GURBAX SINGH
2018.09.01 11:04

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20637 of 2013 (O&M)
Date of decision: 17.05.2018

M/s S.K. Dyeing & Finishing Mills Private Limited, Faridabad.

……Petitioner

Vs.

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Rajiv Agnihotri, Advocate for the appellant(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Tejinder K. Joshi, Senior Standing Counsel for Central Excise.

Ajay Kumar Mittal,(ACJ)

1. This order shall dispose of a bunch of 40 petitions bearing CWP Nos. 20637, 20671, 20685 of 2013, 19319, 19353 of 2014, 16455 to 16463, 24794 to 24799 of 2017, 1585, 1586, 1587, 1590, 1591, 1592, 1593, 1594, 1595, 1643, 3946, 3947, 3948, 3949, 3986, 4083, 4084, 4085, 4086 and 10504 of 2018 as learned counsel for the parties are agreed that the primary issue in all these petitions would be governed by the decision rendered in VATAP No. 32 of 2017, ***(M/s A.P. Processors, Faridabad Vs. The State of Haryana and others)***, decided today. The essential facts necessary for adjudication of these petitions are being extracted from CWP No. 20637 of 2013.

2. The petitioner company is engaged in the execution of job work in the State of Haryana on fabric, which comes from outside the State and the finished fabric is sent back after various processes are done on it. The Assessing Authority concluded the assessment holding that all the dyes and chemicals used in the execution of job work of bleaching and dyeing are transferred as in physical form or as their inherent properties. Therefore, the property in goods passed on in the process of execution of job work should be taxed. Consequently, the Assessing Officer raised the tax demand of ₹ 5,62,979/- vide order dated 20.03.2008, Annexure P.1. Reliance was placed on the decision of Bombay High Court in ***Commissioner of Sales Tax Vs. Matushree Textiles Limited,*** (2003) 132 STC 539. Aggrieved by the order, the assessee filed an appeal before the Joint Excise and Taxation Commissioner (Appeals), [JETC(A)]. Vide order dated 12.12.2012, Annexure P.3, the JETC(A) rejected the appeal filed by the assessee and upheld the order dated 20.03.2008 passed by the Assessing Officer. The asseessee has approached directly to this Court in view of the decision of the Tribunal in ***M/s Northern India Textile Processors Association, Faridabad vs. State of Haryana,*** STA No.180 of 2005-06, decided on 10.9.2012, appended as Annexure P.5 where the view against the assessee has been expressed and VAT appeals are already pending in this Court against the aforesaid decision. Hence the instant petitions by the petitioner.

3. We have heard learned counsel for the parties.

4. The issue has been decided by this Court vide detailed judgment in VATAP No. 32 of 2017, ***M/s A.P. Processors, Faridabad Vs. The State of Haryana and others,*** of even date, wherein after examining the factual matrix and the relevant case law on the point, it has been held that while determining the actual loss of chemicals, dyes and colours where the fabric or

the textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where parties can produce evidence in respect of their respective claims/contentions. Accordingly, therein, the matter has been remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes and colours that would get washed out in the process of dyeing and printing of fabric undertaken by the assessee. The Assessing Officer has been directed to conduct the factual inquiry in this regard after giving liberty to the parties to produce evidence in respect of their respective contentions and, thereafter, he would be at liberty to proceed in the matter for adding percentage of the chemicals, dyes and colours in the value of the turnover, which are retained or embedded on the textile or fabrics as the case may be in accordance with law. The relevant paras from the judgment in ***M/s A.P. Processor's*** case (supra) read thus:-

> "21. In other words, the bleaching and dyeing is multi level process in which chemicals are used initially and are mandatorily washed out before the cloth becomes conducive for the process of dyeing. After undertaking dyeing, the fabric is sent to the principal. Initially the fabric indicates washing with the help of caustic soda, desizer, soda ash, hydrogen peroxide, HCL, potassium permanganate, oxalic acid, sodium sulphate and acetic acid. The said process would be akin to washing clothes at home with the help of washing powder. The effect of washing is to ensure that the portion of elements and dirt attached to the cloth is removed before any further process is carried out. It was also claimed that in this process, the weight of the cloth is reduced which shows that no chemical gets stuck to the cloth. The property of such chemicals, if held to be absorbed in the fabric and transferred, the fabric would not remain fit for wearing. The dyeing work undertaken by the appellant on cotton fabrics manufactured by them is the final act, but prior to this act of dyeing, various processes are undertaken for making the

fabric fit for dyeing. The processes normally undertaken are as follows:

(1) desizing (2) scouring (3) bleaching (4) mercerizing (5) dyeing and finishing.

While the textile undergoes the aforesaid treatment, certain chemicals are used which are consumables and which do not hold on to the cotton fabrics. After completion of the aforesaid processes, dyeing is undertaken which holds on to the cotton fabric giving lasting impression and ultimately converts the grey fabric into printed fabric which is marketed in the market. In the act of dyeing, as also in printing, certain amount of chemicals, dyes and colours are washed out and they do not remain embedded on the textile or fabric. Thus, the benefit of chemicals, dyes and colours which get washed out to this extent would be extended to the assessee-appellant. In ***Gannon Dunkerley's*** case (supra), it has been specifically laid down that while permitting deductions, the consumables are required to be deducted from the total Gross Turnover of an assessee for arriving at actual taxable turnover and the dyes and chemicals in the present case certain percentage thereof being consumables are required to be excluded.

22. Thus, it would be pertinent to observe that what is taxable under the HVAT and CST Act is the value of the goods which get transferred to the customer in the execution of works contract either as goods or in any other form and not the value of goods used or consumed in the execution of the works contract, if such user or consumption does not result in transfer of property in those goods in any form to the customer. The tax on the entire value of chemicals consumed during the process of dyeing and job work are not to be included for the purpose of levy of VAT as substantial portion of the same is not transferred to the principal eventually.

23. In all fairness, reference is made to judgments relied upon by the learned State counsel. The case of ***Matushree Textile Limited*** (supra) was concerned with the aspect as to whether

process of dyeing of textile would amount to works contract or not and there was no dispute regarding the quantification of goods on which tax would be imposed. The High Court of Bombay while answering the questions posed before it held that property of the material such as chemical colours and dyes used in the process of dyeing and printing is passed on to the fabric of the customer and as such passing of property of material is a deemed sale & tax is leviable on such materials under the works contract. The High Court had not expressed any opinion with regard to as to how much quantity of dyes and chemicals would be made subject matter of such tax.

The issue which has not been decided by the courts below is to the quantum of chemicals, dyes and colours used in the process of job work of dyeing and printing which is taxable. The Tribunal relied upon the judgment of the Bombay High Court in ***Matushree Textile Limited's*** case (supra) which was concerned with the issue as to whether process of dyeing of textile would amount to works contract or not. The issue as to how much quantity of dyes and chemicals would be made subject matter of such tax was not decided. The relevant para of the judgment in ***Matushree Textile Limited's*** case (supra) reads thus:-

> "39. Now, turning to the second question, the Tribunal has held that the coloured shade passed on to the fabrics represents very small quantity of the materials used in dyeing and hence the Works Contracts Act is not applicable. As rightly contended by the counsel for the Revenue, under the Works Contract Act, what is relevant is the passing of property in goods used in the execution of the works contract and not the quantity of the material that passes. It is not the case of the respondents that the chemical solution used for dyeing retains its property even after dyeing. In fact, it is the specific case of the respondents that the solution prepared for dyeing the grey fabrics of one customer, cannot be used for dyeing the grey fabrics of another customer. It is the case of the

respondents that on completion of dyeing, of a particular fabric, the chemical solution becomes worthless and is thrown as a waste. Therefore, it is clear that on completion of dyeing, the entire property of the materials used in dyeing are passed on and what remains as solution is nothing but the residue or the waste. In other words, the coloured shade on the fabrics represents the entire property of the materials used in dyeing. Therefore, it was not open to the Tribunal to hold that the coloured shade represents only very small quantity of the materials used for dyeing and, therefore, the Act is not applicable. In this reference, we are not concerned with the issue relating to the computation of tax on transfer of property in goods used in the execution of a works contract. We are only concerned with the applicability of the Works Contracts Act to the materials used in the execution of a works contract. As stated hereinabove, what is relevant for the applicability of the Works Contracts Act is the passing of the property in goods and not the quantity of goods that passes. The decision of the apex Court in the case of \ [2003] 130 STC 1 relied upon Mr. Joshi, does not in any way support the case of the respondents. Accordingly, we are of the opinion that the Tribunal was not justified in holding that the Works Contracts Act is not applicable in the present case, because the coloured shade passed on to the consumer represents only a small quantity of the materials used in the process of dyeing."

24. In ***Taktex Processing Complex vs. State of Kerala***, 2004 (136) STC 435 (Kerala), the issue was whether the Tribunal was justified in holding that the chemicals and dyes used up in the execution of job works was taxable at the hands of the petitioner. It was held that the item dye used in the process of bleaching textile fabrics, could not be treated as a consumable mentioned in Section 5C(1)(c) (iii) of the Act. Thus, the order passed by the Tribunal was upheld.

25. In ***East India Cotton Manufacturing vs. State of Haryana,*** (1993) 104 PLR 269, it was held by this Court that the activity of processing of grey cloth into finished cloth by East India Cotton Manufacturing company limited amounted to inter state sale. In ***M/s Mahim Patram Private Limited vs. Union of India and others,*** Civil Appeal No.922 of 2007, decided on 23.2.2007, the question was whether the printing of question papers for examination boards amounted to a works contract in the course of inter state trade or commerce. In ***M/s Associated Cement Companies vs. Commissioner of Customs***, Civil Appeal No.821 of 2000, decided on 25.1.2001, the issue was whether drawings, designs etc. relating to machinery or industrial technology were goods which were leviable to duty of customs on their transaction value at the time of their import. In none of these decisions, the issue was with regard to the percentage/quantum of chemicals, dyes and colours used in the process of job work of dyeing or printing etc., which is taxable. Thus, learned counsel cannot derive any advantage from the said decisions.

26. Having arrived at the conclusion that chemicals used in the job work are taxable but the pertinent question to be answered would be as to how much of dyes/colours are taxable which is transferred to the fabric when the whole quantity of consumable is not transferred. In the present case, it would be essential to determine the value of consumables transferred in the goods on which tax is leviable. While determining the actual loss of chemicals, dyes and colours where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where parties can produce evidence in respect of their respective claims/contentions.

27. In the light of legal position enunciated hereinabove, the substantial questions of law as claimed are answered accordingly and the impugned orders passed by the authorities are hereby set aside. The matter is remanded to the Assessing

> Officer to work out the details of quantity of chemicals, dyes and colours that would get washed out in the process of dyeing and printing of fabrics undertaken by the appellant. The Assessing Officer would conduct a factual enquiry in this regard after giving liberty to the parties to produce evidence in respect of their respective contentions. Thereafter, he would be at liberty to proceed in the matter for adding the percentage of chemicals, dyes and colours in the value of the turnover which are retained or embedded on the textile or fabrics, as the case may be, in accordance with law. The Assessing Officer shall do so after examining the relevant statutory provisions and the case law on the point as noticed hereinabove. All the appeals stand disposed of accordingly."

5. In view of the above, the impugned orders passed by the Assessing Officer and the JETC(A) dated 20.03.2008 and 12.12.2012 Annexures P.1 and P.3 respectively are quashed and the matter is remanded to the Assessing Officer to pass a fresh order after hearing the parties, in view of the observations made in ***M/s A.P. Processors's*** case (supra) in accordance with law. All the writ petitions stand disposed of accordingly.

(Ajay Kumar Mittal)
Acting Chief Justice

May 17, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**