

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6663 OF 2008
(Arising out of S.L.P.(C) No.10272/2007)

Yashwant Co-op. Processors Ltd. Etc.

...Appellant(s)

Versus

Union of India & Ors.

...Respondent(s)

ORDER

Leave granted.

2. Appellants claim that they are engaged in the business activity of bleaching, dyeing and processing of grey fabrics. They claim that such grey fabrics are supplied to them by power loom industries for job-work. They were called upon to furnish Return in Form A and Form B of Textiles Committee (Cess) Rules, 1975 on the basis that they undertook work of manufacturing, that what they (appellants) called as job-work was in fact a process of manufacturing and, consequently, they (appellants) were liable to pay cess under the provisions of the Textiles Committee (Cess) Act, 1963.

3. Therefore, amongst several questions, which arises for determination, the main question is: whether the process undertaken by the appellants constituted manufacture or processing, whether the

appellants were job-workers or manufacturers and whether, consequently, the appellants were liable to pay cess under the Textiles Committee (Cess) Act read with Textiles Committee (Cess) Rules? It may also be mentioned that the method of quantification and liability also arises for determination. Consequently, the meaning of the words “value of textiles” used in the Act/Rules is also required to be decided.

4. Before coming to the impugned judgment, we may state that the above questions arose before the Bombay High Court in a batch of writ petitions, whose particulars are given in Chart-I hereinbelow, which writ petitions came to be disposed of by the Division Bench vide its Order dated 18.4.2007 (impugned order). These writ petitions covered the period between December, 1998 to December, 2000. It appears that there were twelve writ petitions before the High Court. They were filed by twelve independent processing companies/firms. We annex Chart- I accordingly hereinbelow:

Chart – I
Demand for the period December, 1998 to December, 2000 which is the subject matter of the writ petitions whose numbers are given in the chart below:

S. No.	Name of the Petitioner	WP No.	Amount Demanded
1.	Yashwant Co-op. Processors Ltd.	2959/07	3,15,837.00
2.	Radha Kanhaiya Textile Processors Ltd.	2909/07	1,45,620.50
3.	Mahesh Textile Processors	2910/07	2,13,833.00
4.	Unirose Textile Processors Pvt. Ltd.	2927/07	2,69,180.00
5.	Radha Mohan Processors	2930/07	2,04,934.50
6.	Shantinath Synthetics Pvt. Ltd.	2928/07	1,96,568.00

7.	Balaji Dyeing & Bleaching Mills	2929/07	1,92,061.50
8.	Manpasand Textile Processors Pvt. Ltd.	2951/07	2,04,441.00
9.	Jubilee Fabrics Pvt. Ltd.	2960/07	1,40,455.00
10.	Swastik Dyeing & Bleaching	2922/07	3,30,364.50
11.	Amit Weaving	2926/07	3,06,678.00
12.	Arihant Yarn Processors	2953/07	2,01,356.00

5. However, for the period 2001-02 to 2002-03, the appellants who were given show cause notice(s) did not file their monthly Returns under Rule 4 of the Textiles Committee (Cess) Rules, 1975. Consequently, ex parte assessment order came to be passed. Since appellants failed to pay cess, each of them was served with notice of demand under Rule 7 of the Textiles Committee (Cess) Rules, 1975 on the basis of ex parte assessment orders (best judgment assessment). The particulars of such cases are given hereinbelow in Chart-II:

Chart – II

Demand for the periods 2001-02 to 2002-03 which is covered by Notice(s) of demand served upon the Assessee who failed to submit monthly Returns:

S. No.	Name of the Assessee	Notice of Demand dated	Period	Amount Outstanding
1.	Shantinath Synthetics Pvt. Ltd.	30.10.03	01-02 139097.50 02-03 <u>79442.50</u>	2,18,540.00
2.	Mahesh Textiles Processors	30.10.03	01-02 196768.50 02-03 <u>123624.00</u>	3,20,393.00
3.	Unirose Textile Processors Pvt. Ltd.	30.10.03	01-02 172394.00 02-03 <u>23645.50</u>	1,96,040.00

4.	Radhamohan Processors	30.10.03	01-02 77137.50 02-03 <u>29060.00</u>	1,06,198.00
5.	Shri Balaji Dyeing & Bleaching Mills	30.10.03	01-02 39767.00 02-03 <u>48145.00</u>	87,912.00
6.	Manpasand Textile Processors Pvt. Ltd.	08.12.05	01-02 to 02-03	1,14,878.50
7.	Jubilee Fabrics Pvt. Ltd.	28.01.04	01-02 142201.00 02-03 <u>48011.00</u>	1,90,212.00
8.	Radhakanhaiya Textiles Processors Ltd.	30.10.03	01-02 18071.00 02-03 <u>21591.50</u>	39,663.00

6. By the impugned Order dated 18.4.2007, the High Court dismissed the above writ petitions on the ground of delay, hence, this civil appeal.

7. We may state at the outset that although we do not find error in the judgment of the High Court in dismissing the writ petitions on the ground of delay, since the appellants on instructions have agreed to discharge their outstanding liabilities without prejudice to their rights and contentions in the writ petitions and since interpretation of the Textiles Committee Act/ Rules is involved, we are inclined to restore the above writ petitions on the file of the Bombay High Court subject to the appellants satisfying the following conditions so that the Department earns its revenue:

(i) In Chart-I we have furnished the names of the appellants who are

the petitioners and the amount outstanding against their names. Each of the appellants shall deposit with the Department the outstanding amount shown against its name within eight weeks from today.

- (ii) Each of the appellants whose name appears in Chart-II (who incidentally are also writ petitioners in the Bombay High Court) shall, without prejudice to its rights and contentions in the writ petition, file its monthly Returns before the AO within twelve weeks from today. At the same time, along with the Returns, each of the appellants whose name appears in Chart-II shall deposit the outstanding amount with the Department for the period 2001-02 and 2002-03. On such deposit, which will be under protest, the AO will set aside the ex parte Assessment Order passed earlier and the AO shall hear and pass an Assessment Order on such Returns on merits within three months from the date of filing of the said Returns. If the appellants fail to deposit the outstanding amount as indicated in Chart-II, then the ex parte order passed earlier by the AO and the notice of demand issued earlier will stand and the Department would be at liberty to initiate recovery proceedings against such appellant (assessee).

- 8. On the appellants' satisfying the above conditions, the writ petitions dismissed by the Bombay High Court on the ground of delay shall

stand restored to the file of the High Court. Needless to mention that, if any of the above conditions remain unsatisfied then the writ petition filed by the processor shall not be restored to the file of the Bombay High Court and in such eventuality, the impugned order of the High Court dated 18.4.2007 shall stand. In other words, till the above conditions are satisfied, the High Court shall not proceed to entertain the writ petitions mentioned in Chart-I, which concerns the period December, 1998 to December, 2000.

9. Before concluding, we may state that we have not gone into the merits of the matter and we keep all contentions on both sides on merits expressly open.

10. Accordingly, the civil appeal stands disposed of with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
November 12, 2008.

ITEM NO.1

COURT NO.5

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).10272/2007

(From the judgement and order dated 18/04/2007 in WP Nos.2959, 2909, 2910, 2922, 2926, 2927, 2928, 2929, 2930, 2951, 2953 & 2960 of 2007 of the HIGH COURT OF BOMBAY)

YASHWANT CO-OP.PROCESSORS LTD.ETC.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With prayer for interim relief)(FOR FINAL DISPOSAL)
(FOR ORDERS)

Date: 12/11/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Vijay Hansaria, Sr.Adv.

Mr. B.K. Barve, Adv.

Mr. Sanjay Sarin, Adv.

Ms. Samina Sheikh, Adv.

Mr. Abhinav Ramkrishna, Adv.

Mr. Ashok Mathur, Adv.

For Respondent(s)

No.2:

Mr. B.A. Desai, Sr.Adv.

Mr. N.V. Solanki, Adv.

Mr. Dattatray Vyas, Adv.

Mr. Chirag M.Shroff, Adv.

For UOI:

Ms. S. Wasim A. Qadri, Adv.

Mrs. Anil Katiyar, Adv.
Mr. Jufer A.Khan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Civil Appeal is disposed of in terms of the signed order, with no
order as to costs.

(N. ANNAPURNA)
COURT MASTER

(MADHU SAXENA)
COURT MASTER

(Signed order is placed on the file)