

(1972) 12 GUJ CK 0002
In the Gujarat High Court
Case No : Sales tax reference No. 8 of 1969

Hind Engineering Co., Rajkot

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 04-12-1972

Acts Referred:

Central Excise Rules, 1944 — Rule 8

Central Excises and Salt Act, 1944 — Section 2, 4, 7

Citation : (1984) 17 ELT 268 : (1973) 31 STC 115

Hon'ble Judges : T.U. Mehta, J;P.D. Desai, J

Bench : Division Bench

Advocate : S.L. Mody, for the Appellant; B.R. Shah, . Doshit, R.M. Gandhi and H.V. Chhatrapati, Additional Govt. Pleaders, for the Respondent

Judgement

P.D. Desai, J.—The assessee, Messrs Hind Engineering Co. is a firm carrying on business in an article known as rubber belting. The said article is marketed by it under two different trade names, namely, "Hind Rubber Belting" and "Cooper Rubber Belting". The article in question is a rubber coated belt used as an accessory in the machinery employed for transmission of power. The assessee sold the articles marketed under the aforesaid two trade names under two separate invoices each dated September 30, 1966. The assessee thereafter made two applications each dated December 22/24, 1966 to the Commissioner of Sales Tax, u/s 52(1)(e) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Act") for determination of the question whether any tax was payable in respect of the said two sales and, if so, the rate at which it was payable. The contention of the assessee in the said proceedings was that the articles sold by it were "Cotton fabrics" within the meaning of Entry 15 of Schedule A to the Act and, as such, no tax was payable on the sales of the said articles. In support of its contention, the assessee furnished a true copy of the test certificate dated November 19, 1966, issued by the Assistant Director (Chemicals), National Rest House, Ministry of Supply and Technical Development, Government of India, Calcutta and the letter dated March 30, 1967 written by the Mercury Rubber

Mills, New Delhi who are the manufacturers of these rubber beltings. The assessee also relied upon certain previous decisions of the Deputy Commissioner of Sales Tax (Appeals), Gujarat State, in which two articles of identical nature marketed under different trade names were held to fall within the ambit of Entry 15 to Schedule A to the Act.

2. The Deputy Commissioner of Sales Tax (Headquarters), Gujarat State, before whom the said applications came up for hearing, negated the contention of the assessee by two separate orders each dated December 19, 1967. The Deputy Commissioner *inter alia* held that in the process of manufacturing rubber beltings, rubber was actually superimposed on canvas after the weaving process of canvas cloth was completed. There was, therefore, a change in the original form of canvas cloth which was turned into rubber cloth and as such canvas cloth did not retain its character as cloth or cotton fabric. In the opinion of the Deputy Commissioner, therefore, rubber belting was not an item which fell within the ambit of Entry 15 of Schedule A to the Act. The Deputy Commissioner, further held that rubber belting was in fact an essential and integral part of the machinery in which it was commonly used and, therefore, it was covered by Entry 15(1) of Schedule C to the Act.

3. The assessee, being aggrieved by the determination aforesaid, preferred two separate appeals before the Gujarat Sales Tax Tribunal (hereinafter referred to as "the Tribunal"). Two questions were raised before the Tribunal in the said two appeals. The first question was as to whether the determination of the Deputy Commissioner that rubber beltings were not covered by Entry 15 of Schedule A was correct. The second question was whether the Deputy Commissioner ought to have directed u/s 52(2) of the Act that the determination shall not affect the liability of the assessee as respects any sales of rubber beltings effected prior to the determination. Since common questions were involved in both the appeals, the Tribunal heard them together and disposed them of by its common judgment and order dated August 31, 1968. The Tribunal confirmed the decision of the Deputy Commissioner as regards the first question. As regards the second question, the Tribunal took the view that it was not obligatory on the part of the Deputy Commissioner to give benefit of Section 52(2) of the Act to the assessee and that the matter was one which involved the exercise of discretion by the Deputy Commissioner on a consideration of the facts and circumstances of the case before him. The Tribunal, therefore, declined to interfere with the exercise of discretion by the Deputy Commissioner in the case of the assessee. In this view of the matter, the Tribunal dismissed the appeals.

4. The assessee feeling aggrieved by the order of the Tribunal made two applications u/s 61 of the Act requiring the Tribunal to refer to this Court the questions of law arising out of its orders. The Tribunal, has thereupon made a consolidated reference and referred to this Court the following two questions of law :

(1) Whether on the facts and in the circumstances of the case, the sales of Hind

Rubber Beltings and Cooper Rubber Beltings are covered by Entry 15 of Schedule A to the Bombay Sales Tax Act, 1959 ?

(2) Whether the Tribunal was justified in holding that, on the facts and in the circumstances of the case, the appellants were not entitled to the benefit of sub-section (2) of section 52 of the Bombay Sales tax Act, 1959 ?

5. At the hearing of this reference Counsel for the assessee has not pressed the second question for our decision and it is, therefore, not necessary to deal with and give our opinion on the said question. We shall confine the discussion only to the first question which has been elaborately argued before us on behalf of the assessee as well as of the Revenue.

6. The answer to the first question will depend upon the true construction of the expression "cotton fabrics" as appearing and defined in Entry 15 of Schedule A. At the material time, the said entry read as under :

"Cotton fabrics" as defined in Item 19 of the First Schedule to the Central Excises and Salt Act, 1944."

Item No. 19 of the First Schedule to the Central Excises and Salt Act (hereinafter referred to as "the Central Excises Act") read as under :-

"Cotton fabrics : Cotton fabrics mean all varieties of fabrics manufactured either wholly or partly from cotton and include Dhoties, Saris, Chadars, bedsheets, bed-spreads, counter-panes and table-cloths but do not include any such fabric :

- (a) if it contains 40 per cent or more by weight of wool;
- (b) if it contains 40 per cent or more by weight of silk;
- (c) if it contains 60 per cent or more by weight of rayon or artificial silk or;
- (d) if manufactured on a hand-loom.";

It is manifest that this is an instance of referential legislation in that the Legislature has adopted by reference the definition of the article "cotton fabrics" as given in the Central Excises Act for the purpose of defining the said article in the present Act.

7. Before we enter upon a consideration of the question of construction of the said entry, it may be convenient to refer to the legislative history and trace the genesis of the exemption of "cotton fabrics" from the liability to pay sales tax. It is necessary to refer to the same since heavy reliance was placed by counsel for the assessee and the intervener on the legislative history which according to him, brought into bold relief the object and intention of the legislature in granting exemption to cotton fabrics.

8. In the Bombay Sales Tax Act, 1963, which was repealed by the Bombay Sales Tax Act, 1959, "cotton fabrics" as such were not exempt from the liability to pay sales tax. Exemption from liability to pay sales tax was confined, merely of cloth

woven on hand-loom sold at a rate not exceeding Rs. 2/- per yard. It appears that some time in 1956, the Central Government decided to designate certain goods which it considered to be goods of special importance in inter-State trade or commerce, as declared goods and having regard to the special importance of those goods in inter-State trade or commerce, to provide for the levy of sales tax on those goods at a uniform rate in place of sales tax levied by the State Governments at varying rates. The Central Sales Tax Act, 1956 (Act No. 74 of 1956) was, therefore enacted. The Act received the assent of the President of India on December 21, 1956, and with the exception of Sections 6 and 15 it came into force with effect from January 5, 1957. Section 6 came into force on July 1, 1957, and Section 15 came into force on October 1, 1958. By Section 14 of the said Act, certain goods were declared to be of special importance in inter-State trade or commerce and by section 15 of the said Act, as originally enacted, a two-fold restriction was placed on the imposition of tax on the sales or purchases of declared goods under sales tax law of any State. The first restriction imposed by the Act was that the tax payable under the State law in respect of any sales or purchases of declared goods inside the State shall not exceed two per cent of the sale price thereof and the second restriction was that such tax shall not be levied at more than one stage. It may be mentioned at this stage that "cotton fabrics" were not declared to be goods of special importance within the meaning of Section 14 of the Central Sales Tax Act at the time of its original enactment.

9. It was evident that on coming into force of Section 15 of the Central Sales Tax Act, the State would suffer some loss of revenue. It was, therefore, found expedient and desirable to compensate the States for the proportionate loss of sales tax incurred by them on the sales of declared goods inside the State as a result of the restrictions imposed by Section 15 of the Central Sales Tax Act. Therefore, even before Section 15 of the said Act was brought into force, the Central Government decided to enact an Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof amongst the States in pursuance of the principles of distribution formulated and recommendations made by the Finance Commission in its report dated September 30, 1957. The proposal to levy additional duties of excise on the said goods was a part and parcel of the integrated scheme under which sales tax levied at different rates by the States on certain goods was ultimately substituted by the levy of additional duties of excise on such goods and the States were compensated by payment of a part of the net proceeds of the said additional levy of duties of excise on such goods collected during each financial year. To give effect to these proposals, the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was enacted and it came into force with effect from December 24, 1957, Section 3 of the said Act provided for the levy and collection of duties of excise on certain specified goods in addition to the duties chargeable on such goods under the Central Excises and Salt Act, 1944. "Cotton fabrics" were amongst the goods specified by the said section. Section 4

of the said Act provides for the distribution of a part of the net proceeds of the additional duties thus collected amongst the States. u/s 7 of the said Act, as originally enacted, "Cotton fabrics" amongst other goods of special importance in inter-State trade or commerce and it was specifically provided that every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sales or purchases of the declared goods be subject as from the first day of April, 1958, to the restrictions and conditions specified in Section 15 of the Central Sales Tax Act, 1956. "Cotton fabrics" accordingly were subjected to the levy of additional excise duty and at the same time the levy of sales tax under the States Sales Tax Law on the sale of cotton fabrics was subjected to the two-fold restriction laid down in Section 15 of the Central Sales Tax Act.

10. In the meantime, the Bombay Legislature enacted the Bombay Sales Tax Laws (Special Exemptions) Act, 1957 which came into force on December 14, 1957. The preamble of the Exemption Act shows that the purpose of the Act was threefold. It was : (i) to exempt the sales or purchases of certain goods which became assessable to an additional duty of excise, (ii) to exempt the sales or purchases of certain hand-loom textiles and (iii) to exempt the sale or purchases of "other goods" from the sales tax laws in force in the State of Bombay. The reference in the preamble of the said Act to the liability of certain goods to be assessed to an additional duty of excise is a reference to the additional duty which was proposed to be levied of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which was to come into force with effect from December 24, 1957 that is, subsequent to the enactment of the Bombay Exemption Act. The goods which earned exemption under the Bombay Act were divided into two categories : one category consisted of goods specified in Schedule I and the other category consisted of goods specified in Schedule II. The former were described as "Scheduled goods" u/s 2(7) while the latter were described as "designated goods" u/s 2(3). Section 3 and 4 of this Act provided, in so far as it is material that notwithstanding anything contained in the relevant sales tax law or any rules, notifications or orders made thereunder no tax shall be payable on the sale or purchase of scheduled goods as well as of designated goods effected on or after the appointed day. When we turn to the Schedules, we find that Entry 1 of Schedule I specified all varieties of cloth manufactured in mills or on power-looms excluding pure silk cloth, and Entry No. 1 of Schedule II specified any variety of handloom cloth, excluding pure silk cloth, as goods the sales of which were exempted from tax under the said Act. It would thus appear that the effect of the Bombay Exemptions Act was to exempt all varieties of cloth manufactured in mills or on power-looms and any variety of handloom cloth (excluding in any case, pure silk cloth) from liability to pay sales tax (subject to certain exceptions and conditions in case of designated goods). Be it noted, however, that no exemption as such as granted to "Cotton Fabrics" as defined in the Central Excises and Salt Act and that though the Bombay Exemptions Act appears to have been enacted inter alia with the object of exempting goods which were to be subjected to the levy of additional duty of excise under the

Additional Duties of Excise Act, it was not necessarily co-extensive with it.

11. The Parliament thereafter enacted the Central Sales Tax (Second Amendment) Act No. 31 of 1958, which received the assent of the President on September 16, 1958 and came into force with effect from October 1, 1958 (hereinafter referred to as the Amendment Act). By the said Amendment Act, "cotton fabrics" as defined in item No. 12 of the First Schedule to the Central Excises and Salt Act, 1944 were added to the categories of goods declared by Section 14 of the Central Sales Tax Act to be of special importance in inter-State trade or commerce and original Section 15 of the Central Sales Tax Act was substituted by a new section. Section 15, as substituted, re-enacted the provisions of the repealed section which has placed a two-fold restriction on the power of the State Legislature in the matter of imposition of tax on sales or purchases of declared goods : in addition, it imposed one more restriction and the said restriction was that where a tax was levied under the State Law in respect of the sale or purchase inside the State of any declared goods and such goods were sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in the said State. Accordingly, sales tax levied under the State law on sale of any declared goods inside the State, became refundable if such goods were sold in the course of inter-State trade or commerce subject to certain conditions.

12. The Bombay Sales Tax Act, 1959 which repealed the Bombay Sales Tax Act, 1953 and the Bombay Sales Tax Laws (Special Exemptions) Act, 1957 received assent of the Governor on September 25, 1959. Section 1 of the said Act came into force immediately and the remaining provisions of the said Act came into force on January 1, 1960. Sub-section (10) of Section 2 of the said Act defines "declared good" to mean declared goods as defined in the Central Sales Tax Act, 1956. Sub-section (1) of Section 5 of the said Act provides that notwithstanding anything contained in the Act, but subject to the conditions or exceptions, if any, set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule, sub-section (2) empowers the State Government by a notification in the Official Gazette, to add to or enlarge any entry in Schedule A or relax or omit any condition or exception specified therein and further provides that thereupon the said Schedule shall be deemed to be amended accordingly. S. 7 provides for a single point levy of sales tax or general sales tax on declared goods. By virtue of Entry No. 15 of Schedule A, "Cotton fabrics" were included among the goods the sale or purchase of which was to be free from all taxes. Entry 15 of Schedule A read at that time as under :-

"Cotton fabrics as defined in Item No. 12 of the First Schedule to the Central Excises and Salt Act, 1944."

Item No. 12 of the First Schedule to the Central Excises and Salt Act was at the material time in terms identical to the present Item No. 19 of the said Act which

has already been set out in the earlier part of this judgment. It would appear that upon the coming into force of the Bombay Act of 1959, exemption from liability to pay sales tax was granted to "Cotton fabrics" as such and that the Legislature by reference, incorporated the definition of the said expression as found in the Central Excises and Salt Act in the Bombay Act for defining the said article for its own purposes.

13. Next in point of time comes the Central Excises (Conversion to Metric Units) Act, 1960. The Act received the assent of the President of India on September 20, 1960 and was enacted to amend the law relating to duties of excise for the purpose of introducing Metric Units in such law. For the purposes of the present case all that is required to be noted is that Item No. 12 of the Central Excises and Salt Act, which related to "Cotton fabrics", was renumbered as Item No. 19. However, so far as the definition of "Cotton fabrics" was concerned, no change was made by the said Act.

14. The Government of Gujarat appears to have taken the view that having regard to the change in the number of entry relating to "Cotton fabrics" in the Schedule to the Central Excises and Salt Act, it would be necessary to make a consequential amendment in the relevant entry in Schedule A of the Bombay Sales Tax Act, 1959. The Government of Gujarat, therefore, issued a notification dated April 6, 1962 in exercise of the powers conferred by sub-section (2) of Section 5 of the said Act and substituted in place of original entry 15, a new entry 15. This new entry has already been set out in the earlier part of this judgment and the said new entry re-enacted the original entry in the same form except that the words "Item No. 19" were substituted in place of the words "Item No. 12" found in the original entry.

15. The result of this amendment was that the definition of "Cotton fabrics" as contained in Item No. 19 of the First Schedule to the Central Excises and Salt Act is the definition which is required to be taken into consideration in construing the expression "Cotton fabrics" for the purposes of the Bombay Sales Tax Act, 1959.

16. Having set out the legislative history we may now turn to the consideration of the question referred to us by the Tribunal, namely, whether rubber beltings marketed by the assessee can be said to be "Cotton fabrics" within the meaning of Entry 15 of Schedule A. In paragraph 3 of the statement of case submitted by the Tribunal, the manufacturing process of the article in question, as described by its manufacturers has been set out in the following words :

"The fabric (cloth) is firstly passed through a Drying Machine and while still warm is passed through the middle and bottom rolls of a Calender Machine consisting of three bowls (rolls) revolving in opposite directions and the middle roll runs faster than the bottom roll thus producing friction. The rubber compound is fed between the top and the middle rolls from the other side of the machine. The fabric (cloth) thus gets rubberised on one side and for the other side, the process is repeated."

The Tribunal has further observed that the test certificate issued by the Assistant Director of the National Test House, Ministry of Supply and Technical Development, showed that the samples of the articles in question supplied to him were tested for the purpose of analysing their canvas and rubber contents. The result of the test revealed that in the "Hind Rubber Beltings" canvas content by weight was 61.5 per cent and rubber content by weight was 38.5 per cent. In the "Cooper Rubber Beltings" the content by weight of these two respective articles was found to be 58.6 per cent and 41.4 per cent respectively, it appears that a sample of the rubber belting of each variety was also produced before the Deputy Commissioner of Sales Tax as well as before the Tribunal.

17. The main argument of the assessee before the Deputy Commissioner appears to have been that since canvas was a form of cotton fabric and the canvas content by weight in these two varieties of rubber beltings was more than 40 per cent, rubber beltings should be treated as "Cotton fabrics" within the meaning of Entry 15 of Schedule A. The Deputy Commissioner observed that the exemption applied only to "Cotton fabrics" manufactured either wholly or partly from cotton and that rubber beltings could not be said to be "Cotton fabrics" even though they were manufactured by superimposition of rubber on canvas. In his opinion "one can see clearly when this canvas actually is rubberised, it cannot in any sense be termed as a cotton fabric either in appearance or by common usage". Relying upon the principle laid down in the decision of this Court in *Pravin Bros. Vs. The State of Gujarat*, he found that since rubber was superimposed on canvas after the weaving process was over, there was a change in the form of canvas since it was converted into "something like rubber cloth" and did not retain its character as a cotton fabric. The Deputy Commissioner, therefore, negatived the contention of the assessee that rubber beltings were comprehended within the meaning of the expression "Cotton fabrics" found in Entry 15 of Schedule A.

18. When the matter went before the Tribunal, it confirmed the decision of the Deputy Commissioner. The reasons which impelled the Tribunal to take the same view were : (i) that "primarily" cotton fabrics and not all articles having cotton content were intended to be covered by the expression "Cotton fabrics", (ii) that even assuming that canvas, which was the main component of rubber beltings, was a product of cotton and, as such, a variety of cotton fabrics, it was not shown that rubber and cotton were used in the actual process of manufacture of canvas, (iii) that the process of coating canvas with rubber was also not a process incidental or ancillary to the completion of canvas as a manufactured product and (iv) that since rubber was actually superimposed on canvas, the latter lost its identity, if any, as cotton fabrics and a new commercial article came into existence which could not properly be described as "Cotton fabrics".

19. There is no dispute that for the purpose of manufacturing rubber beltings, canvas is subjected to a special process and rubber or rubber compound is superimposed on canvas on both the sides. For the purpose of deciding this

reference, we shall assume that canvas is comprehended within the meaning of the expression "Cotton fabrics". We shall also assume that rubber beltings contain canvas by weight ranging between 61.5 per cent to 58.6 per cent and rubber by weight ranging between 38.5 per cent to 41.4 per cent. The question that falls for our determination then is whether after rubber is superimposed on canvas on both the sides for the purpose of selling the material as rubber beltings, such article can still be said to be cotton fabrics within the meaning of Entry 15 of Schedule A. To be "cotton fabrics" three conditions are required to be fulfilled, first, the article in question must be a fabric; secondly, it must have been manufactured, either wholly or partly from cotton and thirdly it should not contain 40 per cent or more by weight of wool or silk, 50 per cent or more by weight of rayon or artificial silk and must not have been manufactured on a handloom. The last condition has no application in the present case and need not detain us. The question posed above will have to be answered by reference to the first two conditions referred to above.

20. There is another aspect of the matter to which we must advert at this stage. The definition of "Cotton fabrics" as found in Item No. 19 of the Central Excises and Salt Act shows that it is not intended merely to cover articles known as cotton fabrics in common parlance. It is intended to cover all varieties of fabrics manufactured either wholly or partly from cotton provided they do not contain by weight wool, silk, rayon or artificial silk in excess of the prescribed percentage. Since the definition embraces an article which might by weight contain within the prescribed limits specified material other than cotton, it appears that it is intended to cover an article which may not be understood in common parlance as "cotton fabrics". But that is not all, there are words of exclusion which go to suggest that what might in popular parlance be regarded as "cotton fabrics" is not comprehended within the meaning of that expression for the purposes of the Act. We have in mind clause (d) of the definition which provides that a fabric manufactured on a handloom even if it is manufactured wholly from cotton, is not covered by the definition. The principle which we must, therefore, apply in construing the expression "Cotton fabrics" is not the one which is often applied in construing entries appearing in a fiscal statute, namely, as what is the meaning of the expression "Cotton fabrics" which people conversant with it would attribute to it. What is required to be seen is whether the article in question, namely, rubber beltings is "Cotton fabrics" as defined by Item 19 in the First Schedule of the Central Excises and Salt Act.

21. Now, as pointed out earlier, in order that rubber beltings may qualify to be termed as "Cotton fabrics" within the meaning of the Act, the first condition which has to be satisfied is that they must be fabrics. In Webster's New Twentieth Century Dictionary, the following three meanings are given to the word "fabric".

"1. Anything made of parts put together; structure; building, framework.

"2. The style or plan of construction; texture.

"3. any woven, knitted, or felted cloth."

In Corpus Juris Secundum, Vol. 35, this is what is found stated with reference to "fabric" :

"In its primary sense, a woven, felted or knitted material for wear or ornament, as cloth, felt, hosiery or lace : also the material used in its making. In a secondary sense, something that has been fabricated, constructed or put together; any complex construction; a system built up of correlated parts; structure, edifice, as a social fabric; anything manufactured, or the structure of anything; also, the act of building; a thing was received for the fabric of the Churches of the poor. In its primary sense, the term has been held to include "cotton cloth" but also it has been said that the word is rather a broad one in common speech, and that it is certainly as broad, if not broader than the word "cloth", and that, in its broad sense, it undoubtedly includes a flexible sheet metal.

In concrete construction the term is applied to a union of drawn wires made up in rows. In acoustics, particularly in the art of sound deadening "fabric" is a term of art, and has been held not to include sheet metal or cement slabs."

It would appear that in its primary sense, "fabric" connotes a woven, knitted or felted material for wear or ornament such a cloth, felt, hosiery or lace. In a secondary sense, however, it comprehends anything made of parts put together or something resulting from the compounding or inter-relating of two or more articles so as to produce a whole. In its secondary sense, therefore it may be possible to say that "fabrics" may include rubber beltings.

22. We must next consider the question whether rubber beltings satisfy the second condition namely, whether they are manufactured either wholly or partly from cotton. As stated earlier, the process of manufacturing rubber beltings involves superimposition of rubber on canvas. Rubber beltings are, therefore, not manufactured either wholly or partly from cotton directly. What is utilised in the manufacture of rubber beltings is canvas which itself is a distinct and complete product manufactured either wholly or partly from cotton and is a known commercial commodity. It cannot therefore, be said that rubber beltings are manufactured wholly or partly from cotton.

23. The question then is whether it can be said that canvas, which is a cotton fabric, still retains its character as a cotton fabric after rubber is superimposed upon it by some process. Two things are required to be noted in this connection. In the first place, the word "manufacture" is defined in Section 2(f) of the Central Excises and Salt Act includes any process incidental or ancillary to the completion of a manufactured product. The process of superimposition of rubber on canvas, which is a completely manufactured product, cannot be said to be a process incidental or ancillary to its manufacture and therefore, rubber beltings cannot be said to be "Cotton fabrics" within the meaning of Item 19 read with Section 2(f) of the Central Excises and Salt Act. Secondly, as a result of the

superimposition of rubber on canvas it is converted into a wholly different commercial article for the purpose of making its marketable in the new form. Rubber beltings, when manufactured would be different goods constituting a different commercial commodity and canvas cannot be said to continue to retain its identity as canvas after the process of superimposition of rubber. Thirdly, there is nothing to show that rubber beltings can be put to the same use to which canvas can be put. In fact as far as common sense dictates, rubber beltings could not possibly be used for the same purpose for which canvas, which has not undergone the process of superimposition of rubber, could be used. It is therefore, clear that even if it is assumed that canvas is comprehended within the meaning of "Cotton fabrics" for the purposes of the Act, the process of superimposition of rubber brings about such a basic change in its character, nature and form that it loses its identity and is converted into an altogether different commercial commodity. In our opinion, this different commercial commodity cannot be said to fall within the meaning of the expression "Cotton fabrics".

24. Our attention was invited on behalf of the assessee to to some of the decisions which have construed various entries in the different schedules of the Bombay Sales Tax Act. It is unnecessary to refer to them because in our opinion the decision in each case turned upon the peculiar words of the concerned entry and the facts found by the Tribunal. The only direct decision which has a bearing on the question under consideration is the decision of a Division Bench of this Court in (1964) 15 STC 478 (Guj.) in which the question of construction of the very entry which we are construing in this case had arisen before the court. The assessee in that case had purchased takas of Mlmal and voil cloth and after cutting out five yards pieces and three yards pieces from them, superimposed embroidery work on those pieces and sold the five yards pieces as Sarees and three yards pieces as ladies" underwears. The assessee approached the Commissioner of Sales Tax u/s 52(1)(e) of the Act for determination of the question whether any tax was payable in respect of the said sales and, if so, the rate at which it was payable. The Deputy Commissioner of Sales Tax held that embroidered Sarees were covered by Entry 3(i) of Schedule E and not by Entry 15 of Schedule A and the embroidered three yards pieces were covered by Entry 22 of Schedule E. The Tribunal in appeal confirmed the decision of the Deputy Commissioner in so far as Sarees were concerned but different from the Deputy Commissioner in regard to the three yards pieces meant for ladies"s underwear and held that they were covered by Entry 4 of Schedule D. The matter came before this Court on a reference and the question which was substantially raised for decision in the reference was whether embroidered Sarees and embroidered pieces meant for ladies, underwears were exempt from tax being covered by entry 15 of Schedule A to the Act and if not, whether the said two articles were covered respectively by Entry 4 in Schedule D and and Entry 22 in Schedule E, or any other entry of the Schedules to the Act. The Division Bench, which heard the reference, posed for its determination the question whether the fact that after

the said pieces of five yards and three yards were cut from Takas, embroidery by hand or machine was superimposed on them so as to make them embroidered sarees and underwear material and to sell them as such material took those articles out of Entry 15 of Schedule A to the Act. The Court held that the five yards and three yards pieces, even after they were cut from Takas, would not cease to be cotton fabrics within the meaning of Entry 15 of Schedule A and that the fact that they were so cut and were intended for a particular use would not make any difference. The Court, however, found that once the five yards and three yards pieces were embroidered, they would not be covered by Entry 15 of Schedule A for two reasons; first, that entry 3 in Schedule E specifically dealt with sarees embroidered or otherwise decorated, that the explanation to the said entry clearly distinguished a saree which was decorated during the course of weaving from a saree which was decorated after the process of its manufacture was over, that though embroidered cotton sarees may, in ordinary parlance, be called cotton fabrics, the legislative intent was not to treat them as such if embroidery or decoration was superimposed upon the sarees after process of their manufacture was over and that the legislature intended such sarees to be covered by entry 3 in Schedule E which was a specific entry dealing with that specific kind of saree and, secondly, that if a saree piece, which is a cotton fabric, is subjected to the process of embroidery after its manufacture as a cotton fabric has been completed, it can no longer be called a cotton fabric as defined by entry 19 of Schedule I to the Central Excises and Salt Act since the process of embroidery was not a process incidental or ancillary to its manufacture as defined in Section 2(f) of the said Act. It is true that this decision turns upon the construction of two entries, namely, entry 15 in Schedule A and entry 3 in Schedule E and upon the inter-relation and mutual impact of the said two entries. At the same time, however, the decision is also a clear authority for the proposition that if something which is an additional thing, is superimposed on an already manufactured cotton fabric and if that additional thing is neither incidental nor ancillary to the completion of the process of the manufacture, the article which is subjected to the process of superimposition can no longer be called a cotton fabric as defined by entry 19 of Schedule I read with Section 2(f) of the Central Excises and Salt Act. This decision, therefore, clearly supports the view which we are inclined to take.

25. Counsel for the assessee and the intervener, however, urged that in order to arrive at a proper meaning of the entry in question, it would be necessary to consider not only the language of the said entry but also the circumstances in which the provision granting the exemption was enacted and the object and purpose of the legislation. Our attention was invited to the provisions of the various legislative enactments referred to earlier and it was submitted that they were so closely inter-related as to form a single system or code of legislation and were required to be interpreted and enforced as such. If the legislative history is borne in mind, proceeded the argument it would appear that the object of granting exemption to cotton fabrics from liability to pay sales tax under the

Sales Tax Laws of the States was that the said goods were to bear additional duty of excise and a part of the net proceeds thereof was to be distributed amongst the States. The exemptions granted by Section 5 of the Bombay Sales Tax Act were, therefore, intended to be co-extensive with the liability to bear additional duty of excise. What is treated as "Cotton fabrics" for the purposes of the Central Excises and Salt Act and Additional Duties of Excise Act must also be treated as "Cotton fabrics" for the purposes of the Bombay Sales Tax Act. We were then referred to a statutory notification issued by the Central Government under rule 8 of the Central Excise Rules, 1944 which exempted certain varieties of cotton fabrics falling under Item 19 "from so much of duty as is in excess of the duty" specified in the said notification. Amongst the articles which were thus exempted were "mercerised or/and waterproofed, whether rotproofed or not (including rubberised)" cotton fabrics, Counsel urged that the said notification would show that rubberised cotton fabrics were treated as "Cotton fabrics" within the meaning of Item 19 of Schedule I by the Central Government and that rubber-beltings marketed by the assessee which were rubberised Cotton fabrics, were accordingly subjected to the levy of excise duty at a concessional rate as well as to the levy of additional duty of excise. In interpreting the provisions of Item 15 of Schedule A, the Court must, therefore, take into account this factor, more particularly because when the provisions of Item 19 of Schedule I to the Central Excises and Salt Act were incorporated by reference into the Bombay Sales Tax Act, by the notification dated April 6, 1962 issued by the Government of Gujarat the said notification was already in existence. Unless the same meaning was assigned to the same expression in both the Acts, the scheme envisaged by the legislature would not work in unison and the object of the legislature would be frustrated.

26. We are not impressed by the argument advanced on behalf of the assessee and our reasons for saying so are as follows : In the first place, there is no factual foundation laid for making good this submission. For the purpose of showing that rubberised cotton fabrics are treated as cotton fabrics within the meaning of the Central Excises and Salt Act, our attention was invited to a book entitled "Indian Customs and Central Excise Tariff", which is an official publication issued by the Department of Commercial Intelligence and Statistics, Government of India; it was published on June 30, 1967 and sets out the rates of excise duty on excisable goods as on June 30, 1967. Item 19 of the First Schedule is found at page 74 of this publication and at page 78 of the said publication, the notification of the Government of India under which some varieties of "Cotton fabrics" have been exempted from "so much of duty as was in excess of the duty" specified in the said notification is reproduced. The notification does not relate or refer to the payment of the additional excise duty, if any, leviable thereon. Besides, it appears from the text of the notification that the notification granting such exemption was first issued on March 1, 1966 and that it was amended from time to time and the last of such amendment was made by the notification dated May 2, 1967. It would, therefore, appear that there is nothing

to show that when Item 19 was incorporated by reference into the Bombay Sales Tax Act by the notification dated April 6, 1962, rubberised cotton fabrics were treated as covered by the said item. The subsequent additions or alternations in the Central Excises and Salt Act, which were made for the purposes of granting exemptions, cannot be deemed to have been incorporated into the Bombay Sales Tax Act. As observed by the Privy Council in AIR 1931 149 (Privy Council) :

"It seems to be no less logical to hold that where certain provisions from an existing Act have incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

It is, therefore, clear that the notifications issued by the Central Government under the Central Excises and Salt Act for the purpose of granting exemptions under the said Act after Item 19 of Schedule I of the said Act was incorporated in the Bombay Sales Tax Act would not be deemed to have been incorporated in the latter Act and even if such notifications treated rubberised cotton fabrics as cotton fabrics, it cannot be said that they could be treated as cotton fabrics even for the purposes of the latter Act. That apart, there is no material before us to show that rubber beltings were in fact treated as rubberised cotton fabrics and excise duty or additional duty of excise was levied and collected thereon under Item 19 by the Excise Authorities. Even if it is possible therefore, to hold that the subsequent notifications issued by the Central Government under the Central Excises and Salt Act became incorporated into the Bombay Sales Tax Act, the argument that the Sales of such articles should be exempted from the liability to pay sales tax since they bear additional duty to excise, has no foundation in fact.

27. There are several other reasons also why the submission made on behalf of the assessee cannot be accepted. In the first place, we are not, in the present case concerned with the reason why Section 5 and Entry 15 in Schedule A were enacted. The only question which arises for our consideration is the question of construction of entry 15 in Schedule A. It is one of the well-established rules of construction that if the words of a Statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. The definition of "Cotton fabrics" in Item 19 of Schedule I is precise and unambiguous and it would not, therefore, be permissible to give to the said expression a wider or different meaning by reference to the legislative history on the ground that such an interpretation would be more consistent with the smooth working of the system which the Statute purports to regulate. Secondly what is incorporated into the Bombay Sales Tax Act is only the definition of "Cotton fabrics" as contained in Item 19 of Schedule I. It would not be permissible by reference to bring into the Bombay Sales Tax Act all the notifications which the Central Government might issue in exercise of the powers conferred upon it under the provisions of the Central

Excises and Salt Act or the Central Excises Rules. Thirdly, the law is well settled that it is for a person who claims exemption to establish it; a person who claims benefit of exemption must bring his case squarely and fairly within the provisions granting exemption. In the true and proper construction of Item 19 of Schedule I, rubber beltings do not fall within the said item and it would not be permissible to claim the benefit of exemption under the Bombay Sales Tax Act by having recourse to a statutory notification issued under some different Act for a different purpose. In our opinion, therefore, the argument founded on the legislative history cannot help the assessee in the present case.

28. We might observe that a similar argument was advanced before the Division Bench of this Court which decided *Pravin Bros. Vs. The State of Gujarat*, . The argument there urged was that while construing entry 15 in Schedule A to the Act, the Court should bear in mind the purpose and object of granting exemption to cotton fabrics from the levy of sales tax under the Sales Tax Law of the State and must so construe the said entry that all articles which bear additional duty of excise are not required to bear the burden of sales tax. Negating this argument, this Court observed :

"There may perhaps be some force in that contention and Section 5 and Entry 15 in Schedule A to the Bombay Sales Tax Act, 1959, may have been enacted for the reasons stated by Mr. Modi. But we are not in the present case concerned with the reason why Section 5 and Entry 15 in Schedule A were enacted. We are concerned at present with the construction of the two entries, viz., Entry 15 in Schedule A and Entry 3 in Schedule E to the Act. In the first place, it is not correct to construe a provision in one Act or an entry therein from another provision in another Act enacted for a distinct purpose. In the second place, Sections 3 and 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, merely provide for the levy of an additional duty and contain a declaration of certain goods as goods of special importance in inter-State trade or commerce and u/s 4 of the Act benefit is given to the States to share such additional duty. It is difficult to see how the provisions of that Act can in any way assist us in construing the entries before us.... Mr. Modi is certainly right when he says that S. 5 of the Sales Tax Act of 1959 exempts sales of cotton fabrics in general, but the real question before us is whether the saree pieces before us, after they were cut from the Takas and embroidered, were still more cotton fabrics within the meaning of Entry 15 of Schedule A to the Act, that is to say, whether they were still cotton fabrics as defined in Item 19 of the First Schedule of the Central Excises and Salt Act, 1944 or whether they ceased to be mere cotton fabrics as defined in that Entry and fell under Entry 3 of Schedule E to the Act."

This decision is a clear authority for the proposition that Entry 15 of Schedule A which incorporated Item 19 of the Central Excises and Salt Act, must be construed having regard to its own language and that it would neither be proper nor helpful to construe it in the light of the provisions of another Act.

29. In our opinion, therefore, the Tribunal was right in coming to the conclusion that "Hind Rubber Beltings" and "Cooper Rubber Beltings" are not covered by Entry 15 of Schedule A to the Act. Our answer to the first question referred to us is, therefore, in the negative. The second question has not been pressed and it is, therefore, not necessary to answer the same.

30. The assessee will pay the costs of the reference to the Commissioner.

31. Order accordingly.