**(2004) 04 AHC CK 0002**

**In the Allahabad High Court**

Commissioner, Sales Tax APPELLANT

Vs

Bharat Rope Store RESPONDENT

**Date of Decision :** 09-04-2004

**Acts Referred:**

**Citation :** (2008) 11 VST 236

**Hon'ble Judges :** Prakash Krishna, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Prakash Krishna, J.—Question of law that arises as to whether the turnover of badh (baan) sold by the assessee should be taxed at the rate of 2 per cent as per entry No. 55. Entry No. 55 of Notification No. ST-2-5785/X-10(1)-80-U.P. dated September 7, 1981 reads as follows:

December 24, 1986 (copy annexure 55. Yarn of all kinds except those covered by any M or I 2 per cent other notification.

2. Heard the counsel for the parties and perused the record.

The dealer-opposite party deals in badh (baan), rassi, jute, pattal, etc. The assessing authority for the assessment year in question 1984-85 by its order dated October 7, 1988 found that the turnover of imported badh (baan) in U.P. is taxable at the rate of 6 per cent. This part of the assessment order was confirmed in appeal by the Assistant Commissioner 0udi-cial) dated June 28, 1989. The Tribunal concluded that badh (baan) is covered within the definition of "yarn of all kinds" and as such is taxable at the rate of 2 per cent. Feeling aggrieved, the present revision challenging the rate of tax on badh (baan) at the rate of 2 per cent as held by the Tribunal, has been filed.

3. Before the assessing authority the dealer-opposite party submitted that badh (baan) can be used for the purposes of making Rassi and in weaving of matting, etc. The assessing authority recorded a finding that Badh (Baan) cannot be

 

included in the category of yarn. Badh (baan) is manufactured from a particular kind of grass. It is not "yarn" but it is, itself a finished goods and is not generally used in weaving, knitting or rope making. It is used mainly in cots. Finished badh (baan) is a kind of a rope which is manufactured by spinning and is given shape of a rope. The Tribunal has not substantially disturbed the process of making badh (baan) as found by the assessing officer. However, it preferred the view that, badh (baan) is covered within the definition of yam and should be taxed accordingly at the rate of 2 per cent.

4. The point which immediately falls for consideration is the meaning to be ascribed to the words "yarn" and knitting "yarn". "''Yarn'' has not been defined either in the Act and the Rules, or in the notifications. We have therefore to construe this term in its ordinary grammatical sense. According to ''Oxford Dictionary7, ''yarn'' means: ''Any spun thread specially of kinds prepared for weaving, knitting or rope-making.'' Webster''s New World Dictionary also gives its meaning thus: ''Any fibre, as wool, silk, flax, cotton, nylon, etc., spun into strands for weaving, knitting or making thread.'' Thus, a fibre in order to answer the description of ''yarn'' in the ordinary commercial sense must have two characteristics. Firstly, it should be a spun strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making". The Commissioner of Sales Tax, U.P. Vs. Sarin Textiles Mills, . This decision has been followed in the case of M. Jafar A Majid v. Commissioner of Sales Tax STI 1982 All 78 : [1982] 4 STL 62 (All) : [1982] UPTC 451.

5. "Yarn" has been interpreted by the Supreme Court with reference to the provisions of the U.P. Sales Tax Act in the case of The Commissioner of Sales Tax, U.P. Vs. Sarin Textiles Mills, in connection with the phrase "woollen carpet yarn". The said word is not defined either in the Act and Rules or, in the notifications. The dictionary meaning of these words, as noted by the Supreme Court from Oxford Dictionary in the aforesaid case of The Commissioner of Sales Tax, U.P. Vs. Sarin Textiles Mills, reads as follows:

''Yarn'' has not been defined either in the Act and the Rules, or in the notifications. We have therefore to construe this term in its ordinary grammatical sense. According to ''Oxford Dictionary'', ''yarn'' means:

Any spun thread specially of kinds prepared for weaving, knitting or rope-making.

6. Webster''s New World Dictionary also gives its meaning thus:

Any fibre, as wool, silk, flax, cotton, nylon, etc., spun into strands for weaving, knitting or making thread.

7. Thus, a fibre in order to answer the description of ''yarn'' in the ordinary commercial sense must have two characteristics. Firstly, it should be a spun strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making.

8. The Supreme Court has also defined the weaving in paragraph Nos. 14, 15

 

and 16 See pages 637-638 of [1975] 35 STC (SC) of the said judgment which reads as follows:

The question thus narrows down into the issue: Is woollen carpet Kati--which is admittedly unspun fibre--''used in weaving'' within the contemplation of these notifications? Again, ''weaving'' has not been defined in these notifications or the other statutory provisions. We have therefore to fall back upon its ordinary dictionary meaning. In that sense, ''weaving7 implies the process of forming thread into fabric by interlacing. ''The most important method by which wool products are produced is weaving, the interlacing at right angles of two or more systems of threads. Variations are almost limitless but all are derived from three basic weaves, plain, satin and twill. Hundreds of yarns wound on large spool or beam form the warp. Each yarn is drawn through the eye of a heddle or wire mounted on a harness frame. The alternate raising and lowering of the frames, each with its hundreds of heddles controlling the warp yarns, forms the shed, the space through which the weft or filling yarn is carried by the shuttle, a long streamlined box holding a bobbin of yarn in its hollowed centre. Each trip of the shuttle is called a pick. After each pick the harness frames shift position in accordance with the predetermined pattern, producing a new shed or different combination of raised and lowered warp yarns. The filling yarn are beaten down with a weaver''s reed to make a tighter weave.'' (Encyclopaedia Britannica, Vol. 23, page 342, 1971 Edn.)

Thus ''weaving'' is the process of combining warp and weft components (respectively lengthwise and crosswise) to make a woven structure. The threads that lie lengthwise are called the warp. The other threads, which are combined with the warp and lie width wise, are called the ''weft'', also known as ''woof. An individual thread from the warp of indefinite length is called an end; each individual length of weft from one edge to the other is called a pick. Consecutive picks are usually consecutive lengths of one piece of weft yam that is repeatedly folded back on itself. In all methods of weaving before a length of weft is inserted in the warp, the warp is separated, over a short length extending from the cloth already formed, into two sheets. The process is called shedding. The sequence of primary operations in one weaving cycle is thus shedding, picking and beating in. (Encyclopaedia Britannica, Vol. 23, page 342.)

Weaving is differentiated from both warp and weft, knitting from braiding and from net-making, in that these processes all make use of only one set of elements. In addition, there are geometrical differences. (Encyclopaedia ibid.).

9. In paragraph No. 16 See page 638 of [1975] 35 STC of the aforesaid judgment weaving has been differentiated from knitting and from net-making. The word "knitting" has not been defined either under the Act or the Rules or in the notifications.

10. This Court in Jaimets Pvt. Ltd. v. State of U.P. [1984] 55 STC 119 : [1984] UPTC 67 following the aforesaid judgment of the Supreme Court has held that

 

the acrylic (cashmelon) yarn is covered by the expression of "yarn of all kinds".

11. Now the question arises as to whether badh (baan) is yarn or not. Badh (baan) as found by the fact-finding authorities is used mainly for the purposes of weaving cots. In this connection it may also be mentioned here that subsequently the State Government had issued a notification exempting badh (baan)--"Badh (baan) made of kaans, moonj, sunn and sunnai with effect from November 1, 1991".

12. Baan itself is a finished product and is not yarn as it does not satisfy the second condition of yarn as defined by the Supreme Court in the case of The Commissioner of Sales Tax, U.P. Vs. Sarin Textiles Mills, is not primarily meant for use in weaving, therefore, it is not a yarn. It will not fall either under the entry No. 55 or entry No. 25. Therefore it is taxable as unclassified item.

13. In the result the revision is allowed. The order of the Tribunal is set aside and the assessment order is restored back.

 