**(1963) 04 AHC CK 0010**

**In the Allahabad High Court**

**Case No :** Sales Tax Reference No. 75 of 1955

J.K. Cotton Manufacturers Ltd. APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

**Date of Decision :** 23-04-1963

**Acts Referred:**
Uttar Pradesh Sales Tax Act, 1948 — Section 11(6), 3

**Citation :** (1963) 14 STC 777

**Hon'ble Judges :** M.C. Desai, C.J;K.B. Asthana, J

**Bench :** Division Bench

**Advocate :** J. Sarup and C.S.P. Singh, for the Appellant; Standing Counsel, for the Respondent

## Judgement

M.C. Desai, C.J.—The Judge (Revisions) has submitted this statement of case inviting this Court''s answer to the following question:-

Whether the word ''goods'' appearing in item No. 9 of List I given in the Notification No. ST-117/X-923-1948 dated 8th June, 1948, modified by Notification No. ST-1429/X-1012-1948, dated 30th June, 1949, refers to and qualifies ''canvas'' also or whether the word ''canvas'' means only the canvas cloth and not included in cloth which is item No. 2 in the same list?

2. The assessee at whose instance the statement has been referred, is a manufacturer of canvas cloth and the question is at what rate it is liable to pay sales tax on the turnover of sale of canvas cloth.

3. u/s 3 of the U. P. Sales Tax Act subject to the other provisions of the Act, a dealer is liable for each assessment year to pay a tax at the rate of two naye paise per rupee on his turnover of a year,. Section 3-A empowers the State Government to declare that the turnover in respect of any goods shall not be liable to tax except at such single point in the series of sales by successive dealers as may be specified. When the State Government makes such a declaration it is empowered to declare further that the turnover in respect of

such goods shall be liable to tax at such rate not exceeding seven naye paise per rupee as may be specified. In exercise of the powers conferred by Section 3-A, the State Government issued Notification No. ST.-117/X-923-1948 dated 8th June, 1948, declaring that the proceeds of sale of goods entered in the Schedule attached to it shall not be included in the turnover of any dealer except at the point mentioned in the Schedule and that the rate of tax in respect of the turnover of the goods shall be as entered in column 5 of the Schedule. The relevant items of the Schedule are as follows :-

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Serial Name of goods Circumstances under Point of Rate of number which to be included tax tax per in turnover. rupee.

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* * * * * 2. Cloth manufac- If manufactured in Sale by manu- Six pies. mills U.P. facturer. 3. Woollen goods and knitting wool. * * * * * 6. Iron and steel. 7. Iron and steel goods. * * * * * 9. Leather, canvas, crepe " " Six pies. or rubber goods (except tyres and tubes). Note.-The term manufacturer in case of leather goods includes* * but does not include * * * carrying on the business of making these goods * * *. * * * * * 16.Tyres and tubes

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On 30th March, 1949, the State Government amended the above notification with effect from 1st April, 1949, and declared that "the following goods shall be taxed at all points of sale at the rate of three pies per rupee: (1) Leather, canvas, crepe and rubber goods (except tyres and tubes)."

4. The assessment year here is 1949-50. It is admitted the assessee is liable to pay sales tax on the turnover of sale of canvas cloth manufactured and sold by it and the only question is the rate of sales tax payable by it. Its contention is that the goods sold by it came within serial No. 9 of the notification dated 8th June, 1948, amended with effect from 1st April, 1949, through the notification dated 30th March, 1949, or in the alternative that the sales tax is governed by the main Section 3. It reads serial No. 9 and the corresponding serial No. 1 of the amending notification to mean "leather, canvas, crepe and goods made out of rubber". Sri Jagdish Swarup contended that the word "goods" is qualified only by the word "rubber" and not by the words "leather", "canvas" and "crepe". We are unable to accept this contention. We are sure that the word "goods" is qualified by all the four preceding words and that the meaning of serial No. 9 is that the goods made out of leather, canvas, crepe and rubber, when sold by their manufacturer, will be charged at 3 pies per rupee with effect from 1st April, 1949, at all points of sale. We do not think that the fact that there is no comma after the word "rubber" is indicative of the State Government''s intention not to use all the four words to qualify the word "goods". It is true that had there been commas after the words "crepe" and "rubber" the meaning would have been clear that the word "goods" is qualified by all the four words. But the absence of these commas does not indicate that there was no such intention. In the context

 

it appears to us that the word "goods" is qualified by all the four words; otherwise leather, canvas and crepe would not have been joined with goods made out of rubber. Goods made out of leather, goods made out of canvas, goods made out of crepe and goods made out of rubber could have been joined in one serial number, but there would have been no sense in joining under one serial number goods made out of rubber with leather, canvas and crepe.

5. Further, the word "manufactured" used in the third column of the Schedule cannot go with leather, because leather is not manufactured. Finally, whatever doubt there was is completely removed by the note expressly referring to "leather goods". There would have been no occasion for this note if serial No. 9 referred to leather as distinct from leather goods. We have, therefore, not the slightest doubt that what is included in serial No. 9 is canvas goods and not canvas cloth.

6. There is no difference between the meanings of the phrases "leather, canvas, crepe or rubber goods" used at serial No. 9 of the notification dated 8th June, 1948, and "leather, canvas, crepe and rubber goods" used in serial No. 1 of the amending notification dated 30th March, 1949. We do not know why the draftsman used the word "and" instead of the word "or" but the difference is of no consequence whatsoever and in any case, has nothing to do with the question whether the words mean leather or leather goods, canvas or canvas goods and crepe or crepe goods. Whether the word "goods" is qualified by all the four words or only the word "rubber" does not depend upon whether the word "rubber" is preceded by the word "or" or "and". We, therefore, hold that the assessee did not have to pay sales tax under serial No. 9 of the notification dated 8th June, 1948, as amended by the notification dated 30th March, 1949.

7. "Cloth" means according to Encyclopaedia Britannica "any material woven on wool or hair, cotton, flax or vegetable fibre." According to Murray''s Dictionary it means in the most general sense "every pliant fabric woven, felted, or otherwise formed, of any animal or vegetable (or even mineral) filament, as of wool, hair, silk, the fibres of hemp, flax, cotton, asbestos, spun glass, wire etc." Canvas means according to Murray''s Dictionary a strong or coarse unbleached cloth made of hemp or flax. According to these definitions, canvas cloth is cloth manufactured by mills and is covered by serial No. 2 of the notification dated 8th June, 1948. Any kind of cloth is covered by this serial and there is no justification for including only certain kinds of cloth or excluding other kinds of cloth. Serial No. 3 of woollen goods and knitting wool does not include woollen cloth and, therefore, it cannot be said that all kinds of cloth are not included in serial No. 2. We are unable to accept the contention of Sri Jagdish Swarup that the sale of canvas cloth by the assessee is not covered by entry No. 2 of the notification dated 8th June, 1948.

8. Our answer to the question is as follows :-

The word ''goods'' in the two notifications refers to and qualifies ''canvas'' also.

 

Canvas cloth as distinct from goods made out of canvas, is not covered by entry No. 9 of the notification. Canvas cloth is covered by serial No. 2 of the notification dated 8th June, 1948.

9. We direct that copies of this judgment be sent to the Judge (Revisions) and the Sales Tax Commissioner, U. P., under the signature of the Registrar and the seal of Court as required by Section 11(6) of the U.P. Sales Tax Act. The assessee shall pay costs of this reference which we assess at Rs. 100. The counsel fee is also fixed at Rs. 100.