(2013) 03 AHC CK 0142

In the Allahabad High Court

Case No : Writ Tax No. 354 of 2006

Premium Suiting P. Ltd. — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:
Estate Duty Act, 1953 — Section 2(15)
Textiles Committee Act, 1963 — Section 12, 2, 2(9), 5A, 5A(1)

Citation : (2013) 4 ADJ 361 : (2013) 4 ALJ 231 : (2013) 5 AWC 4488 : (2013) 19 GSTR 235

Hon'ble Judges : Ram Surat Ram Maurya, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Ashok Kumar and Praveen Kumar, for the Appellant; Ashok Kumar Nigam, A.S.G. of India, K.C. Sinha and S.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present writ petition arises out of proceeding under a little known statute, namely, the Textile Committee (Cess) Act, 1963 and is directed against the order passed by the Textile Committee Cess Appellate Tribunal, Mumbai whereby the order passed by the assessing officer, Textile Committee, New Delhi demanding textile cess from the petitioner has been confirmed. The petitioner is engaged in the business of bleaching, dyeing and processing of 100 per cent, man-made cloths/fabrics, said to have been supplied to them from power loom industries only. The petitioner is also indulged in the trading of some part of fabrics processed by them on its own kind. The case of the petitioner is that the job work undertaken by them is not a process of manufacturing textile. Therefore, they are not liable to pay any cess under the Textiles Committee Act, a Central legislation, being Act No. 41 of 1963 (hereinafter referred to as the Act). For the assessment years 1997-98 to 2000-01 the assessing officer issued demand notices dated November 21, 2011 asking the petitioner to pay the cess amounting to Rs. 2,68,293 for the aforesaid four assessment years. The matter was carried in the appeal unsuccessfully before the Textile Committee Cess Appellate Tribunal, Mumbai. Hence the present writ petition.

2. The ground of challenge in the writ petition is that the activity of the petitioner is exempted from payment of cess under the proviso to section 5A(1) of the Act.

3. A counter-affidavit has been filed by the respondents wherein emphasis has been laid that the activity of processing and dyeing, printing, bleaching, etc., on textile amounts to manufacturing activity and as such the levy of cess in question is justified.

4. Heard Shri Praveen Kumar, learned counsel for the petitioner and Shri S.K. Mishra, learned counsel for the respondents.

5. The counsel for the petitioner submitted that u/s 5A of the Act, cess is levied on manufacture of textiles and textile machinery. The word "textile" as defined u/s 2(9) of the Act means "any fabric or cloth or yarn or garment or any other article made wholly or in part of (i) cotton or (ii) wool or (iii) silk or (iv) artificial silk or other fibre and includes fibres. The petitioner is not manufacturing textile as defined under the Act. The petitioner is engaged in the business of performing job work such as bleaching and processing the cloth already manufactured and supplied to them. The job work performed by the petitioner does not amount to manufacture of the cloth; as such, he is not liable to pay cess under the Act. He further submitted that the proviso to section 5A(1) of the Act exempted the textile manufactured out from handloom and power loom industries from the liability of the cess; as such, job work of dyeing the textile can at no stretch of imagination be included u/s 5A of the Act.

6. Reliance has been placed upon a decision of this court given by the learned single judge in Writ Petition No. 637 of 2006: Pawan Exports P. Ltd. v. Union of India (2013) 19 GSTR 232 (All) and others decided on April 28, 2010.

7. The word "manufacture" has not been defined under the Act. Since the cess is being realised as the excise duty, as such, the definition of the word "manufacture" as given in the Central Excise Act, 1944 can be applied for the purposes of this Act. As under the Central Excise Act, 1944, "processing" is included in "manufacturing", as such the provision is also covered under the Act. He relied upon the judgment of the Supreme Court in Ujagar Prints Vs. Union of India (UOI) and Others, . He further submitted that the Supreme Court in Sirsilk Ltd. Vs. Textiles Committee and Others, has held that the manufacture of textile of rayon and nylon yarn are liable to pay cess under the Act. He further submitted that the Delhi High Court in Nath Bros Exim. International Ltd. Vs. Union of India and Others, has held that the manufacturer of readymade garments from the textiles purchased from handloom industries are liable to pay cess under the Act.

8. Considered the respective submissions of the learned counsel for the parties and perused the record.

9. In order to appreciate the rival contentions it is necessary to set out the background in which the textile committee was constituted, the object and purposes of the Textiles Committee Act as also the relevant provisions of the said Act and the Rules made thereunder. The statement of objects and reasons of the said enactment is as follows:

The Cotton Textiles Fund Ordinance, 1944, provides for the establishment of a cotton textiles fund and the constitution of a committee to administer the fund. The fund was originally created from the proceeds of the levy of a duty of customs at three per cent, on the ex-mill prices of cloth and yarn exported and later on the Central Government used to make contributions to the fund. The cotton textiles fund committee has been doing useful work and the inspection scheme of the committee has found increasing popularity and authenticity in trade circles, both in India and abroad.

2. In recent years, however, conditions in the textiles industry have changed. Indian cloth is facing ever increasing competition in the international markets from other exporting countries like Japan, China, etc. The Mill owner''s Association and the manufacturers of textile machinery in India have been stressing the necessity of an independent inspectorate for indigenous textile machinery. In order to meet their needs, the tariff commission recommended in 1960 that adequate arrangements should be made for impartial investigation of all complaints from the consuming industries about the quality of indigenous products and for keeping a continuous watch over the progress of the textile machinery as a whole. Under the existing ordinance, the powers of the committee have not been clearly defined and they are also restricted in scope.

3. It is therefore considered necessary that in the interest of textile industry the committee should be reconstituted and its functions should be enlarged. It is accordingly proposed to establish a committee which shall be a body corporate and it should be vested with enlarged statutory powers. Under the existing ordinance, the functions of the committee were restricted to cloth and yarn only. It is proposed to empower the committee to ensure the quality of all textiles whether made wholly or partly of cotton wool, silk, artificial fibre or silk. It is further considered that the work of inspection of indigenous textile machinery and stores should also be entrusted to the committee. The functions of the committee should generally be to ensure standard qualities, of textile for internal marketing and export purpose and the manufacture and use of standard type of textile machinery.

4. The present Bill seeks to achieve the above objects and to replace the existing Cotton Textiles Fund Ordinance, 1944--Gaz. of India, dated November 22, 1962, Pt. II, sec. 2, Ext. p. 1160.

The Act was amended by the Amending Act No. 51 of 1973. The aims and objects of the Amending Act is reproduced below:

Amending Act 51 of 1973.--The textiles committee has been set up under the

Textiles Committee Act, 1963 for securing standard qualities of textiles for internal as well as external marketing and manufacture and use of standard type of textile machinery. The committee has so far concentrated its attention and efforts on ensuring standard qualities of textiles for export by undertaking pre-shipment inspection. Since December, 1966, export of cotton textiles has been banned without pre-shipment inspection certificate of the committee. Even in respect of woollen and art-silk textiles such inspection is undertaken by the committee to enable the exporters to claim replenishment entitlements under the Registered Exporter''s Policy. For all these services, the committee is authorised u/s 12 of the Act to levy such fees as may be prescribed by rules for the inspection and examination of textiles and textile machinery and for any other service which the committee may render to the manufacturers of textiles and textile machinery.

2. The various activities undertaken by the textiles committee for the development of the textile industry and the promotion of textile exports have been expanded considerably and it has been found necessary that the finances of the textiles committee are put on a sound footing. Moreover, if the textile industry is to develop on sound and proper lines and production and export of textiles are to be substantially increased, the expenditure of the textiles committee has necessarily to be on a larger scale than the present in order to be commensurate with the desired results. It has, therefore, become necessary to take steps to augment the resources of the textiles committee. Accordingly, it is proposed to provide for the levy of a cess as a duty of excise on all textiles (other than those manufactured by handloom and power loom industries) and textile machinery at such rate not exceeding one per cent, ad valorem, as the Central Government may fix from time to time. It is also proposed to retain in the Act the provision for the levy of fees for inspection and examination of textiles on which no duty of excise is leviable and for certain special services rendered by the committee.

3. Opportunity is being taken to extend the Act to the State of Jammu and Kashmir and also to make certain amendments in the Act, which were found necessary in its actual working.

4. The Bill seeks to achieve the above objects--Gaz. of India, dated April 6, 1973, Pt. II, sec. 2, Ext., p. 273."

10. The avowed purpose of the Act as reflected in the long title is to provide for the establishment of a committee for ensuring the quality of textiles and textile machinery and for the matters connected therewith. In order to meet the expenses of the committee it has been given power to realise fee u/s 12 of the Act. At the time of amendment of the Act in the year 1973, it was realised that expenses of the committee realised from the fee were not meted out; as such, cess was imposed on the manufacturer of textiles over textile machinery. Thus, the object of the Act was not to realise the revenue for the Government.

11. With effect from January 11, 1975, a new definition of "textiles" was substituted which reads as follows:

By Act No. 51 of 1973, a new definition of "textiles" was substituted with effect from January 1, 1975 and it reads:

2. (g) ''textiles'' means any fabric or cloth or yarn or garment or any other article made wholly or in part of--

(i) cotton; or

(ii) wool; or

(iii) silk; or

(iv) artificial silk or other fibre.

12. It must be stated here that Act No. 51 of 1973 introduced a new provision section 5A as a result of which a cess has been imposed in place of a fee. Sub-section (1) provides that there shall be levied and collected as a cess for the purposes of this Act a duty of excise on all textiles and on all textile machinery manufactured in India at such rate, not exceeding one per cent, ad valorem as the Central Government may, by notification in the Official Gazette, fix, the proviso thereto interdicts that no such cess shall be levied on textiles manufactured from out of handloom or power loom industry. Sub-section (2) of section 5A directs that the duty of excise levied under sub-section (1) shall be in addition to any cess or duty leviable on textiles or textile machinery under any other law for the time being in force.

13. In the case of Sirsilk Ltd. Vs. Textiles Committee and Others, the apex court was called upon to decide the validity of fee as levied under rule 21 of the Rules as existed for the period prior to January 1, 1975 and the question whether imposition can be justified as fee, were in issue. It was held that all the income derived from the levy of fee under rule 21 has to be credited to the textiles fund and the said income is utilised in defraying the expenditure of the textiles committee in carrying its manifold activities. In paragraph 31 of the report it was noticed that by section 5F introduced by the Act No. 51 of 1973, the proceeds collected u/s 5A reduced by the cost of collection as determined by the Central Government shall first be credited to the consolidated fund of India and the Central Government may, after due appropriation made by Parliament by law pay to the committee from out of such proceeds of money as it thinks fit for being utilised for the purposes of the Act. The court thereafter proceeded to hold that the levy of fee under rule 21 of the Textiles Committee Rules, 1965 is valid and constitutionally permissible. However, the issue of section 5A as involved herein was not an issue there.

14. Now, coming to the merits of the case, it is desirable to have a look to section 5A of the Act which reads as follows:

5A. Imposition of cess on textiles and textile machinery manufactured in India.--

(1) There shall be levied and collected as a cess for the purposes of this Act, a duty of excise on all textiles and on all textile machinery manufactured in India at such rate, not exceeding one per cent, ad valorem as the Central Government may, by notification in the Official Gazette, fix:

Provided that no such cess shall be levied on textiles manufactured from out of handloom or power loom industry.

15. The learned counsel for the petitioner submits that there being no definition of manufacturer being given in the present Act the definition given in the Excise Act cannot be imported, which is refuted by the respondents.

16. Strong reliance was placed by the learned standing counsel for the Department on Ujagar Prints Ujagar Prints Vs. Union of India (UOI) and Others, , a case under the Central Excise Act, 1944, prior to amendment in the year 1990. Interpreting the word "manufacture" the apex court has laid down that by amending the definition of manufacture in the year 1990, the scope of "manufacture" has been enlarged. The amendment has sought to equate the processing with manufacture. The vires of the amended definition of manufacture was in issue. The apex court ruled that by including the processing with manufacture, the Legislature has not exceeded in its power and it is covered under Entry No. 48, List 1. The moot question is whether that definition of "manufacture" which was amended subsequently as contained in the Central Excise Act can be imported for the purposes of the present Act.

17. The Textile Committee Act and Central Excise Act are two enactments with different purposes and objects. The Central Excise Act levies duty on the production of goods. The Textile Committee Act has been enacted with a view to improve the standards of textile meant for export. The aim and object of Amending Act No. 51 of 1973 states that since 1966 export of cotton textile has been banned without pre-shipment inspection survey of the Committee. For all these services, the Committee is authorised u/s 12 of the Act to levy such fees as may be prescribed by rules for inspection and examination of the textiles and textile machinery and for any other services which the committee may render to the manufacturers of textiles and textile machinery. It further provides that the expenditure of textile committee has been increased on large scale to develop the textile industry on sound and proper lines. The production and export of textiles are to be substantially increased. The textile committee is empowered to ensure the quality of all textiles whether made wholly or partly of cotton wool, silk, artificial fibre or silk. The textile committee has to carry out the work of inspection and to meet the cost of inspection, etc., it has been empowered to realise the cess. The nature of proceeds so realised by the textile committee is quite different than the duty realised under the Central Excise Act. Both the Acts operate at different fields and have been enacted with different aims and objects.

18. In Sri Jagatram Ahuja Vs. The Commissioner of Gift Tax, Hyderabad, , the apex court ruled that the aims and objects of the Gift Tax Act is not similar to

that of Estate Duty Act, 1953. Therefore, the definition of a word given in one Act cannot be imported in the other Act. The relevant portion is reproduced below (page 620 of 246 ITR):

We find that Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, ; [1977] SCC (Tax) 90 supports the view taken in N.S. Getti Chettiar''s case. Added to this, section 2(15) of the Estate-Duty Act, defining ''property'' came up for consideration in Kantilal Trikanlal''s case. We may state here itself that the words and expressions defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expressions in another statute unless both the statutes are pari materia legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in the other statute. The aim and object of the two legislations, namely, the Gift Tax Act and the Estate Duty Act are not similar.

19. The aforesaid view has been reiterated subsequently in Tata Consultancy Services Vs. State of Andhra Pradesh, . The relevant para 41 is reproduced below (page 555 of 3 RC):

In absence of incorporation or reference, it is trite that it is not permissible to interpret a word in accordance with its definition in other statute and more so when the same is not dealing with any cognate subject. (See State of Kerala Vs. Mathai Verghese and Others, and Feroze N. Dotivalaq Vs. P.M. Wadhwani and Others,).

20. The Supreme Court in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, , has clearly held in paragraph 1 that if a particular expression is not defined in an Act, its definition in another Act cannot be imported into former Act. It is not safe to import, viewed as above, the widely worded definition of "manufacture" in the Excise Act to this Act, object and purpose of both the Acts being different. The word manufacture should be understood as it is understood in the common parlance. The textile remains textile after colouring, dyeing, etc.

21. The next case, a decision of the Delhi High Court in the case of Nath Bros Exim. International Ltd. Vs. Union of India and Others, strongly relied upon by the respondents. A close reading of the judgment would show that in that case the petitioners were manufacturers of ready-made garments which is covered within the definition of textile as given u/s 2(9) of the Act. Accordingly, it was found that as the petitioners were covered u/s 5A, the proviso to this section will not exempt them from the liability of cess. Neither the factual matrix nor the issue raised therein has any connection or bearing to the issues in hand. The petitioners therein were exporters and having registered export house, were engaged in the export of readymade garments. They challenged the levy of cess on the exporters by the textile committee. The levy of cess on exporters who were dealing with finished goods was held to be valid. The factual matrix in the case of Nath Bros Exim. International Ltd. Vs. Union of India and Others, being different, we fail to understand its applicability, if any, to the facts of the present

case.

22. A learned single judge as mentioned hereinabove, had an occasion to consider the judgment of Nath Bros Exim. International Ltd. Vs. Union of India and Others, and of Ujagar Prints Vs. Union of India (UOI) and Others, ; (1989) 74 STC 401 (SC) and held as follows (page 233 of 19 GSTR):

The case is therefore, clearly distinguishable from the present case as in the present case the assessee has sought the benefit of the provisions of section 5A(1) proviso that is to say that it has made a clear statement that it is doing the job work of bleaching and dyeing of textile, which had been made by the power loom industry. The question therefore, arises that if and whether the assessee shall be entitled to the benefit of the proviso or not. The proviso to the section clearly extends the benefit to the manufacture of textile out of the power loom and handloom industry. Even if, it is accepted that the petitioner is a manufacturer at the second stage then the textile on which the petitioner is working does not cease to be a product of the power loom and handloom Industry.

In this case as it is well established by the petitioner that his product is being made out of the power loom and handloom industry then clearly he is entitled to the benefit of the proviso.

Even after being subjected to bleaching, dyeing or any other process the gray cloth, which is finished by the assessee would not cease to be the outcome of the power loom industry and, therefore, even if, the assessee has been considered to be a manufacturer of textile by virtue of the judgment of the apex court in the case of Ujagar Prints Vs. Union of India (UOI) and Others, then too as a manufacturer of the power loom industry he would be entitled to the benefit of the proviso at that stage of manufacture because there is no bar under the proviso with regard to the stages of manufacture.

23. We fully concur with the view of the learned single judge. In view of the fact which is not disputed that the petitioners are job workers and are doing bleaching, dyeing, etc. on the textile so supplied to them, they will be treated as extended hand of handloom and power loom textile manufacturers. The handloom and power loom textile manufacturers instead of getting work of bleaching, etc., done by themselves, have engaged the petitioner on job-work basis. The petitioner received the textile and after doing the needful return the textile to such manufacturers, Section 5A imposes cess for the purposes of the Act, 1963, a duty of excise on all textiles and on all textile machinery manufactured in India. The word "manufacture" is not defined in the Act, 1963. The textile committee has been set up to carry on inspection to enable the exporters to claim replacement entitlements under the registered exporter policy as finds mention in the statement of objects to Amending Act No. 51 of 1973. Since the textile manufactured out from handloom and power loom industry has been exempted u/s 5A, obviously no inspection in respect of textile

manufactured by such industry is required and therefore, it is reasonable to conclude that the activity undertaken by an extended hand of these manufacturers will also be not liable to pay the impost of cess under the Act.

24. In the result, the writ petition succeeds and is allowed. The impugned order dated October 20, 2010 passed by respondent No. 3 as contained in annexure 3 and the demand notices dated December 9, 2005 and January 6, 2006 as contained in annexures 5 and 6 to the writ petition are hereby quashed. The writ petition succeeds and is allowed. But no order as to costs.