IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM

The Hon'ble Mr. Justice R.SURESH KUMAR

Writ Petition No.30698 of 2003 and
W.M.P.No.37433 of 2003

United Bleachers Limited,
Nellithurai Road,
P.B No.12,
Mettupalayam - 641 301. ... Petitioner

vs.

1.The Additional Development Commissioner
for Handlooms, Ministry of Textiles,
Government of India,
Udyog Bhavan,
New Delhi.

2.The Government of India,
Represented by the Secretary,
Ministry of Finance,
New Delhi.

3.The Assistant Director of
Handlooms & Textiles,
Saibaba Mission Post,
Coimbatore 0 641 011.

4.The Assistant Commissioner
of Central Excise,
Coonoor Division,
D.No.28-2-129C, Karamadai Road,
Mettupalayam - 641 301.

5.The Superintendent of
Central Excise,
Mettupalayam Range,
Mettupalayam.

6.The Commissioner of Handlooms and
Textiles, Kuralagam Annexure,
II Floor, Chennai - 108.

(R.6 impleaded as per
order dated 17.07.2018 in
W.M.P.No.21276/2018 in
W.P.No.30698 of 2003) ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the files of the sixth respondent herein in Rc.No.45327/2001/K1 dated 13.02.2003 along with the files of the first respondent herein in No.DCH/9(1)/2001/P&S dated 18.07.2003 and quash the same.

For Petitioner :Mr.N.Prasad

For Respondents 1 to 3 :Mr.J.Madana Gopal Rao

For Respondents 4 & 5 :Mr.S.R.Sundar

For 6th Respondent :Mr.K.Ravikumar, Additional Government Pleader

(Prayer amended as per order dated 17.07.2018 in W.M.P.No.21277/2018 in W.P.No.30698/2003)

O R D E R

The prayer sought for in this writ petition as amended, reads as follows:-

> "Writ of Certiorari calling for the records on the files of the sixth respondent herein in Rc.No.45327/2001/K1 dated 13.02.2003 along with the files of the first respondent herein in No.DCH/9(1)/2001/P&S dated 18.07.2003 and quash the same."

2.The very facts which are required to be noticed for the disposal of this writ petition are as follow:-

3.The petitioner is a limited company registered under the Indian Companies Act, 1956. It has already established a Textile Fabric Processing Unit and has been functioning as such. The main job of the 'processing unit' is to process the fabrics, after it has been woven by any other manufacturer and supplied to this company for the purpose of process towards the 'finished goods' as a job work. Though the petitioner company is only a processing unit, it has already been registered under the Central Excise Act, for the purpose of assessment of Central Excise Duty.

4.In this context, the Central Excise Department has issued a notification in Notification No.11/2001-Central Excise dated 01.03.2001. Under which, the Central Government being satisfied that, it became necessary, in the public interest to exempt excisable goods of the descriptions in the Column No.3 in the table given in the notification. In the said table, number of items have been given as exempted goods, for the purpose of excise duty, out of which Item No.3 under the heading or sub-heading Nos.52.07, 52.08 and 52.09 i.e., cotton fabrics woven on handlooms and processed with aid of power or stream by an independent processor approved in this behalf by the Government of India on the recommendation of the Development Commissioner for Handlooms, has been given.

5.The relevant period for seeking such exemption according to the petitioner, from paying the exemption duty, was 2001-2004.

6.In this context, it is the case of the petitioner that, since the petitioner is running an independent processor to process the fabrics exclusively, it is entitled to claim the total exemption of paying excise duty by availing the benefit conferred under the said notification. Accordingly, the petitioner made a request on 16.04.2001 to the Assistant Director of Handlooms & Textiles, Coimbatore.

7.In the said request/application, the petitioner had specifically stated that, the petitioner is an independent processor to process handloom woven fabrics and therefore, they are entitled to claim central excise duty under the notification. Therefore, seeking for a certificate to that effect, such application was made.

8.Along with the said application, a list of documents also had been annexed by the petitioner. Out of such eight documents, document No.4 is more relevant whereby, the duty assessment as independent processors by central excise authorities for the period from 16.02.1998 to 20.02.2000 was also annexed.

9.Since, no orders were passed and no certificate to that effect was given on the application of the petitioner dated 16.04.2001, the petitioner had sent a reminder on 03.09.2001. Thereafter, number of reminders had been given by the petitioner i.e., on 17.09.2001, 03.10.2001, 11.12.2001, 17.04.2003 and 07.07.2003. Ultimately, the first respondent passed an order on 18.07.2003 whereby the request of the petitioner to issue certificate as an 'independent processor' for the purpose of seeking exemption of central excise duty under the notification dated 01.03.2001, has been rejected. Assailing the same, this writ petition was filed originally.

10.Subsequently, during the course of hearing, the recommendatory report/order made by the Commissioner of Handlooms and Textiles, Chennai dated 13.02.2003 had been produced and it is seen that, only based on such recommendatory report/order passed by the Commissioner of Handlooms and Textiles dated 13.02.2003, the impugned order has been passed by the first respondent. Therefore, it became necessity for the petitioner to implead the Commissioner of Handlooms and Textiles, Chennai, as one of the respondent (sixth respondent) in the writ petition and also made an amendment in the prayer to challenge such order of the sixth respondent dated 13.02.2003 making a recommendation to the first respondent not to consider the petitioner as an 'independent processor' for the purpose of issuing certificate to that effect. That is how the writ petition now stands challenging the orders of the sixth respondent dated 13.02.2003 as well as the order passed by the first respondent dated 18.07.2003.

11.Mr.N.Prasad, learned counsel for the petitioner would straight away made the submissions that, the petitioner, though a limited company, during the relevant point of time, had been engaging only the processing unit as an independent processor, processing woven fabrics supplied to them. He would further submit that, for the purpose of determination of excise duty, the revenue i.e., the Central Excise Department by applying the rule called "Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998," (hereinafter referred to as "the Rules") determined the excise duty. Therefore, the Central Excise Department has already recognised the petitioner as the independent textile processor by applying the relevant rule even though subsequently the said rule itself was struck down on 20.12.2001.

12.The learned counsel for the petitioner would further submit that, the fourth respondent had issued a certificate on 10.09.2001 which reads thus :-

> "TO WHOMSOEVER IT MAY CONCERN
>
> This is to certify that M/s.United Bleachers Ltd., Mettupalayam are the "independent processors" and engaged in the processing of Textile Fabrics."

13.The learned counsel for the petitioner would further submit that, the expression "independent processor" has also been explained in the following terms:-

> "the expression "independent processor" means a manufacturer who is engaged

exclusively in the processing of fabrics with the aid of power and who has no proprietary interest in any factory engaged in the spinning of yarn of cotton or weaving of cotton fabrics."

14.By relying upon these materials, the learned counsel for the petitioner would argue that, the notification dated 01.03.2001 made it clear that, whoever running independent processor unit of textile ofcourse after getting an approval to that effect from the Government of India on the recommendation of the Development Commissioner for handlooms, can seek or claim for exemption of paying the central excise duty, under the said notification.

15.In this regard, the first step to be undertaken by the independent processor/petitioner is to get a certificate to that effect and such application was also made to the first respondent, who after considering the request of the petitioner ofcourse based on the supporting materials supplied by the petitioner should have issued such certificate. Instead, the first respondent relying upon the impugned report of the sixth respondent dated 13.02.2003 that too behind the back of the petitioner and rejected the claim of the petitioner by passing a cryptic order. Therefore, the said order could not be sustained.

16.The learned counsel for the petitioner would further argue that, in so far as the order passed by the sixth respondent in the capacity as a recommending authority or a fact finding authority, by order dated 13.02.2003 is concerned, the sixth respondent having taken into account only the interest of other shareholders of the company had come to a conclusion that the petitioner is not an independent processor. In this regard, the reasoning given by the sixth respondent in the said order dated 13.02.2003 has no basis to substantiate. Merely because of some of the shareholders of the petitioner company having interest independently in some other spinning mills or textile industries that would not ipso facto makes the petitioner company as if the petitioner company is having an interest of textile like spinning, weaving etc. Therefore, the reasoning given by the sixth respondent, in his order, which was the sole basis for rejecting the claim of the petitioner, for issuance of certificate as an independent processor, has absolutely no legs to stand and therefore, both the orders of the sixth respondent as well as the first respondent are liable to be interfered with.

17.Per contra, Mr.S.R.Sundar, learned counsel appearing for the respondents 4 & 5 would submit that, there is no quarrel for seeking exemption for paying the excise duty under the notification, if the petitioner is an independent processor. He would also submit that, in the case in hand, though it was claimed by the petitioner that he was an independent processor, such a declaration has not been made by the first respondent and a certificate to that effect has not been given for the reason that the petitioner is not only engaged in processing activity but also engaged in other textile activities such as spinning, weaving etc., and therefore, the petitioner cannot be brought in under the category of independent processor within the meaning of "independent processor" for the purpose of seeking exemption under the notification.

18.In this regard, the learned counsel for the respondents 4 and 5 would submit that, the word "shareholder" as per the Law Lexicon reads thus:-

> "Shareholder.A shareholder in a corporation is one who has a proportionate interest in its assets and is entitled to take part in its control and receive its dividends."

19.According to the said meaning given by the Law Lexicon, a shareholder in a company who is having a proportionate interest in its assets is entitled to take part in its control apart from entitled to receive dividends. Therefore, if a shareholder is having control over the company and such company is in the process of engaging in processing fabrics and the shareholder is having interest over the other units relating to textile industry like spinning and weaving, it can be safely concluded that the company, where a shareholder is having the share and by virtue of the controlling capacity of that shareholder, who also have the share in the other textile activities, where the same shareholder is having the share, cannot be regarded as independent processor for the purpose of tax exemption under the notification.

20.The learned counsel for the respondents 4 and 5, in this context, has relied upon an earliest judgment reported in Bacha F.Guzdar, Bombay v. Commissioner of Income Tax, Bombay (1955 1 SCR 876 : AIR 1955 SC 74), where he relied upon the following passage:-

> "It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest(1), that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also

buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them.”

21.By placing reliance on these materials, the learned counsel would argue that, as per the explanation given for the words or expression “independent processor” the words “proprietary interest” will be more important and in this context, even if a shareholder of a company is having share, in other fabric or textile related activities such as spinning, weaving etc., definitely the company which claim the status of independent processor would lose its identity as an 'independent processor' because of proprietary interest, its shareholders would be having. Therefore, the petitioner company cannot be fit in the meaning of 'independent processor' as explained in this regard for the purpose of getting a certificate for that effect from the first respondent. Hence, the rejection order passed by the first respondent ofcourse on the basis of the recommendatory order passed by the sixth respondent dated 13.02.2003 are fully justifiable and sustainable and therefore, both the orders do not require any interference from this Court.

22.Mr.J.Madana Gopal Rao, learned counsel for the respondents 1 to 3 would argue that, eventhough under the notification, the approval has to be given by the first respondent for the purpose of seeking exemption under the notification, that process would be undertaken by the first respondent by getting inputs from the said authorities. Therefore, the first respondent entrusted the matter to the sixth respondent for verification and to report as to whether the petitioner is an 'independent processor' for the purpose of issuing certificate to that effect.

23.In this context, the learned counsel for the respondents 1 to 3 would rely upon the following communication of the first respondent to the sixth respondent.

> "M/s.United Bleachers, Nellithurai Road, P.O Box.12, Mettupalayam 641 301, has requested to the Government of India to approve their processing unit in Mettupalayam as an independent processor for availing the excise duty concession for processing of cotton handloom fabrics as defined in Ministry of Finance Notification No.11/2001- Central Excise dated 1st March 2001. The above notification has defined the term independent processor as under:
>
> "The expression "independent processor" means a manufacturer who is engaged exclusively in the processing of fabrics with the aid of power and who has no proprietary interest in any factory engaged in the spinning of yarn of cotton or weaving of cotton fabrics."
>
> You are requested to kindly enquire into the matter and confirm, whether M/s.United Bleachers Ltd., Mettupalayam will come under the expression independent processor, at the earliest to enable us to take a final decision in this regard."

24.Only pursuant to the said request made by the first respondent, the sixth respondent, after having got an assessment report from the officers concerned who had enquired into the matter thoroughly and reported the matter to the sixth respondent, sent the communication dated 13.02.2003 stating that the Development Commissioner for Handloom New Delhi cannot consider the petitioner company as an 'independent processor'.

25.The learned counsel for the respondents 1 to 3 would further submit that, since acceptable reasons have been given by the sixth respondent in her communication dated 13.02.2003, accepting the same, the first respondent passed the impugned order rejecting the claim of the petitioner for grant of certificate as an 'independent processor'.

26.Mr.K.Ravikumar, learned Additional Government Pleader appearing for the sixth respondent would submit that, the petitioner is a Limited Company and it involves not only engaging in processing activity but also engaging in other activities, as has been mentioned in the memorandum of articles and objects of the company and pursuant to such activities, since the petitioner company had been engaging in other activities including its shareholders interest in spinning mills, weaving, etc., the petitioner company lost its status as an 'independent processor' and therefore, the sixth respondent has rightly made a recommendation to the first respondent not to consider the claim of the petitioner as an 'independent processor'.

27.I have considered the said rival submissions made by the learned counsel appearing for the respective parties and also perused the materials placed before this Court.

28.The petitioner is a limited company and it is the stand of the petitioner that, during the relevant point of time, i.e., between 2001-2004, the petitioner had been involving or engaging only in processing of fabrics as an independent processor and not involving any other activities eventhough number of activities had been mentioned in the memorandum of articles of the petitioner company.

29.The notification which gives exemption, for the relevant period, of the excise duty, made it very clear that, under Serial No.3, the item, cotton fabrics woven on handlooms and processed with aid of power or stream by an independent processor is entitled for such an exemption. Provided that, an approval to that effect on behalf of the Government of India on the recommendation of the Development Commissioner for Handlooms, has to be obtained and only on the basis of such approval/certificate on behalf of the Government of India that the petitioner is an independent processor then only he can claim exemption under the notification.

30.Therefore, the petitioner had made an application to the first respondent and several reminders had also been sent. Along with an application, the petitioner also had sent more documents as annexure. Among those documents, one such document was the duty assessment as independent processor by the central excise authority for the period from 16.02.1998 to 20.02.2000 which was also annexed and that apart, the fifth respondent also had given a certificate on 10.09.2001 recognising the status of the petitioner as an 'independent processor' stating that the petitioner engaged in the processing of textile handlooms as an independent processor. Apart from these, some more supporting documents were also sent by the petitioner to the first respondent to consider his request for grant of such certificate as “independent processor”.

31.It seems that, after having receipt of the application with the supporting documents, the matter has been referred to the state authorities i.e., the sixth respondent with a request to enquire into the matter and confirm that the petitioner will come under the expression “independent processor”. Since, the first respondent has written a letter to the sixth respondent to confirm the status of the petitioner as an 'independent processor', it means that prima facie the first respondent satisfied with the claim of the petitioner that it is an independent processor based on the supporting materials which had already been annexed along with the application.

32.On receipt of such request from the first respondent, the sixth respondent had sent two officials namely, the Assistant Director of Handlooms and Textiles, Coimbatore and the Managing Director, Tamil Nadu Cooperative Textile Processing Mills Limited, Erode, to enquire into the matter and submit report. Probably, those two officials would have submitted a report to the sixth respondent, who in turn on considering the said report has sent his recommendation through the said communication dated 13.02.2003. On a perusal of the said communication of the sixth respondent dated 13.02.2003 it reveals that, the sixth respondent has very much relied upon the memorandum of articles and the objects of the petitioner company, as provided in the documents supplied by the petitioner company.

33.Based on the memorandum of articles and objects of the company, the sixth respondent has given her reasons that the petitioner company involving not only in the processing of fabrics but also its shareholders are having controlled share in some other textile related industries such as spinning and weaving mills and therefore, the petitioner company lost its status as an 'independent processor'.

34.In this context, the sixth respondent's communication dated 13.02.2003 does not reveal anything to state that the petitioner company apart from running the independent processing unit as claimed by them, is also running some other textile related units or industries. Merely because the petitioner company is the limited company registered under the Companies Act and having memorandum of articles with various objects, it cannot be construed that the company is involving in all such activities on that date i.e., for the relevant period.

35.Further, it is the submission of the sixth respondent that, some of the shareholders of the petitioner company are having shares in some spinning mills and some of the shareholders of the company are having their own shares and therefore, the petitioner's company could not be considered to be an independent processor as the company should have engaged exclusively in the activities of processing of fabrics alone. This aspect has been in fact argued vehemently by the learned counsels for the respondents. In support of the stand taken by the sixth respondent, the learned counsels for the respondents in one voice had made submissions that once the shareholders of the petitioner company are having shares in other fabric or textile related units like spinning mills or in some cases some of the shareholders are having independent or their own spinning mills, certainly, the petitioner company would lose its status as an independent processor and therefore, the conclusion arrived at by the sixth respondent to make a recommendation to that effect to the first respondent is justifiable.

36.The said reasoning given by the sixth respondent supported by the learned counsel for the respondents is absolutely unacceptable. The reason being that, the words or expression 'independent processor' has been explained, where, it is specifically mentioned that, the manufacturer who is engaged exclusively in the processing of fabrics and who has no proprietary interest in any factory engaged in spinning of yarn of cotton or weaving of cotton fabrics. The word 'manufacturer' mentioned therein is nothing but, in this case, the petitioner company, who is the manufacturer who claimed to be exclusively processing fabrics with the aid of power. If such manufacturer having any proprietary interest in any factory engaged in spinning of yarn of cotton or weaving of cotton fabrics, then, such manufacturer cannot claim the status of 'independent processor'.

37.Here, in the case in hand, the manufacturer is the petitioner company. The petitioner company, even according to the respondents, has not engaged in the spinning of yarn or cotton weaving of cotton fabrics and the petitioner company does not have any proprietary interest over the said factories or companies.

38.Merely because one or more shareholders of the petitioner company is having proprietary interest in some other factory engaged in yarn or cotton, it does not mean that the petitioner is having direct control and proprietary interest over the said factories. Since, the petitioner company is a registered company under the Companies Act, no doubt it is a juristic person and every shareholder of the petitioner company is independently a juristic person. Merely because one or more shareholders of the petitioner company is having proprietary interest in other factories that would not ipso facto make the petitioner company that it also have such proprietary interest over the said factories. This distinction has not been considered by the sixth respondent while making the recommendatory note through her order dated 13.02.2003 supplied to the first respondent.

39.That apart, yet another reason which makes the impugned order infirm is that, the first respondent to whom the authority has conferred the power to give certificate on behalf of the Government of India, to any claimant as an independent processor for the purpose of seeking exemption of excise duty, the first respondent cannot abdicate but he can delegate the same. Assuming that the power has been delegated to the sixth respondent to have on the spot inspection and to give an input to that effect to confirm, the claim of the petitioner for the status of "independent processor" and once such delegate given her report or opinion to the first respondent which consist of adverse finding against the claimant or manufacturer or assessee, before taking a decision thereon, the first respondent should have given an opportunity to the petitioner and thereafter, a decision should have been taken. However, in this case, the first respondent having accepted the report given by the sixth respondent that too behind the back of the petitioner, has passed the impugned order rejecting the claim of the petitioner, therefore, this Court feels that, the order of the first respondent apart from that reasons, as set out above, is also defective on the ground of violation of principles of natural justice.

40.The intention of the notification to give exemption to excise duty is to encourage the independent processor and in this regard, the Government of India has given power to the first respondent to independently assess every claim made in this regard by a processor as to whether he is an 'independent processor' for the purpose of exemption of excise duty and such power shall be exercised cautiously and diligently.

41.Here, in the case in hand, merely because the petitioner is a limited company and it is having memorandum of articles and objects to have various activities apart from textile industry, based on which, no decision can be taken that the petitioner company could not be eligible to get the benefit of independent processor merely because, it is having other objects in the memorandum of articles. If this kind of decision is taken to reject the claim of the petitioner, then, the very purpose of giving exemption to the eligible processor would get defeated thereby, the very object of giving exemption notification would also get defeated. Therefore, looking from any angle, the reasoning given by the sixth respondent in her communication dated 13.02.2003 would not be sustainable and based on which, without giving an opportunity to the petitioner since, the first respondent mechanically passed the impugned order rejecting the claim of the petitioner which can also be unsustainable and therefore, this Court has no hesitation to interfere with both the impugned orders.

42.In the result, the following orders are passed:-

(i)The impugned orders passed by the sixth respondent in Rc.No.45327/2001/L1 dated 13.02.2003 and the order passed by the first respondent in No.DCH/900/2001/P&S dated 18.07.2003 are hereby quashed;

(ii)The matter is remitted back to the first respondent for re-consideration;

(iii)While making such re-consideration, the first respondent must independently apply his mind ofcourse on the inputs supplied by the sixth respondent by taking into account the supporting materials supplied by the petitioner to establish the status as an 'independent processor' for the relevant period i.e., between 2001-2004 where assertively the petitioner claimed that he did not involve in any other manufacturing or spinning or woven process of fabrics except the independent processing as set out in the exemption appended to the notification.

(iv)After considering these aspects, order to that effect shall be passed for giving such certificate to the petitioner and such order shall be passed, within a period of two months from the date of receipt of a copy of this order.

(v)It is made clear that until such a decision is taken and certificate to that effect is issued by the first respondent, the consequential process of demanding excise duty shall not be made by the respondents 4 and 5.

The writ petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional Development Commissioner
for Handlooms, Ministry of Textiles,
Government of India,
Udyog Bhavan,
New Delhi.

2.The Government of India,
Represented by the Secretary,
Ministry of Finance,
New Delhi.

3.The Assistant Director of
Handlooms & Textiles,
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4.The Assistant Commissioner
of Central Excise,
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5.The Superintendent of
Central Excise,
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6.The Commissioner of Handlooms and
Textiles, Kuralagam Annexure,
II Floor, Chennai - 108.

+1 cc to Mr.N.Inbarajan, Advocate, S.R.No.64127

+1 cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.64476

+1 cc to Mr.S.R.Sundar, Advocate, S.R.No.64892

+1 cc to the Government Pleader, S.R.No.64970

W.P.No.30698 of 2003

VBA(CO)
SSM(08/08/2019)