

(1988) 09 GAU CK 0035

In the Gauhati High Court

Case No : Sales Tax Reference No's. 1 to 10 of 1976

Assam Cotton Mills

APPELLANT

Vs

Commissioner of Taxes

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Assam Sales Tax Act, 1947 — Section 7

Citation : (1990) 76 STC 6

Hon'ble Judges : A. Raghuvir, C.J.; S.N. Phukan, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, B.P. Saraf and A.K. Saraf, for the Appellant; D.P. Chalina, Government Advocate, for the Respondent

Judgement

A. Raghuvir, C.J.—This Court on March 3, 1976, directed the Assam Board of Revenue to refer the following questions of law. Accordingly, the Board referred the questions for opinion of this Court.

Questions--(1) Whether "cotton" as described in item 8 of Schedule III to the Assam Sales Tax Act, 1947, includes "cotton waste" and is exempted from taxation under the Act ?

(2) Whether "cotton yarn" as described in item 43 of Schedule HI to the Assam Sales Tax Act, 1947, includes cotton yarn waste and is exempted from taxation under the Act ?

(3) Whether, on the facts and in the circumstances of the case, Section 19A of the Assam Sales Tax Act, 1947, can be applied to reopen the completed assessment ?

2. The Assam Board of Revenue considered the subject-matter of the three questions in cases Nos. 29 STA/70 to 38 STA/70 on March 11, 1970, and held that cotton waste is different from cotton and cotton yarn waste is different from cotton yarn. The Board stated to have followed the earlier decision. The judgment of the Board on March 11, 1970, is not made available in the record.

The counsel for the parties have not produced the judgment before this Court.

Section 7 of the Assam Sales Tax Act, 1947 (Act 17 of 1947), reads as under :

"7. Exemptions.--(1) Subject to the conditions and exceptions, if any, set out in Schedule III attached to this Act, the sales of goods specified therein shall be exempted from taxation under this Act.

(2) The State Government, after giving in the Official Gazette such previous notice as may be considered reasonable of its intention so to do, may, by like notification, add to, amend or otherwise modify, the said Schedule and thereupon the said Schedule shall be deemed to be amended accordingly."

3. In Schedule III, item Nos. 8 and 43, the words are "cotton" and "mill-made cotton yarn (excluding sewing thread)". The words "cotton and cotton yarn" (in item No. 8) are substituted for the word cotton from November 1, 1956, by notification on October 20, 1956. Item 43 is inserted by the same notification from the same date.

We see in the Black's Law Dictionary (Revised Fourth Edition) "cotton" is described as under :

"A term which is applicable to such substance in whatever state it exists after it has been gathered and before it is manufactured into some article of merchandise whether the seeds have been removed at the gin or whether it is lint cotton in the seed or in the bale, Freeman v. State 156 Ark 592 ; 247 S.W. 51".

4. The learned Government Advocate who appeared for the Revenue argued that in the commercial world or in commercial circles cotton waste and cotton yarn waste are specified goods and are identified by the name. Therefore, he contended, cotton yarn waste is different from cotton yarn and cotton waste is different from cotton. These two goods, the counsel urged, can be sold, can be purchased in the markets. Therefore, his argument was cotton waste is a separate commodity from cotton and similarly cotton yarn waste is a separate commodity from cotton yarn and cited two decisions [1988] 71 STC 362 (Gau) ; (1988) 1 GLJ 25 (Modern Candle Works v. Commissioner of Taxes, Assam, Gauhati), and The Atlas Cycle Industries Ltd. Vs. The State of Haryana, .

5. The question in the instant references is not whether there can be a business in cotton waste or in cotton yarn waste, whether the two commodities can be sold and purchased. The precise question in these references is far different and to repeat the issue, is whether cotton waste is cotton and cotton yarn waste is cotton yarn.

6. We see there is elaborate discussion in Krishi Utpadan Mandi Samiti, Kanpur and Others Vs. Ganga Dall Mill and Co. and Others, .In that, a judgment of the Allahabad High Court 1980 ALJ 1137 (Modi Spinning and Weaving Mills Co. Ltd., Modinagar v. State of U.P.) is referred to. The word cotton was considered with

reference to cotton ginned and cotton unginned. In the Allahabad decision, the question arose with reference to chargeability of market fee. The court in that case held cotton ginned and cotton unginned is an agricultural product. Cotton waste is a processed form of cotton and cotton was defined in the relevant Act to cover manufactured cotton, ginned and unginned cotton, cotton waste and cotton seed and after referring to the definitions, the Court held cotton ginned and cotton unginned is different from cotton waste. The Supreme Court did not approve that decision in *Krishi Utpadan Mandi Samiti, Kanpur and Others Vs. Ganga Dall Mill and Co. and Others*, and observed that the court has strained the language to reach an unsustainable conclusion holding that cotton waste is not the processed form of cotton containing cotton fibre which cannot be used as ordinary cotton. The Supreme Court held cotton waste appears to be droppings, stripping and other waste product while ginning cotton. Further it added cotton waste is not a bye-product but it is a residue of ginned cotton. We have referred to this decision to understand the ramification of the two expressions "cotton" and "cotton waste".

7. We see in the case of *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, various tests have been laid by the Supreme Court in identifying the commodities. The question in that case related to paddy, rice, parched rice and puffed rice and how to identify the four commodities. The first test the Supreme Court laid down (a) unless the language of the taxing statute was absolutely clear obviously unfair interpretation against the assessee should not be adopted by the courts, (b) when two interpretations of the provision are possible, adopt the principle which favours the assessee, (c) in interpreting a word the history of the legislation should be taken into consideration, (d) the commonsense rule of interpretation as expounded by the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, should be adopted, (e) finally, it was held the word should be interpreted as understood in the English language if the legislation is in English.

8. What is stated in principle (a) above is slightly different from what has been laid down by the English Courts in [1921] 1 KB 64 (*Cape Brandy Syndicate v. Inland Revenue Commissioners*), wherein it has been held one has to look merely what is clearly said. There is no reason for any intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, and nothing is to be implied. One can only look fairly at the language used. As to the scope of second test recently the Supreme Court has reviewed the cases in *McDowell and Co. Ltd. Vs. Commercial Tax Officer*, and categorised the fashionable topic of tax avoidance and referred the art of dodging tax. The principle laid down in [1942] 1 KB 389 (*Lord Howard de Walden v. Inland Revenue Commissioners*), was dilated. The magic performance by lawyer-turned magicians and that has been laid down in [1936] AC 1 (*Inland Revenue Commissioners v. Duke of Westminster*) as cardinal principle were expounded. The article relating to 18 *Modern Law Review* 209 was referred. The tax-avoider and his expert team of advisers were described as warring groups. Again in

[1941] AC 1 (United Australia v. Barclay's Bank Ltd.), it is held the ghost of tax dodgers in that case were exorcised. These principles have been replayed after the decision of McDowell and Co. Ltd. Vs. Commercial Tax Officer, ,once again but we are not informed of the result of the replay of these principles.

9. For the purpose of these references we adopt what is referred to as commonsense rule of interpretation or as understood in English language, we hold the common man understands cotton waste is covered by cotton and cotton yarn waste is covered by the words cotton yarn.

10. The first and the second questions for the aforesaid reasons are answered in affirmative in favour of the assesseees and against the Revenue.

11. The learned counsel for the assesseees has stated that the third question was referred to this Court by way of abundant caution and is not pressed for the answer. Therefore, no answer is recorded for that question. No costs.