(2000) 08 MP CK 0081

In the Madhya Pradesh High Court

Case No : L.P.A. No. 109 of 1995

Assistant Sales Tax Officer and Others APPELLANT

Vs

Central Stores RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Citation : (2001) 123 STC 338

Hon'ble Judges : Shambhoo Singh, J;Nirmal Kumar Jain, J;Jayant Govind Chitre, J

Bench : Full Bench

Advocate : S.S. Kemkar, for the Appellant; G.M. Chaphekar, Senior Advocate and C.R. Pancholia, for the Respondent

Judgement

J.G. Chitre, J.—Vide order dated September 29, 1998, the Division Bench of this Court made a reference for adjudication of a question "whether neck-ties fall under entry 26, Part IV of Schedule II or not" and, therefore, this matter has been laid before us for adjudication.

2. A few facts need to be stated for unfolding the topic and the point for adjudication. Central Stores, through proprietor Rakhabchand, R/o. Rampurawala Building, M.G. Road, Indore, trades in business of sale and purchase of ready-made garments including neck-ties and other general goods being a registered dealer under the M.P. General Sales Tax Act, 1958 (for convenience hereinafter referred to as "Sales Tax Act"). The Assistant Sales Tax Officer, Circle VI, Indore, purporting to act u/s 19(1) of the Sales Tax Act issued notice for reopening of the assessments done previously and for levying the tax at 12 per cent instead of 3 per cent on sale of neck-ties. An additional demand of Rs. 23,409 was made against Central Stores. Being aggrieved by the said act, order, notice, an appeal was preferred by Central Stores. It was pending for disposal for sufficient long time, and was not decided within reasonable time and Central Stores received fresh notices for demand of tax at 12 per cent. Hence Central Stores filed a writ petition bearing No. M.P. 1987 of 1993. It was finally heard and decided by

learned Single Bench on July 24, 1995. The learned single Judge held that "the neck ties would be included as ready-made garments only and would be liable to be taxed accordingly". It further held on merit of the said writ petition that for long number of years, the Assistant Sales Tax Officer was treating neck-ties as ready-made garments and was assessing as such. Hence all of a sudden, he cannot be permitted to treat neck-ties as "something different than ready-made garments". The learned single Judge quashed the said notices, orders of reassessment initiated against Central Stores by allowing the said writ petition.

3. Being aggrieved by the said judgment/order of learned single Bench, Assistant Sales Tax Officer, Circle VI, Indore and others preferred Letters Patent Appeal which is numbered as L.P.A. No. 109 of 1995. When the said appeal was being heard, the learned counsel for State brought two judgments to the notice of the Division Bench hearing the L.P.A. : (i) Commissioner of Sales Tax, M.P. v. Central Stores, Indore reported in (1981) 14 VKN 305 and (ii) Commissioner of Sales Tax v. Wearwell Dresses, Gwalior, reported in (1980) 13 VKN 361. These two judgments reflected conflicting views and, therefore, the Division Bench hearing the appeal referred the question mentioned above for adjudication.

4. Shri Kemkar, Government Advocate, appearing for the appellants submitted that the view taken by the Division Bench of this Court in the matter of Commissioner of Sales Tax v. Wearwell Dresses, Gwalior (1980) 13 VKN 361, is proper and that be given preference being the later judgment and the judgment/ order passed by learned single Judge be set aside. He made reference to the meaning of words "ready-made garments". Countering that Shri G.M. Chaphekar, senior advocate, instructed by Shri C.R. Pancholia, submitted that the judgment in the matter of Wearwell Dresses, Gwalior case (1980) 13 VKN 361, is a judgment per incuriam because the previous judgment of this Court delivered by the Division Bench in the matter of Commissioner of Sales Tax, M.P. v. Central Stores, Indore (1981) 14 VKN 305 was not brought to the notice of the Division Bench which decided the matter--Commissioner of Sales Tax v. Wearwell Dresses, Gwalior (1980) 13 VKN 361. He submitted that the neck ties are ready-made garments and fall under entry 26, Part IV of Schedule II, of Madhya Pradesh General Sales Tax Act, 1958. He submitted that neck ties are readily available for use and do not come under the category of garments.

5. The judgment in the matter of Commissioner of Sales Tax, M.P. v. Central Stores, Indore (1981) 14 VKN 305 has been delivered by the Division Bench of this Court on 9th November, 1978 but has been reported in the year 1981. The judgment in the matter of Commissioner of Sales Tax, M.P. v. Wearwell Dresses, Gwalior (1980) 13 VKN 361 has been decided on 2nd January, 1980 and has been reported in 1980 itself. This has been mentioned for the purpose of clarifying that the judgment in the matter of Commissioner of Sales Tax, M.P. v. Wearwell Dresses, Gwalior (1980) 13 VKN 361 is the later judgment though reported in Vikraya Kar Nirnaya earlier than the judgment in the matter of Commissioner of Sales Tax, M.P. v. Central Stores, Indore (1981) 14 VKN 305.

6. In the matter of Commissioner of Sales Tax, M.P. v. Wearwell Dresses, Gwalior (1980) 13 VKN 361, the Division Bench of this Court considered the judgment of this Court in the matter of Commissioner of Sales Tax, M.P., Indore v. Mahajan Bros. [1963] 14 STC 808, and the judgment of the Allahabad High Court in the matter of Commissioner of Sales Tax, U.P. v. H.M. Ashiq [1979] 43 STC 281. It by considering the meaning indicated by word "garment" in common language, concluded that it is an article of dress or cloths, that is to say, cloths or articles of dress which attire or array or adorn a person. It pointed out that a garment is made of cloth whether woollen, silken, cotton or linen or any other fabric. The neck-tie is a decorative band of fabric worn round the neck under the collar by men. A neck-tie may be of any material but generally being decorative it is of silk or man-made fabric. It covers the body to a most insignificant extent and always worn over a shirt. To be a "garment" it must be an article of dress. It further pointed out that Allahabad High Court in Commissioner of Sales Tax, U.P. v. H.M. Ashiq [1979] 43 STC 281, held that mufflers would also be garments. Mufflers, however, are also used particularly for protecting neck and the chest. The Division Bench in the said case further opined that according to them the question before the Bench could be decided without deciding whether or not a neck-tie would fall within the ambit of the meaning of "garment". According to learned Division Bench in the said matter the words "ready-made garments" are to be understood in contra-distinction to garments made and stitched to measure. Garments are available ready-made and can also be made to order by purchasing the material from the dealer and taking it to the tailor for stitching. A ready-made garment is one available in standard shapes and sizes. A shirt or even a coat or trousers or other similar garments which need stitching and tailoring are either made according to the measure of a particular person or such garments can be had in standard shapes and sizes.

7. In the same case the Division Bench further opined that in the former case, the tailoring and stitching is done according to the measure of a particular individual but in the latter case, the garments are purchased which generally fit the person. It is in this sense that the ready-made garments must be understood. Such meaning necessarily postulates that a ready-made garment needs stitching and tailoring. A tie even if it is considered as a garment would not be a ready-made garment in the sense in which the ready-made garments are understood by the people dealing in trade and by the people generally. A dhoti or a saree would be a garment but it cannot be said to be a ready-made garment. Similarly, a scarf or muffler may or may not be a garment ; but it cannot be said that it is a ready-made garment. Essentially, ready-made garment is understood to mean a garment which is made after tailoring and stitching to suit the human form but it is not made for any particular person as such but made in standard form and size. It held that it did not, therefore, think that ties could appropriately be called ready-made garment.

8. In the matter of Commissioner of Sales Tax, M.P. v. Central Stores, Indore (1981) 14 VKN 305 the Division Bench of this Court held that a garment is an

article of clothing especially of outer clothing which attires or adorns a person. By pointing out this, it concluded that the question which was referred to it for opinion, was answered. It held that neck tie is ready-made garment.

9. Chambers'' Twentieth Century Dictionary--indicates that word "ready-made" means--made before sale, not made to order. It referred to "a garment" while indicating the meaning of word "ready-made" that way.

10. The Shorter Oxford English Dictionary--Volume II, Third Edition indicated the meaning of word "ready-made" (i) made ready, prepared, (ii) of made and manufactured articles ; In a finished state, immediately ready for use ; now spec. of articles which are offered for sale in this state (iii) applied to any thing or person which exists in a finished or complete form ; frequently used with depreciatory force, in allusion to the inferiority of "readymade" goods ; (iv) pertaining to, dealing in, ready-made articles ; a readymade article ; esp. a ready-made garment etc.

11. Webster''s Encyclopaedic Unabridged Dictionary of the English Language, New Revised Edition, based on the first edition of the Random House Dictionary of English Language published in 1996 by Gramercy Books, a division of Random House Value Publishing, Inc., New Jersey--indicates the meaning of word "ready-made" as (i) made in advance for sale to any purchaser, rather than to order ; a ready-made coat ; (ii) made for immediate use ; (iii) unoriginal, conventional ; (iv) a manufactured object exhibited as being a esthetically satisfying ; (v) something that is ready-made, especially a garment.

12. If the meaning given by these three foremost dictionaries is understood together with its appropriate impact, one will find that the important test applicable would be the availability of the article for immediate use as it is. At the same time the conventional use of it cannot also be ignored. The way in which such an article is being used has to be given appropriate weightage. A neck-tie is exhibited in shop for being sold and it is being purchased by the customer for its use as it is. It is used on the outer surface of the body under the collar conventionally. It is used as an article which attires or adorns a person. It is being used under the collar over the shirt conventionally for number of years since past. It is never tailored, stitched to the order for a special customer by keeping in view the specific measurement. It is an article which is being used commonly which is made ready for being immediately used by the customers or for general and immediate use and no specific processing is required. A person can purchase it and after wearing in the shop itself may walk out. He need not bother for his measurement.

13. When concluding whether an article is "garment" or "ready-made garment", the attention has to be drawn in the way in which such an article is manufactured, used and being sold in community of traders as well as the users-cum-customers. It is also to be kept in mind as to how that article is being" used, whether for the purpose of covering the body to significant extent or not.

It cannot be compared with other articles which are understood by the word "garment". It is ready-made to suit need of any customer who desires to use it immediately after purchasing it without further processing like measuring, stitching or pressing.

14. Therefore, gathering the impact of the meaning given by the foremost dictionaries and understanding it correctly, we respectfully disagree with the view taken by the Division Bench of this Court which decided M.C.C. No. 135 of 1976 [Commissioner of Sales Tax, M.P. v. Wearwell Dresses, Gwalior (1980) 13 VKN 361]. We uphold the view taken by the Division Bench which decided M.C.C. No. 208 of 1976 [Commissioner of Sales Tax, M.P. v. Central Stores, Indore (1981) 14 VKN 305].

15. Thus, in view of the discussion above, we answer the question referred to us "whether neck ties fall under entry 26, Part IV of Schedule II or not" by holding that the neck ties are ready-made garments and, therefore, do fall under the entry 26, Part IV of Schedule II to the Madhya Pradesh General Sales Tax Act and return the reference accordingly.

16. This L.P.A. shall now be placed before the appropriate Division Bench for passing final order in the matter.