

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15.09.2020

+ **W.P.(C) 597/2019**

MANUFACTURERS TRADERS ASSOCIATION & ANR.

... Petitioners

Through: Mr. Prakash Shah, Advocate
with Mr. Jasdeep Dhillon,
Advocate.

versus

UNION OF INDIA & ORS.

... Respondents

Through: Mr. Jasmeet Singh, CGSC with
Mr. Kirtiman Singh, CGSC and
Mr. Srivtas Kaushal, Advocate
for R-1.
Mr. Amit Bansal, Senior
Standing Counsel with
Mr. Aman Rewaria and
Ms. Vipasha Mishra, Advocates
for R-2 to R-4.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

CM APPL. 22639/2020

1. By way of this application, the Petitioners seek early hearing of the petition through video conferencing. Since no objection is raised on behalf of the Respondents, the application is allowed. Having regard to the fact that a short question is involved in the present petition, with the

consent of the counsel for both parties, we proceed to hear the main petition for final disposal.

2. The application is disposed of accordingly.

W.P.(C) 597/2019 & CM APPL. 22638/2020

3. Petitioner No. 1, a society comprising of members engaged in the manufacture of fabrics, has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950 (“Constitution”) seeking *inter alia* a writ in the nature of mandamus directing the Central Government (“Respondent No. 1”) as well as the Government of NCT of Delhi (“Respondent No. 2”) to notify the GST rate of 5% for all varieties of fabrics falling under Chapters 50 to 63 of the Customs Tariff in furtherance of the recommendations made by the Goods and Service Tax Council (“Respondent No. 3”).

4. Briefly stated, the subject matter of the present petition revolves around three GST Notifications, the details whereof are as follows: (i) No. 1/2017-Central Tax (Rate) dated 28.06.2017 issued by Respondent No. 1 under Section 9(1) of the CGST Act, 2017, notifying the rate of central tax at 6% on Intra-State supply of fabrics; (ii) No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 also issued by Respondent No. 1 under Section 5(1) of the IGST Act, 2017, notifying the rate of integrated tax at 12% on Inter-State supply of the fabrics; (iii) No. 1/2017-State Tax (Rate) dated 30.06.2017 issued by Respondent No.2 under Section 9(1) of the DGST Act, 2017, notifying the rate of state tax at 6% on Intra-State supply of fabrics made within the NCT of Delhi. In terms of the afore-noted notifications, for fabrics falling under Chapter 50 to 63

GST @ 5% has been notified, except for the varieties of fabrics falling under Chapter 58 and 59 for which GST is notified @ 12%.

5. The Petitioners perceive the aforesaid three notifications to be in conflict with the recommendations made by Respondent No. 3 in its 15th Meeting held on 03.06.2017. They contend that although the Joint Secretary (TRU-1) CBEC proposed a rate of 12% on fabrics falling in Chapters 56, 57 & 59, however during the meeting, Respondent No. 3 took a decision and finalised uniform rate of tax for all varieties of fabrics falling under Chapters 50 to 63 of the Customs Tariff at 5% and not at the proposed rate of 12%. Then in the subsequent 16th Meeting held on 11.06.2017, the Council after due deliberations, adopted the decision taken in the previous meeting. It is thus contended that Respondents No. 1 and 2 have not implemented the specific recommendations made by Respondent No. 3 in entirety, and the rate of tax notified on all varieties of fabrics covered under Chapters 50 to 63 of the Customs Tariff is not the recommended rate of 5%. On the aforesaid footing, Petitioners seek directions to Respondents No. 1 and 2 to immediately implement the recommendations made by Respondent No. 3 and issue requisite notifications notifying the recommended rate of 5% on all varieties of fabrics covered under Chapters 50 to 63 of the Customs Tariff.

6. During the course of preliminary hearing, taking a *prima facie* view of the matter on the basis of the record shown to the Court, it was felt appropriate and necessary to have the matter referred to Respondent No. 3 to have its view. Directions to this effect were issued vide order dated 11.10.2019, relevant portion of which is extracted hereunder:

“On 27.08.2019, we had passed the following order:

“ 1. During the course of arguments, the counsel for Petitioner relies upon the paragraph No. 9.8.10 of Minutes of the 15th GST Council Meeting held on 03.06.2017, which read as follows:

“9.8.10. After discussion, the Council agreed to keep raw silk and raw jute at Nil rate of GST; tax cotton and other natural fibres at the rate of 5%; tax man-made fibre and yarn at the rate of 18%; tax all fabrics at 5 %; tax apparels sold at a value exceeding Rs. 1,000 per piece at the rate of 12% and tax apparels sold at a value exceeding Rs. 1,000 per piece at the rate of 5%. The Council also agreed that if there was credit accumulation on account of inverted duty structure at the fibre stage, no cash refund would be given. “

2. The submission of the learned counsel for the Petitioner is that the GST Council has decided the rate of tax on fabric items. He also refers to Agenda item No.4 wherein the council has approved the rates of GST on supply of goods as listed in Volume — 2 of the detailed agenda notes subject to modification No. (vi) which read as;

“(vi) to tax all the varieties of fabric at the rate of 5% instead of the proposed rate of 12% and not to allow cash refund of any accumulated credit of duty arising out of inversion of tax”.

3. Learned counsel for the Respondent submits that he will take instruction in this respect and is presently instructed to state that the reduction of the rate is only related to cotton and natural fabric.

4. Let the Respondent file an affidavit on the aforesaid aspect within four weeks.

5. List on 11.10.2019.”

In pursuance of our aforesaid order, an affidavit has been filed on behalf of respondent No. 3 by the Commissioner of Central Goods and Services Tax, Delhi East. In the said affidavit, the stand taken by respondent No. 3 is as follows:

4. That it is respectfully submitted that the GST rate structure on all goods of the textile value chain was deliberated at length during the 15th meeting of the GST council held on 03.06.2017. Based on the Pre-GST tax incidence, the council recommended 18% GST on Man-made filaments and yams. The pre-GST tax incidence on Man-made fabrics including embedded taxes was more than 11%. Therefore, a GST rate of 12% was

recommended on fabrics by the Fitment Committee. However, considering that there was no tax on Man-made fabrics of chapters 50 to 55 and 60 of the tariff in Pre-GST regime and considering the involvement of large number of powerlooms and handloom weavers in the MSME sector in this sector, the council recommended to fix GST rate of 5% on all fabrics, including Manmade fabrics falling under chapters 50 to 55 and 60. Further, the council recommended to restrict the refund of accumulated ITC on manufacture of Man-made fibre fabrics to prevent huge amount of refunds being generated. The discussion in this regard is at Para 9.8.10 of Minutes of the 15th GST Council meeting. That it is further submitted that this recommendation of 5% GST rate was specific to Man-made fabrics used to make apparels as these are made by MSME sector. However, in respect of technical textiles, special fabrics, coated fabrics, laminated fabrics and other textile items like cordage, twine, carpets, tapestry etc, under chapters 56 to 59 of the Tariff, it was recommended by the Council that the rate be kept at 12% as these fabrics are specialised industrial fabrics used in the industry for high value addition and not manufactured by the MSME sector. This has been discussed in para 9.8.11 of the minutes of 15th GST Council meeting.

5.1 The GST Council had made a specific recommendation to prescribe 12% GST rate on specialised and industrial fabrics of chapters 56 to 59. The Council discussed the requests for (F) reduction in tax rates on fabrics of chapters 56 to 59 from 12% to 5% in various meetings after the rollout of GST. All these requests for reduction were examined in detail by the GST Council and was rejected by the GST Council on the grounds that GST rate on technical textiles and specialised fabrics of chapters 56 to 59 shall attract GST at the rate of 12% as these fabrics attracted more than 13% tax incidence in pre-GST regime. However, the GST rate on very few items of these chapters were reduced by the GST Council to 5% without refund of ITC, as the trade requested that these fabrics are apparel fabrics, same as Man-made fabrics of chapter 50 to 55 attracting 5% GST and should not be given the GST rate of technical and industrial fabrics. These included corduroy fabrics and velvet fabrics, narrow woven fabrics of heading 5806 and all woven pile fabrics and chenille fabrics under tariff heading 5801.”

In the light of the aforesaid, we have heard further submissions of learned counsels. It is pointed out by Mr. Shah, learned counsel for the petitioner that on a perusal of the minutes of the 15th GST Council

Meeting, held on 03.06.2017, it emerges that the decision of the Council is, inter alia, contained in paragraph 9.8.10. The Council agreed to keep raw silk and raw jute at Nil rate of GST and tax cotton and other natural fibres at the rate of 5%. It also decided to tax all fabrics at the rate of 5%.

Reliance placed by Mr. Bansal on paragraph 9.8.11 of the said minutes is challenged by Mr. Shah by stating that the said paragraph, in the opening, only contains the proposal by the Joint Secretary (TRU-1), CBEC that “the remaining items in the textile sector were goods falling under Chapter 56, 57, 58 and 59. He stated that these Chapters covered products like cordage; twine; carpet; floor covering; special fabric; tapestry; impregnated, coated, fabric laminated textile fabric; and textile articles of a kind suitable for industrial use and all these were proposed to be taxed at the rate of 12%” He submits that the said proposal could not be considered as the decision of the council. He further points out that in the said meeting, the council approved the minutes of the previous meeting i.e. 14th GST Council Meeting, held on 18/19.05.2017. From the said minutes, it appears that even in the 14th Meeting of the GST, it had taken a decision “to tax all varieties of fabric at the rate of 5% instead of the proposed rate of 12% and not to allow cash refund of any accumulated credit of duty arising out of inversion of tax”.

Mr. Shah has also pointed out that the minutes of the 15th GST Council Meeting were approved in the subsequent meeting i.e. 16th GST Council Meeting, held on 11.06.2017 without any modification on fabrics.

From what has been argued by Mr. Shah, we are inclined to agree with his submission that the decision of the GST Council was to subject all fabrics at the rate of 5% taxation and it appears that the position stated in the affidavit filed on behalf of respondent No. 3 was only the proposal of the Joint Secretary (TRU-1), CBEC, which was not agreed to or approved by the Council.

Keeping in view the aforesaid controversy, we are of the considered view that the aforesaid controversy should specifically and pointedly be placed before the Council, preferably in the next meeting. A copy of our order should also be circulated so that the controversy is brought before the Council.

List on 11.02.2020.

Dasti.” (emphasis supplied)

7. In terms of the aforesaid directions, Respondent No. 3 in the 38th GST Council Meeting held on 18.12.2019, took up the matter pertaining to notification of the tax rate relating to fabrics and articles of textiles

falling in Chapters 56 to 59. Respondent No. 3 examined the matter and passed a detailed resolution/decision, to the following effect:

“Agenda Item 14: Clarification on GST rate on fabrics and articles of textiles falling in Chapters 56 to 59 of the tariff pursuant to the order of the Hon'ble High Court of Delhi in Writ petition (Civil) No. 597 of 2019”

Manufacturers Traders Association & Anr. had filed Writ Petition (Civil) No. 597 of 2019 in the Hon'ble High Court of Delhi, challenging the levy of 12% GST on fabrics of chapters 56 to 59 of the HS on the grounds that as per paragraphs 9.8.10 and 9.8.11 of the Minutes of the 15th GST Council Meeting held on 03.06.2017, all fabrics should be subject to a uniform GST rate of 5% and there is no recommendation of GST rate of 12% on any fabrics by the GST Council.

2. The relevant paragraphs of the minutes of 15th GST Council meeting read as under:

“9.8.10. After discussion, the Council agreed to keep raw silk and raw jute at Nil rate of GST; tax cotton and other natural fibres at the rate of 5%; tax man-made fibre and yarn at the rate of 18%; tax all fabrics at 5 %; tax apparels sold at a value exceeding Rs. 1,000 per piece at the rate of 12% and tax apparels sold at a value exceeding Rs. 1,000 per piece at the rate of 5%. The Council also agreed that if there was credit accumulation on account of inverted duty structure at the fibre stage, no cash refund would be given. “

9.8.11. The Joint Secretary (TRU-1), CBEC stated that the remaining items in the textile sector were goods falling under Chapter 56, 57, 58 and 59. He stated that these Chapters covered products like cordage; twine; carpet; floor covering; special fabric; tapestry; impregnated, coated fabric, laminated textile fabric and textile articles of a kind suitable for industrial use and all these were proposed to be taxed at 12%.....”

3. Department of Revenue submitted before the Hon'ble Court that the GST Council had made a specific recommendation to prescribe 12% GST rate on specialized and industrial fabrics of chapters 56 to 59 which was notified by the Central and the State Governments and thus there was no variance in the recommendations of the GST Council on specialized and industrial fabrics of chapters 56 to 59 and the notifications issued by the Central and State Governments issued in pursuance of these recommendations.

4. After considering the submissions made by Department of Revenue and the petitioner the Hon'ble Court passed the following order:

“From what has been argued by Mr. Shah, we are inclined to agree with his submission that the decision of the GST Council was to subject all fabrics at the rate of 5% taxation and it appears that the position stated in the affidavit filed on behalf of respondent No. 3 was only the proposal of the Joint Secretary (TRU-1), CBEC, which was not agreed to or approved by the Council.

Keeping in view the aforesaid controversy, we are of the considered view that the aforesaid controversy should specifically and pointedly be placed before the Council, preferably in the next meeting. A copy of our order should also be circulated so that the controversy is brought before the Council.”

5. **It is submitted that the GST rates on fabrics was discussed in detail in the 15th GST Council meeting and the GST rates were prescribed on the recommendations of the Council. The rate of 5% was prescribed on fabrics used for making apparels. The GST Council had recommended 12% GST rate on specialized and industrial fabrics. The Council discussed the requests for reduction in tax rates on fabrics of chapters 56 to 59 from 12% to 5% in various meetings after the rollout of GST. The Council did not recommend any change in the tax structure on these goods i.e. technical textiles and specialized fabrics of chapters 56 to 59.**

6. **As per the direction of the Hon'ble High Court, copy of the order dated 11th October, 2019 of the Hon'ble Delhi Court is placed before the Council with above submission.” (emphasis supplied)**

8. In view of the aforesaid clarification, the controversy is now put to rest. Respondent No. 3 has confirmed that it had recommended a rate of 12% on specialized and industrial fabrics. Respondent No. 3 has also confirmed that it did not recommend any change in the tax structure on these goods i.e. technical textiles and specialized fabrics which fall under Chapters 56 to 59 of the Customs Tariff. Now, in the face of aforesaid stance, Mr. Prakash Shah, learned counsel or the Petitioner contends that the Court should disregard the aforesaid decision and still grant relief sought in the present petition. Mr. Prakash Shah, submits that Respondent No. 3 has wholly erred and misdirected itself by not examining the issue in the right perspective. He again refers to the minutes of the 15th GST Council Meeting and submits that in the said meeting, the Council had recommended GST rate of 5% for all

varieties of fabric. This Court found merit in his submissions and on that premise issued directions to the GST Council to have a fresh look into the matter. He argues that in the 38th GST Council meeting, the main issue has been skirted and the observations made by the Council are outwardly contrary to the earlier resolution passed in the 15th GST Council meeting.

9. We have deliberated on the contentions urged by the learned counsel for the Petitioners; however, we are unable to agree with him. This Court referred the matter to Respondent No. 3 in view of the seeming ambiguity in the minutes of the 15th GST Council Meeting, as portrayed by the learned counsel for the Petitioner. The Court *prima facie* comprehended that the affidavit filed on behalf of Respondent No. 3 was only a proposal of the Joint Secretary (TRU-1), CBEC that was not agreed to or approved by the Council. In these circumstances, in order to have certainty in the matter, the Court deemed that the best course of action would be to have the opinion of the GST Council. Now, the Council in its 38th meeting on 18.12.2019 has deliberated on the matter and has unequivocally confirmed that it had indeed recommended the GST rate of 12% for the fabrics falling under Chapters 56 to 59 of the Customs Tariff. This ratifies the stand taken in the counter affidavit of 09.10.2019 of Respondent No.3, wherein it has been averred as under: -

“3. That it is submitted that the duty structure pre-GST and post GST on fabrics is as under:

a. Pre-GST Excise duty structure:

On cotton and other natural fibres' fabrics, the excise duty was Nil (if no input tax credit (ITC) is availed of). If ITC was availed of, the excise duty was 6% in case of 100% cotton fabric and 12.5% in case of other fabrics.

b. Pre-GST VAT structure:

In general, VAT on fabrics was Nil.

c. Implications of Pre GST excise duty structure:

i. Domestic manufacturers were paying Nil excise duty on fabric, if they did not avail ITC.

- ii. However, there were embedded taxes (excise duty and VAT on inputs/ raw materials and capital goods) on fabrics. As per the Input Output Transactions Table 2007-08 of the Central Statistics Office, Ministry of Statistics and Programme implementation, embedded taxes on account of excise duty and VAT) on fabrics were as under:
- (a) Cotton fabrics - 6.19% (3.38% on account of Excise + 2.81% on account of VAT)
 - (b) Silk fabrics - 8.4% (5.25% on account of Excise + 3.15% on account of VAT)
 - (c) Woollen fabrics - 4.04% (2.36% on account of Excise + 1.68% on account of VAT).
 - (d) Fabrics of other natural fibres - 4.12% (2.01% on account of Excise + 2.11% on account of VAT)
 - (e) Man-made fabrics- 11.88% (7.85% on account of Excise + 4.03% on account of VAT)

4. That it is respectfully submitted that the GST rate structure on all goods of the textile value chain was deliberated at length during the 15th meeting of the GST council held on 03.06.2017. Based on the Pre-GST tax incidence, the council recommended 18% GST on Man-made filaments and yams. The pre- GST tax incidence on Man-made fabrics including embedded taxes was more than 11%. Therefore, a GST rate of 12% was recommended on fabrics by the Fitment Committee. However, considering that there was no tax on Man-made fabrics of chapters 50 to 55 and 60 of the tariff in Pre-GST regime and considering the involvement of large number of powerlooms and handloom weavers in the MSME sector in this sector, the council recommended to fix GST rate of 5% on all fabrics, including Manmade fabrics falling under chapters 50 to 55 and 60. Further, the council recommended to restrict the refund of accumulated ITC on manufacture of Man-made fibre fabrics to prevent huge amount of refunds being generated. The discussion in this regard is at para 9.8.10 of Minutes of the 15th GST Council meeting.

5. That it is further submitted that this recommendation of 5% GST rate was specific to Man-made fabrics used to make apparels as these are made by MSME sector. However, in respect of technical textiles, special fabrics, coated fabrics, laminated fabrics and other textile items like cordage, twine, carpets, tapestry etc, under chapters 56 to 59 of the Tariff, it was recommended by the Council that the rate be kept at 12% as these fabrics are specialised industrial fabrics used in the industry for high value addition and not manufactured by the MSME sector. This has been discussed in para 9.8.11 of the minutes of 15th GST Council meeting.

5.1. The GST Council had made a specific recommendation to prescribe 12% GST rate on specialised and industrial fabrics of chapters 56 to 59. The Council

discussed the requests for reduction in tax rates on fabrics of chapters 56 to 59 from 12% to 5% in various meetings after the rollout of GST. All these requests for reduction were examined in detail by the GST Council and was rejected by the GST Council on the grounds that GST rate on technical textiles and specialised fabrics of chapters 56 to 59 shall attract GST at the rate of 12% as these fabrics attracted more than 13% tax incidence in pre-GST regime. However, the GST rate on very few items of these chapters were reduced by the GST Council to 5% without refund of ITC, as the trade requested that these fabrics are apparel fabrics, same as Man-made fabrics of chapter 50 to 55 attracting 5% GST and should not be given the GST rate of technical and industrial fabrics. These included corduroy fabrics and velvet fabrics, narrow woven fabrics of heading 5806 and all woven pile fabrics and chenille fabrics under tariff heading 5801.”

10. The learned counsel for the Petitioners is not satisfied and persists that the Respondent No. 3 has recommended tax at the rate of 5% for all fabrics. To buttress his contention, he relies upon the reply given by the Union Minister for Finance in response to a starred question raised on 18.07.2017 in the Rajya Sabha. We find the aforesaid contention to be unconvincing and meritless. A perusal of the response reveals that the Union Minister for Finance while responding to a question raised in connection with organized traders and unorganized sellers in textile sectors, stated that the GST rate structure for textile sector was discussed in detail in the GST Council Meeting held on 03.06.2017, and that the Council recommended the detailed rate structure for textile sector. The tabulation which form part of the response reflects the notified GST rates as 5%. This response of the Union Minister for Finance to a query, cannot prevail over the decision of the GST Council. It can also not form the basis for impugning the decision of GST Council or the notification notifying the tax rate. The Respondent No. 3 is a Constitutional body chaired by the Union Minister for Finance and all other members are the Union Minister of State for Finance, and Ministers for Revenue or Finance of all the states. The 101st Amendment to the Constitution had brought into existence the GST framework and created

Respondent No. 3 as the highest deliberative forum to resolve the issues arising out of the implementation of the GST. The rate of taxes is jointly decided by the centre and states on the recommendations of the Council. The Council has the power and prerogative to issue recommendations on issues in terms of Article 279A (4) of the Constitution. The composition of Respondent No. 3 and the constitutional scheme of taxation is a clear indication that the functioning of the GST Council is based on collaborative efforts that embody the spirit of cooperative federalism. The coming together of the stakeholders has given rise to a unified system of taxation for the entire country. The GST tax rates must be notified in consonance with the recommendations of the Respondent No. 3. Once the Respondent No. 3 has made the recommendation of the tax rate, we are unable to appreciate the premise of the Petitioners to impugn the same. The only aspect that required introspection, now stands concluded in view of the emphatic response of the Respondent No. 3 in its 38th Meeting, wherein they have reiterated that the recommendation for rate of tax was indeed 12%. The impression of contradiction that appeared on comparison between the counter affidavit of Respondent No. 3 and the minutes of meeting has been resolved and conclusively settled. The matter has been deliberated by the body whose decision were called in question. We cannot sit in appeal and postulate that the decision of the Council is not what they have unwaveringly held it to be. Therefore, there is no merit in the present petition and the same is accordingly dismissed. The pending application also stands disposed of.

SANJEEV NARULA, J

MANMOHAN, J

SEPTEMBER 15, 2020 /nd