(2013) 05 RAJ CK 0203

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8389 of 2012

Sulzer Processors Pvt. Ltd. APPELLANT

Vs

Textile Committee, Cess Appellate Tribunal and Others RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:
Textiles Committee Act, 1963 — Section 5A(1)

Citation : AIR 2013 Raj 147

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; Ravi Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This writ petition has been filed by the petitioner against the order dated 6-3-2012 of The Textile Committee Cess Appellate Tribunal whereby the learned Tribunal upheld the levy of cess on the petitioner-Sulzer Processors Pvt. Ltd. under the provisions of Textile Committee Act, 1963. The Tribunal in its impugned order dated 9-2-2009 relied upon the decision of Hon''ble Supreme Court in the case of Ujagar Prints Vs. Union of India (UOI) and Others etc. etc., in which it has been held that the processing activities of bleaching, dyeing, printing or finishing etc. amounts to manufacture of textile and, therefore, it would be fall within the mischief of charging provision of Section 5A(1) of the Textiles Committee Act, 1963.

2. The learned Tribunal distinguished the earlier decision of the Hon''ble Supreme Court in the case of Aditya Mills Ltd. Vs. Union of India (UOI), while upholding the contention of learned counsel for the respondent-Revenue. The relevant paras 4 to 6 of the Tribunal''s order are quoted below for ready reference:

4. Shri Javed Ansari, Ld. Counsel appears for the respondent and contradicts the stand of the Appellants by citing the ruling of the Hon''ble Apex Court in the case of Ujagar Prints Vs. Union of India (UOI) and Others etc. etc., Further, the Ld.

Counsel also files a Judgment of the Supreme Court in the case of Aditya Mills Ltd. Vs. Union of India (UOI), It is further argued that there is no double taxation.

5. After hearing the parries and on perusal of the case laws, I find that M/s. Ujagar Prints case holds the field as the Hon''ble Apex Court has held that processing like bleaching, dyeing, printing or finishing, etc. amounts to manufacture and, therefore, the processing activities carried out by the Appellant amount to manufacture of textile and, therefore, liable to pay the cess in terms of Section 5A(1) of the Textiles Committee Act. The Judgment cited by the Ld. Counsel for the Appellant will be of no consequence in view of the Supreme Court Judgment. Before the issuance of Demand Notice, a show-cause notice was also issued on 24-11-2003, therefore, the contention of the Ld. Counsel for the Appellants in this regard is not tenable.

6. In view, of the above discussion, the issuance of Demand Notice cannot be faulted as it is issued in accordance with law and sustainable. There is no merit in the Appeal and hence it is dismissed, however, without costs.

3. Mr. Ravi Bhansali, learned counsel for the respondents also submitted that this Court has already dismissed one such similar writ petition in the case of Sangum (India) Ltd. v. The Textile Committee Cess Appellate Tribunal & Ors. (SBCWP No. 747/2009, decided on 9-11-2011) in the following terms:-- 6. From the perusal of the impugned order of the learned Appellate Tribunal, it does not appear that the petitioner-company made any argument or contention before the said Tribunal that notwithstanding the demand of cess in question, the petitioner was not liable to pay the same nor any such document showing such payment of cess ''under protest'' has been placed on record. On the other hand, the Revenue''s counsel relied upon the Circular dated 14-11-1984, issued by the Ministry of Textiles, Government of India, wherein it was clarified that textiles (including dyed, printed and otherwise), was liable to pay in respect of such manufacturing by the petitioner-Company. The Revenue also relied upon the Supreme Court decision in the case of Ujagar Prints Vs. Union of India (UOI) and Others etc. etc., wherein the Apex Court has held that process of bleaching, dyeing, printing, sizing, shrinking proofing, etc. of textile amount to manufacture. The said judgment of the Constitution Bench of Supreme Court relied upon by the Revenue was a reason on the basis of which the Tribunal upheld the said levy further relying upon factum that the petitioner itself in the meanwhile had paid cess in question without a demur and, therefore, the appeal of the petitioner had no merit.

7. Before this Court also, the petitioner has not produced any document like memo of appeal, written submissions before the Tribunal or even receipts showing such payment of cess made under protest to even prima facie satisfy this Court that such payment of cess was made under protest reserving petitioner Industry''s right to challenge the levy thereof. In the face of these circumstances, nothing but the inference of acquiescence of the petitioner company to its liability to pay such cess under the provisions of Act of 1963 can

be drawn.

8. In the opinion of this Court, the Appellate Tribunal was justified in rejecting the appeal of the petitioner company and there is no force in this writ petition. The writ petition is accordingly dismissed. No costs.

The controversy involved in the present writ petition is no more res integra in view of decision of Hon''ble Supreme Court''s decision, this Court finds no force in the present writ petition and no interference with the impugned order of the Tribunal is called for. The present writ petition is, accordingly, dismissed.

