(1971) 04 KL CK 0008

In the High Court Of Kerala

Case No : T.R.C. No. 47 of 1970

Bhagwan Ganesh Pai Company — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 08-04-1971

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 10

Citation : (1971) KLJ 493 : (1971) 28 STC 460

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; M.I. Joseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—The petitioner who is a firm dealing in different varieties of yarn including nylon contended that the turnover of the sale of nylon yarn during the assessment year 1966-67 is liable to sales tax at the point of first sale only in the series of sales by successive dealers in the State at the reduced rate of 2 per cent. in view of the Notification No. G.O. Ms. 361/64/Rev. dated 4th June, 1964, issued by the Kerala Government u/s 10 of the Kerala General Sales Tax Act, 1963, for the reason that nylon yarn is artificial silk yarn. The Tribunal has not specifically considered the point raised by the assessee.

2. The plea on behalf of the revenue that the point was not raised before the Tribunal cannot be accepted for the reason that ground No. 4 before the Tribunal deals with the specific point mooted before us.

3. The notification referred to exempts staple fibre yarn and artificial silk yarn from sales tax at all points in the series of sales by successive dealers except the point of first sale in the State by a dealer who is liable to tax u/s 5 of the Act. The said notification also makes a reduction in rate in respect of the said goods from 3 per cent. to 2 per cent.

4. The only question which should have been decided is whether "nylon yarn" is "artificial silk yarn" to attract the benefit of the said notification. In Kishinchand Chellaram v. Joint Commercial Tax Officer [1968] 21 S.T.C. 367 HC the Madras High Court took the view that the expression "artificial silk" in item 4 of the Third Schedule of the Madras General Sales Tax Act, 1959, will take in "nylon" and is therefore exempt from sales tax. It is no doubt true that the decision interpreted the expression "artificial silk fabrics" in item 4 of the Third Schedule of the Madras Act. But the said decision discusses the nature of "nylon". In view of the discussion in that decision, the learned Government Pleader did not very seriously dispute the proposition that nylon yarn is artificial silk yarn coming within the meaning of the said notification. If so, the claim of the assessee has only to be upheld. We, therefore, hold that the turnover of the nylon yarn of the petitioner has to be assessed for the assessment year 1966-67 at the reduced rate of 2 per cent. on the basis of the Government notification No. G.O. Ms 361/64/Rev. dated 4th June, 1964, issued u/s 10 of the Kerala General Sales Tax Act, 1963. The revision case is allowed to that extent. But we make no order as to costs.

