(2003) 12 AHC CK 0158

In the Allahabad High Court

Commissioner, Sales Tax — APPELLANT

Vs

Laxmi Leather Cloth Industries Pvt. Ltd. — RESPONDENT

Date of Decision : 09-12-2003

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

Citation : (2008) 11 VST 79

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act") filed against the order of Tribunal dated June 29, 1992 for the assessment year 1982-83 under the U.P. Sales Tax Act and under the Central Sales Tax Act, 1956.

2. In the present revisions dispute relates to the taxability of the "leather cloth." Whether "leather cloth" being textile is exempted from tax under the notification issued u/s 4 of the Act. Tribunal held "leather cloth" as textile and exempted from tax. Dealer claimed leather cloth as a cotton quoted fabric on which additional excise duty has been paid.

3. Tribunal observed that in the case of dealer Sales Tax Officer (A), Noida, conducted a chemical examination of the product. As per examination report dated March 24, 1992 there was 54 per cent rexine and 40 per cent cotton. The base cloth was pure cotton. Tribunal further observed that the aforesaid fact has not been disputed by the department. Tribunal further observed that in several other cases assessing authority accepted the claim of dealer and treated the cotton quoted fabric called as leather cloth exempted from tax being textile. Some of the orders have also been referred in the order. Tribunal has further observed that in 1985 from textile HDPE and PVC have been specifically excluded which means that prior to 1985 they were included in textile.

4. Heard learned Counsel for the parties.

Notification No. ST-2-8058/X--11(5)-78--U.P. Act XV/48-Order-80 dated November 29, 1980 relating to textile reads as follows:

3. Textiles of the following varieties manufactured on powerloom, excluding durries, carpets, druggets, hosiery goods, ready-made garments and cotton, rayon or nylon tyre cords and tyre cord warp-sheets, but including the goods specified in the annexure hereunder:

(a) Cotton fabrics of all varieties ;

(b) rayon or artificial silk fabrics, including staple fibre fabrics of all varieties;

(c) woollen fabrics of all varieties ;

(d) fabrics made of a mixture of any two or more of the above fibres, viz., cotton, rayon or artificial silk, or staple fibre or wool;

(e) canvas cloth, tarpaulins and water proof cloth.

5. In the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , the question was whether "dryer felts" fell in the category of "all varieties of cotton, woollen or silken textiles" specified in item 30 of the Schedule B to the Punjab General Sales Tax Act, 1948. The Supreme Court held that the word "textile" in item No. 30 must be interpreted according to its popular sense, meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. It observed [in paragraphs 5 and 6 of the reports (pages 437-439 of STC)], inter alia, as follows:

...There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be ''textiles''. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls; it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in its character as a textile.... A textile may have diverse uses and it is not the use which determines its character as textile.

...It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard ''dryer felts'' as ''textiles''. But it must be remembered that the concept of ''textiles'' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as ''textiles''.... The character of the fabric or material as textile does not depend upon the use to which it may be put. The uses of textiles in a fast developing economy are manifold and it is quite common now to find ''textile'' being used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find in chapter 59 occurring in Section XI of the First Schedule that there is a reference to ''textile fabrics'' and textile articles, ''of a kind commonly used in machinery or plant'' and Clause (4) of that chapter provides that this expression shall be taken to apply, inter alia, ''woven textile felts...of a kind commonly used in paper-making or other machinery....'' This reference in a statute which is intended to apply to imports made by the trading community clearly shows that ''dryer felts'' which are ''woven textile felts...of a kind commonly used in paper-making machinery7 are regarded in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that ''dryer felts'' are ''textiles'' within the meaning of that expression in item 30 of Schedule ''B''.

6. In the case of Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, , the Supreme Court was called upon to decide whether "rayon tyre cord fabric" was rayon fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, and therefore, exempt from sales tax under the Central Sales Tax Act. It was urged before the Supreme Court that the question whether the rayon tyre cord fabric fell within the expression "rayon fabric" or not was a question of fact and the High Court should not go into it. Negativing this submission, it was observed by the Supreme Court [paragraph 21 of the reports (page 263 of STC)] thus:

...We are unable to agree that the question is one of fact. It is a question which concern the construction of item 22 of the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. If the rayon tyre cord fabric manufactured by the appellant is covered by that item it is exempt from sales tax and there is no jurisdiction in the sales tax authorities to assess the appellant on its turnover.

7. It then proceeded to examine the question with reference to the material brought to its notice including the interpretation put by the Government of India itself in its various departments upon tyre cord fabrics. It referred, inter alia, to the revised Indian Trade Classification (1965) published by the Central Government in the Department of Commercial Intelligence and, Statistics and the Indian Customs Tariff Guide apart from the table appended to the exemptions in the Central Excise Duties Drawback Rules. It recorded thereafter its conclusion [in paragraph 12 of the reports (pages 260 and 261 of STC)] and in these words:

On a comprehensive consideration of the material before us, there is no escape from the conclusion that by and large a tyre cord fabric is regarded as a textile fabric....

and later that,

...item 22 of the First Schedule to the Central Excises and Salt Act speaks of ''all varieties of fabrics'', language wide enough to include the rayon tyre cord fabric manufactured by the appellant.

8. In the case of Commissioner, Sales Tax v. Arora Material Store reported in [1982] 51 STC 235, a cotton fabric base impregnated with preparations of cellulose derivatives or other artificial plastic materials has been held as cotton fabric. While holding so learned single Judge has relied upon the principle laid-down by the apex court in the case of Porritts and Spencer (Asia) Ltd. [1978] 42 STC 433 , and in the case of Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others,

9. In the case of Omvik Electronics Pvt. Ltd. v. Commissioner of Sales Tax reported in [1980] UPTC 912, fused collars and shoulder straps has been held as cotton fabrics.

10. In the present case since it is found as a fact that the leather cloth is a cotton coated fabric it is one of the varieties of cotton fabric and falls under the textile. It is now seen that the leather cloth are commonly used as a textile. It is used for making coat, jackets, table sheets, etc., and is used and known as textile. Perusal of the notification also shows that the textile includes water proof cloth. Leather cloth being water proof may also fall under "water proof cloth".

For the reasons stated above, I do not find any error in the order of Tribunal, which is hereby upheld.

In the result, both the revisions fails and are dismissed.

