
(2002) 01 MP CK 0069
In the Madhya Pradesh High Court
Case No : Writ Petition No. 994/95

Jyoti Overseas Limited

APPELLANT

Vs

M.P. Electricity Board and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 1 MPLJ 449

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Shekhar Bhargava and R. Bhargava, for the Appellant; Surjeet Singh, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.

By filing this petition under Articles 226/227 of Constitution of India, the petitioner seeks quashing of a decision taken by the M.P.E.B. contained in their letter dated 12-5-96 (Annexure P-1) and the consequential demand based on the said impugned decision dated 3-6-1995 (Annexure P-2), dated 12-6-95 (Annexure P-3), dated 14-7-95 (Annexure P-4). Facts of the case lie in a narrow compass. It essentially involves an interpretation of a notification detailed infra. They, however, need mention in brief.

The petitioner is a limited Company duly registered as such under the Companies Act. It is engaged in the business of manufacture of several kinds of cotton, cloth/fabrics. These fabrics are heavily and thickly woven with multiple warp/weft/yarns. The petitioner is having its manufacturing unit at Indore. The petitioner has entered into an agreement with the M.P. Electricity Board (for short "Board") for supply of electricity to their manufacturing unit.

A dispute arose while opting for the tariff between the petitioner and the Board as to at what rate the petitioner is liable to pay electricity charges. The

contention of the petitioner was that they being engaged in the business of manufacture of various kinds of cloth are governed by the electricity tariff applicable for Textile Mills as defined in notification dated 1-12-1988 issued by the Board (Annexure P-8) whereas the contention of the Board was that petitioner cannot be regarded as a Textile Mill nor they cannot be regarded as a manufacturer of cotton as provided in the notification, and hence no benefit of the tariff which is applicable to Textile Mills can be extended to petitioner. According to Board, the petitioner's case was governed by residuary entry of notification i.e., VII. Since the Board did not accept contention of the petitioner and hence conveyed their decision by their letter dated 12-5-1995 (Annexure P-I) holding therein that petitioner will have to pay their electricity bill as per rates defined in residuary Clause VII of the notification i. e., rates applicable to those units which are not falling in any other categories i.e., I, II, III, IV and VI. As a consequence, the demand of electricity bills were raised on the petitioner as per rates specified in Clause VII. It is against this decision and the impugned demands, the petitioner has felt aggrieved and filed this writ.

The respondent-Board has defended their stand and the decision taken by them in their letter dated 12-5-95.

So the question that really falls for consideration in this petition is whether petitioner's case is governed by Clause IV of notification dated 1-12-1988 (Annexure P-8) which has its application to Textile Mills ? or it is governed by Clause VII i.e., residuary. In other words, the question that rise for consideration is whether it can be held that petitioner is engaged in the business of manufacture of cloth or any of the combination of cloth so as to get the benefit of tariff applicable to Textile Mills ?

Heard Shri S. Bhargava, Senior Counsel with Smt. R. Bhargava, learned Counsel for the petitioner and Shri Surjeet Singh, learned Counsel for the respondents.

Learned Counsel for the petitioner while assailing the impugned decision of the Board and the consequential demands based thereon, contended that on a plain reading of Clause IV of notification which is applicable to Textile Mills would show that it is applicable to all those units which are engaged in the business of manufacture of any cloth whether made of cotton, nylon or polyester or even combination of any of the three. Placing heavy reliance on a decision of Supreme Court in the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana,). Learned Counsel urged that in fact issue involved in this petition stands decided in favour of petitioner by the decision of Supreme Court in the case referred supra and hence the petitioner is entitled to claim the benefit of tariff applicable to Textile Mills i.e., Clause IV.

In reply learned Counsel for the respondent-Board defended their decision contained in Annexure P-I and urged for its upholding. Learned Counsel urged that the Cotton Fabric manufactured by the petitioner cannot be regarded as a cotton satisfying the requirement of Clause IV so as to get the benefit of tariff

applicable to Textile Mills. Learned Counsel urged that the benefit of Textile Mills tariff is applicable to only those manufacturer who manufactures cloth by use of cotton or nylon or polyester which is basically used by common man for their day to day use as garments. Since learned Counsel maintained that the same is not the position in the case of the petitioner whose cloth are meant for human consumption and hence they are not entitled to get the benefit of tariff applicable to Textile Mills. As a necessary consequence, learned Counsel urged that the case of petitioner will fall in residuary Clause VII.

Having heard the learned Counsel for the parties and having perused the entire record of the case. I am inclined to allow the writ and quash the impugned decision contained in Annexure P-I together with the consequential demands Annexures P- 2 to P-4.

Following two clauses of notification dated 1-12-88 (Annexure P-8) and in particular Clause IV are relevant for the disposal of this writ:

Clause IV Tariff Mills

Where kVA metering is available (Rs. per kVA per month) Where only kW metering is available (Rs. per kW per month)

Demand/charge : Per kVA or kW of billing demand. 48.00 57.00

Energy Charge : For all units consumed per month Paise 38.00 per unit

Tariff Minimum:

The demand charge on the contract demand is a monthly minimum charge energy is consumed or not.

Applicability:

The tariff shall apply to only such of the consumers who avail supply for manufacture of cloths whether cotton, nylon or polyester or any of the combination of cotton, nylon or polyester. The Industries engaged in ginning and/or spinning and/or processing of cloth and manufacturing of HDPE/PP Sacks etc. shall not be entitled for this tariff.

Clause VII : Tariff for Consumers other than those covered in I,II,III,IV and VI

(a) Two Part Tariff

Where kVA metering is available (Rs. per kVA per month) Where only kW metering is available (Rs. per kW per month)

Demand Charge : Per kVA or kW of billing demand 58.00 68.00

Energy charge : For all units consumed per month Paise 51.00 per unit

Perusal of Clause IV quoted supra would show that it is applicable to those consumers who are engaged in the business of manufacture of cloth-be it made

of cotton, nylon, polyester or any of combination of these three i.e., cotton, nylon or polyester. The clause then provides for exclusion. It says that those consumers who are engaged in ginning, spinning and/or processing of cloth and manufacture of HDPE/PP Sacks etc. will not be entitled to get the benefit of Clause IV tariff.

In order to, therefore, claim the benefit of Clause VI, it is necessary for the consumer to satisfy that they are engaged in the business of manufacture of cloths. The only requirement is that the cloths must be either made of cotton, nylon, polyester or combination of any of these three items. Once it is proved then the consumer becomes entitled to get the benefit of tariff made applicable for Textile Mills i.e., Clause IV. So the question is whether the petitioner is engaged in the business of manufacture of cloth ?

The question arose before their Lordships of Supreme Court in the case of Ponits & Spencer (Asia) Ltd. (supra) as to whether a commodity known as "Dryer Felts" manufactured by an assessee fall within the category "all varieties of cotton, woollen or silken textiles" as specified in item No. 30 of Schedule B of Punjab Sales Tax Act. If the contention of assessee was that the commodity manufactured by them i.e., "Dryer Felts" constitutes a variety of cotton textiles and hence entitle for exemption from payment of sales tax, the contention of Revenue was that the commodity in question is largely used in paper industry as absorbents of moisture in its process of manufacturing and hence it can never be regarded as "Textiles" in item No. 30 of Schedule B. Their Lordships examined the meaning of word "textiles" and held as under:--

5. There can, therefore, be no doubt that the word "textiles" in Item No. 30 of Schedule B must be interpreted according to its popular sense, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". There we are in complete Agreement with the Judges who held in favour of the Revenue and against the assessee. But the question is : What result does the application of this test yield ? Are "dryer felts" not "textiles" within the ordinary accepted meaning of that word ? The word "textiles is derived from the Latin "texere" which means "to weave" and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description as made out of any other material is woven into a fabric, what comes into being is a "textile" and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous i.e., the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be "textiles". What is necessary is no more than

weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls: it may be weak or strong, light or heavy, bleach or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. It may be used for making wearing apparel, or it may be used as a covering or bed-sheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile. It is, therefore, no argument against the assessee that "dryer felts" are used only as absorbents of moisture in the process of manufacture in a paper manufacturing unit. That cannot militate against "dryer felts" falling within the category of "textiles", if otherwise they satisfy the description of "textiles".

After examining the true import of the word "textile". Their Lordships then proceeded to examine what are "Dryer Felt" and whether they can be held to be the textiles within the meaning of Item No. 30 of Schedule B. In para 6, their Lordships after discussing the entire issue held that dryer felt to be the textiles. This is what is held :--

6. Now, what are "dryer felts" ? They are of two kinds, cotton dryer felts and woollen dryer felts. Both are made of yarn, cotton in one case and woollen in the other. Some synthetic yarn is also used. The process employed is that of weaving according to warp and woof pattern. This is how the manufacturing process is described by the assessing authority in its order dated 12th November, 1971 "the raw material used by the company is cotton and woollen yarn which they themselves manufactured from raw cotton and wool and the finished products called "felts" are manufactured on power looms from cotton and woollen yarn." "Dryer felts" are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word "textiles". We do not think that the word "textiles" has any narrower meaning in common parlance other than the ordinary meaning given in the dictionary, namely, a woven fabric. There may be wide ranging varieties of woven fabric and they may go on multiplying and proliferating with new developments in science and technology and inventions of new methods materials and techniques, but nonetheless they would all be textiles. The analogy of cases where the word "Vegetables" was held not to include betel leaves or sugar-cane is wholly inappropriate. There, what was disapproved by the Court was resort to the botanical meaning of the word "vegetables" when that word had acquired a popular meaning which was different. It was said by Holmes, J., in his inimitable style: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. The reason is that as pointed

out by Story, J., in 200 Chest (of Tea) (supra), the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists". But here the word "textiles" is not sought by the assessee to be given a scientific or technical meaning in preference to its popular meaning. It has only one meaning, namely, a woven fabric and that is the meaning which it bears in ordinary parlance. It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard "dryer felts" as "textiles" : But it must be remembered that the concept or "textiles" is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as "textiles". Take for example rayon and nylon fabrics which have now become very popular for making wearing apparel. When they first came to be made, they must have been intruders in the field of "textiles" because only cotton, silk and woollen fabrics were till then recognized as "textiles". But today no one can dispute that rayon and nylon fabrics are textiles and can properly be described as such. "We may take another example which is nearer to the case before us. It is common knowledge that certain kinds of hats are made out of felt and though felt is not ordinarily used for making wearing, apparel, can it be suggested that felt is not a "textile" ? The character of fabric or material as textile does not depend upon the use to which it may be put. The uses of textiles in a fast developing economy are manifold and it is quite common now to find "textiles" being, used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find in Chapter 59 occurring in Section XI of the First Schedule that there is a reference to "textile fabrics and textile articles, of a kind commonly used in machinery or plant" and clause (4) of that chapter provides that this expression shall be taken to apply inter alia to "woven textile felts.... of a kind commonly used in paper making or other machinery....." This reference in a statute which is intended to apply to imports made by the trading community clearly shows that "dryer felts", which are woven textile felts... of a kind commonly used in paper making machinery" are regarded in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that "dryer felts" are "textiles" within the meaning of that expression in Item No, 30 of Schedule B.

There can be no doubt that the aforesaid decision of Supreme Court has a material bearing over the issue involved in this writ and the same has to be decided keeping in view the ratio laid down therein.

What is manufactured by the petitioner was examined by the Full Bench of CEGAT in the case of this very petitioner. The question before the CEGAT was under which heading the product manufactured by the petitioner is liable to be taxed. The contention of the petitioner was that they be classified under Heading 52.07 of tariff whereas the case of department was that it is liable to be classified under Heading 59.11. While examining this issue, the learned members of CEGAT accepted the submission of petitioner and holding their goods to be

taxable under heading 52.07 held as under:--

"Para 6: Appellants contend that the cotton fabrics manufactured by them fall under Heading 52.07. They pressed this contention because of the fact that it is woven fabric of cotton containing 85% or more by weight of cotton. The fact that the goods cleared by the appellants are woven fabrics of cotton containing more than 85% by the weight of cotton is not in dispute."

"Para 7 : Sample of product manufactured by Jyoti Overseas Ltd., was sent to Central Revenue Control Laboratory for testing. Its report shows that the sample is a cut piece of thick grey plain weave cotton fabric having 2 ply yarns along warp and weft. The fabric so produced was in running length. It was not cut to size. It continued to be grey fabric. No processing was done on that fabric."

"Para 14: The grey fabrics manufactured by the appellants, which were cleared in running length, can never be classified as an item falling under Heading 59.11. The adjudicating authorities were clearly in error in classifying them as item falling under Heading 59.11. The goods cleared by the appellants were classified under Heading 52.07. Goods falling under that chapter Heading were not liable to any duty."

This Court can, therefore, safely rely on the finding recorded by CEGAT (supra). In so far as it relates to the nature of product manufactured by the petitioner is concerned and take it that the goods manufactured by the petitioner is in fact a cotton and can certainly be classified as cotton fabrics made out of cotton.

In my opinion, if the facts of this case are examined in the context of law laid down by the Supreme Court in *Porrits & Spencer (Asia) Ltd* (supra) then there is no difficulty in concluding that the cotton fabrics manufactured by the petitioner is and can be regarded as cloth within the meaning of Clause IV of notification dated 1-12-1988. Indeed, it was even admitted by the respondent-Board in their letter dated 22-11-90 (Annexure P-10) which was written by Executive Engineer (O & M) to its Superintendent Engineer. In this letter the Board authorities after examining the entire *modus operandi* and the nature of the working of the petitioner as also their produce confirmed that petitioner has installed power looms for manufacturing cotton cloth. It was also confirmed that petitioner has installed 30 looms - each having capacity to produce 300 meters cloth. It was also confirmed that the raw material for production of cotton is cotton yarn which the petitioner is procuring from different yarn producers.

In my opinion, the aforesaid facts which are undisputed and are matters of record as emerge from the judicial finding recorded by the CEGAT, one can conclude that cotton fabric manufactured by the petitioner is a textiles as falling in Clause IV so as to get the benefit of tariff applicable to Textile Mills.

The submission of learned Counsel for the respondent was that since the ultimate use of cotton manufactured by the petitioner is not for wearing garments and hence it can not be regarded as textile is not acceptable for the

reason that this very submission was considered and repelled by the Supreme Court in the case of Porrits (supra), as is clear from the following observations contained in para 5 of the report:--

"The use to which it may be put is also immaterial and does not bear on its character as a textile....."

In my opinion, if the intention of framers was to confine the benefit to only those textile mills which are engaged in the business of manufacture of garments to be used by human being as contended by the respondents then it ought to have been or could have been provided for in the exclusion clause itself. It was much more so when the clause did provide for exclusion but it was only confined to those industries which were engaged in ginning, spinning and processing of cloth and manufacture of HDPE/PP Sacks and alike products.

It being the well settled principle of Rule of interpretation that if the language of statute is clear and explicit, effect must be given to it. For in such a case, the words best declare the intention of the law giver. It is only from the language of the statute that the intention of the legislature must be gathered from the legislature means no more and no less than what it says. It is not permissible to the Court to speculate as to what the legislature must have intended and then twist or bend the language of the statute for make it accord with the presumed intention of the Legislature (41STC 409 SC). This principle squarely in my considered view apply to the language employed in Clause IV of the notification while finding out the real intention of the framers of the notification.

Yet another submission of learned Counsel for the respondent that the ratio of Supreme Court decision in the case of Porrits & Spencer (supra) has no application to the facts of this case because the same was rendered in the context of taxing statute is not acceptable. Such fine distinction has no significant role in this case. In my opinion, this Court can not brush aside the ratio laid down by the Supreme Court on the ground that the same was rendered while interpreting the taxing entry relating to sales tax whereas the present is not the case relating to sales tax. The considered view of Supreme Court, explaining the meaning assigned to the word "textile" will be applicable wherever the word occur.

Accordingly and in view of aforesaid discussion, the petition succeed and is allowed. Impugned decision contained in letter dated 12-5-95 (Annexure P-1) and the consequential demand dated 3-6-95 (Annexure P-2) demand dated 12-6-95 (Annexure P-3) and demand dated 14-7-95 (Annexure P-4) are quashed by issue of writ of certiorari. A writ of mandamus is issued against the respondents to refund the excess amount after determining the liability to pay the electricity charges at the tariff specified in Clause IV of notification as applicable to Textile Mills to the petitioner. However, the claim of refund will confine to period of 3 years prior to petition till date.

No costs.