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In the High Court Of Kerala

Case No : O.P. No''s. 2719, 4219 and 7955 of 1986, 865 and 1968 of 1987, 84 and 1685 of 1988 and 1719 of 1989-D

Importex International (P) Ltd. APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 13-08-1990

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 59A

Citation : (1991) 81 STC 351

Hon'ble Judges : K. Sukumaran, J;G. Rajasekharan, J

Bench : Division Bench

Advocate : V.V. Asokan, for the Appellant; N.N.D. Pillai, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—The proper classification of nylon fishing nets for purposes of sales tax under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the Act"), is the common question involved in these cases.

The competition is between entry 7 of the Third Schedule reading :

"7. Cotton fabrics, woollen fabrics and rayon or artificial silk fabrics as defined in items Nos. 19, 21 and 22 respectively of the First Schedule to the Central Excises and Salt Act, 1944."

and entry 100 of the First Schedule reading:

"100. Bonded fibre fabrics other than those made of coir."

2. The petitioners are dealers in nylon fishing nets. The Government issued an order invoking Section 59A of the Act, on October 21, 1985. It took the view that the nylon nets will come under entry 100. The reasoning in the order reads :

"Government have examined the question in detail. It is seen that nylon nets are

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manufactured out of nylon twines by the process of weaving. Being a woven stuff, these nets are to be correctly classified as ''fabrics''. Twine is a product obtained by twisting two or more nylon fibres and hence it can be classified as bonded fibre."

3. Fishing has been an adventurous avocation of man with whom a gurgling stream, a placid river, brackish back waters or the boundless seas was in direct contact. Some like the aborigines of Andamans had such skill and accuracy as to get at the targeted fish by their bows and arrows. Angling was another method. "Hook, line and sinker" is a famous and familiar phrase even for those who have not read the "The Compleat Angler". Nets were more advantageous. Easier manipulation and larger collection were distinct advantages. Law borrowed very many concepts from the fishing field. Judicial Tribunals, in seisin of taxation problems, sometimes noted how the minor fries were caught while the larger sharks splashed and broke the nets. A reckless adventurer was referred to as one who fished in troubled waters. A shady deal was synonymous with a fishy transaction. The nets of olden days were essentially made of cotton or other fibre twines.

4. As in many other fields, technological innovations brought about revolutionary changes in the industries and implements. Fishing nets were no exception. The change is attributable to the emergence of polymers. Caxton''s Encyclopaedia gives a concise account of it. The material portion relevant for the consideration of the issue in the case may be extracted as follows :

"One of the best known and most widely used synthetic or non-cellulose man-made fibres. Nylon is a generic name for polyamide fibres,..... Nylon yarns have comparatively low moisture absorption and therefore dry with unusual rapidity, thus giving rise to ''drip-dry'' shirts, etc. Nylon yarn is also used for the manufacture of knitwear, stockings and tights, shirts, linen, fabrics, and soft furnishings. The yarn, which has twice the tensile strength of aluminium wire of the same size, is used in parachutes and ropes of all sorts, fishing lines and nets, and tyre cords.......".

Mark the sentence indicating the use of nylon for the specific purpose of manufacture of fish nets. There could not be any doubt then that the nylon fibres do directly go into the manufacture of the nylon fish nets. While dealing with fishing nets also, the switch over to nylon fabrics from the traditional cotton and fibre fabrics, has been noted. The following sentences from the same Encyclopaedia would make the idea clearer :

"The usual line material in all these types of sea fishing is nylon monofilament or braided terylene, from 20 to 40 pound strain, depending on the variety and size of the fish to be caught......"

"Several kinds of netting are used and at the end of the trawl is a bag, the cod-end, in which the fish are finally retained. Since only the large fish are saleable, the mesh is standardised at 80 mm. Seine nets and drift nets are both long walls

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of netting, weighted at the bottom and buoyed by cork or glass floats at the top ; drift nets are floated across the path of a shoal and the fish entangle their gills in the mesh ; seine nets are drawn round to encircle the fish. A variation is the purse seine, which has a rope running through the bottom so that it can be drawn up into a bag........."

Nylon is recognised as fibre in other publications as well. (See Webster''s Third New International Dictionary and Seven Language Dictionary, Volume II, Page 1553 ; Encyclopaedia Britannica, Volume VII, page 453).

5. The fact that nylon fish nets would come within fibre fabrics, cannot, therefore, be a matter of controversy in the light of the scientific information available as regards the manner in which nylon fishing nets are made.

6. The question whether nylon fabrics would come within artificial silk fabrics, has been considered by the Madras High Court in Kishinchand Chellaram v. Joint Commercial Tax Officer [1968] 21 STC 367 Mad. That court answered the question in the affirmative. The decision is indicative of the thorough preparation of a case before the High Court with demonstration of the articles and presentation of historical and technical literature side by side with the tools of legal interpretation. It is sufficient to observe that nylon nets were held to come within the entry of artificial silk fabrics.

7. The Madras decision [1968] 21 STC 367 SC (Kishinchand Chellaram v. Joint Commercial Tax Officer), did not have to consider a case of conflict between the two entries as in the present case. A rival in the form of "bonded fibre fabrics" was not anywhere in the horizon. It is now a well-settled principle that if an item comes under two entries, one of a general character and the other, a special one, the latter entry will get priority and preference. (See Shree Ram Industries v. State of Gujarat [1974] 34 STC 153 (Guj). Even assuming that nylon fishing net will come within the comprehensive entry of artificial silk fabrics, it would be pushed out of the general category, if it would rightly come within the special one of "bonded fibre fabrics".

8. Counsel for the petitioner, Mr. Jose Joseph, who led the arguments in the case (supported and supplemented by Shri Premjit Nagendran) contended that it is not sufficient for fishing nets being branded as fibre fabrics and that the entry needed one more ingredient, that fishing nets should be made from bonded fibre.

9. The petitioners'' pleadings on this point could be adverted to. The material portion reads :

"Fish net is made out of twisted nylon yarn which is also known as fish net yarn. Yarn itself is a continuous strand of twisted fibres whether animal, mineral, vegetable or synthetic for use in weaving and knitting. Fish net yarns are very strong and are required to be pliable and stiff in the finished thread, so as to be free from a tendency to curl and twist up, which would cause entanglements in a net. These yarns are about 20''s in 21 folds. Three seven cord threads are

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twisted together weft way with a moderate amount of twist to make into fish net yarn, generally..............Bonded fibre is totally different...........It will be seen therefore that bonding is holding together of fibres by adhesive substance. There is no element of bonding involved in the making of fish net yarns or in the weaving thereof in the fish nets."

The averments are not specifically contradicted in the counter-affidavit filed on behalf of the Government. A counter-affidavit in another case was cyclostyled and produced as the counter-affidavit in the present case also. Technically, the counter-affidavit is available. From the practical angle, it is useless as it does not answer the factual and technical aspects, pointedly stressed in the original petitions. The necessity for restructuring the legal defence in taxation administration, though pointed out on numerous occasions, does not appear to have been felt by the Government. A court, which is to render a decision on a complicated issue, cannot possibly satisfy its conscience and constitutional obligation on the ground of the grievous default of those entrusted with the defence of the cases involving the financial interests of the Government.

10. The contention of the petitioner is sought to be buttressed by a statement in the Encyclopaedia Britannica, which reads :

"In textiles, production of nonwoven cloth from fibres held together by an adhesive substance or by the inclusion of man-made fibres that can be fused by the application of heat or solvents. Such fabrics are frequently used for inexpensive disposable articles and for garment interlining.

The term bonding is often applied to the process of laminating two layers of cloth with an adhesive, of fusing a sheet of plastic foam between two layers of cloth to provide insulation or of fusing a cloth to a plastic foam backing. Major Reference 18 :1833."

A bonding operation, according to him, requires an adhesive substance or the process of fibres being fused by the application of heat or solvents. The petitioners stress that there is no process of laminating two layers of cloth with an adhesive or of fusing a sheet of plastic foam between two layers of cloth to provide insulation or of fusing a cloth to a plastic foam backing. There is, therefore, no bonded fibre and a fortiori, no bonded fibre fabrics--thus ran the arguments.

11. The term "bonded", doubtless gets its colour and content from the context in which it is used and the statutory scheme including the Schedule in which the various entries occur. [See Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. K.A. Latheef,

12. We get a direct clue from the entry itself. As noticeable, coir fabrics are expressly excluded by the latter limb of the entry reading :

"Bonded fibre fabrics other than those made of coir."

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13. Coir fabrics are close to the views of the inhabitants of the State. The green husk taken to brackish backwaters to be retted for a period, and to be beaten into golden fibres by the weakly hands of the working women, is a familiar sight all along the Kerala coast. Coir products, in the form of coir mats, mattings or carpets are also familiar household articles. The very many qualities which coir fibre had, got it an international market. The coir yarn fabrics, clearly, would not satisfy a bonding process, if that process is given a restricted and narrow meaning as is referred to in the passage relied on by the petitioner. Yet, the Legislature clearly intended that they will come within the entry if not otherwise excluded. If not expressly, at least by clear implication, it demonstrates the legislative will that a bonding process with adhesion or fusion of other substances is not indispensable for the process of bonding as visualised in the entry. That, which had been bound together (see Shorter Oxford Dictionary, Third Edition, page 215) is the meaning attributed by the Legislature to the word "bonded" in that context. It is in that view of the matter, that a specific exclusion was needed for coir yarn fabrics. This discussion leads to the conclusion that nylon fibre would, doubtless, answer the description of "bonded fibre". The classification by the Government, of nylon fish nets as coming within entry 100 can be considered as correct in the circumstances. That would be the legal position even without reckoning the clarification of the Government, u/s 59A. In that view of the matter, we reject the contentions of the petitioners. The writ petitions are accordingly dismissed.

14. A subsidiary contention raised in O.P. No. 1968 of 1987 is about the classification of nylon twine. The Government took the view that it is not nylon yarn coming within entry 42 nor of entry 156 reading :

"42. Artificial silk yarn, synthetic polyester fibre, polyester fibre yarn and staple fibre yarn."

"156. Plastics and articles made of plastics including plastic pipes."

The order states :

"Government have examined the question in detail after taking legal opinion in the matter and are of the view that nylon fish net twines do not come within the ambit of either entry 42 or entry 156 of the First Schedule to the Kerala General Sales Tax Act, 1963. Though a scientific analysis of plastics and nylon reveals that both have a petro-chemical base, in commercial field nylon belongs to the textile group and is different from plastic goods. It will not come under entry 156 of the First Schedule to the said Act. Entry 42 of the First Schedule also does not take in twine but only fibre and therefore nylon fish net twine will not come under entry 42 of the First Schedule to the Act."

The Government directed it to be taxed as general goods. The view does not suffer from any legal infirmity. "Nylon twine", though a polymer, will not fit in with the common understanding of the term plastic goods. It is also different from entry 42 which deals with polyester fibre and yarn. Polyester twine is

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commercially a different commodity from polyester fibre. The contention therefore fails.

15. Learned counsel for the petitioner brought to our notice yet another notification of the Government dated November 25, 1988, by which exemption was granted in respect of certain types of nylon fish nets on the ground that they arc man-made fabrics. We are not concerned with the correctness of that decision in these cases. The entry "man-made fabrics" itself is enormously confusing. The fabric is a man-made one in the sense that a divine dispensation has not intervened in its manufacture. In one sense, a product like a fish net is a man-made fabric. That will be so even if in the manufacture of the net, mechanical processes are employed. The tedium of work and the unduly long duration of the finishing lime are avoided by such speedy mechanisms. Possibly, the Government intended fishing nets which have been made by the fishermen with their inherited skill and in the traditional way of using their native technology, without the intervention of a weaving mill or mechanised process.

16. We have considered the entries independently and without reckoning the clarification of the Government u/s 59A. If, for reasons best known to them, the Government has waived its rights or otherwise blundered, the court is unconcerned about it We do not express any opinion on the correctness or otherwise of that order, as no challenge has been made about it before us.

In the result, the writ petitions fail and they are accordingly dismissed but without any order as to costs.

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