

**Devi Textiles Vs. Collector of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/808347](http://sooperkanoon.com/808347)

**Court :** Chennai

**Decided On :** Jan-04-1994

**Reported in :** 1995(79)ELT411(Mad)

**Judge :** Raju, J.

**Acts :** [Central Excise Act, 1944](#) - Sections 35P; [Central Excise Tariff Act, 1985](#)

**Appeal No. :** Writ Petition No. 2298 of 1985

**Appellant :** Devi Textiles

**Respondent :** Collector of Central Excise

**Advocate for Pet/Ap. :** Mr. Tamizhmani

**Judgement :**

ORDER

1. The above writ petition had been filed for a writ of certiorari to call for and quash the proceedings of the first respondent in Ref. C. No. V/19/15/17/74, dated 24-2-1977 which was confirmed by the second respondent in his proceedings date 4-3-1980 and in turn modified by the third respondent in his proceedings dated 17-12-1984 rejecting the claim of the petitioner challenging the demand made of the duty and penalty in the following circumstances.

2. The petitioner was a firm of partners carrying on business at Nos. 142 and 143, Pension Lines Road, Gugai, Salem. The Central Excise Officers appear to have inspected the place of business on 9-11-1974 and found that 16 power-looms were installed in the premises and the actual manufacturing process was going on, manufacturing cotton furnishing fabrics in about 12 of the said powerlooms. The petitioner appears to have not taken any central excise licence for the manufacture of cotton furnishing fabrics on power-looms in the said premises. Consequently, in the presence of witnesses, the cotton furnishing fabrics on 12 looms as also the other pieces found in the premises, manufactured, were seized. Various account books were said to have been seized. On a verification of the said account books, the authorities noticed that during the period from 1-2-1972 to 9-11-1974, the petitioner firm has manufactured and removed without payment of duty about 88,255.75 meters of cotton furnishing fabrics valued at Rs 8,13,811.45 and that the excise duty payable thereof was Rs. 1,22,071.72 besides handloom cess to the tune of Rs. 2,028.97. The Managing Partner of the petitioner-firm by name Smt. Janaki appears to have given a statement the next day, i.e., 10-11-1974 admitting that the looms have been installed on rental basis and that while initially art furnishing fabrics were being manufactured on the said power-looms, subsequently, with effect from 1-2-1972, cotton furnishing fabrics were being manufactured on the said power-looms but that no licence had been obtained and no duty had been paid on such cotton furnishing fabrics manufactured and removed. At the request of the petitioners, the seized fabrics were said to have been released to the petitioner on their furnishing a bond after they had paid the duty thereof.

3. A show cause notice dated 16-1-1975 came to be issued and a reply was said to have been filed on 14-6-1975 whereunder the petitioner denied that they had been manufacturing furnishing fabrics and claimed that they had been manufacturing bed-sheets and bed-spreads only and that too using art silk yarn only. It was also claimed that Smt. Janaki was not a managing Partner, but one among the five partners only and that the statement had been obtained under duress and coercion and, therefore, cannot be relied upon, so as to bind the firm. It was also contended that no samples were sent to the Chemical Examiner for obtaining his opinion and that the claim for payment was also time-barred. The

Collector of Central Excise, Madras by his order dated 24-2-1977 held that there were sufficient materials to prove that the petitioner manufactured cotton furnishing fabrics without obtaining the necessary central excise licence and removed them without paying the duty thereof and that the bar of limitation has no merit (sic). The said authority demanded a duty of Rs. 1,22,071.72 as also the handloom cess of Rs. 2,028.97 besides imposing a penalty of Rs. 1,00,000. The duty was also demanded on 7,749 meters of cotton furnishing fabrics seized at the time of the inspection.

4. Aggrieved, the petitioner preferred an appeal to the Central Board of Excise and Customs which by its order dated 4-3-1980 rejected the appeal. Thereupon, the petitioners filed a revision to the Government of India and the revision stood transferred to the third respondent Tribunal by virtue of Section 35P of the Central Excises and Salt Act, to be disposed of as an appeal.

5. The Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, Special Bench-I heard the appeal and while confirming the levy and demand of the duty, reduced the penalty to Rs. 35,000 from Rs. 1,00,000. Not satisfied with the relief granted the above writ petition has been filed.

6. Mr. Javed Khan, learned counsel appearing for the respondent even at the initial stage invited my attention to an earlier order of mine dated 23-4-1992 in W.P. No. 2921 of 1984 (M/s. Jeetamal Jaichandlal P. Ltd. rep. by its Director, Norammal Chouria, Madras-1 v. 1. The Customs Excise & Gold (Control) Appellate Tribunal, South Regional Bench at Madras, Madras-17, 2. The Collector of Central Excise, Madras-34) to contend that the writ petition is not maintainable and is liable to be dismissed in view of my order referred to above and also the earlier decision of S. Ramalingam, J., in S. C. Rampalal v. Union of India : 1991(52)ELT346(Mad) Mad. Mr. Tamizhmani, learned counsel for the petitioner in controverting the preliminary objection raised by the respondent, relied upon another decision of the learned Single Judge of this court reported in 1992 62 E.L.T. 496 Mad in the case of Super Rubber Works v. Assistant Collector of Central Excise, whereunder it has been held that though further avenue of relief is available to the petitioner like the one before me it would at best be a case of

availability of an alternative remedy and a writ petition which has been admitted and allowed to be kept pending on the file of this court for a pretty long time need not be rejected on the ground that an alternative remedy is available to the very petitioner.

7. After a careful consideration of the decisions relied upon by the learned counsel on either side, I am of the view that it would not be proper or just to summarily reject the writ petition after nearly nine years on the ground that the petitioner has an effective remedy. As a matter of fact, in my earlier decision in W.P. No. 2921 of 1984 supra, I felt obliged to follow the decision of S. Ramalingam, J., though I had my own reservations about the same and which have also been expressed in the very judgment. In the light of the subsequent decision relied upon by the petitioner and having regard to the fact that availability of an alternative remedy is no ground of estoppel or limitation on the powers of this Court, but is purely a rule of discretion in the matter of invoking the jurisdiction of this Court, I overrule the preliminary objection taken with reference to the maintainability of the writ petition.

8. The learned counsel appearing on either side took me at length through the orders of the authorities below including that of the Tribunal. On a careful consideration of the submission of the learned counsel on either side, I am of the view that there are no merits in the submission and contentions made on behalf of the petitioner challenging the order of the Tribunal. The main grievance of the petitioner even at the time of hearing of the writ petition before me as well as at the time of hearing of the appeal before the Tribunal, is that in the teeth of a dispute relating to the quality of the fabrics as to whether they were cotton furnishing fabrics or art silk furnishing fabrics, the authorities ought to have secured samples and sent them for chemical examination and secured the opinion of the technical authority before saddling the petitioner with any liability and that in the absence of such action, no reliance could be placed for arriving at a decision on the nature and quality of the fabrics merely on the statement said to have been obtained from one of the partners. I am afraid that I can (not) countenance such a plea. The Tribunal has noticed at considerable length more than one factual aspects of the matter which militate against the merit of the claim on behalf of the petitioner in this regard. The Tribunal was convinced of the Facts, viz. (a) that the officers

found at the time of their inspection, the petitioner-firm was manufacturing Cotton Furnishing Fabrics and also such Cotton Furnishing Fabrics and also such Cotton Furnishing Fabrics actually were in the process of manufacturing in about 12 power-looms; (b) that the Managing partner, Smt. Janaki also gave a statement on the next day admitting the nature of the product and also the period of time from which such cotton furnishing fabrics were being manufactured and removed; (c) that the fact that the petitioner-firm has not submitted its explanation denying or disputing the character and quality of the fabric being other than the cotton furnishing fabrics before they had obtained return of the goods seized. On the above materials, the Tribunal, in my view, has rightly come to the conclusion that no exception could be taken to the action of the authorities in not sending any samples for the examination of an expert regarding their quality. Since there was no dispute whatsoever till, at any rate, the goods were lying with the department and not released, there was no scope, need or necessity for the department to send the sample of the product for examination for the technical report. Particularly when the Inspection Officers themselves witnessed the actual manufacturing of the cotton furnishing fabrics as also the previously manufactured similar product stocked in the premises. For all the reasons stated above, in, my view, the impugned order of the Tribunal, confirming the orders of the authorities below except in respect of a substantial portion of the penalty levied, do not suffer from any patent error of law or perversity of approach. The factual findings recorded by the Tribunal are well-justified, in my view, on the materials available before it and relied upon by the authorities in support of their conclusions. The challenge to the impugned order, therefore, has no merit and the writ petition fails and shall stand dismissed. No costs.