

(1963) 03 BOM CK 0011

In the Bombay High Court

Case No : Sales Tax Reference No. 2, 3 and 4 of 1962

A-1 Engineering Co.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-03-1963

Acts Referred:

Citation : (1964) 15 STC 15

Hon'ble Judges : Y.S. Tambe, J;V.S. Desai, J

Bench : Division Bench

**Advocate : S.P. Mehta, Y.P. Trivedi, U.T. Shah and S.J. Mehta, for the Appellant;
H.D. Banaji, for the Respondent**

Judgement

Desai, J.—The common question, which arises for our determination in all these three references, is whether the goods sold by the applicants constituted "textile fabrics" within the meaning of entry 79 in schedule B of the Bombay Sales Tax Act, 1953.

2. The applicants, who are the holders of a registration certificate, import what is called "machine cloth" or "silk bolting cloth" and sell it. In the year 1954-55 they sold such cloth of the value of Rs. 72,959 and in the subsequent two years they sold cloth worth Rs. 1,04,212-4-0 and Rs. 73,306 respectively. These sales were taxed by the Sales Tax Officer under entry No. 79 of Schedule B of the Act. That entry is as follows :-

-----				Serial
Description of	Rate of	Rate of	Rate of	No. goods.
Sales Tax.	Tax.	-----	-----	Sales General Purchase Tax.
79 Textile fabrics of any	Eight naye	Three naye	Eight naye	kind including saris,
paise in	paise in	paise in	dhooties,	sheets, chaddars, the
rupee."	blankets and other similar articles [except (i) cloth woven on handlooms and (ii) coarse and medium cotton cloth woven in mills or on powerlooms] sold	at	a	rate not less than Rs. 3 per yard.

3. The contention of the applicants before the Sales Tax Authorities was that the material, which they had sold did not fall under the said entry and could only be taxed under the residuary entry, which was entry No. 80. It was urged on their behalf that entry 79 was restricted to textile fabrics such as were enumerated in the said entry, viz., saris, dhoties, sheets, chaddars, blankets and other similar articles. The goods sold by the applicants did not belong to this class of goods. They constituted an article, which was sold as a part of machinery. It was a special kind of cloth, which was used as a part of the machinery in the flour mills and for screen-printing processes in dye works, etc. It was pointed out on their behalf that under the Indian Customs Tariff, the article was treated as a component part of the machinery and not as a textile fabric. The Sales Tax Authorities did not accept this contention urged on behalf of the applicants and held that the cloth, whatever its use may be, fell under "textile fabrics" and since textile fabrics of any kind was to be taxed under entry 79, the said entry was the proper entry for taxing the goods sold by the applicants.

4. In the revision before the Sales Tax Tribunal, it was urged on behalf of the applicants that on a proper construction of entry No. 79, the material in question would not fall under the said entry. It was argued that although in view of the meaning of the word "textile" and "fabrics", the goods sold by the applicants would fall under the expression "textile fabrics", the expression used in entry 79 by reason of the further implication of the said expression by the words "including saris, etc." curtailed the scope of the expression "textile fabrics" and made it to confine only to articles of the class as were included in the inclusive part. That argument was negatived by the Tribunal and rightly, in our opinion. As observed by the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, :

"The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where the Courts are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation."

5. The argument, therefore, that by the use of the words in the inclusive part of the said entry the meaning of the expression "textile fabrics of any kind" is sought to be restricted and cut down cannot be accepted.

6. Mr. Mehta has also contended before us that in interpreting the expression "textile fabrics of any kind" used under entry 79, what we must consider is what would commonly be understood by the expression "textile fabrics". What is understood by the said expression, says Mr. Mehta, is articles such as are mentioned in the inclusive part of other similar articles. Nobody would understand by the said expression, says he, a machine cloth of the kind that is sold by the applicants. He has in support of his submission placed reliance on the decision of the Supreme Court in *Ramavatar Budhaiprasad v. Assistant Sales Tax*

Officer, Akola and Another [1961] 12 S.T.C. 286, where their Lordships in considering the question as to whether betel leaves could be said to fall within the entry "vegetables" observed :

"The word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance."

7. Mr. Mehta's argument is that "textile fabrics" as understood in common parlance would not mean a machine cloth or silk bolting cloth, which the applicants have sold in the present case.

8. Now, in the first place, there has not been any attempt made by the applicants to produce before the Sales Tax Authorities or the Tribunal sufficient material from which it could be said that the expression "textile fabrics" would not as understood in common parlance cover a cloth of the kind that has been sold by the applicants. The only material, which they had sought to produce, is a letter from the manufacturers of the cloth. Now, what the manufacturers have stated in that letter is that in some countries the cloth is imported as spare parts of industrial machinery and that the customs authorities in the United Kingdom, Germany and the United States of America, treat it as a special kind of material not falling within the ordinary textile material and allow it to be imported either at reduced rate or free from duty. The letter also states that under the Customs and Excise Tariff of the United Kingdom the article is considered as a species of textile products. Now, this letter from the manufacturers would not, in our opinion, be sufficient to show that in the ordinary or common parlance the article would not fall under textile fabrics. All that the letter says is that by reason of the use to which this cloth is put, it has been treated for the purpose of customs duty as a different item from the ordinary textile products or textile articles. The Supreme Court decision, therefore, on which reliance has been sought to be placed by Mr. Mehta, will not help him in the present case. The main argument of the applicants in the present case before the lower authorities was that although the expression "textile fabrics of any kind" in entry 79 is wide enough to include the article that is sold by the applicants, in view of the inclusive part of the said entry, the expression must be given a curtailed or restricted connotation. That argument as we have already pointed out cannot be accepted.

9. The result, therefore, is that our answer to the question which has been referred to us in the present reference must be in the affirmative. We answer it accordingly. The applicants will pay the costs of the department in one set.

10. Reference answered in the affirmative.