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HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

WRIT - C No. - 1001686 of 2004

M/S Century Laminating Company Ltd. Thru Deputy Manager
.....Petitioner(s)

Versus

Assessing Authority U.P. Pollution Control Board and Anr
.....Respondent(s)

Counsel for Petitioner(s)	:	Smita Chitranshi,
Counsel for Respondent(s)	:	Sudeep Kumar, Ashok Kumar Verma, Sudhir Pande

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Smt. Smita Chitranshi, learned counsel for the petitioner and Shri Ashok Kumar Verma, learned counsel for the respondents.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs:

> *a) an appropriate writ, order, or direction in the nature of Certiorari quashing the order/ judgment dated 22.4.2002 (contained in Annexure no.1) along with assessment orders dated 17.8.2002, 17.8.2002, 25.7.2002, 25.8.2002, 17.11.2003, 9.3.2004 contained in Annexure Nos.1 to 6, 17, 18.*
>
> *b) an appropriate writ, order or direction to hold that petitioner industry (whole) is not covered under Schedule I of Cess Act and is exempted from levy of cess with a further direction to respondents to refund the total amount of Cess deposited by petitioner industry.*
>
> *c) an appropriate writ, order or direction declaring that the 'Formaline Plant' of petitioner industry is "Chemical Industry" and accordingly to hold the petitioner industry liable for payment of Cess in respect of water consumed by it in 'Formaline Plant' on*

the basis of return in accordance with maximum rates under Section 3(2A) for the pleriod 1.1.1995 to 31.12.1996 and maximum rates under Section 3(2) along with prescribed rebate for the period 1.1.1997 to 31.12.2000, 31.12.2000 to 3.2.2004.

d) to quash the observation made with regard to quantity of water consumption in judgment (annexure no.1) i.e. 356 K1/D for the period 1.1.1993 to 31.12.1994, 704 K1/D for the period 1.1.1995 to 31.12.1996, 704 K1/D for the period 1.1.1997 to 30.9.1998, 778 K1/D for the period 1.10.1998 to 31.3.2000 alongwith the quashing of annexure no.2 to 6, 17, 18 accordingly. The respondent no.1 may further be directed to make assessment on the basis of return at the maximum rate under Section 3(2A) for the period 1.1.1993 to 31.12.1996 and at the maximum rate under Section 3(2) for the period 1.1.1997 to 31.12.2000 alongwith prescribed rebate.

d) any other writ order or direction which this Hon'ble Court deems just and proper in the circumstances of the case may also be issued in favour of the petitioner.

f) cost of petition may also be awarded in favour of petitioner."

3. Facts of the case are that in the year 1982, petitioner industry was installed. It used to purchase its raw materials i.e. craft paper, base paper, phenol, card phenol, malamine, formaline. It manufacture decorative laminates sheet of required thickness by putting craft and base sheets paper (impregnated with phenol/ Formaldehyde resin) one over the other by using high pressure and heat. These composite sheet then trimmed and sanded. Such finished sheets are called decorative laminated sheets.

On 11.1.1995 respondent no.2 given "No Objection Certificate" for installation of a new plant for manufacturing of 20 MT/ day Formaline in its existing unit. Therefore, it do not make any difference for the purpose of applicability of Cess Act. Petitioner industry is a law abiding industry, so it is always intended to adopt and carry out the prevention and control policies in order to protect the environment. Effluent treatment plant as well as water meters are installed in the industry. Water, consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1975 (since 1997) is being granted to petitioner's industry. It is also conforming the standards laid down by the Central Government under the Environment (Protection) Act, 1986.

The International Organization for Standardization is a worldwide federation of National Standards Bodies-member bodies. International standards are drafted in accordance with rules given in International

Organization for Standardization/ International Electrotech Commission Directive. This international standards are used to assess the industry ability to meet customer regulatory and the organisation's own requrement by issuing certificates to industries.

The design and implementation of an industry's quality management system ISO 9002-1994 influenced by varying needs particular objectives, the products provided, the process employed and the size and structure of the industry. The quality system standards provides necessary requirement i.e. (1) General requirements, (2) documentation requirement (3) quality movement (4) control of documents (5) control of records etc.

General requrement- The industry shall:-

a) identify the processes needed for the quality system management and their application throughout the industry.

b) determine the sequence and interaction of these processes.

c) determine and methods needed to ensure that both the operation and control of there processes are effective.

d) ensure the availability of resources and information necessary to support the operation and monitoring of these processes.

e) monitor, measure and analysis these processes, and

f) implement actions necessary to achieve planned results and continual improvement of these processes.

These processes shall be managed by the industry in accordance with the requirements of the international standard i.e. ISO 9002:1994.

(Note: Processes referred to above include process for management activities provision of resource, product realization and measurement).

The top management shall provide evidence of its commitment to the development and implementation of the quality management system and continually improving its effectiveness by

a) communicating to the organization and importance of meeting customer as well as statutory and regulatory requirements,

b) establishing the quality policy,

c) ensuring that quality objectives are established,

d) conducting management reviews, and

e) ensuring the availability of resources.

The petitioner’s industry has very keen sense for quality management system. The petitioner’s industry therefore, determined and started to collect and appropriate data to demonstrate the suitability and effectiveness of the quality management system in the year 1996. Petitioner’s industry confirmed the above mentioned requirements and achieved the quality policy, quality objectives, audit results, analysis of data, corrective and preventive actions and management review.

On August 2, 2000 petitioner’s industry very intensely achieved certificate for "ISO 14001: 1996" for environmental management system (hereinafter referred to as 'EMS') that includes organizational structures, planning activities, responsibilities practices procedures, processes and resources for developing, implementing achieving, reviewing and maintaining the environmental policy. The ISO: 14001: 1996 established audit procedure that provide for planning and conduct of an audit of an environmental system to determine conformance with EMS audit criteria.

Environmental Management System audit denounces systematic and documented verification process of objectively obtained and evaluating audit evidence to determine whether an industry’s EMS audit criteria and communicating the results of this process to the client. The audit objective of environmental management system is to determine proper implementation and maintenance of auditee, which starts from review of the auditee industry’s documentation such as environmental policy statements, programme, records of manuals for meeting its EMIS requirements and got completed once (whever) all activities defined in the audit plan have been concluded. This is the 'stage' when certificate is awarded.

In view of the above, it is clear that petitioner’s industry demonstrated validation of its environmental responsibility. This validation confers it to be 'eligible' to what it claims, submits and reiterates. 'Laminating' was defined in the case of Liberty Machinery Co. V.T.M. Mech. & Tool Corpn., D.C.N.Y. (-73 F. Supp.663, 664). It means "bringing two strips into permanent union so that the final product will be in affect an integral article.

In case of A.P. Board for Water Pollution Control Versus A.P. Rayons Ltd. (1989)/ SCC 44), 'Chemical' of the Schedule-1 of Cess Act was examined and was interpreted as given below:

"CHEMICAL"- Water (Prevention and Control of Pollution) Cess Act, 1977 Ss 2(c), 3 and Schedule-I.

Chemical process would be involved to a certiain extent, more or less in all industries, but an industry should be known as a chemical industry, if it carries out predominantly chemical endeavours, looked from the circuitous method every industry would be chemical industry. It could not have been the intention to include all industries. Such expression should, therefore, be construed reasonably, strictly and from a common sense point of view, so construed and having regard to the dictionary meaning of the word 'chemical'; the rayon grade pulp cannot be considered even remotely connected as such with chemical industry or textile industry or proper industry."

Respondent no.1 continued assessment of whole industry by issuing assessment order dated 24/31.8.1999, 30/6.7.2000 and 28.3.2001 for the period 1.1.1993 to 30.9.1998, 1.10.1998 to 31.3.2000 and 1.4.2000 to 31.12.2000 respectively.

The petitioner’s industry was aggrieved by the aforesaid three non-speaking assessment orders, hence petitioner challenged these orders by filing appeals no.24/1999, 38/2000, 11/2001 respectively on the ground that the assessments were made on the basis of extraneous materials unknown to assessee and without providing the proper opportunity to the petitioner to present his case with regard to quantum, categorisation and purposes of water consumption. The respondent no.1 filed objection to appeals which were replied by the petitioner industry.

On 9.3.2004, assessment order was passed which is bearing the figures of previous assessment orders passed on higher side.

4. Learned counsel for the petitioner submitted that the petitioner’s industry is a decorative laminates manufacturing unit and uses Kraft paper, waste paper, phenol, card phenol Melamine, Formalin as raw material and is not covered under item no.9 and 11 of Schedule-I of the Cess Act, 1977 because craft paper waste is not covered under paper industry. He next submitted that the assessing authority never disclosed the category on the basis of which the assessment has been made.

5. Learned counsel for the petitioner next submitted that water meters as well as the Effluent Treatment Plant are installed in the industry since the year of establishment of the petitioner’s industry and consent under the Water (Prevention and Control of Pollution) Act, 1974 has also been granted by the respondent Board for the years 1997 and 1998.

6. Learned counsel for the petitioner next submitted that the petitioner’s industry has been wrongly assessed under Section 3(2A) of the Cess Act, 1977 while it should be assessed under sub-section 3(2) of the said Act as unit is complying with the provisions of Water Act and E.P. Act.

7. Learned counsel for the petitioner next submitted that the petitioner’s industry is entitled to rebate under Section 7 of the Act and the petitioner’s industry has obtained the ISO 14001 certificate in the year 1996.

8. Learned counsel for the petitioner next submitted that petitioner’s industry is continuing in production of same decorative laminates sheets i.e. Sunmica, prayer of the instant writ petition i.e. non-coverage of petitioner industry has already been decided. In view of this, orders as contained in Annexure nos.1 to 6, 17 and 18 of the instant writ petition are without jurisdiction and non-est.

9. Learned counsel for the petitioner next submitted that feeling aggrieved by the imposition and realization of cess under the provisions of Water (Prevention and Control of Pollution) Cess Act, 1977 petitioner’s industry filed Writ Petition No.2865 (M/B) of 1995 before this Court which was allowed with a direction that the amount of cess deposited by the petitioner shall be released and shall be refuned to the petitioner within a maximum period of two months.

10. In support of this submissions, learned counsel for the petitioner relied upon a judgment rendered in the case of **M/s Saraswati Sugar Mills** reported in (1992)1 SCC 418 and **A.P. Rayons Ltd. Case reported in (1989)1 SSC 44.**

11. Per contra, learned counsel for the respondents submitted that the petitioner’s industry is undoubtedly covered under item no.9 of schedule-I of the Cess Act, 1977 as "chemical industry" as chemicals like malamine formalin resin and phenolic resin are manufactured in the unit and are used in manfacture of laminates which apparently is hazardous in nature and therefore, the assessment has been made treating this industry as a chemical industry.

12. Learned counsel for the respondent next submitted that the parameters of effluent are beyond the standards laid down by the respondent-Board.

13. Learned counsel for the respondents next submitted that no rebate is admissible to the petitioner in absence of regular requests accompanied by the compliance of the provisions of the Pollution Control Acts.

14. Learned counsel for the respondents next submitted that the industry produces decorative laminates by using chemical process and only thereafter the finish product is produced by the company which is called Sunmica hence very well covered under the Schedule-I and liable to pay cess.

15. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record as well as case-laws cited by learned counsel for the petitioner.

16. To resolve the controversy involved in the present writ petition, operative portion of the judgment and order dated 30.11.2004 passed by a Division Bench of this Court is extracted here-in-below:

> *"Thus, by use of raw material a completely different and a new product manufactured which is known as Decorative Laminated Sheet. Schedule-I of the Act does not specify the industry of Decorative Laminates manufacturing. Simply because some paper is used as raw material or phenol, card phenol, melamine and formalin are used, it does not mean that the petitioner industry would be a paper industry.*
>
> *Cess Act, a fiscal statute has to take into account the literal meaning of the word 'industry' as used in the Act for which aid and assistance can be taken from the language used in common parlance in trade/ commercial activities for applying the provision of the Cess Act. The industry must fall within the specified industries enumerated in Schedule-I. In view of the law laid down by the Apex Court in the case referred to above it is clear that simply on the basis of raw material used, the nature of industry cannot be determined. The process of manufacturing, ingredients used and the ultimate product, which is manufactured would determine the nature of industry. The petitioner who manufctures Decorative Liminate Sheets, commonly known as Sunmica, cannot be subjected to any cess under the Cess Act as the said industry does not find any mention in Schedule-I, nor the ultimate product viz. sunmica, can be termed or classified as 'Paper'.*
>
> *As a consequence of the findings recorded above, we hold that there was no authority or jurisdiction to impose any cess under the Act on the petitioner's industry and therefore, the assessment made is totally without jurisdiction and is liable to be quashed.*
>
> *Accordingly, the petition is allowed and the impugned order of assessment is hereby quashed. The rejection of the appeal being barred by limitation would not come in the way of the petitioner in challenging the very levy of cess and its relisation, the same being*

not supported by any law and the Cess Act, being not applicable to their industry. A further direction is hereby issued that the amount of cess deposited by the petitioner shall be released and shall be refunded to the petitioner within a maximum period of two months from the date a certified copy of this order is produced before the authority concerned."

17. Perusal of the above-extracted order reveals that the question before the Court that whether the petitioner's decorative laminates manufacturing unit, using Kraft paper/ waster paper as a raw material, falls under the scope of "Chemical Industry" as specified in Item No.7 of Schedule I of the Cess Act, 1977 was considered and after considering, observed that the petitioner's industry does not fall within the ambit of "Chemical Industry" as specified in Item No. 7 of Schedule I of the Cess Act, 1977 because although the industry was engaged in the manufacturing of decorative laminating sheets (SENMICA) which to some extent is a chemical endeavour but not to the extent that the industry as a whole be regarded as a " Chemical Industry" for the purpose of imposition of cess. Moreover the end product of the petitioner industry .i.e., SENMICA is not a chemical substance but a finished,composite product.

18. Once the question aforesaid has already been decided by a Division Bench of this Court, there is no need to decide the same question as decided vide judgment and order dated 30.11.2004.

19. Learned counsel for the petitioner relied upon judgment rendered in the case of **A.P. Board for Water Pollution Control (supra)**, operative portion of which is extracted here-in-below:

> *"8. In this case where the question is whether a particular industry is an industry as covered in Schedule I of the Act, it has to be judged normally by what that industry produces mainly. Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business.*
>
> *9. Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours.*

The expression "chemical" means, according to Collins English Dictionary, any substance used in or resulting from a reaction involving changes to atoms or molecules or used in chemistry. The Concise Oxford Dictionary, 6th Edn., p. 170 defines "chemical" as made by, or relating to, chemistry."

20. Learned counsel for the petitioner also relied upon another judgment rendered in the case of **Saraswati Sugar Mills (supra)** to say that an industry will be a "specified industry" only if the industry producing the final product falls squarely within an entry in Schedule I. Relevant portion of the judgment is extracted here-in-law:

"21. Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and to the fitness of the matter to the statute. The meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing statute. The Cess Act is a fiscal enactment. In the context in which the word 'vegetable' is used in Entry 15 'vegetable product' means product of or made of or out of vegetable. 'Vegetables' as understood in common parlance are not products of manufacture unless we say that agriculture is an industry for certain purposes and vegetables are products of that industry. In order to bring an industry within any of the entries in Schedule I it has to be seen what is the end product produced by that industry. Sugarcane is not a vegetable though it may be an agricultural product. If the botanic meaning of vegetable as referring to any and every kind of plant life is to be given then some of the industries listed in Schedule I like paper industry and textile industry and even chemical industry which are covered by other entries could also be brought within Entry 15. The word vegetable in the context does not attract the botanic meaning. The sugar manufacturing industry does not, therefore, come within Entry 15 of Schedule I of the Cess Act."

21. Perusal of the aforesaid judgments reveals that whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business. Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours.

22. Use of raw material a completely different and a new product manufactured which is lnow as Decorative Laminated Sheet. Schedule-I of the Act does not specify the industry of Decorative Laminates manufacturing. Simply because some paper is used as raw or phenol, card phenol, melamine and formalin are used, it does not mean that the petitioner's industry would be a paper industry or chemical industry.

23. Cess Act, a fiscal statute has to take into account the literal meaning of the word 'industry' as used in the Act for which aid and assistance can be taken from the language used in common parlance in trade/ commercial activities for applying the provision of the Cess Act. The industry must fall within the specified industries enumerated in Schedule-I. In view of the law laid down by the Apex Court in the case referred to above it is clear that simply on the basis of raw material used, the nature of industry cannot be determined. The process of manufacturing, ingredients used and the ultimate product, which is manufactured would determined the nature of industry. The petitioner who manufactures Decorative Liminate Sheets, commonly known as Sunmica, cannot be subjected to any cess under the Cess Act as the said industry does not find any mention in Schedule-I, nor the ultimate product viz. sunmica, can be termed or classified as 'Paper'.

24. As a consequence of the findings recorded above, we hold that there was no authority or jurisdiction to impose any cess under the Act on the petitioner's industry and therefore, the assessment made is totally without jurisdiction and is liable to be quashed.

25. In this case where the question is whether a particular industry is an industry as covered in Schedule I of the Act, it has to be judged normally by what that industry produces mainly. Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business.

26. Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours. The expression "chemical" means, according to Collins English Dicionary, any substance used in or resulting from a reaction involving changes to atoms or molecules or used in chemistry. The Concise Oxford Dictionary, 6th Edn. p. 170 defines "chemical" as made by, or relating to chemistry.

27. Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and to the fitness of the matter to the statute. The meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing statute.

28. The Cess Act is a fiscal enactment. In the context in which the word 'vegetable' is used in Entry 15 'vegetable product' means product of or made of or out of vegetable. 'Vegetables' as understood in common parlance are not products of manufacture unless we say that agriculture is an industry for certain purposes. If the botanic meaning meaning of vegetable as referring to any and every kind of plant life is to be given then some of the industries listed in Schedule I like paper industry and textile industry and even chemical industry which are covered by other entries could also be brought within Entry 15. The word vegetable in the context does not attract the botanic meaning. The suger manufacturing industry does not, therefore, come within Entry 15 of Schedule I of the Cess Act.

29. It also shows that in order to bring an industry within any of the entries in Schedule I it has to be seen what is the end product produced by that Industry.

In the case in hands, the petitioner’s industry is engaged in the manufacturing of decorative laminating sheets (SENMICA) which to some extent is a chemical endeavour but not to the extent that the industry as a whole be regarded as a " Chemical Industry" for the purpose of imposition of cess. Moreover the end product of the petitioner industry .i.e., SENMICA is not a chemical substance but a finished,composite product. The declaration of the petitioner’s industry as 'not chemical industry' was made by a Division Bench of this Court vide judgment and order dated 30.11.2004.

30. Considering in totalities of facts and circumstances of the present case, order dated 22.4.2002 (contained in Annexure No.1) along with assessment orders dated 17.8.2002, 127.8.2002, 25.7.2002, 29.8.2002, 17.11.2003, 9.3.20024 (contained in Annexure Nos.1 to 6, 17, 18) are hereby quashed. A further direction is hereby issued that the amount of cess deposited by the petitioner shall be released and shall be refunded to the petitioner within a maximum period of two months from the date a certified copy of this order is produced before the authority concerned.

31. In result, the writ petition succeeds and is **allowed**.

32. Needless to say that cess in respect of water consumed by petitioner’s industry in 'Formaline Plant' on the basis of returns shall be levied in accordance with law, especially under Section 3(2A) and 3(2) of the Cess Act, 1977.

(Irshad Ali,J.)

November 6, 2025
GK Sinha