

*Before Ajay Kumar Mittal, ACJ & Tejinder Singh Dhindsa, J.*

**M/S A.P. PROCESSORS**—Appellant

*versus*

**STATE OF HARYANA**—Respondents

**VATAP No. 32 of 2017**

May 17, 2018

*Haryana Value Added Tax Act, 2003—S.2(ze) and 2(zg)—Central Sales Tax Act, 1956—Ss. 2(d), 2(g) and 2(h)—Additional Duty of Excise (Goods of Special Importance) Act, 1957—Appellant, a textile unit challenged the order dated 17.03.2017 passed by the Haryana Sales Tax Tribunal—Grey fabric is processed by assessee and finished product returned—Invoice raised on which Basic Excise Duty (BED) and Additional Excise Duty (AED) is leviable—Assessee filed 04-quarterly returns and claimed that no sales tax be levied when Additional AED is leviable as per the provisions of the statute—Assessing Authority issued notice in Form VAT No.2—Assessee submitted entries pertaining to sales and purchase—Assessing Authority concluded that all dyes and chemicals used for job work are transferred in physical form or in inherent properties—Therefore, the property in goods passed on in the process of execution of the job work should be taxed—Assessing Officer raised a tax demand of Rs.5,34,516/- —Appeal against the said order was rejected and the Assessee filed appeal before the Tribunal and the same was also dismissed upholding the levy of tax on the entire value of the chemicals and dyes irrespective of the fact whether the property in goods had been transferred or not—Impugned orders set aside and matter remanded to the Assessing Officer—What is taxable in the value of goods, which get transferred to customer and not value of goods used or consumed in execution of work—Thus, tax on entire value of chemicals consumed during dyeing/job work not to be taxed.*

*Held*, that a perusal of the reports of experts shows that in the process of dyeing or printing, the colour and chemicals are stuck to the fabric. In this process, about 20% of the total colours are used out of which 10% to 30% of the colours form part of the fabric. About 2% to 6% of the colours are part of finished fabric. Another report suggests that what gets absorbed and manifest itself with the finished goods are about 4.15% of the estimated average quality of chemicals and colours used in the process in case of dyeing and 8.9% in the case of printing.

According to the Government of Haryana Undertaking report, after going through various processes, the fabric finally contains only about 17% of the dyes which have been used during the process of dyeing and there is no existence physically or by its chemical properties of any of the chemicals consumed. The irresistible conclusion is that in the process of dyeing, some portion of colour is embedded in the fabric which is passed on to the principals for whom the job work is undertaken whereas certain portion is used as consumable only.

(Para 13)

*Further held that*, consumables are items which are lost in the course of execution of works contract. Even though consumables are items which are lost to the contractor, but it is not a gain for the awarder. In other words, they are used up in the process of executing the work. The chemicals are being used by the assessee only in aid of the work undertaken by it and they are extinguished in the process. They are not transferred to the awarder in any form, either as goods or otherwise. The work is more or less a labour contract, in which the assessee utilizes the chemicals just as it uses any other item or its machinery of fuel or power in the performance of the work.

(Para 14)

*Further held*, that adverting to the factual matrix in the present case, admittedly, the assessee is a textile processor and is engaged in the execution of job work. The grey fabric is received by the processor which is processed into finished cloth by subjecting it to various processes such as bleaching, dyeing, de-sizing and printing. The finished fabric after processing/manufacturing is sent back to the owner of the fabrics. Explaining various stages of dyeing and bleaching process, according to the appellant, the cloth undergoes the following processes:-

#### 1. Process of Washing

Washing is conducted with the help of chemicals namely, Desizer, soda ash, caustic soda, Hydrogen peroxide, HCL, Potassium permanganate, oxalic acid, sodium sulphate and acetic acid. In the whole process of washing there is no change in the form of fabric. It remains the same as it was before washing. Only impurities and dust are removed from the gray cloth. No transfer of property of any chemical passes in the process of washing of fabric. After this stage fabric is called as RFD (Ready for Dyeing). That all the chemicals consumed upto this stage are necessarily to be removed from the fabric and for

this, tests are conducted on the fabric because presence of even a single chemical (or its property) will destroy the whole process alongwith the fabric. Further, the properties of the above chemicals is so hazardous in nature that it cannot be passed alongwith the fabric in any circumstances.

## 2. Process of Whitening

The whitening process in which RFD fabric is exposed to whitening agents to give a white colour effect to the gray fabric. So, in the process of bleaching process, there is transforming impact on the fabric as the colour of the gray cloth changes to white. So whitening agents are deemed to be transferred as inherent property.

## 3. Process of dyeing

The process of dyeing is carried by exposing RFD fabric to dyestuff (Solution of Dyes and dyeing Chemicals) and common salt in the dyeing machine and required colour impression is achieved on the fabric. So in the process of Dyeing, dyes and common salt has the transforming impact and their inherent property as colour is transferred on the fabric and the remaining solution is drained out. So dyes and common salt are deemed to be transferred as property.

## 4. Process of Softening

Some times after the process of dyeing the fabric get hard during the process, then the fabric is given a treatment of softening agents (softners) to remove the hardness of the dyed fabric. So softening process also does not have any transforming impact and there is no transfer of property of any chemical in this process.”

(Para 20)

*Further held*, that 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.

(Para 22)

*Further held*, that 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.

(Para 26)

K.L Goyal, Senior Advocate with Rohit Gupta, Advocate, Rajiv Agnihotri, Advocate, *for the appellant(s)*.

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

Mamta Singla Talwar, D.A.G., Haryana.

### **AJAY KUMAR MITTAL, (ACJ)**

(1) This order shall dispose of a bunch of 94 appeals bearing VATAP Nos. 32, 45 to 81, 83 to 106, 110 to 116, 123, 126, 127, 128, 147, 149 to 155, 158, 159, 165, 166, 179 of 2017, 05, 06, 28, 30, 41, 43, 56, 57 of 2018 as according to the learned counsel for the parties, the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No.32 of 2017.

(2) VATAP No.32 of 2017 has been filed by the appellant-assessee against the order 17.03.2017, Annexure A.5 passed by the Haryana Tax Tribunal, Chandigarh (in short, “the Tribunal) for assessment year 2003-04 in STA No. 513 of 2010-11, claiming following substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the levy of tax on chemicals used as consumables in the process of job work of dyeing of fabric by assuming that property in the goods has passed on to the principals?

(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the

levy of tax on the entire value of dyes used by the appellant in the job work process of dyeing of fabric ignoring the quantity of dyes which are wasted during the process in which property is not transferred to the principals?

(iii) Whether on the facts and in the circumstances of the case, the findings of learned Tribunal are perverse insofar as it has been held that property in the goods i.e. dyes and chemicals is transferred to be principals in the job work of dyeing the fabric?

(iv) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in placing reliance upon the judgment of Hon'ble Bombay High Court in the case of *Commissioner of Sales Tax versus Matushree Textiles Limited*, ignoring that the said judgment dealt with applicability of works contract tax and not quantity of goods on which tax is to be levied?"

(3) A few facts relevant for the decision of the controversy involved as narrated in VATAP No.32 of 2017 may be noticed. The appellant-assessee is a dealer duly registered under the provisions of the Haryana Value Added Tax Act, 2003 (for brevity HVAT Act) and Central Sales Tax Act, 1956 (in short, "the CST Act"). The assessee is a textile processor and is engaged in the execution of job work. The grey fabric comes to the processors and after due processing/manufacturing, the finished product is sent back raising an invoice on which Basic Excise Duty (BED) and Additional Excise Duty (AED) is also leviable although the rate of duty is nil and as per the valuation prescribed in the relevant Act considering cost of grey fabric, processing charges and other incidental charges etc. Thus, the processed fabric falls under the category of declared goods and the sales tax on such fabrics stands already paid in the form of additional duty of excise under the Additional Duty of Excise (Goods of Special Importance) Act, 1957. The assessee filed all the four quarterly returns for the year 2003-04. It claimed that no sales tax should be levied on sale of textile under the provisions of the Sales Tax laws when additional excise duty is leviable as per the provisions of the statutes. For framing the assessment, the assessing authority issued notice in Form VAT N.2. In response to the notice, the assessee submitted sufficient entries pertaining to the purchases and sales with the lists of LP3, LP7 and No.C4 to the assessing authority. While framing the assessment, the assessing authority checked all the records submitted

by the assessee. Cross entries from cash book to ledger and vice versa had been checked. Account books produced by the assessee had been examined in detail. Sales invoices, tax invoices had also been verified with the help of account books and lists submitted by the assessee alongwith the returns. The assessee authority concluded assessment on the basis of observations and findings 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 and the Assessing officer raised a tax demand of Rs.5,34,516/- vide order dated 20.3.2007, Annexure A.1. Reliance was placed on decision of the Bombay High Court in *Commissioner of Sales Tax versus Matushree Textiles Limited*<sup>1</sup>. Aggrieved by the order, the assessee filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) [JETC(A)]. It was pleaded that no such tax was payable by the assessee. The order of the Assessing Authority was not supported by any reason/ground or report regarding the portion of the material which could technically be said to have been transferred after the process of dyeing as that there was no transfer of chemical on dyed fabric. Even if sales tax was leviable, at best it could be said that the dyes transferred may be approximately 20%. Vide order dated 4.3.2008, Annexure A.2, the JETC(A) rejected the appeal on the ground that the Assessing Authority was the best judge to ascertain the factual position as to how much transfer of property was involved in the process and it had rightly been ascertained by the assessing authority. Still not satisfied, the assessee filed appeal before the Tribunal, inter alia canvassing that tax on value of chemicals consumed during the process of dyeing and job work was not to be included for the purpose of levy of VAT under the HVAT Act/CST Act. It was also argued that even the dye used in the process would not be entirely taxable as a substantial portion of the same is not transferred to the principal eventually. The assessee also submitted a paper book containing the reports of technical personal certificates issued by various competent authorities justifying the stand of the assessee that chemicals are wasted during the process of dyeing of textiles and only a part of colour is made part of the final product sent to the principal. Vide impugned order dated 17.3.2017, Annexure A.5, the Tribunal dismissed the appeal upholding the levy of tax on the entire value of the chemicals and dyes used in the process irrespective of the fact whether

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<sup>1</sup> (2003) 132 STC 539

property in goods had been transferred or not. Hence the instant appeal by the appellant-assessee.

(4) Learned counsel for the appellant assessee inter alia submitted that the order passed by the Tribunal is based upon judgment of the Bombay High Court in *Matushree Textile Limited's cases (supra)*, wherein the issue was 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. It was held by the Court that property of the material such as chemical colours and dyes used in the process of dyeing and printing was passed on to the fabric of the customer and as such, passing of the property of material was a deemed sale and tax was leviable on such materials under the Works Contract. The Court did not decide as to how much quantity of dyes and chemicals would be made subject matter of such tax since such question was not referred to it for an answer. Learned counsel relied upon judgment of the Apex Court in *Gannon Dunkerley versus State of Rajasthan*<sup>2</sup>, wherein it was held that tax is imposed in a works contract on the transfer of property in goods involved in the execution of the works contract. It was observed that the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works. Reliance was also placed on judgment of Karnataka High Court in *Sri Krishna Spinning and Weaving Mills Pvt. Limited versus Authority for clarification and Advance Rulings, Bangalore*<sup>3</sup>, wherein it was noted that about 10% to 20% of the dyeing chemicals are consumed by the fabric and the remaining get washed out as per technical reports. In that case, the court while holding that the said aspect had not been considered by the authorities below as to how much would be the actual loss of chemicals, dyes and colours when the fabric undergoes various process, remanded the case back to the Assessing Office to work out details regarding as to how much of chemicals, dyes and colours get washed out. The Assessing Officer was asked to add to the value of turnover in accordance with law the actual percentage of chemicals, dyes and colours which were retained or embedded on the textile or the fabric.

(5) On the other hand, learned counsel for the revenue

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<sup>2</sup> (1993) 1 SCC 364

<sup>3</sup> (2010) 27 VST 194

contended that vide 46<sup>th</sup> Amendment of the Constitution with effect from 02.02.1983, it was inter alia provided that power to levy tax on sale and purchase of goods included power to levy tax on transfer of property in goods used in execution of works contract. Consequent upon this amendment, most of the States amended their sales tax laws to include transfer of property in goods used in execution of works contract within the ambit of taxation. The Haryana General Sales Tax Act, 1973 was also amended on 18.04.1984 to incorporate such levy of sales tax. There was no change under the HVAT Act in this respect. According to the learned counsel for the revenue, from the above legal position, it is clear that the goods used in bleaching, dyeing, printing etc. by textile processors became taxable from 18.04.1984 where such goods were used in the execution of local works contracts, and from 11.05.2002 where the goods were used in the execution of interstate works contracts. With regard to contention of the assessee whether chemicals used in the job work are taxable or not and whether dyes/colours are taxable only to the extent of the quantity which is transferred to the fabric or not the whole quantity, learned counsel for the revenue submitted that the judgment of the Bombay High Court in *Matushree Textiles Limited's case(supra)* relied upon by the Tribunal in its order dated 17.03.2017 is against the assessee, on the issue of taxability of the chemicals, dyes and colours used in the process of dyeing and printing and also, on the quantum of taxability thereof. Learned counsel for the revenue concluded her arguments by stating that the entire property in the chemicals/dyes/colours used in the job work of dyeing and printing the fabric passes on to the fabric because the solution left behind is wastage and is of no use or value and therefore, the value of all chemicals and dyes used in the job works is taxable.

(6) We have heard learned counsel for the parties.

(7) Before adjudicating the issue involved in these appeals, it would be apposite to reproduce the relevant statutory provisions:-

**Section 2(ze) of the Haryana Value Added Tax, 2003 defines "Sale".** The relevant portion thereof reads thus:-

"Sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration except a mortgage or hypothecation of or a charge or pledge on goods; and includes-

(i) XXXXXXXXX



(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) to (vi) xxxxxx”

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

**Section 2(g) of the Central Sales Tax Act, 1956 defines “Sale”, which is in similar terms as under:-**

With its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

(i) xxxxxxxxxxxxxx

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii)to (vi)xxxxx”

but does not include a mortgage or hypothecation of or a charge or pledge on goods.

**Section 2(d) of the Central Sales Tax Act, 1956 defines “Goods”:**

“d) “goods” includes all material , articles, commodities and all other kind of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.”

(8) A plain reading of the above provisions shows that sale means any transfer of property in goods for cash or deferred payment or other valuable consideration except a mortgage or hypothecation of or a charge or pledge on goods. The “goods” means all material articles, commodities and all other kinds of moveable property but does not include newspapers, actionable claims, stocks, shares and securities.

(9) **Section 2(zg) of HVAT defines “Sale price”, which reads thus:-**

**“2(zg) “sale price”** means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression purchase price shall be construed accordingly;

Explanation:- (I) in relation to transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, sale price shall mean amount as is arrived at by deduction from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing the labour and other service charges incurred for such execution, and where such labour and other service charges are not quantifiable, the sale; price shall be the cost of the acquisition of the goods and the margin of profits on them prevalent in the trade plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in them whether as such or in any form passed to the contractee and where the property in a different form shall include the cost of conversion.

According to the aforesaid provision, the “sale price” under the HVAT Act means the amount payable to a dealer as consideration for the sale of any goods minus cash or trade discount allowed at the time of sale but includes any sum charged by the dealer in respect of the goods at the time of or before the delivery thereof. Explanation to Section 2(zg) provides the method of determination of sale price in relation to transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, which shall be an amount arrived at by deduction from the amount of valuable consideration paid or payable, the labour and other service charges incurred for such execution and where it is not so quantifiable, then the cost of acquisition of the goods and the prevalent margin of profits on them plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in them is transferred to the contractee and where the property is converted into different form, by including the cost of conversion.

Similar meaning is assigned to the expression “sale price” under the

CST Act. **Section 2(h) of CST Act** is in the following terms:-

“**2(h) “sale price”** means the amount payable to a dealer as consideration for sale of any goods, less any sum allowed as cash discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause.”

(10) The Apex Court in ***Gannon Dunkerley’s case (supra)*** had held that for purposes of computation of tax, the tax is imposed in a works contract on the transfer of property in goods involved in the execution of a works contract. The taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works.

(11) Having noticed the taxable event in a works contract, we proceed to examine the core issue that arises for consideration as to what is the quantum of transfer of property in goods while executing the job work of bleaching and dyeing. To put it differently, it is to be seen whether it would be the value of the entire material used for bleaching and dyeing or some portion of the material used for process of bleaching and dyeing which is transferred as property in goods while accomplishing the job work under works contract.

(12) It would be apt to refer to various technical reports of the experts relied by the assessee which are as under:-

**“1 Report dated 19.11.2004 given by Shri K.P. Bhatt, B.Sc. B.SC. Tech (Textile Chimistry), UDCT, Mumbai, Technical Consultant, Textile Process Industry**

In this report, the Technical expert had observed that the dyeing and printing of textile fabric undergoes the following

processes:

**(i) Stitching**

This stage of process is to make the fabric ready for the process. No chemicals or dyes are used in this process.

**(ii) Singeing and Desizing**

In this process, roughly around 15% of the chemicals are used. However, all the chemicals are washed out in this process.

**(iii) Scouring and Bleaching**

In this process, about 15% of the dyes and chemicals are used and all the chemicals are washed out as in this process, the fabric passes through the machine in which the chemicals are applied on the fabric at a higher temperature of 97 degree centigrade. At this temperature, these chemicals remove wax, fatty materials, yellow colour from the fabric and make the fabric more absorbent and white.

**(iv) Mercerizing**

In this process, the fabric is passed through caustic soda solution to change the structure of cellulose. The fabric becomes more lustrous and the strength increases. After the process is over, the entire caustic is to be removed from the fabric. In this process, 10% of the total value of dyes and chemicals are used.

**v) Dyeing**

After all the processes, to make the cloth fabric ready for dyeing the process of applying the colour is undertaken. In this process of dyeing, depending upon the colour of shade, 10 to 30% of the colours are fixed on the fabric. Rest of the colours are washed out. In this process, reactive colours and chemicals on the alkali, sodium silicate and detergents are used. In this process, 10 to 30% depending upon the shade are stuck to the shade and the rest of the colour and chemicals are totally washed out. In this process, about 20% of the colours and 10% of the total chemicals are used.

**(vi) Printing**

After mercerizing, either the fabric is dyed or printed. In

case the process of printing is undertaken, the fixation of colours on the fabrics would vary from 20% to 50%. Rest of the colours alongwith entire chemicals are washed out in the subsequent process of washing/soaping. In the printing, around 25% of the total colours and 5% of the total value of dyes and chemicals are used.

**(vii) Finishing**

Finishing process is done to make the fabric softer or heavier as per the requirement. In this process, no chemical traces remain in fabric and around 10% of the value of total dyes and chemicals are used.

**Conclusion:** The fabric is used by human beings and traces of chemicals, enzymes, acids and alkalis and excess colours must be removed to make it harm free to wear by human beings. Ultimately, dyed or printed fabrics will have and carry a small portion of colours on it and nothing else.

**2. Report of Shri H.V. Krishnaswamy dated 28.01.2005**

“1.1 M/s. Sri Krishna Spinning & Weaving Mills Private Limited (SKSWMPL), Subramanyapura, Bangalore-560061, are engaged in the Textile Processing of cotton fabrics from the first stage of stitching of grey fabrics to the final stage of dyeing/ printing and finishing.

1.2 M/s. SKSWMPL now wishes to have an opinion on this process details and to evaluate the extent of permanent absorption of dyes, chemicals and colours used in different stages, which manifest itself in the final outputted fabrics. This Report analyses this requirement.

2.0, 3.0, 4.0 xxxxxxxx.....

The brief details of the various stages of process, the grey fabrics go through, in chronological order, are as under:

**Stitching**

The first stage of process is to make the grey fabric ready for process. The grey fabric is in the form of pieces having a maximum length of about 30 meters each piece. However, the pieces cannot be processed individually and they have to be stitched piece to piece to make it continuous ready for processing. The length of the stitched fabric varies from

about 300 meters and above.

### **Singeing**

The surface of the fabric contains loose fibres and they have to be removed to make the fabric ready for next process. In the process of singeing the fabric is passed through uniform flame at certain speed. When the fabric passes through flame at a predetermined speed, all loose fibres on the surface of the fabric are burnt and the surface of the fabric becomes plain without any loose fibres and is ready for the next process.

### **Desizing:**

At the stage of weaving (converting yarn into fabric) the size (starch) is applied. However, while processing the fabric, all impurities and foreign materials etc., have to be removed from the fabric. The fabric can be processed (dyed or printed) only when it is devoid of all impurities and foreign materials.

### **Nature of Process of Desizing:**

In the process of desizing, the size (starch) which was applied at the time of weaving, is removed. The fabric is wetted and certain chemicals are used to remove the size (starch) from the fabric. When certain chemicals are applied to the fabric, the size (starch) is made soluble and removed completely in the final process of washing immediately after desizing.

### **Chemicals Used**

- Enzymes
- Wetting Agents
- Deaerating Agents
- Sequestering Chemicals

In this process of desizing, roughly about 15% of the total dyes and chemicals are used.

#### **5.3.4. Effect of Desizing:**

After desizing the fabric, the fabric is fully devoid of size

(starch) and is ready for next process i.e. Scouring and Bleaching. All chemicals used in the process along with dissolved size (starch) are totally washed out while washing immediately after desizing.

**Scouring & Bleaching:**

The natural colour of the grey fabric is yellow and it contains certain fatty material, wax, etc. On account of this the fabric at this stage is not fully absorbent in nature.

**Nature of Process of Scouring & Bleaching:**

In the process of Scouring & Bleaching, the wetted fabric is treated by applying various chemicals, and is passed through the machine at high temperature (around 97 degree Celsius). At this temperature the chemicals applied in this process remove all impurities such as wax, fatty material and yellow colour from the fabric. Finally the fabric is washed when all chemicals used along with all impurities are washed out, and the fabric becomes white and is more absorbent in nature.

**Chemicals Used:**

- Sodium Hydroxide
- Hydrogen Peroxide
- Organic Stabilizers
- Demineralising Agents
- Wetting Agents

In this process of Scouring & Bleaching roughly about 30% of the total dyes and chemicals are used.

**Effect of Scouring & Bleaching:**

The process of Scouring & Bleaching removes all fatty materials, wax and yellow colour from the fabric, and the fabric becomes more absorbent and white in colour.

**Mercerizing:**

**Nature of Process of Mercerizing:**

In this process of Mercerizing physical transformations of

the fabric take place. The cellulose structure of the fabric changes from cellulose one to cellulose two. The fiber in the fabric becomes cylindrical and due to this, the fabric becomes more lustrous and the strength increases. In this process the fabric is passed through caustic soda solution (26% strength). The cellulose structure of the fabric changes when it enters into caustic soda solution which acts as a media. After the process is over the entire caustic soda has to be removed from the fabric to make it ready for next process (Dyeing or Printing).

### **Chemicals used:**

- Caustic Soda Solution.

In this process of Mercerizing, roughly about 15% of the total dyes and chemicals are used.

### **Effect of Mercerizing:**

As stated earlier, the physical dimension of the fabric changes after this process. The cellulose structure changes from one to two, and the strength of the fabric increases.

### **Dyeing or Printing:**

Dyeing:

After Desizing, Scouring & Bleaching and Mercerizing the fabric is ready for Dyeing or Printing. At this stage the fabric must be devoid of all impurities and various chemicals that were used and left out in the earlier processes.

### **Nature of process of Dyeing:**

In this process, the colour is applied on the fabric either by Pad Batch Technique or Exhaust Process in Jiggers as per the requirement. Here various reactive colours (as per requirement) along with certain chemicals and detergents are used. Depending on the requirement of shades (light, medium or dark) colours are fixed on the fabric. Between 10% - 30% of the total colours used in the process of Dyeing are actually fixed on the fabric. As the process of Dyeing is done in all combinations of shades (light, medium and dark) depending on the customers requirement, it can be assumed that, on an average about 20% of the total colours



used in this process of Dyeing are actually fixed on the fabric. The balance 80% colours alongwith the all chemicals used are fully washed out at the end of this process.

Colours and Chemicals Used:

- Various reactive colours
- Alkalis
- Sodium Silicate
- Detergents

In this process of Dyeing, roughly about 15% (chemicals), and about 20% (colours) of the total dyes and chemicals are used.

### **Effect of dyeing**

In this process of Dyeing the white fabric becomes coloured fabric as per the requirement with about 20% of the colours used are actually fixed on the fabric.

### **Dyeing or Printing:**

#### **Printing:**

After Desizing, Scouring, Bleaching and Mercerizing, the fabric is ready for Dyeing or Printing. At this stage the fabric must be devoid of all impurities and various chemicals that were used and left out in the earlier processes.

5.7.1 to 5.8.2 xxxxxxxxxxxx.....

#### **5.8.3 Effect of finishing**

In this last process, the fabric acquires different feels like soft, heavy, etc. About 3% of the total chemicals used remain on the fabric.

#### **7.0 Opinion:**

It is my opinion that, in the total process of dyeing and printing of cotton fabrics, the estimated average quantity of total chemicals and colours used in the process, what gets absorbed and manifest itself with the finished goods are about-

- 4.15% (four point one five percent) in the case of dyeing, and

- 8.9% (eight point nine percent) in the case of printing.”

**3. Report of Govt. Quality Marketing Centre for Textile Goods, Panipat (A Govt. of Haryana Undertaking) dated 26.03.2011**

The abovesaid report provides as under:-

**(i) Stitching**

No chemicals are used in this process.

**(ii) Mercerizing**

Chemicals are used in this process where the fabric has to pass through the solution and is finally washed and neutralized with the help of acetic acid. After this process, the dimensional change in the width of fabric is reduced by 15% and weight of fabric is reduced by about 9%. After this process, no trace or property of the chemicals consumed has been reported. Conclusion is drawn that every chemical is washed off.

**(iii) Scouring**

Scouring is undertaken with the help of caustic soda, sodium carbonate, sodium bicarbonate, hydrogen peroxide, peroxide stabilizer, bleaching powder, HCL, Detergent and acetic acid. This process is conducted at a higher temperature of 97 degree centigrade. After this process, the dimensional change in the width of fabric is further reduced to 2% and weight of the fabric also gets reduced by about 2%. The entire chemicals consumed in this process are washed off as there is no trace or property of the chemicals.

**(iv) De-sizing**

After scouring, the fabric is desized with the help of desizer, HCL and common salt. This process is necessary for removing the size from the fabric, after this again the fabric was thoroughly hot washed with detergent. It was concluded that every chemical used/consumed upto this process was completely washed off.

**(v) Dyeing**

After completion of process no. (iv) of Desizing, the process of dyeing is started with the help of 8% colour (by weight of

fabric). After completion, two hot wash with detergent and two hot and two wash of normal water are given. In this process, dimensional width increases by 6% and the weight of fabric increases by about 1.5%. In this process, no trace of chemicals is found leading to a conclusion that every chemical is washed off. It was, however, observed that about 17% of the dyes used have been retained by the fabric.

**(vi) Finishing**

After dyeing, the softener is used but no traces are found in the final fabric.”

**Conclusion:** Now it is clearly concluded, here above that after going through various processes, the fabric finally contains only about 17% of dyes, which has been used during the process of dyeing. There is no existence, physically or by its chemical properties of any of the chemicals consumed here above upon the dyed fabric.

(13) A perusal of the reports of experts shows that in the process of dyeing or printing, the colour and chemicals are stuck to the fabric. In this process, about 20% of the total colours are used out of which 10% to 30% of the colours form part of the fabric. About 2% to 6% of the colours are part of finished fabric. Another report suggests that what gets absorbed and manifest itself with the finished goods are about 4.15% of the estimated average quality of chemicals and colours used in the process in case of dyeing and 8.9% in the case of printing. According to the Government of Haryana Undertaking report, after going through various processes, the fabric finally contains only about 17% of the dyes which have been used during the process of dyeing and there is no existence physically or by its chemical properties of any of the chemicals consumed. The irresistible conclusion is that in the process of dyeing, some portion of colour is embedded in the fabric which is passed on to the principals for whom the job work is undertaken whereas certain portion is used as consumable only.

(14) Consumables are items which are lost in the course of execution of works contract. Even though consumables are items which are lost to the contractor, but it is not a gain for the awardee. In other words, they are used up in the process of executing the work. The chemicals are being used by the assessee only in aid of the work undertaken by it and they are extinguished in the process. They are not

transferred to the awarder in any form, either as goods or otherwise. The work is more or less a labour contract, in which the assessee utilizes the chemicals just as it uses any other item or its machinery of fuel or power in the performance of the work.

(15) Now, reference is made to the case law relied upon by the appellant-assessee. In ***Gannon Dunkerley's case*** (*supra*), it was held by the Apex Court that the cost of consumables would not form part of the value of goods on which tax is payable in a works contract. The relevant paras read thus:-

“45. Keeping in view the legal fiction introduced by the Forty Sixth Amendment whereby the works contract which are entire and indivisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works [item no (i)], amounts paid to a sub- contractor for labour and services [item No. (ii)], charges for planning, designing and architect's fees [item No. (iii)], charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contract [item No. (iv)], and the cost of consumables such as water, electricity, fuel etc. which are consumed in the process of execution of a works contract [item No. (v)] and other similar expenses for labour and services will have to be excluded as charges for supply of labour and services. The charges mentioned in item No. (vi) cannot, however, be excluded. The position of a contractor in relation to a transfer of property in goods in the execution of a works contract is not different from that of a dealer in goods who is liable to pay sales tax on the sale price charged by him from the customer for the goods sold. The said price includes the cost of bringing the goods to the place of sale. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods. The charges mentioned in item No. (vii) relate to the various expenses which form part of the cost of establishment of the

contractor. Ordinarily the cost of establishment is included in the sale price charged by a dealer from the customer for the goods sold. Since a composite works contract involves supply of materials as well as supply of labour and services, the cost of establishment of the contractor would have to be apportioned between the part of the contract involving supply of materials and the part involving supply of labour and services. The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods. Similar apportionment will have to be made in respect of item No. (viii) relating to profits. The profits which are relatable to the supply of materials can be included in the value of the goods and the profits which are relatable to supply of labour and services will have to be excluded. This means that in respect of charges mentioned in item nos. (vii) and (viii), the cost of establishment of the contractor as well as the profit earned by him to the extent the same are relatable to supply of labour and services will have to be excluded. The amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover:

- a) Labour charges for execution of the works;
- b) amount paid to a sub-contractor for labour and services;
- c) charges for planning, designing and architect's fees;
- d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- e) cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

- f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- g) other similar expenses relatable to supply of labour and services;
- h) profit earned by the contractor to the extent it is relatable to supply of labour and services;

The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor.

46. We may, however, make it clear that apart from the deductions referred to above, it will be necessary to exclude from the value of the works contract the value of the goods which are not taxable in view, of Sections 3, 4 and 5 of the Central Sales Tax Act and goods covered by Sections 14 and 15 of the Central Sales Tax Act as well as goods which are exempt from tax under the sales tax legislation of the State. The value of goods involved in the execution of a works contract will have to be determined after making those deductions and exclusions from the value of the works contract.”

(16) In *Sri Krishna Spinning and Weaving Mills Pvt. Limited's case (supra)*, it was observed by the Karnataka High Court that the dyeing work undertaken by the assessee on cotton fabrics is the final act but prior to this act of dyeing, various processes are undertaken for making the fabric fit for dyeing like bleaching, scouring and mercerizing. According to technical reports, 10 to 20% of dyeing chemicals are consumed by the fabric and the remaining get washed out. The case was remanded back to the Assessing officer to work out the details regarding as to how much of chemicals, dyes and colours get washed out in the process of dyeing and printing of fabric. The relevant paras read as under:-

“5. The appellant is a dealer duty registered under the provisions of the Act and is engaged in the business of dyeing and printing of textiles both on own account and also on job-work basis. For the said purpose the appellant procures materials, within and outside the State, of dyes, chemicals and colours besides using husk and agro-based fuels and diesel to run the boiler.

6. According to the appellant, it incurs expenses on salary, electricity, repairs, administrative and selling expenses. It has further been the contention of the appellant that the dyes, chemicals and colours used in the work of dyeing and printing are not consumed in full but certain percentage thereof would get washed away in the process of final product. Since there was some doubt with regard to computation of taxable turnover on such work besides the issue of input credit available but used as consumables, the appellant sought clarification by moving an appropriate application before the Authority by filing an application under section 60 of the Act.

7. 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

8. While the textile undergoes the aforesaid processes, certain chemicals are used in the process 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 markets.

9. It was contended by the learned counsel for the appellant that in the process of dyeing, as also in the process of 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 could be extended to the appellant.

10. During the course of hearing, learned counsel for the appellant submitted before us a certificate issued by Sri K. P. Bhatt, technical consultant of textile processing industry to suggest that in dyeing, about 10 per cent to 20 per cent of the dyes and chemicals are consumed by the fabric and remaining, gets washed out. Normally, for dyeing it has

been mentioned that roughly around 20 per cent colours and 10 per cent of chemicals are used and remaining gets washed out. Ultimately, the conclusion of expert is as follows:

As everyone is aware, the fabric is used by human beings and traces of chemicals, enzymes, acids and alkalis and excess colours must be removed to make it harm-free to wear by human beings. Ultimately, dyed or printed fabrics will have and carry a small portion of colours on it and nothing else.”

(17) In *Commissioner of Sales Tax, Maharashtra State, Bombay versus R.M.D.C. Press Private Limited*.<sup>4</sup>, the Bombay High Court opined that in the execution of job work of printing, there is no transfer of property in the ink which is used for the purpose of printing. Infact, ink is a tool of the printer. It is consumed in the process of printing and loses its identity as goods. The relevant para read thus:-

“5. The question that arises for consideration is whether in execution of job-work of printing, any transfer of property in the ink is involved. We have given our careful consideration to this controversy. We, however, find it difficult to hold that in the execution of job-work of printing, there is any transfer of property in the ink which is used for the purpose of printing. In fact, ink is a tool of the printer. It is consumed in the process of printing and loses its identity as “goods”. No property can be said to pass in ink in execution of the contract of printing, either as ink or in any other form. No customer, is concerned with the ink used in printing, its quantity or cost. It cannot be said that when a customer gets some papers printed, he also gets ink either as ink or in any other form. There is thus no transfer of ink involved in execution of a works contract of printing. It may be pertinent to observe that what is taxable under the Act is the value of the goods which get transferred to the customer in 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. That being so,

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<sup>4</sup> (1999) 112 STC 307



in our opinion, the Tribunal was right in holding that there is no transfer of property in ink involved in the execution of contract of printing, either as ink or in any other form.”

(18) Kerala High Court delving into similar issue in *Microtrol Sterilization Services Private Limited versus State of Kerala*<sup>5</sup>, observed that sales tax is payable only on the value of goods that get transferred from the contractor in the execution of the works contract. Consumables are items which are lost in the course of execution of works contract. In other words they are used up in the process of executing of work. The relevant observations are as follows:-

“Consumables are items which are lost in the course of execution of works contract. Even though consumables are lost to the contractor, it is not a gain for the awardee. In other words, they are used up in the process of executing the work. Sterilisation is a process by which goods are made free of germs and in order to retain the quality of goods, only packed commodities are subject to sterilization with the use of ethylene oxide. The assessee’s representative present in court explained the sterilization process as one involving the use of a compact airtight room wherein the goods to be sterilized in packed form are exposed to ethylene oxide for around six hours and then the said gas is allowed to escape after mixing with carbon dioxide at higher levels through chimney. Ethylene oxide is a toxic gas which is highly inflammable. After the duration of sterilization, the gas is released to air after neutralising it with carbon-dioxide. Admittedly after sterilization goods do not retain any trace of ethylene oxide which is completely released in the air. Therefore, there is no transfer of ethylene oxide from the assessee to the customers in the course of sterilization of the goods. On the other hand, it is used up as a consumable in the service rendered by the assessee, the value of which is to be excluded in the determination of taxable turnover of works contract under section 5C of the Act. The decision of the Patna High Court in the case of application of pesticide and the other decisions of this court in the case of fire works squarely apply to the facts of this case. The decision cited by the Government Pleader will not

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<sup>5</sup> (2009) 26 VST 213 (Ker.)

apply to this case because those are cases involving dyeing work where the dye is transferred to the fabric supplied by the customer and is retained in the cloth. We are, therefore, unable to uphold the order of the Tribunal confirming the levy and demand of tax on the value of ethylene oxide used up in sterilization work. We, therefore, allow the sales tax revision by reversing the order of the Tribunal confirming the assessment and by declaring that no tax is leviable on the value of ethylene oxide used in sterilization work.”

(19) Similar view was reiterated by the Kerala High Court in *Dynamic I&C. Services (P) Ltd. versus State of Kerala*<sup>6</sup>, by recording that the chemicals used by the petitioner were only in aid of the work undertaken by it as a cleaning agent for cleaning the boilers in the plant and they were extinguished in the process. They are not transferred to the awardee in any form either as goods or otherwise. The relevant findings read as under:-

“The chemicals are being used by the petitioner only in aid of the work undertaken by it, as a cleaning agent for cleaning the boilers in the plant and they are extinguished in the process. They are not transferred to the awardee in any form, either as goods or otherwise. The work is more or less a labour contract, in which the petitioner utilizes the chemicals just as it uses any other item of its machinery of fuel or power in the performance of the work. There is no transfer of property in goods and no sale is liable for tax under Explanation 3A.”

Similar decision was taken in *M/s Chandok Textiles Enterprises Private Limited versus State of U.P. and others*, Civil Misc. Writ Petition No. 273 of 2014 decided on 18.05.2016 and *State of Jharkhand and others versus Voltas Limited*.<sup>7</sup>

(20) Adverting to the factual matrix in the present case, admittedly, the assessee is a textile processor and is engaged in the execution of job work. The grey fabric is received by the processor which is processed into finished cloth by subjecting it to various processes such as bleaching, dyeing, de-sizing and printing. The

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<sup>6</sup> (1995) 97 STC 564

<sup>7</sup> (2007) 7 VST 317(SC)

finished fabric after processing/manufacturing is sent back to the owner of the fabrics. Explaining various stages of dyeing and bleaching process, according to the appellant, the cloth undergoes the following processes:-

### **1. Process of Washing**

Washing is conducted with the help of chemicals namely, Desizer, soda ash, caustic soda, Hydrogen peroxide, HCL, Potassium permanganate, oxalic acid, sodium sulphate and acetic acid. In the whole process of washing there is no change in the form of fabric. It remains the same as it was before washing. Only impurities and dust are removed from the gray cloth. No transfer of property of any chemical passes in the process of washing of fabric. After this stage fabric is called as RFD (Ready for Dyeing). That all the chemicals consumed upto this stage are necessarily to be removed from the fabric and for this, tests are conducted on the fabric because presence of even a single chemical (or its property) will destroy the whole process alongwith the fabric. Further, the properties of the above chemicals is so hazardous in nature that it cannot be passed alongwith the fabric in any circumstances.

### **2. Process of Whitening**

The whitening process in which RFD fabric is exposed to whitening agents to give a white colour effect to the gray fabric. So, in the process of bleaching process, there is transforming impact on the fabric as the colour of the gray cloth changes to white. So whitening agents are deemed to be transferred as inherent property.

### **3. Process of dyeing**

The process of dyeing is carried by exposing RFD fabric to dyestuff (Solution of Dyes and dyeing Chemicals) and common salt in the dyeing machine and required colour impression is achieved on the fabric. So in the process of Dyeing, dyes and common salt has the transforming impact and their inherent property as colour is transferred on the fabric and the remaining solution is drained out. So dyes and common salt are deemed to be transferred as property.

### **Process of Softening**

Some times after the process of dyeing the fabric get hard during the process, then the fabric is given a treatment of softening agents (softners) to remove the hardness of the dyed fabric. So softening process also does not have any transforming impact and there is no transfer of property of any chemical in this process.”

(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* versus *State of Kerala*<sup>8</sup>, 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

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<sup>8</sup> 2004 (136) STC 435 (Kerala)

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 versus State of Haryana*<sup>9</sup>, 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 versus 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 versus 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

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<sup>9</sup> (1993) 104 PLR 269

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.

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*Arihant Jain*