown not to have been removed from the factory premises, the central excise authorities have no authority in law to collect excise duty on such goods which are only removed at the intermediate stage from one part of the factory to another part within the factory of the petitioners.

5 In order to appreciate the rival contentions in this case it is necessary to refer to some of the provisions of the Act and the rules made thereunder. Under sec. 2(d) of the Act excisable goods are defined to mean goods specified in the First Schedule as being subject to a duty of excise and includes salt Under clause(e) of sec. 2 factory has been defined to mean any premises including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on. Under sec 2(f) the word manufacture includes any process incidental or ancillary to the completion of a manufactured product and in relation to goods comprised in Item No. 18A of the First Schedule 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. Prescribed means prescribed by rules made under the Act. Under sec. 3 of the Act there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in or imported by land into any part of India as and at the rates set forth in the First Schedule. Under sub-sec. (2) of sec. 3 the Central Government may by notification in the Official Gazette fix for the purpose of levying the said duties tariff values of any article enumerated, either specifically or under general headings in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force and under sub-sec. (3) of sec. 3 different tariff values may be fixed for different classes or description of the same articles. Sec. 4 deals with a situation where excise duty is chargeable ad valorem that is where under the Act duty of excise is chargeable on any excisable goods with reference to the value of such goods. Such value has to be fixed in accordance with the provisions of sec. 4. In the context of sec. 4 where excise duty is chargeable ad valorem the value has to be fixed with reference to the place of removal and under sec. 4(4)(b), for the purposes of sec. 4 the place of removal means (i) a factory or any other place or premises for production or manufacture of excisable goods.

6 We are concerned in this case with cotton yarn of all sorts which falls under Item No. 18A of the First Schedule to the Act, and duties on cotton yarn are on the basis of weight that is, so much per count per kilogram or so much per kilogram. Under Item 18 E, non-cellulosic spun yarn is chargeable to excise duty according to weight, and it is common ground that polyester fibre would fall under Item 18E of the First Schedule. Item 19 deals with cotton fabric and Item 22 deals with man made fabrics. There is no dispute that excise duty as provided in the third column of the First Schedule which lays down the rate of duty is payable in respect of cotton fabrics and polyester fabrics. But the main question is whether excise duty is payable on yarn which in the case of each of these two petitioners is an intermediate product which comes into existence in the factory premises and since in each of these two cases the factory is a composite textile mill the entire yarn production of each of the petitioner is utilised for the purpose of manufacturing cotton fabrics or polyester fabrics as the case may be in their weaving departments, and both the spinning section where yarn is manufactured and the weaving section where the yarn is woven into fabrics are both located

in the premises of the same factory. The plans annexed to each of these petitions go to show that both the spinning section and the weaving section are within one and the same compound and in buildings located near each other.

7 In paragraph 8 of Special Civil Application No. 707 of 1978 and also in the other petition, it has been emphasized that there is no sale of yarn as such. All yarn manufactured by the respective petitioner mill is used for the weaving section in the mills and there is no removal of yarn outside the factory premises.

8 In exercise of the powers conferred by secs. 6, 12 and 37 of the Act for the purpose of providing for assessment and collection of duty Imposed by the Act and to apply in the adapted form stated below certain provisions of the Sea Customs Act, Rules have been framed called The Central Excise Rules, 1944 . Under Chapter III provision is made for levy refund and exemption from duty. We are concerned with Rules 7 and 9. Rule 7 provides for recovery of duty and lays down that every person who produces cures or manufactures any excisable goods, or who stores such goods in a warehouse shall pay the duty or duties leviable on such goods at such time and place and to such persons as may be designated in or under the authority of these Rules whether the payment of such duty or duties is secured by bond or otherwise. Under Rule 9 time and manner of payment of duty are provided for. Sub-rule (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 in these Rules or as the Collector may require and except on presentation of an application in the proper form and on obtaining the permission of the proper office on the form. The rest of Rule 9 is not relevant for the purpose of this judgement. Under Rule 9-A as it was in existence at the relevant date the rate of duty and tariff valuation if any applicable to any excisable goods shall be the rate and valuation in force... (ii) in the case of goods cleared from a factory or a warehouse subject to sub-rules (2) (3) and (3A) on the date of the actual removal of such goods from such factory or warehouse. Under Rule 49 provision is made for duty chargeable only on removal of goods from the factory premises or from an approved place of storage. Sub-rule (13 of Rule 49 provides that payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a storeroom or other place of storage approved by the Collector under Rule 47. Rule 52 provides for clearance on payment of duty and lays down that when the manufacturer desires to remove goods on payment of duty either from the place or premises under Rule 9 or from a store-room or other place of storage approved by the Collector under Rule 47 he shall make an application in triplicate (unless otherwise by rule or order required) to the proper officer in the proper Form and shall deliver it to the officer at least twelve hours for such other period as may be elsewhere prescribed or as the Collector may in any particular case require or allow) before it is intended to remove the goods. The officer shall thereupon assess the amount of duty due on the goods and on production of evidence that this sum has been paid into the Treasury or into to the account of the Collector in the Reserve Bank of India or the State Bank of India or has been dispatched to the Treasury by money order shall allow the goods to be cleared. Rule 52A provides for the goods to be delivered on a Gate-pass. Sub-rule (1) of Rule 52A provides that no excisable goods shall be delivered from a factory except under a gate-pass in the proper form or in such other form as the Collector may in any particular case or class of cases prescribe signed by the owner of the factory and counter-signed by the proper officer. Under sub-rule (2) the gate-pass shall be

made out in triplicate with indelible pencil using double sided carbon and shall contain no mutilations overwriting corrections or erasures. The gate-pass shall be presented to the proper Officer for counter-signature at least one hour before the actual removal of the goods from the factory. After counter-signature the proper Officer shall return the original and triplicate copies of the gate-pass to the manufacturer retaining the duplicate for his record. The original copy shall accompany the consignment to its destination and triplicate has to be retained by the manufacturer. The manufacturer may with the approval of the proper Officer make extra copies of a gate-pass for his own use clearly marked EXTRA COPYNOT FOR COVERING TRANSPORT. The original copy shall be produced by the carrier on demand by any Central Excise Officer while the goods are in route to such destination from the factory: Provided that in respect of removal of excisable goods consumed within the factory for manufacture of other goods in a continuous process the manufacturer may make out a single gate-pass at the end of the day. Rule 173-G, which is part of the Chapter prescribing for removal of excisable goods on determination of duty by producers manufacturers and private warehouse licensees prescribes what is known as self removal process and under Rule 173-C and G procedure to be followed by an assessee when this special procedure is permitted has been laid down. Under sub-rule (1) every assessee shall keep an account current with the Collector separately for each excisable goods falling under different Items of the First Schedule to the Act in such form and manner as the Collector may require of the duties payable on the excisable goods and in particular such account (and also the account in Form R.G. 23 if the assessee is availing of the procedure prescribed in Rule 173K) shall be maintained in triplicate by using indelible pencil and double-sided carbon and the assessee shall periodically make credit in such account-current by cash payment into the treasury so as to keep the balances in such account current sufficient to cover the duty due on the goods intended to be removed at any time; and every such assessee shall pay the duty determined by him for each consignment by debit to such account-current before removal of the goods The proviso (i) to sec. 173-G is in these terms:

> "Provided that the duty on the goods consumed within the factory in a continuous process may be paid at the end of the factory day except that in the case of cotton yarn in respect of which duty is payable in accordance with the provisions of sub-rule (1) of rule 96W the duty may be paid by the manufacturer in accordance with the provisions of the said rule."

It is common ground between the parties that the petitioners are being given the benefit of paying duty on yarn at the end of the factory day instead of every time yarn is removed from the spinning section to the weaving section of the mill concerned. Chapter VIII which commences from Rule 174 onwards provides for licensing. Under Rule 174 every manufacturer trader or person hereinafter mentioned shall be required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper form. All manufacturers of goods other than salt and matches have to obtain licence for the manufacture and export of the article concerned. Rule 175 provides for the procedure for obtaining licence and lays down that every person referred to in Rule 174 shall make an application for the grant or renewal as the case may be of licence at the time and the manner provided for in Rule 176 to the authority who shall be such officer as the Central Board of Excise and Customs may authorise in this behalf. Rule 178 prescribed the form of licence Under the scheme of licence set out in Chapter VIII it is obvious that a manufacturer of every excisable article mentioned in or the other of the terms of the Schedule has to have a licence and it is because of these requirements that each of the petitioners in the two matters before

us has got a separate licence for manufacturing cotton yarn and a separate licence for manufacturing polyester yarn apart from the licences for manufacturing cotton fabrics and polyester carbonised fabrics.

9 From what we have stated here in above regarding the rules it is obvious that under Rule 9 referred to above removal of excisable goods from the place where they are produced or manufactured is not permitted except until the excise duty leviable on them has been paid at such place and in such manner as is prescribed in the rules. Because of the removal procedure referred to in Chapter VII-A in accordance with Rule 173 the petitioners before us pay excise duty by making necessary entries in the register maintained by them and by maintaining an account-current in respect of each excisable article manufactured by them.

10 The law relating to intermediate products manufactured in the course of production of a final end-produce when the intermediate product is also an excisable article has been clearly laid down by two decisions of the Supreme Court. In UNION OF INDIA AND ANOTHER V. DELHI CLOTH MILLS CO. LTD. All India Reporter 1963 SC 791 in para 8 the law is laid down by Das Gupta J speaking for the Supreme Court in the following terms:

> "Excise duty is on the manufacture of goods and not on the sale Mr. Pathak is therefore right in his contention that the fact that the substance produced by them at an intermediate stage is not put in the market would not make any difference If from the raw material has been brought into existence a new substance by the application of processes one or more of which are with the aid of power and that substance is the same as refined oil as known to the market an excise duty may be leviable under Item 23 (the present item 12)."

The question before the Supreme Court was whether refined oil which was an excisable article was in fact produced at an intermediate stage before Vanaspati came into existence and in this connection, the Supreme Court applied the test of intermediate product of refined oil as known to the market. In the particular case before the Supreme Court it was not established by the excise authorities that an article which was known as refined oil to the market did in fact come into existence as an intermediate produce and hence it was held by the Supreme Court that the particular substance for which the dispute arose was not liable to be subjected to duty.

11 The same principle was reiterated by the Supreme Court in SOUTH BIHAR SUGAR MILLS LTD. V. UNION OF INDIA AIR 1968 S.C. 922. In that case it was pointed out in paragraph 14 by Shelat J. speaking for the Supreme Court as follows:

> "The Act charges duty on manufacture of goods. The word manufacture implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use, the duty is levied on goods. As the Act does not define goods the legislature must be taken to have used that word in its ordinary dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market. That it would be such an article which would attract the act was brought out in UNION OF INDIA V. DELHI CLOTH AND GENERAL MILLS LTD. The contention there was that in the course of manufacture of Vanaspati a, vegetable product from groundnut and til oil, the respondents brought into existence at an intermediate stage of

> manufacturing refined oil which fell within the description of vegetable non-essential oil all sorts, in item 23 or the First Schedule..... This Court held that if a new substance was brought into existence from raw materials and that substance was the same as refined oil as known to the market it would be subject to duty."

In the S. B. SUGAR MILLS V. UNION OF INDIA (SUPRA) the question before the Supreme Court was whether Kilm Gas was the same thing as the gas which was known to the market as carbon dioxide and, on the material before the Supreme Court, it was held that Kilm Gas was not carbon dioxide. In paragraph 15, it was observed by Shelat J:

> "The analogy given by the learned Attorney-General of a manufacturer of cotton cloth also producing at an intermediate stage cotton yarn and such cotton yarn being liable to excise duty would not help the Revenue as cotton yarn obtained by Sub manufacturer is known as such in the commercial community and brought to the market for being bought and sold."

Therefore, in paragraph 15, the Supreme Court proceeded on the footing that, so far as cotton yarn is concerned, if cotton yarn which is an excisable article under Item 18A of the First Schedule to the Act, emerges as an intermediate product in a particular concern, then, cotton yarn will have to be subjected to excise duty.

12 In the light of these two decisions of the Supreme Court, it is clear that excise duty will have to be paid in the case of cotton yarn which emerges as an intermediate product. But, argues the learned Advocate General under sec. 3 of the Act, excise duty has to be levied as provided for in the Act and has to be collected in such manner as may be prescribed, and since under Rule 9 it is prescribed that the excise duty has to be paid at the time of removal from the place where the excisable article is manufactured, if the article is not removed from the factory excise duty cannot be collected at all. In the instant case, we are not concerned with a situation where rules do not provide for collection of excise duty and hence the larger question as to whether, if the rules do not prescribe the mode of collection of excise duty, it will be open to collect excise duty at all, does not arise for our consideration. That larger question which was sought to be argued before us can, so far as the present judgement is concerned, be left open.

13 Under Rule 9, it is clear that excise duty must be paid before the goods are removed from the place where they are produced or manufactured and, in the light of Rule 175 and the provisions as to licences, it is clear that in the case of each excisable article a separate licence has to be taken specifying the particular place where the excisable goods in question are to be manufactured. Unless the place is specified in the licence it is not open to the manufacturer of any excisable goods to carry on manufacturing activity and for the purposes of Rule 9 it is the place specified in the licence concerned that is the place where the goods produced or manufactured and it is the removal from the place thus specified in the licence in question that is the place referred to in Rule 9. Once this position is clearly appreciated in the light of the licensing procedure and it is borne in mind that each licence has to specify under the rules the place where excisable goods are to be manufactured it is obvious that it is removal from the place mentioned in the licence which is material and not removal from the larger compound of the factory where excisable goods are consumed for production of further articles which may or may not be excisable goods. In the case before us, the end-product namely cotton fabrics and polyester carbonised fabrics, are both liable to excise duty as such. But the question that we have to ask ourselves is whether removal which is spoken of in Rule

9 is removal from the spinning sections which are licensed premises as shown in the affidavits before us where yarn an excisable article is produced or manufactured and in respect of which licence to produce yarn either cotton or polyester is issued to each of the petitioners or whether it is only removal of cotton fabrics from the factory as such is the event which will attract collection of excise duty.

14 In our opinion, it is obvious from the scheme of the rules and particularly in the light of the language of Rule 9 read in the context of licensing procedure and rules relating to licences issued to manufacturers of excisable goods that excise duty has to be collected and paid by the manufacturer concerned at the time, so far as yarn is concerned, when yarn is removed from the spinning department to the weaving department. This conclusion gets support from the language of proviso to Rule 52A(2). It is possible that for the sake of convenience of collection particularly in the light of self-removal procedure under the Chapter VIt-A of the Rules the excise authorities are treating production of yarn and weaving as continuous processes and giving facilities to the petitioners on the footing that proviso (i) to sec. 173-G applies but it is obvious from what the petitioners themselves have stated that the process is not Continuous. Merely because a certain facility is given it does not mean that excise duty is not liable to be collected from the petitioners when yarn is removed from the spinning department to the weaving department.

15 The learned Advocate General appearing on behalf of the petitioners in each of these petitions has relied on the decision of the DELHI HIGH COURT IN DELHI CLOTH AND GENERAL MILLS CO. LTD. V. JOINT SECRETARY GOVERNMENT OF INDIA AND ANOTHER, 1978 EXCISE LAW TIMES (J 121). In that case the question before the Delhi High Court was whether excise duty was leviable on calcium carbide produced by the Delhi Cloth and General Mills which was consumed in the manufacture of acetylene gas. It was found as a fact that calcium carbide manufactured by the company was not known to the market as calcium carbide and one of the contention which was also urged before the Delhi High Court was that calcium carbide was not removed from the factory of the petitioner and the passage of calcium carbide from the plant where calcium carbide was manufactured to the plant where acetylene gas was manufactured both plants being located in the same factory was not tantamount to removal from the factory to any other place. It is obvious from what we have stated in connection with the two cases of the Supreme Court referred to above that since calcium carbide which was produced by the manufacturer before the Delhi High Court did not amount to a marketable commodity known to the market as such excise duty was not payable on the intermediate product in that particular case. However, while dealing with the question of removal from the factory it is to be noted that the provisions of sec. 4 were sought to be invoked. Now, as we have stated in the course of this judgement sec. 4 applies in those cases where excise duty is leviable ad valorem and the provisions of sec. 4 provide how value has to be determined for the purpose of levying and collection of ad valorem duty. In the case, before us where excise duty has to be paid on the basis of weight of yarn the question of invoking sec. 4 does not arise and whatever has been said by the Delhi High Court in the context of the provisions of sec. 4 will therefore not apply in the instant case. However, the learned Advocate General relied very strongly on the decision of the Delhi High Court on point 4 at page J-126 of the Report. He relied on the following passage:

> "The expression 'factory' is defined in sec. 2 (c) to mean any premises including the precincts thereof wherein or in any part of which excisable goods are manufactured. The definition covers the present case because the calcium carbide is manufactured in one part of the factory while the acetylene gas is manufactured in another part thereof.

> The definition of factory makes it clear that the meaning of factory is not restricted to only the part in which the excisable goods are manufactured. On the other hand it includes the whole of the premises in a part of which such goods are manufactured. At any rate the case of the petitioner is that the whole of the premises which comprise both the plants making calcium carbide and acetylene gas are its factory. It is not contended by the respondents that the calcium carbide plant constitutes a separate factory and the acetylene gas plant constitutes another factory. It cannot be said therefore that the, so called calcium carbide made by the petitioner is removed from the factory in which it is made. A perusal of Rules 9 and 49 makes it clear the question of collection of any excise duty cannot arise unless and until the goods are removed from the factory."

With great respect to learned Judges of the Delhi High Court who constituted the Division Bench, we are unable to agree with the final sentence in the passage quoted above. Rule 9 applies to place where excisable goods are manufactured and not a factory and if the question of intermediate product which is by itself an excisable article, arises for consideration, it is always a part of the larger factory where intermediate product will be manufactured if it is manufactured in the same larger premises of the factory. But, in view of the licensing procedure in view of Rule 9, it is the place where a particular excisable article is manufactured that is material, so far as collection at the, is concerned and not the larger factory. Reading in the wording of; a factory as equivalent to the place where goods are manufactured is, with great respect to learned Judges of the Delhi High Court not permissible and with great respect we differ from them.

16 Thus, both on the facts of the case on the provisions of sec. 4 which are not applicable to the present case and on interpretation of Rules 9 and 49 where we differ from the learned Judges of the Delhi High Court in our opinion, this decision of the Delhi High Court relied upon by the learned Advocate General cannot help the petitioners in this case.

17 We are not going into the elaborate discussion about Rule 96W or the new Rule 49-A which contemplate a particular type of procedure in the case of cotton yarn used in the manufacture of cotton fabrics, because it is worthwhile noting, as pointed out on behalf of excise authorities in their affidavit in reply that with effect from June 18, 1977. Old Rule 90W has been omitted. That rule provided for collection of duty on cellulosic spun yarn or cotton yarn along with duty on fabrics. Old Rule 96W provided for special procedure of fixing of rate of duty when yarn was used by the same manufacturer for the purpose of manufacture of fabrics and Rule 49A, now provides that in addition to the appropriate duty payable on polyester yarn or cotton yarn one and a half per cent of the duty payable on such cellulosic spun yarn or cotton yarn or both, has to be paid by way of interest on the amount of yarn duty and when cotton fabrics are cleared after processing the yarn duty is payable along with three percent interest on the duty payable on such cellulosic spun yarn cotton warn or both as the case may be and this applies to composite mills which are defined to mean manufacturers who are engaged in spinning of cotton yarn or weaving or processing of cotton fabrics with the aid of power and have a proprietary interest in at least two of such manufacturing activities. Rule 49-A, we are informed has come into force with effect form the end of November, 1977. This rule 49-A and old Rule 96-NV indicate that so far as composite textile mills are concerned special procedure has been laid down under the rules for collection of duty leviable on yarn which is consumed by the same manufacturer in a composite mill for the purpose of manufacturing fabrics.

Shri K. S. Nanavati
Sr. Advocate

18 Under these circumstances our conclusion is that removal for the purpose of Rule 9 of the Central Excise Rules is removal from the spinning department to the weaving department and not removal from the premises of the factory as a whole. This conclusion is the only conclusion which we can come to in the light of rules relating to licence under Chapter VIII of the Rules. Each of these special civil applications, therefore, fails and is dismissed with costs.

Shri K. S. Nanavati
Sr. Advocate