

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Justice Muhammad Shafi Siddiqui

Suit No.1763 of 2016
Umer Spinning Mills (Pvt.) Limited & others
Versus
Federation of Pakistan & others

AND

Suits No.1875 of 2016
Sunrays Textile Mills Limited & others
Versus
Federation of Pakistan & others

Date of Hearing: 01.09.2016

Plaintiffs in Suit No.1763 of 2016: Through Mr. Khalid Jawed Khan Advocate.

Plaintiffs in Suit No.1875 of 2016: Through Mr. Ameen M. Bandukda Advocate.

Defendant No.1: Through Mr. Abdul Qadir Leghari, standing counsel.

Defendant No.2: Through Mr. Mr. Kashif Nazeer, Advocate along with Mr. Muhammad Ilyas.

Defendant No.3: Through Ms. Masooda Siraj Advocate present along with Ms. Mahwish Shah, Deputy Collector (Law).

J U D G M E N T

Mohammad Shafi Siddiqui, J.- In these suits the plaintiffs have sought declaration to the effect that they being “Spinners” are entitled to get benefits of SRO 1125(I)/2011 dated 31.12.2011 as amended from time to time.

2. Counsels appearing for the parties have agreed that in these suits evidence is not required to be led and shown their willingness to argue

the matter for final disposal of these suits. Hence with their consent following issues were framed:-

1. Whether the suit is maintainable?
 2. Whether the plaintiffs being spinners are entitled to claim benefit of SRO 1125(I)/2001 dated 31.12.2011, as amended by two subsequent SROs (i) 154(I)/2013 dated 28.02.2013 and (ii) 491(I)/2016 dated 30.06.2016 while importing raw material for their spinning stage?
 3. What should the decree be?
3. Counsels for the plaintiffs in the two listed cases have argued that the plaintiffs are entitled to the benefit of SRO 1125(I)/2011 dated 31.12.2011, as mended from time to time, as it being applied to the manufacturers of textile sector and those who are engaged in the process of spinning of raw cotton/ginned cotton and that its refusal by defendants to extend benefit of the SRO referred above to the spinners on import of raw cotton/ginned cotton is arbitrary, unlawful and violation of provisions of Sales Tax Act, 1990. It is further prayed that the defendants be directed to allow the plaintiffs to import raw cotton/ginned cotton at 0% sales tax in terms of the aforesaid SRO.
4. Learned counsels at the very outset have received upon SRO 1125(I)/2011 dated 31.12.2011 filed as Annexure 'B' page 73 and submitted that the sectors specified in column 2 of the table under PCT Heading, which is mentioned in column 3, is subjected to zero rate of sales tax subject to the condition No.(xiv) of the said SRO. They further submitted that in terms of condition No.(xii) the benefits are required to be extended to those who are registered manufacture or exporters of "5" zero rated sectors mentioned in Condition No.(i) i.e. textile, carpets, leather, sports and surgical goods and the plaintiffs belongs to one of them.

5. It is claimed that in terms of Condition No.(xiv) of this SRO the notification was applicable from ginning stage onwards in the case of textile sector. They submitted that the SRO was amended and in the preamble of the said SRO 1125(I)/2011 dated 31.12.2011 where the zero rate was mentioned it was revised by 2% and insofar as the condition No.(xiv) is concerned, it was amended to the extent that instead of ginners the exemption was made available “from spinning stage onwards”. However, vide notification bearing SRO No.491(I)/2016 dated 30.06.2016 the rate of sales tax was revised at zero percent to five sectors excluding supplies to finished fabric. It is thus claimed that since the amending SRO No.154 dated 28.02.2013 include the spinning stage therefore the plaintiffs are entitled to such benefit as they are involved in the process of spinning.

6. Learned counsel submitted that the department is interpreting the amended condition from SRO 154 of 2013 as from stage subsequent to the stage of spinning and thus excluding the plaintiffs from the benefit of such SRO 1125(I)/2011 dated 31.12.2011 with all its amendments from time to time which is arbitrary and unlawful.

7. It is contended that there are in fact three main stages involved in textile manufacturing; first stage is of ginned cotton regarding which the raw material is Putti and after that the process of spinning starts which include carding and combing process. It is claimed that the plaintiffs are importing bales of ginned cotton which forms raw material of the spinning sector and it cannot further be segregated. Even otherwise it is claimed that PCT heading for ginned cotton, whether “not carded and combed”, or “carded and combed” declared as 52.01 and 52.03 respectively are within the chapter No.50 to 63 and as such it would not matter if it is not carded or combed. Without prejudice to

above it is claimed that it is part and parcel of the spinning process and form raw material for the spinning sector.

8. Learned counsels appearing for the defendants have opposed the contentions raised by learned counsels for the plaintiffs and submitted that the interpretation of SRO 154 (I)/2013 dated 28.02.2013 is such that its conditions are made applicable to the stage subsequent to the spinning stage as the word used in the condition is “from spinning stage onwards” and hence it would exclude the spinning stage. They further relied upon some Google research to demonstrate that in between ginning and spinning stages there are two more steps i.e. carding and combing and until and unless the ginned cotton are carded and combed it cannot form raw material for the spinning. Hence, since it does not form raw material for the spinning therefore the benefit of the subject SRO cannot be extended to plaintiffs/spinners. They have provided the text of all the processes from ginning up to weaving of fabric.

9. I have heard the learned counsel for the parties and perused the material available on record.

10. Since both the suits are likely to be disposed of on the basis of issues framed above and since common arguments have been advanced, I would dispose of both the suits with this common judgment.

11. That since no ground in relation to the maintainability of suit is raised I score of this issue from providing any reasons and findings. Even otherwise there a number of judgments by apex Court as well as of this Court that the bar contained in section 217 of the Customs Act is not absolute and hence the suits are maintainable under the law. The issue is answered accordingly.

12. Insofar as issue No.2 is concerned primarily the description of goods specified in PCT sub-heading 52.01 and 52.03 would not make

much of a difference since these are within Chapter 50 to 63 of column 3 of subject SRO. The other issue involved is whether the language of the amended notification/SRO 154/2013 excludes the spinners from availing benefit of SRO 1125(I)/2011 dated 31.12.2011 as amended from time to time. Learned counsels for defendants who were also assisted by Deputy Collector (Law) are of the view that the language of the amended condition in SRO 154/2013 is such that it ought to exclude the spinning stage and onwards.

13. A plain reading of the language is as under:-

“...this notification shall apply from—

- (a) spinning stage onwards, in case of textile sector.
- (b) ..
- (c) ..
- (d) ..
- (e) ..”

A simple and pure understanding of above language and law would show that it mean and include the spinning stage and it cannot be excluded by mere reading of the aforesaid wordings of the amended SRO. Had it been amended as “onward to spinning stage” the arguments of defendants’ counsel could have prevailed but not in the present circumstances.

14. On a query as to whether previously they (plaintiffs/spinners) were given exemption from the stage of ginner, both the Deputy Collector and Ms. Masooda replied in affirmative. They were again inquired as to the language used in the earlier notification is almost same as used in the amended notification, they submitted that they have been charging plaintiffs and raising grievances in this regard earlier as well.

15. The other point that relates to additional stages, the defendants counsel have provided text to show that perhaps two additional steps

are available in between ginned cotton and spinning stage which are carding and combing of the bales. The stages as suggested thus are Phutti, ginning, carding, coming, spinning and weaving. The ginned cotton is available in the form of bales. Ginning is a process which separates the seeds and removes the trash from the fiber. This ginned cotton fiber which is a product of ginning is called "lint" which is then compressed into bales and said to have a particular measurement in terms of its length and weight.

16. We need to understand here that these stages are being segregated by the defendants counsel to show what goods form raw material for the next stage. The objections of defendants' counsels are that until and unless carding and combing stages are over, the product does not form raw material for the spinning stage.

17. The process of carding is not such that it change the texture or form of material. Carders only line up the fibers nicely to make them easier to spin and as available in the text provided by Ms. Masooda Siraj, the carding machines consists mainly of a big roller with smaller one surrounding it i.e. it involves process of willowing and loosening the fiber and lapping to remove the dust whereas the combing process in terms of the text provided by Ms. Masooda Siraj shows that it is only optional and is used to distinguish and remove shorter fibers, if required.

18. In order to understand whether it forms raw material for the spinners, it is essential that either a textural form of the goods or its chemical composition is changed to consider it as raw material for the next stage. Both the stages suggested by the defendants' counsels do not show and prove that any of the form, textural form or chemical composition, is changed. In fact one of the stages has already been referred to as optional whereas the other stage only requires the lineup of the fibers nicely to make them easier to spin.

19. In the case of flour mills different sizes of wheat grains are being provided to the flour mills who, before grinding such grains, may or may not segregate the small grains and large grains for the purpose of obtaining best and second best quality of flour, but that does not mean that despite being of different sizes of grain it does not constitute raw material for the flour mills. Likewise different sizes of fiber does not mean that spinners cannot consume it as raw material.

20. Hence, the two stages as referred by the defendants' counsels are not such which are essential to be performed so that it may form raw material for the spinners. The moment the cotton is ginned and converted into bales, whether or not it is carded and combed, it becomes raw material for the spinners.

21. In view of the above, I am of the view that the defendants are entitled for the benefit of subject SRO 1125(I)/2011 dated 31.12.2011 as amended from time to time and hence I answer the issue No.2 in affirmative and the suit is accordingly decreed as prayed.

Dated: 05.09.2016

Judge