(1992) 03 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 155 of 1986

Diamond Industries APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Citation : (1994) 39 MPLJ 257 : (1994) MPLJ 257

Hon'ble Judges : Shacheendra Dwivedi, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : None, for the Appellant; M.G. Khedkar, A.G.A., for the Respondent

Judgement

R.C. Lahoti, J.

Under Section 44(1) of the M. P. General Sales Tax Act, the following question has been referred for opinion of this Court:-

"Whether under the facts and circumstances of the case, the Tribunal was justified in holding that stiffed collar lining cloth will not fall under entry No. 6 of Schedule I appended to the Act?"

The assessee deals in cloth and stiff collar lining. The period of assessment is 1-7-1978 to 30-6-1979. The assessee claims that stiff collar linings are ''cloth'' and exempted from tax. The assessing authority held it not to be ''cloth'', but liable to tax as stiff collar lining under the residuary entry. The opinion of the assessing authority has been upheld by the Board of Revenue.

Entry VI in Schedule I describes goods exempted from tax which reads as under :-

"6. All varieties of cloth manufactured in mills or on power looms or handlooms including processed cloth (but excluding hessian cloth)".

The term ''cloth'' is not defined in the Act. It shall have to assume the same meaning as is assigned to it in common parlance. In view of the phraseology used by the Legislature in the Entry, a little extended meaning is given to cloth. It would include processed cloth which might or might not have been capable of being included in the term ''cloth''.

The stiffed collar lining cloth, sales relating to which are in question, is a product wherein cloth is used. The finding of fact recorded by the Tribunal as to the process is :-

"The process that goes into the preparation of this piece viz., cutting the cloth to size, placing the polythene lining between the two pieces and pressing it by means of heater."

''Processing'' means a sequence of operations or changes undergone. The term ''processing'' merely has to be distinguished from ''manufacturing'' in the sense that a mere processing does not ordinarily make the original thing to undergo a change losing its original identity while under the process of manufacturing the original article loses its identity and a thing or article differently known or recognised in common parlance comes into existence. The process which a cloth is required to undergo to become stiffed collar lining, transforms the cloth into a different identity and the stiffed collar lining which comes into existence cannot in common parlance be called to be cloth.

Useful assistance can be derived from the Division Bench decision of this Court in Somani Bros., Indore v. Commissioner of Sales Tax, M.P. 1989 (14) V.K.N. 57. The assessee''s contention was that ''cotton-hose'' was cloth manufactured by cotton textile mills and hence it was tax free. The process found was that thick cotton yarn was woven by circular weaving machines to make a cotton-hose. For that, the cloth was required to be cut into different sizes. This Court concluded by holding that ''cotton-hose'' did not continue to retain its initial identity as cloth manufactured in mills and hence ceased to be cloth. This Court observed :-

".....the term ''cloth'' in accordance with its dictionary meaning and its ordinary popular meaning has to be understood as any woven fabric or stuff till it is transformed into ready use as a different article and, after such transformation, that article cannot be said to retain its previous state of cloth though it is made of cloth."

Two decisions which were relied on by the assessee and referred to by the Board of Revenue in its order may be noticed. Saifuddin Ebrahimbhai Vadnagarwalla and Anr. v. Assistant Commissioner of Commercial Taxes and Ors. (1976) 38 STC 463, is totally besides the point. There, an entry "cotton fabrics" had come up for interpretation and the definition of cotton fabrics was wide enough to include rubberised cotton fabrics which were obtained by mixing cotton and rubber by a manufacturing process. The State of Gujarat v. Ghanshyam Stores (1982) 49 STC 117, is a case where also the term cotton fabrics was held to include the collar lining. The definition of the tertri "cotton fabrics" as occurring in item 29 of the First Schedule to the Central Excise and Salt Act, 1944 was referred to because that reference was found to be incorporated in the relevant entry in the sales tax law in that State also. These decisions by Calcutta and Gujarat High Courts respectively are of no assistance in interpreting the entry "cloth" abovesaid.

8-A. A Full Bench of this Court in Commissioner of Sales Tax, M. P., Indore v. Gyanmal Kesharichand (1984) 55 STC 140, refused to take assistance for interpreting the entries in the sales tax legislation from such Acts as were not pan materia.

For the foregoing reasons, we are of the opinion that a stiffed collar lining cloth does not fall within the term "cloth", entry 6 in Schedule I of M.P. General Sales Tax Act, 1958. We answer the question in affirmative i.e. against the assessee and in favour of the department. Reference answered in affirmative and in favour of Deptt.