
(1973) 02 MAD CK 0058
In the Madras High Court
Case No : Writ Appeal No. 450 of 1971

South India Viscose Ltd.

APPELLANT

Vs

Textiles Committee and Others

RESPONDENT

Date of Decision : 28-02-1973

Acts Referred:

Textiles Committee Act, 1963 — Section 12, 12(1), 4
Textiles Committee Rules, 1965 — Rule 21

Citation : (1973) 91 ITR 595 : (1978) 87 LW 627 : (1974) 87 LW 627

Hon'ble Judges : Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Advocate : V.K.T. Chari, for Subbaraya Aiyar, Sethuraman and Padmanabhan, for the Appellant; S. Govind Swaminathan, General and S. Mohan, Government Pleader for first respondent, S.V. Subramaniam, for second respondent, S. Mohan, Government Pleader for third respondent and S. Rajaram, for Central Government Standing Counsel for fourth respondent, for the Respondent

Judgement

Raghavan, J.—This appeal arises out of W.P. No. 2191 of 1969 filed by the appellant for the issue of a writ of prohibition or any other appropriate writ, direction or order restraining the first and third respondents from taking any further steps in pursuance of Notice No. 55/405/68-AC, dated February 20, 1969, of the first respondent and Reference No. 11725/ 69-A5, dated July 14, 1969, of the third respondent from collecting the sum of Rs. 78,433 from the petitioner.

2. The appellant is a public limited company and its objects, inter alia, as contained in its memorandum of association are : to carry on business of manufacturing, buying, selling, distributing, exchanging, converting, altering, importing, exporting, processing, twisting or otherwise handling or dealing in rayon yarn which includes artificial silk yarn and all synthetic fibres whatsoever for textile use, cellulose staple fibre and yarn also known as spun rayon synthetic fibres and yarns and other staple fibre or fibrous materials or allied products, etc. The company also used to purchase rayon fabric and other fabrics and other

fibrous materials for the purpose of export in order to obtain import entitlement. The appellant-company commenced its business on November 3, 1958, and has been carrying on business from that date. The first respondent, the Textiles Committee, Bombay, is a body corporate established by the Central Government u/s 3 of the Textiles Committee Act, 1963 (Central Act 41 of 1963), (hereinafter referred to as " the Act"), having perpetual succession and a common seal with power to acquire, hold and dispose of property. The second respondent is the Association of Man-Made Industry, Bombay. The third respondent is the Tahsildar, Avanashi, Coimbatore, seeking to recover the alleged dues and the fourth respondent is the Union of India.

3. In order to provide the establishment of a Committee for ensuring the quality of textiles both for internal marketing and export purposes and the use of standard type of machinery, Parliament enacted the Textiles Committee Act, 1963 (41 of 1963), hereinafter called " the Act", which received the assent of the President on December 3, 1963. u/s 7(1) of the Act, the Committee is to have a fund called the " textiles fund " to which the moneys and fees as enumerated in Section 7(1)(a) to (d) are to be credited. Section 7(2) provides for the application of the moneys in the fund, viz.:

(a) meeting the pay and allowances of the officers and other employees of the Committee and other administrative expenses of the Committee;

(b) carrying out the purposes of this Act.

4. Section 11 authorises the Committee to direct an officer specially authorised in that behalf to examine the quality of textiles or the suitability of textile machinery for use at the time of manufacture and for submission of report to the Committee. Section 12 empowers the Committee to levy such fees as may be prescribed--

(a) for inspection and examination of textile machinery,

(b) for inspection and examination of textiles,

(c) for any other service which the Committee may render to the manufacturers of textiles and textile machinery.

5. Section 22 of the Act authorises the Central Government to make rules and the Government by its notification dated February 27, 1965, published the rules framed thereunder called the Textiles Committee Rules, 1965 (hereinafter referred to as "the rules"), which came into effect on February 27, 1965. Rule 21(1) of the rules framed u/s 22 of the Act prescribes the fee which the Committee is entitled to collect from 1st March, 1965, for inspection and examination of the textiles and textile machinery. The table extracted below shows the fee specified in column 3 of the table chargeable for inspection and examination of the textiles and textile machinery referred to in column 2 of the table.

S. No. Description of textiles and textile machinery Fee

1. Cotton cloth where the average count of yarn used in the cloth is less than 35s. 6 paise for every 100 square metres manufactured.
2. Cotton cloth where the average court of yarn used ia the cloth is 30s or finer. 10 paise f''or every 100 square metres manufactured
3. Woollen yarn. 2 paise per kg. manufactured.
4. Man-made cellulosic or non-cellulosic filament yarn. 2 paise per kg. manufactured.
5. Man-made cellulosic fibre cut to staple length 2 paise per kg. manufactured.
6. Textile machinery. 8 paise per Rs. 100 ad valorem on the ex-factory price of the machinery manufactured.

6. For the year 1965-66 (from March 1, 1965, to February 28, 1966) the first respondent-committee demanded from the petitioner-company payment of fees payable under the Act and the rules in respect of services alleged to have been rendered and the petitioner-company paid that amount. For the year 1966-67, viz., March 1, 1966, to February 28, 1967, the Committee similarly made a demand for payment of Rs. 78,433 as fees. The company declined to pay the amount on the ground that fees are payable only for the services rendered, that the first respondent did not render any service and that the second respondent-Association, Bombay, also advised them that fees need not be paid except for services rendered. The third respondent issued a notice to the petitioner-company stating that if the amount claimed is not paid, steps would be taken for recovery of the amount under the Revenue Recovery Act. The petitioner has filed the above writ petition out of which this appeal has arisen questioning the validity of the levy of fees and the threatened action by the third respondent.

7. In the affidavit in support of the writ petition the following main points were put forward questioning the levy :

(1) The Committee not having established standard qualities of textiles both for internal marketing and export purposes and also not having provided the standards for the manufacture and use of standard type of textile machinery is not entitled to levy fees for inspection of the textiles produced and further the levy is illegal when no inspection is made.

(2) The levy of fees to be valid should be in respect of services rendered and in the absence of any element of quid pro quo the levy will not be a fee, but would be in the nature of an excise duty levied under the Central Excises and Salt Act, 1944.

(3) The fees in respect of each class must be treated separately and must be commensurate to the expenditure for inspection involved in relation to each class, viz., (1) textiles for internal consumption, (2) textiles for export, and (3)

textile machinery. Fee should be fixed with an estimate of the total cost of inspection carried out for each of the separate categories and distributed among the manufacturers of each class.

8. In the circumstances, the petitioner prayed for the issue of a writ of prohibition prohibiting the first and third respondents from claiming the sum of Rs. 78,433 in pursuance of the third respondent's demand dated July 14, 1969.

9. The Secretary of the first respondent-Committee filed a counter affidavit setting out the background and the circumstances under which the Textiles Committee Act was enacted in 1963, which in substance is as follows : The second world war which gave unprecedented boom for the textile industry (sic) was unable to withstand the international competition which they had to face in foreign markets. The Government of India took steps with a view to safeguard the production and export of cotton textiles and, to ensure the efficiency of the cotton textile industry, promulgated "The Cotton Textiles Fund Ordinance, 1944 " establishing a " fund " for supervising the exports of cloth and yarn and for development of technical education, research and other matters in relation to the cotton textile industry. The Cotton Textiles Fund Committee was appointed to perform the various functions imposed under the Ordinance to improve the industry and meet the competition of foreign textiles in international market. The Ordinance promulgated in 1944 related to exports of cotton textiles only. And textiles such as wool, silk, art silk and other man-made fibre, fabrics and yarn and composite fibres and textiles were also entering the foreign market. It was under these circumstances that Parliament decided to re-enact the provisions of the said Ordinance and make the same applicable to all kinds of textiles, and, accordingly, the Textiles Committee Act, 1963 (41 of 1963), was enacted seeking to establish a Committee for ensuring quality of textiles and textile machinery and for matters connected therewith. The Secretary of the first respondent after explaining the various provisions contained in the said enactment and the rules made thereunder stated that the activities undertaken by the first respondent among others pursuant to the statutory provisions contained in the Act were :

- (a) Inspection,
- (b) Market research,
- (c) Textile machinery,
- (d) Testing facilities,
- (e) Publicity and propaganda, and
- (f) Collection of fees.

10. The further contention raised is that Section 12(1) of the said Act authorises the first respondent to levy such fees as may be prescribed by the Central Government for inspection and examination of textiles and textile machinery or for any other service which the first respondent may render to the manufacturers

of textiles and textile machinery. The Central Government in exercise of the powers conferred to it u/s 22 of the said Act, prescribed the rates of fees leviable under Rule 21 of the Textiles Committee Rules, 1965, leviable with effect from March 1, 1965, on various items of textiles and textile machinery. The rates of fees were revised with effect from June 1, 1965, by notification dated June 1, 1966, issued in that behalf. The fees levied and recovered are as under :

- (1) Manufacturers of cloth--on the entire quantity produced,
- (2) Manufacturers of woollen yarn and man-made fibre and filament yarn--on the quantity produced,
- (3) Cotton yarn--on quantity actually inspected,
- (4) Manufacturers of textile machinery--on the value of machinery manufactured.

11. In determining the rates- of fees the Central Government considered broadly the overall requirements with reference to the projected capital and revenue expenditure designed to render service to the textiles and textile machinery industries. A table showing the fees actually realised and the total expenditure incurred during the period from March 1, 1965, to March 31, 1971, is given below :

Period Fees realisable (in lakhs). Fees realised (in lakhs) Total expenditure on the inspectorates (in lakhs).

1-3-65 to 31-3-1970 233.99 163.45 Revenue 119.62

Capital 5.30

(Actuals)

Total 124.92

1-4-70 to 31-3-1971 50.88 32.56 Revenue 40.25

Capital 34.33

Total 75.18

Grand Total 290.87 196.02 200.10

12. The first respondent further stated that although a number of parties covered by Rule 21 of the Textiles Committee Rules, 1965, have paid the fees, some are in arrears from March 1, 1965, some paid the fees for some months and thereafter discontinued and that it has become necessary to take coercive steps to realise the arrears. The petitioner's contention that no service whatsoever has been rendered by the first respondent to the petitioner was denied and it was stated that the first respondent rendered services to the textile industry as a whole, that the petitioner and some of the persons similarly situate like the petitioner had applied from time to time for pre-shipment inspection of art silk and man-made fibre fabrics meant for export and that inspection was made by

the first respondent between March 1, 1965, to May 31, 1969, on their behalf. The first respondent further contended that the demand was made in accordance with the provisions of the Act and the rules framed thereunder, and, therefore, valid and payments in pursuance of the demand were equally valid, that service has been rendered to the industry as a whole, that it is not necessary for the first respondent to render service to each individual unit in proportion to the fee collected from it, that the levy is not arbitrary, that in determining the rate of fee, the requirements of the first respondent for rendering service to the textile industry in general and to the various constituent units have been taken into account, that the rate of fee expressed as percentage to cost of manufacture works out approximately to 0.1 per cent. in the case of collection of fees on production and approximately to 0.5 per cent. in the case of collection of fee on the quantity actually inspected, that the rate of fee prescribed is not disproportionate or unreasonable or excessive, that the fees collected are credited to the textiles fund under the Act and monies were spent out of those collections in respect of services rendered to the first respondent and as such the element of quid pro quo is present, assuming it to be necessary, that the fee imposed u/s 12(1) read with Rule 21 of the Act is quite in order, that the demand dated February 20, 1969, is valid, that the collection is legal and that the question of refund of the fees already collected does not arise.

13. The petitioner filed a reply-affidavit denying the various contentions put forward in the counter-affidavit and contending as follows : Section 4(1) of the Act particularises the functions of the Committee to ensure standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard types of textile machinery. Section 4(2) particularises the various functions which the Committee may take without prejudice to the generality of the provisions of Section 4(1) of the Act. The Committee has not laid down any standard specifications for production of textiles for internal consumption, but has laid down various restrictions and regulations for export. Section 12 of the Act authorises the Committee to prescribe fees,--

- (a) for inspection and examination of textiles,
- (b) for inspection and examination of textile machinery, and
- (c) for any other service which the Committee may render to the manufacturers of textiles and textile machinery.

14. Rule 21 has been framed without any reference to the cost of inspection which alone would be subject of the fees. By fixing fees in such a way as to exceed the expenditure of the Committee and without dealing with each item separately which alone is the scheme of the Act and the rules framed thereunder, the levy is illegal. Further, the textiles meant for internal consumption, textiles meant for export purposes and textile machinery have to be dealt with distinctly and separately and the levy of fees for inspection has to be provided under separate heads. The reference to the pre-shipment inspection of art silk and man-

made fibre fabrics is for export of the fabrics offered for export. The inspection fees for such fabrics have been paid separately to the Silk and Rayon Textile Export Promotion Council through the Textiles Committee, Coimbatore, and the rate of fees paid was 1/2 per cent. on 70% of the f.o.b. value. These fabrics which are exported are not manufactured by the petitioner, as the petitioner is producer of only rayon yarn and staple fibre, but they were purchased by him from other manufacturers to fulfil his export commitments in order to obtain import entitlements for pulp. The fabrics so purchased by the petitioner for export were inspected at the premises of the manufacturers themselves and after inspection those fabrics were directly exported from the premises of the manufacturers. The fees having already been paid to the Textiles Committee for the specific services, namely, for export, the first respondent is not entitled to demand fees on the entire production of rayon yarn and staple fibre manufactured by the petitioner which were never inspected, that the petitioner neither requested the Committee to inspect their production of rayon yarn and/or staple fibre, that the Committee's technical advice was not sought nor was the Committee consulted in respect of yarn manufactured by them, there being no export of yarn by the petitioner, and, consequently, the levy of the fee by the Committee on the entire production of rayon yarn and the staple fibre manufactured by the petitioner is illegal and ultra vires. In respect of export organisation by the Government of India for research and promotion of any particular industry, whether for internal purposes or for export or for both, the pattern of legislation varies with each project. In some cases the entire cost is borne by the Government of India and in some other cases finance is provided by the levy of a cess as and by way of export duty and excise duty, which is directly allocated to the fund of the organisation. The pattern of legislation under the Textiles Committee Act, 1963, is that funds are to be provided by the Government of India. In addition, fees are collected for specific services rendered. The fees authorised to be levied by the Act are specifically fees for inspection of textiles for quality control for which standards must first be laid down separately both for internal consumption and for exports. Further, fees commensurate with the expenditure for inspection in relation to each class, viz., (a) textiles for internal consumption, (b) textiles for export, and (c) textile machinery have to be charged separately and even assuming that fees for inspection are to be distributed generally, fees should be fixed for each of the categories and distributed among the manufacturers of that class. The fees levied and charged under the Act can only be for the specific services rendered. The petitioner not having exported any of its yarn or fibre is not liable to be charged on the basis of export of its yarn or fibre. Further, the reasonableness of the fees is not to be tested by its percentage to the cost of manufacture, but has to be correlated to the expenditure actually incurred on the particular services rendered.

15. The Union of India represented by its Secretary to the Ministry of Commerce, New Delhi, was sought to be impleaded as a party to the writ petition and they

were impleaded as a party. In the application for impleading the Union of India as a party to the writ petition the petitioner sought to raise an additional ground questioning the validity of the levy on the ground that the said levy being identical in nature with excise duty and that excise duty having already been levied and collected under the Central Excises and Salt Act, 1944, the legislature had no jurisdiction to levy any other amount in the garb of a fee.

16. The fourth respondent, the Union of India, filed a counter seeking to uphold the levy and contending that the fee levied under the Textiles Committee Act and the Rules framed thereunder cannot be treated as excise duty and pointing out the difference between the levy of excise duty on the production or manufacture of goods and the levy of the fee under the Textiles Committee Act in respect of services rendered and stating that the two different concepts are not identical and that there is no direct or indirect relationship between the fee leviable under the Central Excises and Salt Act, 1944, and the levy and collection of a fee under the Textiles Committee Act, 1963. The first respondent also filed an affidavit contending that the objection to the levy on the ground that the levy in question is identical with the levy under the Central Excises and Salt Act is untenable.

17. Palaniswamy J., who heard the writ petition, referred to the correspondence between the parties in regard to the levy of fees. The learned judge, in particular, referred to the letter of the Textiles Committee to the petitioner-company, dated January 9, 1967, and to the letter dated January 30, 1967, from the Association of the Man-Made Fibre Industry to the Inspecting Officer, Textiles Committee, as also to the letter dated March 23 1965, from the Chief Inspecting Officer, Textiles Committee, to (1) all mills with spinning plants, (2) the Silk and Rayon Textiles Export Promotion Council, Bombay, (3) the Joint Chief Controller of Imports and Exports, New Delhi, Bombay, Calcutta, Madras, and (4) all Mill Owners' Association among others, and came to the conclusion that standards have already been prescribed. Dealing with the objection to the levy of fees the learned judge came to the conclusion that various other services have been rendered to the exporters as also to the textile industry as a whole, namely, market research with a view to provide information in respect of market segments, channelling of merchandise and structure of consumer demand, as also the work done by the textile machinery inspection wing manned by technologists and mechanical engineers in regard to textile machinery and that it is not possible to compartmentalise the services separately in respect of each class or to particularise any specific service to any individual company. In the result, the levy of fees was upheld and the writ petition was dismissed. The present writ appeal has been filed against the said judgment.

18. Sri V. K. T. Chari, who appeared for the appellant, raised the following contentions:

(1) The Textiles Committee should first u/s 4 establish, adopt or recognise standard specifications and that an inspection can be made only thereafter making the person whose goods are inspected to pay a reasonable fee for such

inspection. No such standard specification having been made, the levy of fee is illegal.

(2) The levy of fee should be correlated to the services rendered and in the absence of the element of quid pro quo, the levy will not be a fee but an impost in the nature of an excise duty.

(3) Each of the three classes must be treated separately and the expenditure for inspection for each of the classes should be shown separately and fees for such inspection carried out and collected from each class separately.

19. Before dealing with the first contention, it is necessary to trace the prior history of the Government's control over the textile industry. The second world war gave a completely sheltered market for Indian textiles and created an unprecedented boom for the products and the industry was unable to withstand the severe international competition which they had to face in foreign markets with the return of the normal conditions after the war. The Government of India with a view to develop technical education, research and other matters in relation to the cotton textile industry proposed to levy a duty of customs on exports of cotton and yarn and to establish a "fund" therefore to improve the quality of textiles manufactured for export to compete in the international market and also for internal consumption and for standardisation of textile machinery. It was with that object that the Cotton Textiles Fund Ordinance, 1944 dated 8th July, 1944, was originally promulgated. Under the said Ordinance a duty of customs was levied on all cloth and yarn manufactured in India and exported from British India at the rate of 3% of the maximum ex-factory price. Under the same Ordinance the Central Government constituted a Committee called the Cotton Textiles Fund Committee to administer the fund in accordance with the provisions of the Ordinance. The Committee performed their functions and did very useful work for the period from 1945 to 1964 for the improvement of the said industry and to enable it to meet the competition of foreign textiles in the international market. The Ordinance as originally promulgated dealt with the export of cotton textiles only, but more and more items of textiles, such as wool, silk, art silk, and other man-made fibre, fabrics and yarn were included and it became necessary for the Government of India to create a homogenous entity to look after and promote the improvement and provide safeguards for all such textiles items. It further became necessary to improve the standards in such industry, as composite fibres and textiles were produced and many units engaged in production of such synthetics and other materials were also engaged in the cotton textile industry. The establishment of merchandise market and standards of quality of goods to be exported out of India or transported from one State to another is covered by entry 49 and entry 51 of List I of the Seventh Schedule to the Constitution. It is with the object of establishing standard quality of goods, improving the quality to compete in the international market and for making available quality goods for home consumption and further standardisation of textile machinery that Parliament passed the Textiles

Cotton Textiles Fund Ordinance, 1944. In Section 3 of the Act a committee known as the Textile Committee, a body corporate having perpetual succession and a common seal, was constituted. Section 4 dealt with the functions of the Committee. Section 4(1) provides that the functions of the Committee shall generally be to ensure by such measures, as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard types of textile machinery. Section 4(2) particularises the functions of the Committee without prejudice to the generality of the provisions of Section 4(1). Section 5 authorises the Committee to exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act. Section 6 provided that for the purpose of enabling the Committee to discharge its functions under the Act, the Central Government may, after the appropriation, pay to the Committee in each financial year such sums of money as the Government considers necessary by way of grant, loan or otherwise. u/s 7 a fund was constituted called the textiles fund, to which,--

- (1) all moneys to the credit of cotton textiles fund established under the Ordinance shall stand transferred,
- (2) the grant made by the Central Government u/s 6,
- (3) all fees and other charges levied under the Act,
- (4) all moneys received by the Committee by way of grant, gift, donation, contribution, transfer or otherwise.

20. Sub-clause (2) to Section 7 provides that the monies in the fund shall be applied for, (a) meeting the pay and allowances of the officers and other employees of the Committee and other administrative expenses of the Committee, (b) carrying out the purposes of this Act. Section 11 provides for the Committee to direct an officer specially authorised in that behalf to examine the quality of textiles or the suitability of textile machinery for use at the time of manufacture and submit a report to the Committee. The powers of such officer authorised are enumerated in Sub-clause (2) and Sub-clause (3) provides for the Committee rendering such advice as may be necessary, as it may deem fit, on the receipt of the report referred to in Sub-section (2). Section 12 deals with levy of fees for inspection and examination and for any sum payable to the Committee being recoverable as arrears of land revenue. Section 17 provides for the Committee prohibiting exports as also internal marketing of textiles and textile machinery where the Committee finds that any textile or textile machinery do not conform to the standards laid down by the Committee and for penalty for contravention. Section 22 gives power to the Central Government to make rules for carrying out the purposes of the Act. Under Sub-clause 2(c) the Central Government is authorised to prescribe a scale of fees that may be levied for inspection and examination u/s 12. The above said Act repealed the Cotton Textiles Fund Ordinance, 1944.

21. In exercise of the powers conferred on the Central Government u/s 22 of the Act, rule 21 of the Textiles Committee Rules, 1966, have been framed prescribing the rate of fees leviable with effect from 1st March, 1965. The rates were Subsequently revised with effect from June 1, 1966, by notification dated June 1, 1966, issued in that behalf. The fees at present levied and recovered are as under:

- (1) Manufacturers of cloth--on the entire quantity produced.
- (2) Manufacturers of woollen yarn and man-made fibre and filament yarn--on the quantity produced.
- (3) Cotton yarn--on the quality actually inspected.
- (4) Manufacturers of textile machinery--on the value of the machinery manufactured.

22. In this connection our attention was drawn to the Indian Standards Institution (Certification Marks) Act, 1952. As a pre-requisite to the establishment of a healthy trade, both internal and external, standardisation of products in respect of quality which would compare very favourably with the established makes of foreign products was considered essential. It was with that object that the Government of India set up the Indian Standards Institution in September, 1946, whose functions were :

- (1) to prepare and promote the general adoption of standards on national and international basis,
- (2) to promote standardisation, quality, control and simplification in industry,
- (3) to provide for registration of standardisation marks applicable to products, commodities, etc.,
- (4) to provide or arrange facilities for the examination and testing of commodities, etc.

23. The Indian Standards Institution have accordingly finalised the Indian standard specifications for most of the commodities and manufactured articles which are usually exported to overseas countries and also in the home markets. The certification marks are impressed on the commodities amounting to an assurance to the purchaser that the goods or services so certified have been inspected, tested and certified by some agency of competence and that they may be purchased. u/s 3 of the said Act, the institution has power to make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the standard mark has been used conforms to the Indian standard.

24. In dealing with continuous filament viscose rayon yarn and acetate yarn, bright and dull, the Indian Standards Institution has prescribed a method of grading and the marking of grade is made on each cone, cake and hank bundles

and on the cases, carton (or bale), containing the material.

25. On the first question raised, Sri V. K. T. Chari referred to the above standardisation procedure to maintain quality control and contended that unless standards have been fixed first for export as also for internal consumption in relation to textile yarn filament viscose, rayon yarn, acetate yarn, staple fibre, etc., as also standard textile machinery by the Committee under the Textiles Committee Act, 1963, the inspection contemplated u/s 11 of the Act and the levy of fee therefore u/s 12 will not arise. From the materials on record it is clear that no standards have been fixed. The Committee's letter dated January 9, 1967, clearly showing that no standards have been fixed for export or internal consumption in respect of viscose rayon yarn and acetate yarn produced by the appellant and no inspection of the appellant's goods was ever conducted.

26. The learned Advocate-General, who appeared for the first respondent, while stating that so far as the internal consumption is concerned no standards had been laid down under the Textiles Committee Act, 1963, contended that in regard to export, standards have been fixed, that inspection is being done, and that there is no need for fixing of standards so far as the internal consumption is concerned. In dealing with this aspect it is necessary for us to refer to some of the documents filed. Before dealing with the documents, we shall refer to one other aspect in regard to export trade.

27. With a view to promoting export of manufactured goods depending upon the facility with which the exporter or the manufacturer can procure basic raw materials required in the manufacture, a scheme has been devised for the grant of special import licences to replace the imported raw material content of the exported product or to provide an inducement for larger exports. That scheme is known as Export Promotion Scheme. The details of the scheme are set out in Appendix 23 of the Import Trade Control Policy by the Government of India, Ministry of Commerce and Industry, for the licensing period October, 1961--March, 1962. Our attention was drawn to trade notices, one of them dated October 5, 1964, dealing with the incentive scheme for ready-made garments or other made-up articles manufactured from art silk and synthetic fibre and yarn. The said public notice provides that all registered exporters will be eligible for the grant of incentives against the exports of ready-made garments and other made-up articles manufactured entirely from art silk and/or synthetic fibre and yarn and that the import licences for the following items will be granted to the extent indicated against each :

(i) Art silk and/or other synthetic yarn or synthetic fibres--50% of f.o.b. value of goods exported.

(ii) Machinery equipment and spares--15% of the f. o. b. value of goods exported for permissible types of machinery equipment and spares as may be approved by the Textile Commissioner.

(iii) Embellishments, viz., buttons, elastic/plastic webbing, zip fasteners, buckles

and trimmings--up to 5% of the f. o. b. value of goods exported.

28. The scheme also provides for pre-shipment inspection in respect of readymade garments and other made-up articles manufactured from art silk/synthetic yarn. The scheme also provides for inspection, organisation, issuing a certificate certifying the quantity and entitlement of incentives for the lot offered for inspection subject to the goods being actually exported. It is thus seen that the above scheme relates to the grant of incentives against exports of ready-made garments. It is not necessary that these garments should have been manufactured by the appellant or persons similarly situate like him. The appellant has taken advantage of the above scheme and has exported ready-made garments after inspection thereof and as a result of such export he has been given a certificate certifying the quantity and entitlement of incentives against the goods exported.

29. Again, the second notice dated March 20, 1965, relating to pre-shipment in respect of viscose staple fibre yarn, cloth or garments or other ready-made materials meant for export under the Export Promotion Scheme was referred to. In both notices the issue of pre-shipment certificate in respect of the yarn or ready-made garments exported by them are mentioned. These notices show that the inspection conducted by them is only in connection with the exporter's claim for import entitlement and that the said inspection has nothing to do with the yarn or viscose staple fibre yarn manufactured by the appellant. We may observe that this Scheme has nothing to do with the functions of the Committee constituted under the Textiles Committee Act, 1963 (Act No. 41 of 1963).

30. We shall now refer to a few of the letters exchanged between the appellant and the first respondent on which the learned Advocate-General placed reliance. On June 27, 1966, the appellant addressed a letter to the Assistant Inspecting Officer of the Textiles Committee, Coimbatore, dealing with the Export Promotion Scheme relating to silk and art silk fabrics and referring to the inspection charges on fabrics exported. On June 29, 1966, the Assistant Inspecting Officer, Coimbatore, addressed a letter to the Secretary, Silk & Rayon Textiles Export Promotion Council, Bombay, with a copy to the appellant enclosing a cheque received from the appellant on behalf of the State Trading Corporation towards the inspection charges for grey spun rayon fabric exported to Italy. The learned Advocate-General next referred to similar correspondence between the parties relating to this scheme and contended that the carrying out of the inspection thereunder is sufficient to attract the levy under the provisions of Section 12 of the Act and Rule 21 of the Textiles Committee Rules so as to authorise levy on the textile yarn manufactured by the appellant. The further contention of the learned Advocate-General is that the entire quantity manufactured by the appellant is thereby liable to pay a fee u/s 12 read with Rule 21 of the Rules. In this connection our attention was drawn to the entire correspondence between the appellant and the first respondent between May 19, 1965, and February 20, 1969. Therein, the first respondent claimed that the fees are chargeable on the

entire production figures of the appellant and the appellant denied the claim on the ground that no inspection of yarn produced by them was ever made; that the pre-shipment inspection relied upon by the first respondent did not relate to their goods but that it related to goods purchased by them in open market and exported for enabling them to obtain import entitlement and that such inspection is not a service rendered to the appellant under the Act, and, consequently, no fee is chargeable on their production. Sri V. K. T. Chari contended that no part of the goods manufactured by them having been inspected under the Act, that no part of such goods having been exported, that the goods tendered for export under the import entitlement scheme having been goods purchased by the appellant in open market for export and the inspection of such goods having nothing to do with the goods manufactured by the appellant, the levy of fees u/s 12 of the Act and under Rule 21 of the Textiles Committee Rules is invalid. Reference in this connection was made to Section 17 of the Act prohibiting exports and internal marketing of textiles and textile machinery. Section 17 itself shows that standards have to be laid down both for internal marketing and export and that a contravention of such standard so laid down in regard to any textiles or textile machinery is made an offence punishable u/s 17(2) of the Act.

31. On January 9, 1967, the Committee issued a public notice addressed to the appellant among others similarly situate like them, enclosing a questionnaire requesting suggestions in formulating inspection standards and promotion level prior to distribution of the product to the different consuming industries and calling upon them to send their replies on or before January 30, 1967. The second respondent in reply to the questionnaire pointed out that in respect of viscose filament yarn, in particular, there was already an I.S.I. standard and another standard in respect of the same product will create confusion and create hardship for the industry. The letter on behalf of the first respondent dated January 9, 1967, and the second respondent's letter dated January 30, 1967, amply establish that no standards have been fixed in respect of filament viscose rayon yarn and acetate yarn with which we are concerned in the above writ appeal. Even in the counter-affidavit of the first respondent it is not asserted that any standards have been fixed in regard to this product. On the other hand, the Committee has in exercise of the powers conferred by Section 23 read with Clauses (c), (d) and (e) of Sub-section (2) of Section 4 of the Act framed regulations dated November 30, 1972, called the Man-Made Fibre Fabrics (Inspection) Regulations, 1972, laying down details of inspection criteria, random inspection for quality, rejection criteria, etc., in respect of filament viscose yarn produced by the textile manufacturers. We are, therefore, of opinion that for the period in question, the first respondent did not lay down standards or prescribe the details regarding methods of inspection and, consequently, we are of opinion that the levy of fees on the entire production of the appellant is illegal and without jurisdiction.

32. The second contention put forward by the learned counsel is that there is no element of quid pro quo and, therefore, the levy in question is not a fee, but is in

the nature of an excise duty. It is unnecessary to refer to the series of decisions of the Supreme Court formulating the distinction between a fee and a tax. But, we shall only give a reference to some of the decided cases. They are as follows:

The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., Ratilal Panachand Gandhi Vs. The State of Bombay and Others, , Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, , Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others, and Lakhan Lal and Others etc. Vs. The State of Bihar and Others etc., Sri V.K.T. Chari next referred to the table of fees specified under Rule 21 of the Rules and contended that the levy in question based on a square metre or the kilogram as the unit can only amount to excise duty and not a fee for the services rendered and in that connection referred to the judgment of this court in P.P. Kutti Keya and Others Vs. The State of Madras and Others, which is a case relating to the validity of certain sections of the Madras Commercial Crops Markets Act, 1933, and the Rules framed thereunder. In that case Section 11 of the Madras Commercial Crops Markets Act, 1933, empowering the market committee to levy fees on the notified commercial crops bought and sold in the notified area at such rates as it may determine and Section 11-A providing for the levy of subscription for collection and disseminating marketing information and Section 13 providing that the fund of the market committee to be utilised for acquiring a site for the market, constructing a building, maintaining the market and meeting the expenses of election to the market committee and so on showed that the levy u/s 11 was held to be in the nature of a tax and not a fee for the services rendered. Venkatarama Iyer J., speaking for the court, at page 133, in Kutti Keya v. State of Madras, observed as follows :

" This contention is, in our opinion, well founded. A fee is what is charged for services rendered by the person who charges it. When the State, for example, introduces licensing, it is entitled to charge for the expenses incurred in maintaining an establishment for licensing and that it is properly termed a fee. The fee prescribed in Rule 28(3) falls under this category and is perfectly legitimate. But, the levy u/s 11 is for no services rendered. It is really a tax levied for raising funds for constructing the market."

33. Placing reliance on these observations Sri V.K.T. Chari contended that the same principle should apply to the facts of the present case. We have already referred to Section 7 of the Act and the various components of the textiles fund. Fees and other charges levied under the Act is one of the components and the main source for it is inspection and examination under Sections 11 and 12 of the Act. Section 12 consists of,--

- (a) for inspection and examination of textiles,
- (b) for inspection and examination of textile machinery, and
- (c) for any other service which the Committee may render to the manufacturers of textiles and textile machinery.

34. Section 7(b) of the Act states that the moneys in the fund shall be applied to carrying out the purposes of the Act apart from meeting the pay and allowances of officials and staff u/s 7(a). The reasonableness of the fee charged u/s 12 of the Act has, therefore, to be considered taking into account all the services rendered by the Committee. In fact several functions of the Committee are enumerated u/s 4 of the Act, namely, the establishment of testing houses for the same purpose, the levy of fees for inspection and examination of textiles and the textile machinery or for any other service which the Committee could render to the manufacturers of textiles and textile machinery, are all contemplated. The Committee is also expected to advise on all matters relating to the development of textile industry and the production of textile machinery. The laboratory and necessary apparatus and sophisticated instruments are necessary for the purpose. The testing houses should be fully equipped with modern appliances and instruments, the laboratory work and test operations cannot be carried on in open air or in tents and buildings are indispensable for all those purposes. Buildings should be either be taken on rent or should be built. The payment of rent annually on buildings taken on hire will result in annual revenue expenditure and unless the laboratories are well equipped in buildings owned by the Committee, the testing operations cannot be successfully carried on and capital investment for owning buildings is an absolute necessity in these days, as threats of eviction will cause considerable loss. Unlike the case of the market committee under the Madras Commercial Crops Markets Act, 1933, there are several sources constituting the textiles fund under the Act as observed by us earlier,--

- (a) monies transferred to it u/s 24(2)(a) of the Act,
- (b) all monies paid by the Central Government u/s 6 of the Act,
- (c) all fees and charges levied under the Act, and
- (d) all monies received by the Committee by way of grant, gift, donation, contribution, transfer or otherwise.

35. We are of opinion that the levy of fees for inspection u/s 12 of the Act should be confined to inspection and examination and any other service referred to in Section 12(1)(c) of the Act cannot take in other kinds of services but should be confined to services akin to inspection and examination. In fact the heading of the section itself, viz., levy of fees for inspection and examination, confirms our view. The textiles fund has other sources of contribution and the money in the fund is available for carrying out the purposes of the Act. (Section 7(2)(b) of the Act). The expenses for any other service which the Committee may render to the manufacturers of textiles and textile machinery other than the levy of fees for inspection and examination and other services akin thereto has to be met from the sources of contribution falling u/s 7(1)(a), (b) and (d) of the Act.

36. Lastly, Mr. V.K.T. Chari contended that the fees in respect of each class must be treated separately and must be commensurate with the expenditure for inspection in relation, to that class. That contention in the abstract is acceptable,

but taking into account the varieties of services rendered by the Committee, viz., the common testing house being used for testing all varieties of textiles and textile machinery and the same officers being employed for inspection of all kinds of textiles and textile machinery, we consider that it would be impracticable to treat each class separately and collect fees for services rendered to each of the classes separately and spend the moneys collected from each class on the same class. It is not clear from the figures of collections and expenditure from the inspection and examination set out above that any capital expenditure, such as construction of a laboratory, establishment of an office, etc., have been included under the head "expenditure". The collection of fees, in our opinion, must be correlated to the services rendered. We are of opinion that the department's treatment of the three classes together and not dealing with each of them separately cannot be said to be illegal in the circumstances of the case.

37. However, in the view taken by us on the first question, viz., that the levy and collection of fees prior to fixation of standards is illegal, we allow the appeal and issue a writ of prohibition prohibiting the respondents from collecting fees before standards are established. The appellant will be entitled to its costs, which we fix at Rs. 500.