

(1964) 11 GUJ CK 0011
In the Gujarat High Court

Case No : Sales Tax Reference No's. 4 and 5 of 1964

Chunilal Harakchand

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 24-11-1964

Acts Referred:

Citation : (1966) 17 STC 123

Hon'ble Judges : J.M. Shelat, C.J;P.N. Bhagwati, J

Bench : Division Bench

Advocate : S.L. Mody, for the Appellant; B.R. Sompura, Assistant Government Pleader and M.G. Doshit, Additional Government Pleader, for the Respondent

Judgement

Shelat, C.J.—This and the following reference raise the same petition and involve the same facts, except that the assessment period in the first reference is from April 1, 1956, to March 31, 1957, and in the second reference it is from April 1, 1957, to October 23, 1957. The common question involved in both the references is whether palavs, admittedly woven on handlooms out of cotton and silk yarn and jari thread and which are generally attached to sari pieces for decorating saris, fall under entry 47(i) of Schedule B to the Bombay Sales Tax Act, 1953. The applicants produced certain samples of palavs before the taxing authorities. There is no dispute that they are of standard sari length, are used for attaching them widthwise to the sari pieces and vary in width from eight inches to thirty-two inches, unlike borders or laces which also are attached to sari pieces but lengthwise.

2. The Sales Tax Officer held that palavs fall under entry 47(i) of Schedule B and subjected to purchase tax the purchases of palavs made by the applicants from unregistered dealers. His order was upheld by the Assitant Commissioner who held that palavs, though differently called, were nothing else but borders attached to saris. The Deputy Commissioner also held that though the palavs produced before the authorities were woven on handlooms with varying width, they were used in the same manner as borders or trimmings and that they were

not capable of being used independently so as to be understood in common parlance as handloom cloth. He observed that though palavs were woven on handlooms like cloth, they had acquired a special meaning and no one would ordinarily describe them as cloth and that entry 47(i) was wide enough to cover the palavs in question. In a further appeal, the Sales Tax Tribunal held that the use to which cloth is put to would be irrelevant for the purpose of determining whether it is cloth or not and that the palavs in question, inasmuch as they were woven on handloom, would be handloom cloth though independently they cannot be sued as garments or saris. The Tribunal, however, was of the view that entry 10 of Schedule B relating to handloom cloth was a general entry while entry 47(i) was a special entry relating to braids, borders, laces and trimmings and that therefore it would be that special entry which would apply and on that basis, affirmed the order of the Deputy Commissioner. The Tribunal also held that palavs mean borders, laces or trimmings also in popular parlance and therefore would fall under entry 47(i) of Schedule B.

3. Entry 47(i) of Schedule B runs as follows :-

"SCHEDULE B. -----
 Serial Description of goods. Rate of Rate of Rate of No. sales general purchase
 tax. sales tax. tax. -----
 -- 47(i) Braids, borders, lacs Seven Three Seven and trimmings
 when naye naye naye sold at a rate not paise paise paise less than annas 8 per
 in the in the in the tola or when sold by rupee. rupee. rupee. length at a rate not
 less than annas 8 per yard."

4. The question that arises for our determination is whether palavs, which are separate pieces woven as aforesaid from cotton and silk yarn and jari thread and are manufactured for attaching them breadthwise to saris for decorating such saris, fall under entry 47(i) of Schedule B, as contended by the State. Mr. Mody, appearing for the applicants, contended that palavs would not fall within the scope of entry 47(i) as the articles mentioned in that entry, namely, braids, borders, laces and trimmings, are articles which have acquired a popular meaning and that palavs also being well-known articles with a popular meaning attached to them, would not fall under any one of the four categories of articles mentioned in the entry. Therefore, though palavs might fall under any other entry of any one of the Schedules to the Act, they certainly do not fall within the ambit of entry 47(i). The contention of Mr. Mody was that just as a bicycle is popularly known as a bicycle and no one would have any chance of misapprehending the meaning of a bicycle, braids, borders, laces and trimmings have acquired such well-known meanings in the market that there is not possibility of any one misunderstanding any one of those articles and a person desiring to deal in or to purchase any one of these articles can go to the market and mention any one of these articles by its own name, namely, braids, borders, laces and trimmings. He argued that palavs also have acquired a well-defined

meaning in popular parlance and no one who desires to purchase a palav would go to the market and ask from the trader conversant with palavs that he desires to purchase either a braid or a border, a lace or a trimming. According to Mr. Mody, palavs constitute a fifth category of goods distinguished from the four articles mentioned in entry 47(i). A palav, therefore, is neither a braid, nor a border, nor a lace, nor a trimming and, therefore, the Tribunal was in errors in coming to the conclusion that palavs would fall under any one of these categories of articles and therefore would be governed by entry 47(i). But even Mr. Mody, agreed that braids, borders, laces and trimmings mentioned in entry 47(i) are categories of goods which the Legislature intended to bring in under this entry as such categories and to tax them at the rate specified in columns 2, 3 and 4 against this entry. Therefore, the very fact that the Legislature named categories of articles under this entry and not the specific individual articles by their names or designations shows that it intended to make this entry as comprehensive as possible. Further, it was not content with bringing in braids, borders and laces only, for it would be possible then to contend that since braids, borders and laces are attached to sari pieces or other garments lengthwise, such articles as palavs which are attached to sari pieces breadthwise would not be included in the first three categories of articles. To prevent such a contention, the Legislature added the fourth category, namely, trimmings, which is a general word which would include not only those things which are attached to sari pieces or garments lengthwise but also breadthwise. It is, therefore, clear that this entry was intended to be as comprehensive as possible so as to include therein all such articles which are attached to garments such as saris, as and by way of embellishment or decoration. The point to consider therefore is whether a palav of the type produced by the applicants before the taxing authorities would fall under any one of these categories. A "border" is defined in the Concise Oxford Dictionary as "side, edge". The Webster's New International Dictionary defines the word "border" inter alia as "a strip along, near, around the edge, as of a garment or rug, usually distinctive and ornamental." In the Chambers' Twentieth Century Dictionary, the meaning of the word "border" as given there is "a piece of ornamental edging or trimming." "Trimmings" are defined in the Concise Oxford Dictionary as "ornamentation of lace, etc. on dress etc. (accessories)". Webster's New International Dictionary defines the word "trimmings" as "that which serves to trim, make complete ornament or the like; especially necessary ornamental fittings or appendages, as of a garment". The Chambers' Twentieth Century Dictionary defines "trimmings" as "fittings". If the ordinary and dictionary meanings of the four words used in entry 47(i) were to be accepted as applicable to the present case, there can be no manner of doubt that a palav, being an appendage to a sari piece and used for the purpose of decorating and embellishing it, would certainly fall within the ambit of entry 47(i). But Mr. Mody argued that the word palav has come to acquire in common circles a secondary or a popular meaning and that a person who desires to purchase a palav does not go to the market and ask for a trimming or a lace or a border but would ask for a palav and, therefore, palav in its popular sense would not fall under any

one of the four categories mentioned in the entry and would, therefore, not fall within the scope of that entry. In support of this proposition, he relied upon the Supreme Court decision in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, where the Supreme Court laid down that words have often two meanings, a primary and a secondary meaning, and sometimes in construing a particular entry, the secondary meaning of a word has to be accepted. Such a case, however, does not arise in the present reference, for entry 47(i) does not deal with any specific or individual article in respect of which there can be both a primary as well as a secondary meaning and where a particular article may have acquired a certain meaning in popular parlance and the Legislature would be presumed in such a case to have intended such a secondary meaning when it inserts such a specific article in an entry. Entry 47(i), as already stated, sets out four categories of articles and not specific individual articles. There would be a large variety of braids, borders, laces and trimmings. There would also be articles, which though called by different names might fall under any one of these four categories and, therefore, the real question that arises in this reference is not whether a palav has acquired a secondary meaning, but whether a palav would fall under any one of these four categories. It is accepted that a palav by itself cannot be used independently as a garment or an article for covering, that the only use of such a palav is as an appendage to a sari piece and a sari piece by itself would be complete even without a palav. It is equally accepted that a palav is nothing more than an addition to a sari piece attached to such sari piece for the purpose of embellishment or decoration of such a sari. That being so, there can be no doubt that such a palav would fall, in any event, under the category of trimmings. The mere fact that it is attached breadthwise and not lengthwise to a sari piece would not seem to make any difference, for it is used as an ornamentation and as an accessory to the principal garment, namely, the sari. In its popular understanding also, though a palav is called a palav, it is understood by all who are conversant with such articles as a trimming, if not as a border or a lace to a sari piece.

5. That being so, we agree with the Tribunal that a palav piece would fall within the ambit of entry 47(i) of Schedule B to the Act. In that view, our answer to question No. 1 would be in the affirmative. So far as question No. 2 is concerned, Mr. Mody himself stated that if a palav is covered by entry 47(i), question No. 2 would not arise and, at any rate, would not become necessary. Since in our view a palav falls under entry 47(i), the further question, whether entry 47(i) would prevail over entry 10 of Schedule B need not arise. That being so, it is not necessary for us to answer question No. 2. The applicants will pay to the respondent in each of the two references the costs of the reference.

6. References answered accordingly.