(1971) 02 AHC CK 0042

In the Allahabad High Court

Case No : S.T.R. No''s. 284 and 285 of 1970

Commissioner of Sales Tax	APPELLANT
Vs	
Ashok Elastic Works	RESPONDENT

Date of Decision : 11-02-1971

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1971) 28 STC 743

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : Shrinath Agarwal, R.M. Agarwal and P.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—At the instance of the Commissioner of Sales Tax, U.P. Lucknow, the Additional Revising, Authority, Sales Tax, Varanasi, has submitted this statement of the case u/s 11(3) of the U.P. Sales Tax Act. The statement of the case is a consolidated one relating to two assessment years, viz., 1962-63 and 1963-64 and a common question of law has been referred. The question is in Hindi. When translated in English it reads as under :

Are dori and fita included in the definition of the word ''laces'' as held by the Additional Judge (Revisions), Varanasi? Are dori and fita covered by the Notification No. S.T. 4064/X-960(4)-58 dated 25th November, 1958, and exempt from tax ?

2. The assessee carried on the business of manufacture and sale of elastic dori and fita. The assessee claimed exemption from tax in respect of the turnover of these two articles relying upon the Notification No. S.T. 4064/X-960(4)-58 dated 25th November, 1958, which is a notification u/s 4 of the Act and enumerates articles which are exempt from tax. This plea of the assessee was rejected by the assessing authority, who taxed the turnover in dispute at the rate of 2 per cent. The assessee''s appeal also failed, but the contention of the assessee prevailed

with the Revising Authority, who held that the elastic dori and fita were laces and were covered by the notification in question. The Commissioner of Sales Tax is aggrieved and has caused this reference to be brought before us.

3. The notification exempts certain categories of goods. Category 3 reads as under:

Textiles of the following varieties manufactured on powerlooms, excluding durries, carpets, hosiery goods and ready-made garments, but including the goods specified in the Annexure hereunder :

(a) Cotton fabrics of all varieties.

(b) ...

(c) ...

(d) ...

(e) ...

Annexure.

(i) ...

(ii) ...

(iii) Tapes, niwars and laces.

(iv) ...

4. It is not disputed that elastic dori and fita are made of cotton. The Judge (Revisions) has held these two articles to be varieties of laces. However, it is immaterial whether these articles can be called as "tapes or laces", because both are covered by the notification and are exempt from tax.

5. According to the Shorter Oxford English Dictionary, the word "tape" means "a narrow woven strip of stout linen, cotton, silk etc., used as a string for tying garments, as binding, as measuring lines, etc.

6. In the Webster''s New International Dictionary, one of the meanings assigned to the word "lace" is "a cord, band, or line; now specify, a string, cord, or band, passing through eyelet or other holes and used in drawing and holding together parts of a garment, of a shoe, of a machine belt, etc.

7. "Fita" can, no doubt, be regarded as a tape. In fact "fita" appears to be a translation of the word "tape". So far as "dori" is concerned, it can very well be considered to be a "lace", because according to the Webster''s dictionary, a lace may be a piece of cord or1'' a band. In the instant case the only difference between a fita and a dori appears to be that one is a band and the other is a cord. We are, therefore, of opinion that "fita" can be classed as "tape", while "dori" as "lace".

8. Mr. R. M. Sahai, learned Counsel for the department, has brought to our notice the decision of the Madras High Court in State of Madras v. T. T. Gopalier and Anr. [1968] 21 S.T.C. 451 where a question arose as to whether braided cords should fall under entry 4 of Schedule III of the Madras General Sales Tax Act, 1959, relating to all varieties of textiles. The Madras High Court (1) [1968] 21 S.T.C. 451(mad), expressed the opinion that braided cords were not laces, which according to the dictionary meaning, was a delicate open work fabric or net work of threads etc.

9. The word "lace" of course was considered by the Madras High Court. But it has also other meanings which we have extracted above from the Webster''s dictionary. In our opinion the context in which the word "lace" has occurred in the relevant notification should be taken into consideration. Words "tapes", "niwars" and "laces" have been used to cover the coarse types of tapes and laces which are used for tying garments or files etc. and not the laces which are used as hem in garments. In any case, under the notification, cotton fabrics of all varieties are exempt. Even if these two articles are not covered by the precise entry relating to "tapes, niwars and laces", in our opinion, they would be covered by the entry "cotton fabrics of all varieties"''. A cotton fabric is a fabrication of cotton yarn. It is not disputed that the articles in question are manufactured out of cotton yarn. The addition of elastic material, the nature of which has not been specified in the statement of the case, will not alter its nature. By the addition of the elastic material, the product can be called as elastic cotton fabric, but it remains a cotton fabric nevertheless.

10. As stated above, we answer the question by saying that dori and fita are a kind of lace and tape, and, in any case, they fall within the entry "cotton fabrics of all varieties", and, as such, are covered by the Notification No. S.T. 4064/ X-960(4)-58 dated 25th November, 1958, and, are therefore, exempt from tax.

11. The assessee is entitled to the costs, which we assess at Rs. 100. Counsel''s fee is also assessed at the same figure.

