

Levy on Chindies, Rags & Fents

(By Swamy Associates)

Chindies, Rags & Fents may not be the lock, stock & barrel of textiles but definitely these end bits are juicy tit bits. Ever since the textile sector is brought under the "excise loom", we have been constantly exploring along the warp and weft of the fabric and this piece is an attempt to address yet another protruding thread in the fabric i.e. Chindies, Rags & Fents.

Manufacture of fabrics (be it by weaving or knitting) is generally a continuous process. During the course of such manufacture of fabrics in running length (like sarees, dhotis, etc.) certain end bits in the form of additional/extra length is bound to emerge. Such end pieces are termed as Chindies, Rags & Fents in the trade and also recognized under law.

Tracing back to the definition of Chindies, Rags & Fents, it could be seen from the Textiles (Consumer Protection) Regulation 1988, vide notification CER/18/88-CLB (Textile) Dated 07-03-1988, modified the definition of Chindies, Rags & Fents as under:-

- i) Chindies means cut piece of cloth having length of 23cms or less.
- ii) Rags mean cut piece of cloth of length more than 23cms but less than 45 cms, where the width of the fabric is 1m or more, **AND** cut piece of cloth of length more than 23cms but less than 65cms, where the width of the fabric is less than 1m.
- iii) Fents mean cut piece of cloth of length more than 45cms but less than 90 cms, where the width of the fabric is 1m or more, **AND** cut piece of cloth of length more than 45cms but less than 135cms, where the width of the fabric is less than 1m.

The above definitions of Chindies, Rags & Fents were incorporated in Central Excise Law in various Notifications (208/87 Dated 11-09-87, 261/87 Dated 09-12-87, 78/88 Dated 01-03-88, being few of them.)

Now coming to the excisability of Chindies, Rags & Fents, reference is drawn to the judgment of the Honourable High Court of Bombay in the case of Punjab Business and Supply Company Pvt Ltd vs State of Maharashtra, as reported in 1978 (2) E.L.T J646 (Bom). In the stated judgment, the Honourable High Court has categorically held that Chindies, Rags & Fents are manufactured cloth and shall be considered as fabrics under Central Excise Law. Thus Chindies, Rags & Fents are excisable goods and classifiable as fabrics.

This is fortified by the plethora of notifications issued by the Central Board of Excise & Customs, exempting these Chindies, Rags & Fents from payment of duty over the years. With the advent of the Budget 1994 – 95, all these exemption / concessional notifications relating to Chindies, Rags & Fents were rescinded and thereafter Chindies, Rags & Fents do not enjoy any specific exemption / concession but are subjected to duty as fabrics.

Now to the moot question.

As the Chindies, Rags & Fents are described and defined length wise, whether such cut pieces generated during the manufacture of fabrics would alone fall within the purview of Chindies, Rags & Fents **OR** the cut pieces emerging (cut) during the course of manufacture of garments from the fabrics would also get classified as Chindies, Rags & Fents? In other words, any cut piece having the specified dimensions as defined above, would get classified as Chindies, Rags & Fents, irrespective of the fact, whether they are generated during the course of manufacture of fabrics (i.e. weaving or knitting) or generated during the course of manufacture of garments.

A close reading of the various notifications issued by department exempting the Chindies, Rags & Fents would throw more light. Kind reference is drawn to notification No.261/87 Dated 09-12-87 wherein the proviso to the said notification reads as under:-

“Further that the exemption contained in the notification shall also apply in respect of Fents, Rags & Chindies arising during the course of manufacture of the said fabrics up to an aggregate quantity of such Fents, Rags & Chindies not exceeding 8% of the total quantity of the clearances of the said fabrics.”

From the above, it appears that, the Chindies, Rags & Fents are also fabrics, which are produced during the course of manufacture of fabrics.

There are catena of judgments pronounced on different contexts, from where it shall be inferred that, Chindies, Rags & Fents are the end bits of cotton fabrics generated during the course of manufacture of fabrics.

On a cruise along the excise lexicon, we identified that the cut pieces generated during the course of the manufacture of readymade garments are best described as “Rags, Trimmings & Tailor Cuttings.” (Ref: Notification 23/2003 Dated 31.03.2003).

From the above, it can be reasonably concluded that, Chindies, Rags & Fents would refer only to those generated during the course of manufacture of fabrics and not the cut pieces generated during the manufacture of garments, which are Rags, Trimmings & Tailor Cuttings. It shall also be a reasonable conclusion that such Rags, Trimmings & Tailor Cuttings are to be treated as waste and scrap arising during the course of manufacture of such garments, because of their irregular sizes and having lost their purpose of being used as a fabric thereafter.

Now to a corollary question. Whether such Rags, Trimmings & Tailor Cuttings, which are nothing but waste and scrap and unfit for the defined purpose as fabrics, are excisable or not? There is no explicit and specific classification under any of the chapter headings of fabrics in CETA, 1985 either as “waste and scrap” or as “Rags, Trimmings & Tailor Cuttings.” Kind reference is drawn to the judgment of the Honorable Tribunal in the case of Carborundum Universal Ltd vs Commissioner of Central Excise, Coimbatore as reported in 1999 (107) E.L.T 100, wherein the Honorable Tribunal has decided that, in the absence of any specific heading / sub heading as waste and scrap in the Tariff Act, the waste and scrap are to be held as non excisable goods. Following the above said ratio, it has to be concluded that the Rags, Trimmings & Tailor cuttings, which are essentially waste and scrap, are not excisable and hence no excise duty is payable on them, as there is no specific

heading / sub heading classifying them is available in the Tariff Act (either as Waste and scrap OR as Rags, Trimmings & Tailor cuttings).

So far so good. But as the maxim goes, "An end shall always lead to a beginning."

Reference is drawn to Notification 23/2003 dated 31/3/2003, which exempts **excisable goods** manufactured and cleared by a 100% EOU. The said notification exempts Rags, Trimmings and Tailor cuttings arising in the course of manufacture of ready-made garments. This emphatically makes such Rags, Trimmings and Tailor cuttings as excisable **goods**.

Reference is also drawn to the judgment in the case of Narayan Venkat and Co vs State of Andhra Pradesh as reported in 1988 (33) E.L.T 327 (A.P). In the said judgment, which was pronounced on a different context, the Honourable High Court spelt out the following reasoning by observing as under:

"Rags are of several varieties. They may consist of defectively manufactured cloth by the mills and sold as such, cloth left out after tailoring, used cotton fabrics in households such as torn bed-sheets, sarees, pillow-cases, table-cloths, wearing apparels, etc. If defective fabrics of varying sizes manufactured by the mills come within the meaning of "cotton fabrics" there is no reason why bits of cloth (cotton fabrics) found in a tailor shop, or torn or used cloth material in the households should be left out of the meaning of 'Cotton fabrics'. The question is not in what shape a cotton fabric ultimately appears, or to what use the cloth has been put, or whether the cloth is still useful for garments or for other household use, but whether it is manufactured out of cotton, as stated in Item 19, referred to supra. The High Court of Bombay in Punjab B. & S. Company Private Ltd. v. State of Maharashtra, (1979) 39 S.T.C. 386 had expressed an identical view that "merely because cloth is sold in pieces and not in the form of takas or bales manufactured by the mills it does not cease to be manufactured cloth or cotton fabrics. Therefore, although rags and chindies are pieces of irregular shapes and sizes, it cannot be said that they are not manufactured cloth. Rags and chindies also do not cease to be manufactured cloth, merely because the purchaser put them to use as raw material for making paper or paper products...."- The fact that the rags in question are meant for the paper-mills makes no difference so long as they come within the meaning of "cotton fabrics" as defined in Item 19 of the First Schedule to the Central Excises and Salt Act."

Applying the above ratio and rationale, the department can proceed to allege that the cut pieces generated during the manufacture of garments, which are Rags, Trimmings and Tailor cuttings, are excisable goods and shall proceed to allege that such clearances are "clearances of fabric as such". Presence of a specific exemption for such Rags, Trimmings and Tailor cuttings, when they are generated by a 100 % EOU and absence of any other general exemption in respect of the same, would further add impetus to the allegation. Accordingly, the department may demand reversal of proportionate credit, "in respect of the fabric cleared" in the form of Rags, Trimmings and Tailor cuttings - which would be nothing less than a guillotine for the garment manufacturers.