
(2014) 04 AHC CK 0230
In the Allahabad High Court
Case No : C.M.W.P. No. 1757 of 2006

Threads (India) Ltd.	Vs	APPELLANT
Textiles Committee		RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Textiles Committee Act, 1963 — Section 11, 12, 2(f), 22, 3

Citation : (2014) 105 ALR 182

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ashok Trivedi, Advocate for the Appellant; A. Bhanot and A. Nigam, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri. Ashok Trivedi, learned Counsel for the petitioner and Sri. Ajay Bhanot, learned Counsel for the respondents. This writ petition has arisen from proceedings relating to Cess payable to respondents No. 1 and 2 under Textile Committee Act, 1963 (hereinafter referred to as "Act, 1963") and demand issued by respondents No. 1 and 2 accordingly.

2. The facts, in brief, giving rise to present dispute are as under.

3. Act, 1963 has been enacted by Parliament so as to provide for establishment of a Committee for ensuring quality of textiles and textile machinery and for matters connected therewith.

4. The two terms i.e., "Textile Machinery" and "Textile", which may be relevant for the case in hand, are defined in section 2(f) and (g) of Act, 1963, and reads as under:

(f) "textile machinery" means the equipment employed directly or indirectly for the processing of textile fibre into yarn and for the manufacture of fabric therefrom by weaving or knitting and includes equipment used either wholly or

partly for the finishing, folding, or packing of textiles.

(g) "textile" 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 fibre

5. The petitioner M/s. Threads (India) Ltd. had its industrial unit at D-3/A, Panki Industrial Estate, Kanpur and was manufacturing/producing "Sewing Thread" from the process of doubling and multiplying "Yarn", purchased from Spinning Mills, through their depots and dealers.

6. It is said that petitioner was liable to pay cess duty of excise, which he failed, and, therefore, Textile Committee issued notice of demand under Rule 7 of Textile Committee (Cess) Rules, 1975, copies whereof have been filed as Annexure 11 to 17 to the writ petition.

7. Aggrieved thereto, petitioner preferred appeal before Tribunal constituted u/s 5B of Act, 1963, but it has also dismissed appeals vide order dated 25.7.2006.

8. The Tribunal considered following two issues:

(i) Whether under the Act, cess is leviable on sewing thread manufactured from yarn?

(ii) Whether the appellants not being a spinning mill are exempted from paying cess under the Act?

Both the issues have been decided against petitioner and that is how, all its appeals have been dismissed. Hence this writ petition.

9. Sri. Ashok Trivedi, learned Counsel for the petitioner contended that, firstly, no cess is leviable from petitioner; and, secondly, there is no order of assessment made by Textile Committee after following the procedure laid down under statute and therefore, notice of demand is patently illegal and without jurisdiction.

10. Per contra, Sri. Bhanot, learned Counsel appearing for respondents 1 and 2 submitted that notice of demand itself is an order of assessment and secondly, that the aforesaid issue was not raised before Tribunal, therefore, cannot be allowed to be raised for the first time before this Court. He also submitted that petitioner is producer of yarn, which comes within definition of "textile", therefore is liable to pay "cess" and the impugned orders warrant no interference.

11. The applicability of provisions relating to "cess" as also procedure need be

observed by Committee for charging "cess" from those who are within the ambit of statute and liable to pay "cess", are the basic questions up for consideration before this Court.

12. The statute is a welfare legislation enacted with an objective of constituting a statutory body conferring wide powers upon him so that it may look into various requirements for development of textile industry and promotion of textile export. On a retrospect of Act, 1963, I find that broadly, it goes to second world war era, which gave a complete sheltered market for Indian Textiles. The Second world war resulted in creation of an unprecedented boom for the products of Indian Textile. However, for a good number of reasons with variety, Indian Textile market finds it difficult to withstand severe international competition which it had to face in foreign markets, after normalcy return with the end of war. The Government of India took steps initially to arrest crisis by adopting measures to safeguard market and export of cotton textiles and also to ensure efficiency of Cotton Textile Industry. It enacted "Cotton Textiles Fund Ordinance, 1944" for establishment of Cotton Textile Fund and also for constitution of a Committee to administer the fund. The fund was established for supervising exports of cloth and yarn and also for development of technical education, research etc. in the matters relating to Cotton Textile Industry. The Committee appointed as a body to perform various functions imposed under Ordinance, 1944 did very useful work during the period from 1945 to 1964. It largely helped in improvement of Cotton Textile Industry and also supported to meet competition of foreign textiles in international market. As a result thereof, textile items like wool, silk, art silk and other man-made fibre fabrics and yarn started finding their way into international market, progressively increased in quantities. Subsequently, with the induction of some other countries like Japan, China at a larger scale, add to make competition more difficult in international market. The manufacturers as also Government felt necessity of an independent body for ingenious textile machinery. A Commission i.e., tariff commission was constituted, which made its recommendation in 1960 that adequate arrangements should be made for impartial investigation of all complaints from consuming industries about quality of indigenous products and for keeping a continuous watch over the progress of Textile machinery as a whole. The Ordinance 1944 was found lacking several specific provisions in this regard.

13. The Parliament then intervened by enacting Act, 1963, which received assent of President on 3.12.1963. While earlier ordinance restricted functions of the Committee with regard to cloth and yam only, Act, 1963, on the contrary, had extensive provisions applicable to cotton, wool, silk, artificial fibre or silk. Meaning thereby, it was made applicable to all textiles including all synthetic fibres i.e., rayon yarn, staple fibre, nylon yarn, man-made fibre, commonly known as artificial silk etc.

14. The Act, 1963 contemplates establishment of a Textile Committee by Central Government vide section 3 thereof. The functions of Committee have been

detailed in section 4. Basically, it includes role of Committee to ensure to take such measures, as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and manufacture and use of standard type of textile machinery. Section 7 talks of constitution of "Fund" called "Textile Fund". The corpus of "Fund" would come from "Fees", required under Act, 1963. The Fund is to be consumed for pay and allowances of officers and employees of Committee, other administrative expenses and for carrying out purposes of the Act.

15. For effective discharge of duties, Committee has been conferred wide supervisory and investigation powers, inasmuch as, section 11 confers power of inspection upon Committee and section 12 talks of fee, which Committee levies for inspection and examination of textiles as well as textile machinery etc. The statute also contemplates that "fee", payable to Committee in case of default, may be recovered as arrears of land revenue. Section 22 confers power to frame rules upon Central Government and in pursuance thereto, Central Government made Textile Committee Rules, 1965.

16. By Act No. 51 of 1973, a new provision namely section 5A was introduced, which provided for imposition of "cess" in place of "fee". With the introduction of cess, section 12 was amended so as to provide that no fee in respect of an inspection and examination of textiles may not be leviable where a duty of excise is leviable under Act, 1963. It thus goes beyond doubt that a compulsory levy in the form of cess was introduced in Act, 1963 by Act No. 51 of 1973. An inbuilt procedure has been laid down under the statute to fix liability of payment of cess and the amount thereof. Section 5A(3) provides that duty of excise levied under this sub-section shall be levied by Committee in accordance with rules made in this behalf. Sub-section (5) further says that, for the purpose of enabling the committee to assess amount of duty or excise levied under sub section (1), the Committee shall fix period in respect of which assessment shall be made and places an obligation upon manufacturer to furnish a return within a prescribed period. Sub-section (6) provides that if manufacturer furnishes return, which the Committee has reason to believe that it is incorrect or defective or manufacturer fails to furnish return whatsoever, Committee may assess the amount of duty of excise in such a manner as may be prescribed. Therefore, for the purposes of assessment and its procedure, this Court has to look into the rules framed u/s 22 of Act, 1963.

17. For the purpose of cess, rules have been framed by Government of India vide notification dated 31.3.1975 titled as "Textiles Committee (Cess) Rules, 1975 (hereinafter referred to as "Rules, 1975").

18. Rule 2(b) of Rules, 1975 defines "Assessing Officer" and reads as under:

"Assessing Officer" means an officer appointed by the Committee for the purpose of assessing the amount of cess.

19. Rule 6 thereof provided that an Assessing Officer shall assess the amount of

cess payable by each manufacturer for each quarter. It reads as under:

Assessing Officer of cess.--(1) The Assessing Officer shall assess the amount of the cess payable by each manufacturer for each quarters on the basis of the data furnished in monthly returns referred to in Rule 4.

20. Rule 7 then provides that for realisation of amount assessed by Assessing Authority under Rule 6, the Committee shall issue a notice of demand. For ready reference, Rule 7 is also reproduced as under:

Notice of demand etc.-

(1) The Committee shall issue a notice of demand to the manufacturer for payment of the cess assessed under Rule 6.

(2) The manufacturer shall pay to the Committee the amount of cess as demanded by a crossed cheque if he is stationed in Bombay and by crossed Demand Draft in case he is stationed elsewhere, within one month from the date on which he receives such notice from the Committee.

(3) For the purpose of encashment of the crossed cheques and crossed Demand Draft received under sub-rule (2) the Committee shall open a separate account in a Scheduled Bank.

21. When the return is not furnished or furnished incorrectly, the manner in which assessment shall be made by Assessing Authority, procedure has been prescribed under Rule 8, which reads as under:

Assessment when return is not furnished or furnished incorrectly etc.-- If any manufacturer fails to furnish the return referred to in rule 4 within the period specified therein, or furnishes a return which the Committee has reason to believe is incorrect or defective, the Assessing Officer may, after giving the manufacturer an opportunity of being heard, assess the amount of cess on the basis of figures obtained from the Central Excise Department or on the basis of the average of the cess levied during the previous two quarters immediately proceeding the quarters for which assessment is being made.

22. A reading of section 5A of Act, 1963 with Rule 6, 7 and 8 of Rules, 1975, leaves no manner of doubt that before issuing a notice of demand, Assessing Officer has to make an assessment so as to crystallize the amount of cess, which is to be paid by manufacturer. In absence of any such assessment, question of sending notice of demand does not arise. Process of assessment includes compliance of principle of audi alteram partem i.e., a minimum opportunity of hearing to the manufacturer. The provision of appeal contemplated in the Act itself shows that process of assessment is a quasi judicial proceedings and therefore, it has to be consistent with principles of natural justice.

23. In the present case, as admitted by respondents, they did not follow any such procedure. No notice was issued so as to give opportunity of hearing to the petitioner and no assessment has been made by Assessing Officer, under Rule 6

of Rules, 1975. In absence of any assessment, issuance of demand notice also does not arise. The impugned notices of demand are therefore patently illegal and without jurisdiction.

24. It is virtually an admitted case of respondents that no assessment in the case in hand has been made by Assessing Officer and none has been placed on record. During course of argument, learned Counsel for the respondents conceded to this aspect that there is no assessment made by Assessing Officer in the case in hand and he tried to read notice of demand itself construing assessment. Obviously, assessment and notice of demand are two different documents, as is evident from a bare reading of Rules 6 and 7 of Rules, 1975.

25. In the result, the writ petition is allowed. The impugned order dated 25.7.2006 and also notice of recovery dated 27.10.2006 (Annexures 34 and 35 to the writ petition) are hereby quashed. The petitioner shall also be entitled to cost, which I quantify to Rs. 20,000/-.