
(1985) 11 RAJ CK 0034

In the Rajasthan High Court

Case No : Sales Tax Reference No's. 26, 27, 28 and 29 of 1981

Commercial Taxes Officer

APPELLANT

Vs

Sakariya Textiles

RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3
Central Sales Tax Act, 1956 — Section 14, 15, 2

Citation : (1986) 61 STC 247

Hon'ble Judges : Shyam Sunder Byas, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; R. Mehta, for the Respondent

Judgement

S.S. Byas, J.—These are four connected references and in view of Section 13(11) of the Rajasthan Sales Tax (Amendment) Act, 1984, these references are now to be treated, heard and decided as revisions u/s 15 of the Rajasthan Sales Tax Act, 1954, as substituted by the Amendment Act.

In these references, the Board of Revenue for Rajasthan, Ajmer, has referred the following common questions of law to this Court for its opinion :

(1) Whether, on the facts and in the circumstances of the case, the Board of Revenue is justified in holding that pachrangi dori is a commodity falling within the purview of Section 14 of the Central Sales Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, pachrangi dori would be taxable at 2 per cent during the relevant periods as declared goods u/s 14 of the Central Sales Tax Act read with Section 15 or at the general rate of 7 per cent for unclassified goods ?

2. The facts involved in all these references are common except the assessment years. The assessee is the same person and so is the commodity involved. The assessment years are 1968-69(12-2-1968 to 22-2-1968), 1969-70, 1970-71 and 1971-72. Briefly recalled, the relevant facts are that M/s. Sakariya Textiles

(hereinafter referred to as the dealer or assessee) is a manufacturer of cloth and laces at Sumerpur (District Pali). The lace is locally known as gope or pachrangi dori. In the return and the trading account filed by the assessee for the year 1968-69, this gope or pachrangi dori was described as lace. Lace was an exempted article not exigible to tax under the Rajasthan Sales Tax Act, 1954 (hereinafter to be referred as "the Act"), by virtue of Notification No. F. 5 (48)E & T/57 dated 1st July, 1958, and the entry at serial number 18 of the Schedule appended to the Act. The Assistant Commercial Taxes Officer (Anti-evasion), Pali, surveyed the business premises of the assessee at Pali on 2nd December, 1971, and formed the opinion that the commodity manufactured and sold under the description of lace was nothing but pachrangi dori. Proceedings were accordingly initiated u/s 12 of the Act in respect of the assessee's assessment for the years 1968-69, 1969-70 and 1970-71. Simultaneously, a regular assessment was made u/s 10 of the Act for the year 1971-72. The assessee contended before the Commercial Taxes Officer, Pali, which is the assessing authority under the Act, that the manufactured article was only a lace and as such not exigible to tax. The assessing authority overruled the contention and held that produce (lace) was in fact a gope or pachrangi dori. No exemption in respect of it was available under the Act. Taking it to be the goods for which no rate has been prescribed elsewhere in the Act, the tax was imposed at the residuary rate of 7 per cent under serial number 19 of Table No. 17. The assessee went in appeal which was heard by the Deputy Commissioner (Appeals), Jodhpur. Before the Deputy Commissioner, the assessee raised the contention that the goods involved (pachrangi dori or gope) were cotton fabrics and as such exempted from tax under the Act. The contention was rejected and it was held that the goods in question were in fact braided cord and as such taxable at the residuary rate. Aggrieved against the said decision of the Deputy Commissioner, the assessee went in revision before the Board of Revenue for Rajasthan, Ajmer. Before the Division Bench of the Board, the contention raised by the assessee was that pachrangi dori was a cotton fabric and as such not exigible to tax under the Act. The stand taken by the department was that the pachrangi dori was not a cotton fabric. Though it was manufactured from cotton yarn, it should not be regarded as a cotton fabric. It was also not a cotton yarn. As such, the commodity was rightly taxed at the residuary rate of 7 per cent. The Division Bench of the Board examined the contention at length and noticed the various judicial pronouncements. The learned Members came to the conclusion that the goods (pachrangi dori) in question were basically cotton yarn and did not lose their character as cotton yarn by virtue of being braided. They were of the opinion that since cotton yarn and cotton fabric are declared goods u/s 14 of the Central Sales Tax Act, 1956, the tax could not exceed the limit prescribed u/s 15 of that Act. The tax would be, therefore, 2 per cent during the relevant assessment periods. They were further of the opinion that tax could not be levied at the residuary rate. In the result, the revisions were partly allowed and the matter was sent back to the assessing authority for the determination of the tax according to law as applicable to the relevant period of assessment. The

department was not satisfied with the decision taken by the Board. An application was moved u/s 16(1) of the Act and the Board was requested to make references as the matter involved is a question of law as to whether pachrangi dori should or should not be taken to be cotton yarn. The learned Members of the Board were not inclined to make the references in view of the pronouncements made by this Court in *Union of India v. Maharaja Umed Mills Limited*, Pali, 1973 Tax LR 2488. But the assessee also contended that the commodity involved was cotton fabric. The Board, after hearing the parties, thought it proper to make the references for an authoritative pronouncement on the matter by this Court.

3. We have heard Mr. K. C. Bhandari, learned counsel for the revenue, and Mr. R. Mehta, learned counsel for the assessee. We have also gone through various orders passed by the Commercial Taxes Officer, Deputy Commissioner (Appeals) and the Revenue Board.

4. Before dealing with the contentions raised at the Bar, the legal position pertaining to cotton fabrics and cotton yarn, about which there is no dispute or controversy between the parties, may be surveyed. Section 2(c) of the Central Sales Tax Act, 1966 (for short "the Central Act"), defines "declared goods" to mean goods declared u/s 14 of this Act to be of special importance in inter-State trade and commerce,. Section 14 of the Central Act declares certain goods enumerated in Clauses (i) to (x) to be of goods of special importance in inter-State trade and commerce. Clause (iia) and clause- (iib) of Section 14 enumerates cotton fabrics and cotton yarn as goods to be of special importance. Section 4(2) of the Act empowers the State Government to exempt from tax the sale or purchase of any goods by issuing a notification in the Official Gazette in that respect. The State Government, by virtue of these powers granted to it under Sub-section (2) of Section 4 of the Act issued Notification No. F.5 (48)E & T/57 dated 1st July, 1958, and exempted all varieties of textiles made wholly or partly of cotton, etc., from tax under the Act. This notification remained in force up to 20th February, 1968, and was rescinded by another Notification No. F. 6(96) FD(CT)/67-1 dated 20th February, 1968, because it had become redundant in view of the exemption available in respect of cotton textiles or fabrics under item No. 18 of the Schedule to the Act. This exemption under item No. 18 of the Schedule remained in force from 6th March, 1964, to 5th March, 1973. We are concerned here in the instant case with the period from 12th February, 1968, to 1972, The cotton fabrics, as such, were not exigible to tax under the Act by virtue of the aforesaid provisions. It may be mentioned that even now this exemption continues under the Act, vide item No. 1 of Table No. 8 of the rates structure issued by the State Government.

5. In case pachrangi dori is taken to be cotton yarn, the rate of tax would be 2 per cent under item No. 6 of Table No. 6 of the rates structure issued by the State Government.

6. In case pachrangi dori is neither taken to be cotton fabrics nor cotton yarn, it

will be governed by the residuary item No. 19 of Table No. 17 of the rates structure issued by the State Government. The tax then would be levied at the rate of 7 per cent.

7. The contention of Mr. Bhandari, the learned counsel for the revenue, is that pachrangi dori should not be treated and taken as cotton fabrics or cotton yarn but should be taken to be a commodity altogether of new commercial connotation susceptible to tax at the residuary rate of 7 per cent. It was argued that, no doubt, pachrangi dori is made from cotton yarn, but the cotton yarn is consumed by the new product (pachrangi dori). As such, the cotton yarn loses its identity and pachrangi dori becomes altogether a new commercial product. Reliance in support of the contention was placed on *Mohta Trading Company v. Commissioner of Sales Tax* [1976] 38 STC 11, *M.M. Pillai v. State of Tamil Nadu* [1977] 39 STC 359 and *Deputy Commissioner v. A.K.K. Sons* [1976] 37 STC 227.

8. Combating the contentions of Mr. Bhandari, it was argued by Mr. Mehta, the learned counsel for the assessee, that pachrangi dori is nothing but a bunch of some cotton threads of five colours. The word "fabrics" is of wide importance and includes a cord within its ambit. Pachrangi dori should, therefore, be taken to be the cotton fabrics. Alternatively, it was argued that pachrangi dori is a very thin cord consisting of some strands of cotton threads. The cotton thread is a process from cotton yarn. Simply because some cotton threads of different colours are twisted, intertwined and braided, it cannot be said that a new commercial product has come into existence. The cotton yarn does not lose its identity in such a case. Pachrangi dori should, therefore, be treated to be the cotton yarn. If it is taken to be cotton yarn, the rate of tax would be 2 per cent. Reliance in support of the contention was placed on numerous authorities to which we will make reference at the appropriate stage.

9. Now, pachrangi dori is a bunch of cotton threads which are intertwined and braided. It is, thus, a cord even thinner than the string. The clinching question before us is whether by intertwining, twisting and braiding the bunch of some cotton threads, a new commercial product is generated? In other words, whether the twisting, braiding or intertwining of some cotton threads generate a new commercial product in which cotton yarn loses its identity?

10. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax (Law) v. Khader Kunhi Sons* [1976] 37 STC 227, the article sold by the assessee was described as "twisted cotton finishing twine". Since the article was not produced before the learned Judges they did not express any final opinion whether the article "cotton finishing twine" was or was not yarn. The case was remitted to the Sales Tax Tribunal to examine the matter afresh. This authority, thus, renders no help to the revenue to show that pachrangi dori should not be taken as cotton yarn.

11. In *Mohta Trading Co. v. Commissioner of Sales Tax* [1976] 38 STC 11 "cotton sewing thread on cops and cones" was taken as separate and distinct from

"cotton yarn on cops and cones". Here the instant case does not relate to sewing thread. As such, this decision of the Allahabad High Court is of no assistance to the department.

12. In *Muthusavari Pillai & Sons v. State of Tamil Nadu* [1977] 39 STC 359 the commodity was cotton bandings and cotton ropes. The cotton banding and cotton ropes were not accepted as textiles (fabrics). The question whether "cotton banding and cotton ropes" retained character of yarn was left open and the case was remanded to decide it. Thus, the decision rendered by the Madras High Court does not support Mr. Bhandari's contention.

13. The above three decisions relied upon by Mr. Bhandari gave no assistance to decide the question in controversy before us.

14. We may examine the controversial question step by step. Cotton thread is made from cotton yarn. In order to make cotton thread, few cotton yarns are braided and intertwined but the yarn does not lose its identity. Cotton thread has been, therefore, accepted as cotton yarn. In *Srinivasa Distributing Agencies v. State of Orissa* [1981] 48 STC 453 the learned Judges of the Orissa High Court treated cotton thread as cotton yarn under the State Sales Tax Act. The Rajasthan Board of Revenue, in *Mali Ram Madho Lal v. State of Rajasthan* 73 RRD 601 was also of the view that thread made out of cotton yarn by the process of twisting, irrespective of the counts to which it is twisted, still, remains cotton yarn.

15. The dyeing or colouring of cotton yarn does not change its character. Cotton yarn remains cotton yarn despite the process of dyeing and colouring. In *Deputy Commissioner of Sales Tax (Law) v. Sadasivan* [1978] 42 STC 201 the Kerala High Court took the view that the process of colouring and dyeing the cotton yarn does not bring out any new commercial commodity and the cotton yarn remains the yarn without losing its essential character as such.

16. The word "don" in the common parlance means a cord. Whether a cotton cord should be taken as cotton yarn in the accepted commercial sense was the direct question mooted in *M.M. Company Ltd. v. Government of Madras* [1970] 25 STC 407. The members of the Rajasthan Board of Revenue were much influenced by the decision rendered in the above authority and took that dori is a cord and if the dori is of cotton yarn, the dori should be treated and taken as cotton yarn for the purpose of the Act. The learned Judges examined the question at length and took cotton cord as cotton yarn and treated it to be one of the "declared goods" under the Central Act. It would be useful to quote the following passage from the judgment:

Cord means twisted thread thicker than string and thinner than rope. String, cord and rope are different species of the, same genus, namely, yarn, which as such means spun thread. Yarn may form one of the threads of a string, cord or rope but cotton yarn is distinct by itself. Though "cotton tyre cord warp sheet" manufactured by the assessee in a bunch of spun thread spread to a particular

shape for a definite commercial purpose, it does not cease to be cotton yarn and is therefore one of the "declared goods".(Headnote)

17. The learned Judges were of the view that the cotton cord is a bunch of cotton threads and comes into existence by twisting, braiding and intertwining. In the cord, the main identity of the goods as yarn is not lost. The cord is, thus, cotton yarn for the purpose of trade and commerce. It may be mentioned that the cord was not accepted as fabrics (textile) in the above decision. Having gone through the reasoning given by the learned Judges, we find ourselves in respectful agreement with the view taken. In our opinion, the cotton cord is a cotton yarn because the yarn does not lose its identity.

18. This Court had an occasion to consider in the *Union of India v. Maharaja Umed Mills, Pali*, 1973 T LR 2488, whether multiple-fold yarn should be taken to be yarn under item No. 18-A of the First Schedule issued u/s 3 of the Central Excises and Salt Act, 1944. It was observed :

Yarn having multiple-folds does not cease to be a yarn. If a basic single yarn is called a yarn and a double yarn is also admittedly a yarn then we fail to understand how a multiple-fold yarn would cease to be a yarn and should be considered as "cotton twist".

19. The multiple-fold yarn was held to be species of the general category of cotton yarn.

20. It would be useful to read item 18-A of the aforesaid Schedule. The explanation occurring in this entry renders considerable help in coming to a conclusion whether cotton yarn twist or thread should be taken to be cotton yarn or not ? The explanation reads as under :

(1) "Cotton yarn" shall include cotton twist and thread.

(2) Cotton yarn, twist or thread, all sorts, whether sized or unsized, in all forms including skeins, hanks, cops, cones, bobbins, pirns, spools, reels, cheeses, balls or on warp beams shall be deemed to be included under this item.

21. The pachrangi dori in question is a very thin-even thinner than a thin string. It is a bunch of some cotton threads of five colours which are intertwined and twisted. The mere act of twisting, braiding, colouring, dyeing, or bunching of cotton yarn into a single cord does not bring into existence a new commercial product. The process of twisting, etc., is, no doubt, there, but the cord still remains a yarn and cannot be treated as an unspecified, distinct and separate product falling under the residuary item. We are, therefore, of the opinion that pachrangi dori is a cotton yarn and is exigible to tax as such.

22. Mr. Mehta, learned counsel for the assessee, argued at length that pachrangi dori should be taken to be a cotton fabric. Reliance in support of the contention was placed on *Commissioner of Sales Tax v. Ashok Elastic Works* [1971] 28 STC 743, *Government of Madras v. Madurai Braided Cord and Tape Producers*

Cooperative Industrial Society [1968] 22 STC 470, Commissioner, Sales Tax v. Arora Material Store [1982] 51 STC 235, Pokardas and Brothers and Another Vs. The State of Gujarat, and Saifuddin Ebrahimhai Vadnagarwalla v. Assistant Commissioner of Commercial Taxes [1976] 38 STC 463.

23. In Government of Madras v. Madurai Braided Cord and Tape Producers Co-operative Industrial Society [1968] 22 STC 470 braided cord was taken to be a variety of textile within the meaning of the Madras General Sales Tax Act. We may here observe that later on the same High Court took another view in M. M. Company Limited v. Government of Madras [1970] 25 STC 407. We have already expressed our opinion that we share the view taken in M. M. Company Limited v. Government of Madras [1970] 25 STC 407. In Commissioner of Sales Tax v. Ashok Elastic Works [1971] 28 STC 743 the commodity was dori and fita which are taken to be lace and tape. Lace and tape were covered by notification issued under the Uttar Pradesh Sales Tax Act and were exempted from tax. Since lace and tape were the specified articles exempted from tax under the notification, the observations made by the Allahabad High Court in the aforesaid case render no help to the assessee. In Pokardas & Brothers v. State of Gujarat [1982] 51 STC 88 the article was tarpaulin. The commodity was altogether different in that case decided by the High Court for Gujarat. As such it also affords no assistance to the assessee. In Commissioner, Sales Tax v. Arora Material Store [1982] 51 STC 235 the question before the Allahabad High Court was whether the cotton-coated fabric remains cotton fabric and is exempted from tax. There was no dispute that the article involved in that case was a fabric. The controversy was between cotton fabrics and cotton-coated fabrics. This decision has, thus, no bearing and renders no help to the assessee. The above authorities, thus, do not show that cotton cord should be taken to be a cotton fabric.

24. Reverting to the issue in dispute, the pachrangi dori is, no doubt, a cotton cord. Nevertheless it does not cease to be a cotton yarn. It is certainly not cotton fabric. Since the pachrangi dori is a cotton yarn, it is exigible to tax as cotton yarn under item No. 6 of Table No. 6 of the rates structure issued by the State Government. It is not exigible to tax as a residuary commodity under item No. 19 of Table No. 17 of the rates structure. We, therefore, decide these references, which have been treated as revisions, as under :

(1) pachrangi dori is not a cotton fabric and is, therefore, not exempted from tax under the Act;

(2) pachrangi dori is a cotton yarn covered by Clause (iib) of Section 14 of the Central Sales Tax Act, 1956, and is one of the goods declared to be of special importance. It would be, therefore, exigible to tax for the relevant period at 2 per cent; and

(3) pachrangi dori does not fall under the residuary item No. 19 of Table No. 17 of the rates structure issued by the State Government. As such it is not exigible to tax at the general rate of 7 per cent meant for unclassified goods.

25. We consequently uphold the view taken by the Board of Revenue for Rajasthan. Looking to the importance of the matter, we leave the parties to bear their own costs.