(1987) 07 RAJ CK 0015

In the Rajasthan High Court

Case No : S.T. Revision No. 71 of 1987 (old No. 82 of 1980)

CTO, Circle 'A' APPELLANT

Vs

Bhanwar Lal Mutha and Sons RESPONDENT

Date of Decision : 14-07-1987

Acts Referred:
Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 2

Citation : (1987) RLW 581 : (1987) 2 WLN 753

Hon'ble Judges : Jadish Sharan Verma, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jadish Sharan Verma, C.J.—This is a revision against the order dated February 21, 1979 passed by the Board of Revenue in a revision. The relevant assessment years were 1966-67 and 1973-74. The question involved for decision is whether embroidered cotton sarees fall within the definition of ''cotton fabrics'' as denied in item 19 of the first schedule to the Central Excise and Salts Act, 1944. That definition is material, since item 18 of the schedule to the Rajasthan Act which is the material entry of taxation refers to all cotton fabrics'' as defined in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Section 2(c) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 provides that the expression ''cotton fabrics'' shall have the meaning assigned to it in item 19 of the first schedule to the Central Excise and Salt Act, 1944.

2. The aforesaid item 19 of the first schedule to the Central Excise and Salt Act, 1944, which is material stood at the relevant date as under:

19. ''Cotton Fabrics'' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, Sarees, chadders, bed sheets, bed spreads, counter panes table cloth, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or luminated with preparations of cellulose derivatives or of other artificial plastic but does not include any such fabric if it

contains.

(i) 40 per cent or more by weight of wool;

(ii) 40 per cent or more by weight of silk;

(iii) 60 per cent or more by weight of reyon or artificial silk; or

(iv) 50 per cent or more by weight of jute (including) Bimlipatam Jute or mesta fibre):

Provided that in the case of embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or luminated with preparations of cellulose derivatives or of other artificial plastic materials, the percentage referred to in (i) to (iv) above shall be in relation to the base fabrics which are embroidered or impregnated, coated, or luminated, as the case may be....

3. The assessee is a dealer in embroidered cotton sarees. The question is whether these embroidered cotton sarees fall within the ambit of ''cotton fabrics'' as defined above. The Board of Revenue has accepted the assessed''s contention that the embroidered cotton sarees sold by it fall within this definition of ''cotton fabrics'' and, therefore, is to be taxed accordingly. Aggrieved by this decision of the Board of Revenue, the Department has preferred this revision.

4. Learned Counsel for the Department based his argument on Pravin Bros. Vs. The State of Gujarat, to support the Department''s contention that the expression ''cotton fabrics'' as defined above does not include embroidered cotton serees. He argued that the value of the sarees increase considerably after its embroidery which is a process subsequent to the manufacture of the saree as a cotton fabric. In my opinion, this decision instead of supporting the contention negatives it in the present case. In that decision in addition to the taxing entry for ''cotton fabrics'' as defined in item 19 in the first schedule to the Central Excise and Salt Act, 1944, there was a specific entry for taxing ''embroidered sarees''. The question really was as to whether embroidered cotton sarees in situation would fall within the specific entry meant for sarees embroidered or otherwise decorated or within the entry relating to ''cotton fabrics''. In this situation it was held that the specific taxing entry meant for sarees embroidered or otherwise decorated would be attracted and would exclude the general entry pertaining to ''cotton fabrics''. It was clearly indicated that the legislative intent was clear to treat the two kinds of sarees differently, because a specific entry was made for embroidered or otherwise decorated sarees. It is obvious from the ratio of that decision that but for the specific entry therein relating to embroidered or otherwise decorated sarees, the general entry of ''cotton fabrics'' as defined in the above item 19 would be attracted to embroidered cotton sarees. Learned Counsel for the Department also argued that in the same decision embroidered pieces of cotton fabrics of shorter length were also not treated as cotton fabrics and the residuary entry was applied to them. The reason for that is also obvious from the decision. It was indicated that a specified

entry being made for embroidered or otherwise decorated cotton fabrics any piece of material which was embroidered or otherwise decorated did not fall within the ambit of the General entry of ''cotton fabrics'' and, therefore, no other specific entry being applicable to these embroidered pieces, the residuary entry had to apply. The absence of any specific entry for embroidered sarees or material in the present case under the Rajasthan Act distinguishes the said Gujarat decision (supra) and the ratio of that decision supports the conclusion that the definition of ''cotton fabrics'' as above in item 19 is wide enough to include embroidered cotton sarees and for this purpose it has to be treated as the specified entry for embroidered cotton sarees.

5. The decision in Radha''s Fancy Piece Goods Merchants Vs. State of Kerala, also supports the above conclusion. Dealing with the same question and the definition of ''cotton fabrics'' contained in item 19 as above, it was held that all varieties of woven materials manufactured wholly or partly from cotton except those that fall under the exclusion clause, are as per the definition ''cotton fabrics''. It has also been pointed out that the exclusion clause applies only to fabrics manufactured partly from cotton and partly from other materials if the percentage of the non cotton material is that specified therein or more. It has also been stated that the woven material should not lose its identity as a woven material to attract item 19 and embroidered cotton sarees are ''cotton fabrics'' provided rest of the definition in item 19 is satisfied. In the present case, there is no finding that the embroidered cotton sarees contain non-cotton material having the specified or greater percentage thereof mentioned in the exclusion clause of the definition of ''cotton fabrics''. Accordingly the exclusion clause contained in the definition of ''cotton fabrics'' does not apply. The cotton sarees even if embroidered remain sarees and do not lose its identity as a woven material. The test indicated in this decision for treating embroidered cotton sarees as ''cotton fabrics'' as defined in aforesaid item 19 in the first schedule to the Central Excise and Salt Act, 1944, is, therefore, fully satisfied, there being no finding of the Board of ony fact which would attract the exclusion clause of the definition. This decision fully supports the conclusion reached by me. No other decision taking a different view has been cited.

6. Consequently, there is no ground made out to interfere with the decision of the Board taking the view that on the facts found proved embroidered cotton sarees fall within the definition of ''cotton fabrics'' as defined above and they are to be taxed accordingly. The revision is, therefore, dismissed. No costs.

