
(2007) 04 AHC CK 0258
In the Allahabad High Court

Gaurav Traders

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 25 VST 23

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Full Bench of the Tribunal, U.P., Lucknow dated May 26, 2001.

2. The question relates to the taxability of HDPE (High Density Poly Ethylene) woven fabrics which are commonly called and understood as nylon fabrics or fishnet fabrics or mosquito-net fabrics.

3. The applicant is carrying on the business of HDPE woven fabrics which are commonly called and understood as nylon fabrics or fishnet fabrics or mosquito-net fabrics for which, it was registered under the U.P. Trade Tax Act, 1948. The applicant moved an application u/s 35 of the Act before the Commissioner, Trade Tax, to settle the dispute about the taxability of HDPE woven fabrics. Before the Commissioner of Trade Tax, claim of the applicant was that HDPE woven fabrics being nylon silk fabrics used for domestic purposes, is exempted from the tax under the Notification Nos. 3738 dated January 31, 1985, 3714 dated June 5, 1985, 303 dated February 1, 1989, 595 dated April 6, 1999. The Commissioner of Trade Tax vide order dated September 30, 2000 held that HDPE woven fabrics is specifically excluded from the ambit of "textile" and, therefore, is not exempted from tax and is liable to tax as an unclassified item. Being aggrieved by the order of the Commissioner of Trade Tax, the applicant filed appeal before

the Trade Tax Tribunal. The Full Bench of the Tribunal, U.P., Lucknow, by the impugned order, dismissed the appeal.

4. Heard Sri K. Saksena, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel.

5. Learned Counsel for the applicant made the following submissions:

1. From the textile, the goods of following three categories are excluded;

(a) Readymade goods (durries, carpets, druggets, hosiery goods, readymade garments).

(b) Fabrics meant for industrial use mainly as packing material (hessian or jute cloth, cotton, rayon or nylon and tyre cord fabrics, tyre cord or tyre cord warpsheets, PVC/HDPE fabrics and cotton beltings).

(c) Textiles imported from outside the India.

6. The mosquito-net fabrics made of HDPE yarn is neither a readymade goods suitable for human use as such nor a fabric suitable for industrial use as packing material nor is imported from outside the India. It is a fabric meant for use by the human beings for domestic purposes as a mosquito-nets to protect from mosquitoes and other insects.

7. On the principle of *noscitur a sociis* which means that a word is judged by the company it keeps, the exclusion of term "HDPE fabrics" is restricted to accompanying the goods, such as, hessian or jute cloth, tyre cord fabrics, tyre cord or tyre cord warpsheets, which are generally used for industrial purposes.

8. Reliance is placed on the decisions of apex court in the case of *Rainbow Steels Ltd., Meerut Road, Muzaffarnagar v. Commissioner of Sales Tax, U.P., Lucknow* reported in [1981] 47 STC 298 : [1981] UPTC 400 and *M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda*,

9. Thus, HDPE fabrics in the form of mosquito-nets which are used for domestic purposes and not for the industrial purposes, are not excluded from "textile".

10. The exclusion clause has to be interpreted strictly, even though, the words used in the exclusionary part of the notification had a wide dictionary meaning or connotation. Only that meaning should be given to them which would achieve rather than frustrate the object of exemption. Reliance is placed on the decision of the apex court in the case of *Pappu Sweets and Biscuits v. Commissioner of Trade Tax* reported in [1998] 111 STC 425 : [1998] UPTC 1086.

11. He submitted that only those HDPE fabrics which are made of tape are excluded and not those made of yarn. He submitted that HDPE falls under "rayon or artificial silk fabrics" which is covered under "textile" and is exempted. Reliance is placed on the decision of this Court in the case of *Commissioner of Sales Tax v. Kanpur Plastic Pack (P) Limited* reported in [1984] 57 STC 188 : [1984] UPTC 641.

12. In the alternative, it is, submitted that it is a declared goods u/s 14 of the Central Sales Tax Act as held by this Court in the case of Polyraf Engineers v. State of U.P. reported in [1988] UPTC 109 and, therefore, it is liable to tax at four per cent.

13. Learned Standing Counsel submitted that the exemption notification has to be considered strictly, primary object is to tax. Reliance is placed on the decisions of the apex court in the cases of State of Kerala v. M.M. Mathew reported in [1978] 42 STC 348 Ker and State of Kerala Vs. M/s. Vattukalam Chemicals Industries,

14. He submitted that the language of the notification relating to textile is unambiguous and clear. He submitted that all HDPE fabrics and woven fabrics have been specifically excluded from textile. He submitted that HDPE fabrics whether made of yarn tape, used for the domestic purposes or for industrial purposes, have been excluded from the word "textile". He submitted that there is no reason to restrict the meaning of HDPE fabrics to only HDPE fabrics used for the commercial purposes, in the absence of any such reference in the notification.

15. Having heard learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

16. The entry of "textiles" in Notification No. 7038 dated January 31, 1985 has been amended by the subsequent notification. Later notifications reiterate the position taken in the notification dated January 31, 1985 except for some minor amendments which do not affect the controversy in the present case.

17. The entry 53 "textile" of Notification No. 7038 dated January 31, 1985 reads as follows:

53. Textiles of the following varieties manufactured on power-loom, excluding durries, carpets, druggets, hosiery goods, readymade garments, hessian or jute cloth and cotton, rayon or nylon tyre cord fabrics, tyre cord or tyre cord warp sheets, PVC/HDPE fabrics and cotton beltings, 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, artificial silk, staple fibre or wool;

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

18. In the case of Commissioner of Sales Tax Vs. Kanpur Plastic Pack (P.) Ltd., HDPE fabrics has been held covered under rayon or artificial silk fabric and is accordingly exempted from tax. This decision is prior to the amendment in the entry by the Notification dated January 31, 1985 when HDPE fabrics was not

excluded from "textile". HDPE fabrics may be rayon or artificial silk fabric, but in view of the specific exclusion from "textile", it is deemed that HDPE fabrics is excluded from rayon or artificial silk fabric under the notification. There is nothing in the entry to suggest that exclusion is only of those HDPE fabrics which are used for commercial purposes. The language of the entry is clear and unambiguous. There is no reason to restrict the meaning of HDPE fabrics mentioned in the notification to HDPE fabrics used for the commercial purposes. Each item which have been excluded from "textile" are the independent items and cannot be classified as suggested by the learned Counsel for the applicant in three categories.

19. In the case of Mahalaxmi Polyplast v. State of U.P. reported in [1992] 86 STC 523 (All) : [1990] UPTC 956, the Division Bench of this Court held that the laminated HDPE fabrics being "rubberised or synthetic water proof fabrics" is exempted from tax.

20. In the case of Kanpur Plasticpack Ltd., Kanpur v. State of U.P. reported in [1995] UPTC 1107, this Court held that HDPE woven fabrics is taxable. Similar view has been taken by this Court in the case of Commissioner of Trade Tax v. Rajesh Kumar Vikas Kumar Pandey, Gorakhpur reported in [1999] UPTC 595.

21. In the case of Commissioner of Trade Tax v. Rajesh Kumar Vikas Kumar Pandey, Gorakhpur reported in [1999] UPTC 595, this Court held that HDPE fabrics, unless, it is water-proof fabrics, is not exempted from tax.

22. It is first principle of interpretation that the statute should be read in its ordinary, natural and grammatical sense. The apex court in the case of Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., held as follows:

In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear...

23. The principle of strict interpretation of taxing statutes has been enundated by Rowlatt, J., in his classic statement vide Cape Brady Syndicate v. Commissioners of Inland Revenue [1921] 1 KB 64 and held as follows:

...In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

24. In the case of State of Kerala Vs. M/s. Vattukalam Chemicals Industries, the apex court held that the primary object is to tax and exemption notification is to be construed strictly.

25. In the case of Swadeshi Polytex Ltd. Vs. Income Tax Officer, Special Ward, the Division Bench of this Court held as follows:

...It is well established that where the language of a section is plain and unambiguous, it is not open to courts to read into it limitation, which are not there based on an a priori reasoning, as to the probable intention of the Legislature. Such intention can be gathered from the words actually used in the legislation and what is unexpressed has the same value as to what is unintended...

26. In this view of the matter, I do not find any error in the order of the Tribunal in holding that HDPE fabrics which is commonly called and understood as nylon fabrics or fishnet fabrics or mosquito-net fabrics is not exempted from the tax under the entry "Textile" being specifically excluded from such entry. It is also a settled principle of law that it is open to the Legislature to exclude or include any item by fiction.

27. Now let us come to the alternative question raised by the learned Counsel for the applicant that HDPE fabrics is a declared commodity u/s 14 of the Central Sales Tax Act, 1956 and therefore, liable to tax at four per cent and not as an unclassified item.

28. The perusal of order of the Tribunal reveals that such question has not been raised before the Commissioner, Trade Tax, in the application u/s 35 and neither the Commissioner nor the Tribunal adjudicated this issue. Since this revision arises from the proceeding u/s 35, in which, only the question raised was required to be adjudicated, in the absence of alternative question being raised before the Commissioner, Trade Tax, such question raised by the learned Counsel for the applicant for the first time before this Court, cannot be adjudicated upon. However, it is open to the applicant to raise this issue in the regular assessment proceeding.

29. In the result, revision fails and is, accordingly, dismissed.