

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CWP-5956-2009
Date of Decision: 24.12.2025

M/S VARUN FABS LTD.

...Petitioner

Vs.

UNION OF INDIA AND ORS.

...Respondents

AND

Sr. No.	Case Number	Petitioner(s)	Respondent(s)
2.	CWP-5901-2009	M/s Appollo Processors Pvt. Ltd.	Union of India and Ors.
3.	CWP-5940-2009	M/s Simran Textiles Pvt. Ltd.	Union of India and Ors.
4.	CWP-5970-2009	M/s Avichal Textiles Mills Pvt. Ltd.	Union of India and Ors.
5.	CWP-5971-2009	M/s Rimpi Processors Pvt. Ltd.	Union of India and Ors.
6.	CWP-2550-2006	M/s C.M. Prints Private Limited	Textiles Committee Cess Appellate Tribunal, Mumbai and Anr.
7.	CWP-15944-2008	M/s Shivalik Prints Ltd.	Textiles Committee Cess Appellate Tribunal & Anr.
8.	CWP-17670-2008	M/s Shivalik Prints Limited.	Textiles Committee Cess Appellate Tribunal & Anr.
9.	CWP-19876-2008	M/s Shivalik Prints Ltd.	Textiles Committee Cess Appellate Tribunal & Anr.
10.	CWP-3742-2006	M/s Luthra Textiles Ltd.	Textiles Committee Cess Appellate Tribunal & Anr.
11.	CWP-3753-2006	M/s M.H. Textiles Pvt. Ltd.	Textiles Committee Cess Appellate Tribunal & Anr.
12.	CWP-3656-2006	M/s Orphic Dyeing & Printing Pvt. Ltd.	Textiles Committee Cess Appellate Tribunal & Anr.
13.	CWP-4121-2006	M/s Mahajan	Textiles Committee

		Processors Overseas	Cess Appellate Tribunal & Anr.
14.	CWP-17558-2006	M/s Creative Dyeing and Printing Mills	Textiles Committee Cess Appellate Tribunal & Anr.
15.	CWP-3595-2006	M/s K.K. Kohli & Bros. Pvt. Ltd.	Textiles Committee Cess & Anr.

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Rahul Bansal, Advocate
for the petitioner (*in CWP-5901-2009, CWP-5940-2009, CWP-5956-2009, CWP-5970-2009 and CWP-5971-2009*)

Mr. Balwinder Singh, Advocate
for the petitioner (*in CWP-2550-2006 and CWP-3595-2006*)

Mr. Arun Gosain, Sr. Government Counsel with
Ms. Swati Arora, Advocate
for respondent No.2 (*in CWP-2550-2006, CWP-15944-2008, CWP-17670-2008, CWP-19876-2008, CWP-3742-2006, CWP-3753-2006, CWP-3656-2006, CWP-4121-2006, CWP-17558-2006 and CWP-3595-2006*)

Mr. Sourabh Goel, Sr. Standing Counsel with
Ms. Anju Bansal, Advocate
Ms. Geetika Sharma, Advocate and
Ms. Himanshi Gautam, Advocate
for respondent-UOI (*in CWP-5901-2009, CWP-5940-2009, CWP-5956-2009, CWP-5970-2009 and CWP-5971-2009*)

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-5956-2009.**

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 24.11.2008 whereby Tribunal has dismissed its appeal.

3. The petitioner is a Private Limited Company and engaged in the business of dyeing of grey cloth for more than last 25 years. It is not manufacturing grey cloth whereas it is getting grey cloth on job work basis and carrying out process of dyeing. Dyed fabric is returned to owner of the fabric who may or may not be manufacturer of grey fabric. The Government of India by way of Textile Committee Act, 1963 (for short '1963 Act') levied cess on all textile and textile machinery manufactured in India. Section 5A of the Act is a charging section. The Government has framed Textile Committee (Cess) Rules, 1975 (for short '1975 Rules').

4. In 1999-2000 officials of Textile Committee sent notices to different units including petitioner who were engaged in the processing of grey fabric. The petitioner was served 3 demand notices all dated 06.03.2000 whereby cess was demanded for the years 1995-96, 1996-97 and 1997-98. The petitioner filed reply to demand notices. The petitioner preferred CWP-17626-2002 before this Court through its association which was disposed of vide order dated 31.10.2002. The said order reads as:-

"Present: Mr. Puneet Jindal, Advocate.

We have heard the learned counsel for the petitioner at length.

At present, only a show cause notice has been issued. Therefore, we are of the considered opinion that the writ petition is premature.

The writ petition is disposed of with a direction to the respondents to treat this writ petition as a representation against the show cause notice and to decide the same by

passing a speaking order within a period of two months of the receipt of a certified copy of this order.

Disposed of accordingly.

Sd/- S.S. Nijjar, Judge

31.10.2002.

Sd/- Satish Kumar Mittal, Judge"

5. The Joint Director, Textile Committee vide letter dated 06.05.2003 asked the petitioner and other members of the association to file returns and pay cess. The petitioner filed CWP-13424-2003 before this Court assailing aforesaid letter which was disposed of vide order dated 25.11.2003 which reads as:-

"C.W.P. No. 13424 of 2003.

Present: Mr. Puneet Jindal, Advocate for the petitioner.

*Mr. Gurpreet Singh, Additional Central Government
Standing Counsel for respondent No. 1.*

*Mr. Rajiv Dutta, Senior Advocate with Mr. Kirat Singh
Nagra, Advocate For respondent Nos. No. 2 and 3.*

Learned counsel for the petitioner acknowledges the fact that an alternative remedy is available to the petitioner. In view of the above, he seeks liberty to file an appeal against the impugned assessment orders. Learned counsel for the respondents has no objection to the course suggested by the learned counsel for the petitioner, in case such an appeal is filed within 6 weeks from today.

In view of the above, the instant petition is dismissed as withdrawn with liberty to the petitioner to file an appeal against the impugned assessment orders within 6 weeks from today. Coercive methods for recovery of tax be not initiated against the petitioner for a period of six weeks from today.

Sd/- J.S. Khehar, Judge.

25.11.2003

Sd/- Hemant Gupta, Judge."

6. The petitioner preferred appeal before Textile Cess Appellate Tribunal, Mumbai (for short 'Tribunal') which came to be dismissed vide

order dated 24.11.2008.

7. Learned Senior Counsel for the petitioner submits that petitioner was engaged in the business of processing of fabric and not manufacture of fabric, thus, Section 5A of 1963 Act was inapplicable. As per Rule 10 of the 1975 Rules, demand could be raised within one year whereas respondent issued notices/orders after more than three years. The respondent vide notification dated 01.06.2007 exempted all textiles and textile machinery manufactured in India from the levy of cess. The Act itself was repealed w.e.f. 21.05.2016.

8. *Per contra*, learned counsel for respondent submits that petitioner did not submit returns, thus, period of limitation prescribed under Rule 10 was inapplicable. The demand was raised under Rule 8 where no limitation period has been prescribed. The petitioner was engaged in the business of processing of fabric which is integral part of manufacture of finished products. Definition of 'manufacture' as provided under Central Excise Act, 1944 read with Central Excise Tariff Act, 1985 is applicable to cess leviable under 1963 Act. The petitioner was liable to pay cess on the process of dyeing.

9. We have heard learned counsel for the parties and perused the record with their able assistance.

10. The respondent has levied cess under Section 5A of 1963 Act which is reproduced as below: -

“5A. Imposition of cess on textiles and textile machinery manufactured in India.—

(1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all textiles and on all textile machinery manufactured in India at such rate, not exceeding one per cent. ad valorem as the Central Government may, by notification in the Official Gazette, fix:

Provided that no such cess shall be levied on textiles manufactured from out of handloom or powerloom industry.

(2) The duty of excise levied under sub-section (1) shall be in addition to any cess or duty leviable on textiles or textile machinery under any other law for the time being in force.

(3) The duty of excise levied under sub-section (1) shall be collected by the Committee, in accordance with the rules made in this behalf, from every manufacturer of textiles or textile machinery (hereinafter in this section and in sections 5C and 5D referred to as the manufacturer).

(4) The manufacturer shall pay to the Committee the amount of the duty of excise levied under sub-section (1) within one month from the date on which he receives a notice of demand therefore from the Committee.

(5) For the purpose of enabling the Committee to assess the amount of the duty of excise levied under sub-section (1),—

(a) the Committee shall, by notification in the Gazette of India, fix the period in respect of which assessments shall be made; and

(b) every manufacturer shall furnish to the Committee a return, not later than fifteen days after the expiry of the period to which the return relates, specifying the total quantity of textiles or textile machinery manufactured by him during the said period and such other particulars as may be prescribed.

(6) If any manufacturer fails to furnish the return referred to in sub-section (5) within the time specified therein, or furnishes a return which the Committee has reason to believe is incorrect or defective, the Committee may assess the amount of the duty of excise in such manner as may be prescribed.

(7) Any manufacturer aggrieved by an assessment made under this section may appeal to the Tribunal, constituted under section 5B for cancellation or modification of the assessment.”

11. The aforesaid section was inserted w.e.f. 01.01.1975. The respondent did not collect even single penny from independent textile units during 1975 to 2000. Said fact has been admitted by Chairman, Textile Committee in its communication dated 17.11.2000. The respondent woke up in 2000 and issued notices to many independent processors. The respondent is of the opinion that definition of manufacture as provided in Central Excise Act, 1944 read with Chapter Notes of Central Excise Tariff Act, 1985 should be applied for determining liability under Section 5A of 1963 Act. Expression ‘*manufacture*’ has been defined under Section 2(f) of Central Excise Act. Said section reads as:-

“(f) "manufacture" includes any process, —

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.”

12. From the persual of above quoted section, it is evident that scope of expression ‘*manufacture*’ under Central Excise Act is very wide. It includes every process which is incidental or ancillary to the completion of manufactured product. There are schedules annexed to Central Excise Act

wherein many activities are declared to be ‘manufacture’ e.g. packing, re-packing, labelling, re-labelling etc. have been declared as processes amounting to manufacture. Textile products fall under Chapter Heading 50 to 64 of Central Excise Tariff Act. There are common Notes for Chapter Headings from 50 to 64 and there are further heading wise notes. Chapter Heading 52 deals with cotton, 54 manmade fiber and 55 acrylic. In all these chapter headings, chapter notes are provided. As per Chapter Notes, process of doubling, dyeing, printing, bleaching, mercerizing, twisting, multi-folding, cabling amount to manufacture. As per Notes of Chapter Heading 61 & 62 labelling, re-labelling of containers or repacking from bulk pack to retail packs or adoption of any other treatment to render the product marketable amounts to manufacture. These Chapter Notes collectively declare that dyeing, mercerizing, bleaching, doubling, twisting, stentering of yarn or fabric amount to manufacture. Similarly, affixing brand, labelling or re-labelling, repacking from bulk pack to retail pack of garments amount to manufacture.

13. From the definition of ‘manufacture’ under Central Excise Act read with Chapter Notes of Central Excise Tariff Act, it is evident that definition of manufacture for levy of Central Excise duty is very wide. Every small process which is incidental or ancillary to manufacture of product amounts to manufacture. Under 1963 Act, there is no definition of ‘*manufacture*’, however, it has been provided that cess would be levied on manufacture of textiles. Expression ‘*textiles*’ has been defined under Section 2(g) which reads as:-

“Textiles” 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.”

14. From the perusal of above-quoted Section, it is evident that textile means fabric or cloth or yarn or garment or any other article made wholly or in part of cotton or wool or silk or artificial silk and includes fibre. The said definition does not provide that manufacture of yarn or cloth or garment includes intermediate stages or incidental processes carried out to manufacture yarn, fabric, garment, made up articles. It is settled proposition of law that definition of another statute especially taxing statute cannot be borrowed unless and until specifically provided in such Act. The respondent is attempting to borrow definition of ‘manufacture’ from Central Excise Act read with Central Excise Tariff Act to levy cess on independent processors. In the absence of specific provision in 1963 Act, it was impermissible to borrow definition from Central Excise Act which is an independent Act levying a different type of duty. In Central Excise Act, by way of MODVAT/CENVAT there is provision of adjustment of duty paid at one stage against the duty to be paid at next stage. There is no such provision in 1963 Act. Had legislature intended to borrow definition of ‘manufacture’ from Central Excise Act, it must have incorporated same provision in the 1963 Act.

15. The respondent is relying upon Section 5(A) of 1963 Act which was inserted in 1975. Concededly, not even a single penny was recovered from independent processing units from 1975 to 2000. This fact is corroborated by letter dated 17.11.2000 of Chairman, Textile Committee.

The said letter for the ready reference is reproduced as below:-

*“Sub: Applicability of Textile Committee's Cess
on independent Processors.*

I would like to draw your kind attention to our various discussions on the above subject i.e. during the meeting of the Textile Committee held at Delhi on 5th July 2000 and subsequently during your visit to Jodhpur when it was brought to your kind attention that the above problem needs be resolved in the larger interest of Processing Unit in particular and Textile Industry in general.

The fact remains that it is debatable question of levy of cess on Processing Units and whereas legal opinions will vary on both the ways. I.e. Cess is applicable and vice-versa. Although the Act came into existence in 1975, not a single rupee has been collected, i.e. over a period of 25 years and hence it is an established fact that Cess is not applicable on independent processing units.

I had discussed the subject matter with Shri Arun Jariwalla of Federation of Indian Art Silk Weaving Industry and it appears that an Administrative Order may be issued by the Textile Ministry to avoid unnecessary legal complications with regard to the Textile Committee's Cess particularly for independent processing units in as much as many of them are either of medium scale or small units and some are in fact tiny, i.e. very small like cottage industry.

The other reason is that when yarn is purchased the weavers pay the cess it is charged separately in invoices by the yarn manufacturers, the composite mills having spinning, weaving and processing, pay the levy of excise cess on yarn and grey cloth of processed cloth, as the case may be, and mills having weaving and processing pay Textile Cess on yarn when purchased and cess on grey of processed cloth as the case may be and Mills having only weaving pay the cess yarn when purchase. Like power and handlooms clothes are exempt from Textile Cess no cess be charged on independent processing units, as cess at yarn level is already paid. Technically, processors are not manufacturers, as they do not

make clothes/ yarn/ textiles.

With respect to the applicability of cess on independent processing units of Textiles Committee is concerned which has not made applicable for the last 25 years and further, it is humanly impossible to cover the scattered processing units in different parts- may be giving employments to 5 to 50 people or more or less in each case, how can we organize to collect the cess and if we collect what will happen to the period between the period 1975 and 2000.

In view of the above, I strongly fell the Hon. Textile Minister to consider favourably the subject matter which is virtually the unanimous request of the Textile Committee to issue the suitable orders for not charging the Textiles Committee's Cess on independent Processing Unit, irrespective of the size of the units concerned.

Thanking you, and looking forward to hearing from you and with kind personal regards.

Yours faithfully,

Sd/-

Navinbhai C. Dave

Chairman.”

16. From the perusal of said letter, it is evident that Committee itself was of the opinion that cess should not be levied on independent processing units. Cess is paid at the stage of manufacture of yarn. Payment of cess at the stage of yarn is sufficient. As cess was not levied during preceding 25 years, it is impossible to cover the scattered processing units which are giving employment from 5 to 50 people.

17. The Textile Committee in its 84th Meeting held on 25.02.2003 resolved that cess should not be levied on independent processing units. It should be levied at the stage of yarn. The conclusion drawn in the aforesaid meeting is reproduced as below:-

“27. After detailed discussions, as mentioned above, the Committee has decided the following:

- a. To carry out the amendments in the Act for*
 - limiting the cess burden only to the textile yarns (as defined above) and the textile machinery;*
 - reducing the upper limit of rate of cess from the existing 1% to 0.1%.*
 - widening the power of exemption (Section 5E) as proposed above;*
- (b) rate of cess should not be increased and should continue to be 0.05%.*
- (c) to include the textile yarns being consumed in-house, under the cess purview, but to exclude the yarns meant for exports.*
- (d) to obtain legal opinion and submit proposal to the Government for exemption of Cess, for the past periods, from independent power processors, on the lines similar to Section 11 (C) of Excise Act.”*

18. The respondent realizing the fact that it is unviable to levy and collect cess from textile units vide notification dated 01.06.2007 exempted all the textile units and thereafter abolished the Act itself w.e.f. 21.05.2016. These facts collectively prove that Government itself was never of the opinion that cess should be charged from independent processing units.

19. The impugned notices were issued in 2000 and period involved is 1995-98. It means notices were issued beyond 1 year from the period involved. Rule 10 of the 1975 Rules provides that notice shall be issued within 1 year. Rule 10 reads as:-

“10. Recovery of cess short lived erroneously levied. When the cess has been short levied through inadvertence or otherwise, or when it is erroneously refunded; the manufacturer chargeable with the cess so short levied or to whom refund has been erroneously made on a notice of demand from the Committee made within one year from the date on which the cess has been paid, shall pay the deficiency or, as the case may be refund the amount paid to him in excess, within a month from the date of receipt of such notice.”

In the wake of afore-cited Rule, the notices were barred by limitation.

20. The petitioner in view of directions of this Court preferred appeal before Appellate Tribunal. From the perusal of orders, it is evident that Tribunal has passed a totally non-speaking orders. Appeal has been dismissed mechanically and without considering factual and legal position.

21. In the wake of above discussions and findings, we are of the considered opinion that the instant petitions deserve to be allowed and accordingly allowed. Impugned orders are hereby set aside.

22. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

December 24, 2025
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No