(1979) 09 AHC CK 0001

In the Allahabad High Court

Case No : S.T.R. No''s. 523 and 523-A and 523-B of 1976

Kashmir Shawls Industries APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 07-09-1979

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : (1980) 45 STC 190

Hon'ble Judges : R.M. Sahai, J;H.N. Seth, J;C.S.P. Singh, J

Bench : Full Bench

Advocate : R.R. Misra, for the Appellant; Standing Counsel, for the Respondent

Judgement

C.S.P. SINGH, J.—The Additional Judge (Revisions), Lucknow, has referred the following question of law for the opinion of this Court:

Whether the turnover of handloom shawls and lohis sold by the assessee during the assessment years 1959-60, 1960-61 and 1961-62 is exempt from sales tax under the U.P. Sales Tax Act by virtue of entry No. 18 in list II of Notification No. ST-911/X dated 31st March, 1956, or is taxable under that Act?

2. The assessee carried on business in handloom shawls and lohis. Under entry No. 18 of Notification No. ST-911/X dated 31st March, 1956, issued u/s 4 of the Act, "all kinds of cloth manufactured on handloom" was exempt from tax. The assessee claimed that shawls and lohis were handloom cloth and, as such, exempt from tax. The Judge (Revisions), following a Division Bench decision of this Court in the case of Firm Jaswant Rai Jai Narain Vs. Sales Tax Officer and Others, , held that handloom shawls and lohis were clothes and not cloth as appearing in the notification and refused the exemption claimed. The reference came up before a learned single Judge of this Court, who, taking the view that there was an apparent conflict of opinion between the two Division Benches of this Court, one in the case of Firm Jaswant Rai Jai Narain Vs. Sales Tax Officer and Others, , and in Commissioner of Sales Tax, U.P. v. Salikram Panna Lal 1971

U.P.T.C. 118, and disagreeing with the view expressed by a learned single Judge in the case of Lakshmiratan Cotton Mills v. Sales Tax Officer, Kanpur [1962] 13 S.T.C. 1031 wherein the decision in Firm Jaswant Rai Jai Narain Vs. Sales Tax Officer and Others, , was distinguished, referred the matter to a larger Bench. Now the reference has come up for consideration before us.

3. Before we refer to the decisions, which have led to this reference, and a large number of other cases that have been cited by the counsel for parties, it will be useful to read Notification No. ST-911/X dated 31st March, 1956, and also refer to certain other notifications which we feel help in resolving the controversy. We may begin by reading Notification No. ST-911/X dated 31st March, 1956. The notification runs:

In exercise of the powers conferred by Section 4 of the U. P, Sales Tax Act, 1948, as amended from time to time, and in supersession of all previous notifications granting any exemption under the said section relating to any persons or class of persons, or goods or class of goods, not being specified in list I below, the Governor of Uttar Pradesh is pleased to direct that, with effect from April 1, 1956, the goods specified in list II hereunder shall alone be exempt from payment of tax.

4. Item No. 18. All kinds of cloth manufactured on handloom.

5. On 4th May, 1962, another notification u/s 4 was issued, being Notification No. ST-3911/X -- 960(4)-58, which runs as under:

In exercise of the powers conferred under Clause (a) of Sub-section (1) of Section 4 of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), and in partial modification of Notification No. ST-911/X dated March 31, 1956, the Governor of Uttar Pradesh is pleased to make the following amendment in list II of the aforesaid notification and to direct that the amendment shall be deemed to have always been so made:

AMENDMENT. -- Against item No. 18, for the existing entry, the following shall be substituted:--

''All kinds of cloth manufactured on handloom including dhoties, sarees and bedsheets.''

6. As will be seen, the notification is retrospective and the result of this is that item No. 18 of Notification No. ST-911/X dated 31st March, 1956, has to be read as including dhoties, sarees and bedsheets. Earlier to this notification, another notification, being No. ST-5621/X ---900(17)-61 dated 16th February, 1962, has been issued on 16th February, 1962, u/s 4 granting exemption with effect from 16th February, 1962, to handloom shawls and lohis, whether plain, printed or embroidered. This notification is to the following effect:

In exercise of the powers under Clause (a) of Sub-section (1) of Section 4 of the

Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor of Uttar Pradesh is pleased to exempt, with effect from February 16, 1962, handloom shawls and lohis, whether plain, printed or embroidered, from payment of tax under the said Act, on the sale thereof.

7. Two other notifications should now be noticed at this stage. One is Notification No. 3708/X -- 960(4)-58 dated 21st October, 1959, issued u/s 4 of the Act. This notification is to the following effect:

In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor of Uttar Pradesh is pleased to order that no tax shall be payable under the said Act on printed or embroidered handloom cloth, with effect from October 1, 1959.

8. This notification was amended retrospectively by Notification No. ST-3911-1/X -- 960(4)-58 dated 4th May, 1962, which runs as under:

In exercise of the powers conferred under Clause (a) of Sub-section (1) of Section 4 of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), and in partial modification of Notification No. ST-3708/X -- 960(4)-58 dated October 21, 1959, the Governor of Uttar Pradesh is pleased to make the following amendment in the aforesaid notification and to direct that the amendment shall be deemed to have always been so made:

AMENDMENT. -- Between the words ''handloom cloth'' and the words ''with effect from'', the words and commas ''including dhoties, sarees and bedsheets,'' shall be inserted.

9. The result of this amendment was that notification of 21st October, 1959, had to be read as follows:

printed or embroidered handloom cloth including dhoties, sarees and bedsheets, with effect from October 1, 1959.

10. In the present reference, we are concerned with the assessment years 1959-60, 1960-61 and 1961-62. In all these three years, on account of Notification No. ST-911/X dated 31st March, 1956, as amended by the notification of 4th May, 1962, which had retrospective effect, the relevant entry read:

All kinds of cloth manufactured on handloom including dhoties, sarees and bedsheets.

11. Side by side, Notification No. ST-3708/X -- 960 (4)-58 dated 21st October, 1959, as amended retrospectively by Notification No. ST-3911/X -- 960 (4)-58 dated 4th May, 1962, exempted printed or embroidered handloom cloth including dhoties, sarees and bedsheets, with effect from October 1, 1959. During the part of the assessment year 1961-62, there was another notification being Notification No. ST-5621/X -- 900 (17)-61 dated 16th February, 1962, u/s 4 of

the Act, which reads as follows:

In exercise of the powers under Clause (a) of Sub-section (1) of Section 4 of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor of Uttar Pradesh is pleased to exempt, with effect from February 16, 1962, handloom shawls and lohis, whether plain, printed or embroidered, from payment of tax under the said Act, on the sale thereof.

12. In the present cases, we are concerned with handloom shawls and lohis and the notification of 16th February, 1962, specifically exempts handloom shawls and lohis, whether plain, printed or embroidered with effect from 16th February, 1962. Thus, during the portion of the assessment year 1961-62, i. e., from 16th February, 1962, to 31st March, 1962, shawls and lohis sold by the assessee were exempt from tax under the notification of 16th February, 1962. The question is whether they were exempt earlier under the notification of 31st March, 1956. The notifications of 21st October, 1959, and that of 16th February, 1962, we think, help us in resolving this controversy without being saddled with the burden of resolving the conflict in the two decisions of this Court and referring to various other decisions cited at the Bar. As all these notifications have been issued u/s 4 of the Act in respect of handloom, we have to adopt a harmonious construction and read them in a way so that none of them is rendered otiose. If the notification of 31st March, 1956, is interpreted liberally as including all types of handloom cloth, the notification of 21st October, 1959, which granted exemption to printed or embroidered handloom cloth becomes redundant, for printed or embroidered handloom cloth would also be exempt. Under the notification of 31st March, 1956, such an interpretation would be ascribing a redundant exercise of power on the part of the State Government. On this consideration, we are inclined to interpret the notification of 31st March, 1956, so as to exclude printed or embroidered handloom cloth at least from 1st October, 1959. We would read the retrospective amendment in the two notifications relating to dhoties, sarees, bedsheets in the same manner, i. e., dhoties, sarees and bedsheets, which are included in item 18 of the notification of 31st March, 1956, are confined to dhoties, sarees and bedsheets, which are not printed or embroidered. Any other reading of the two notifications would destroy the efficacy of the notification of 21st October, 1959. So far as handloom shawls and lohis are concerned, the notification of 16th February, 1962, appears to conclude the case against the assessee. As has been noticed, the notification of 16th February, 1962, exempts specifically handloom shawls and lohis whether plain, printed or embroidered with effect from 16th February, 1962, only. We fail to appreciate the necessity for this notification in case handloom shawls and lohis had been treated as falling in item 18 of the notification of 31st March, 1956. There is another consideration which impels one to this view. The notification of 16th February, 1962, exempts handloom shawls and lohis only from 16th February, 1962, and not from any earlier point of time. This being so, if we interpret item 18 of the notification of 31st March, 1956, as including handloom shawls and lohis, the result would be that they would enjoy exemption from tax

from an earlier date than that indicated by the notification of 16th February, 1962. This would be defeating the intent of the notification of 16th February, 1962. On a composite consideration of these notifications, we are of the view that handloom shawls and lohis were exempt from tax only in the assessment year 1961-62, i. e., from the period 16th February, 1962, and onwards and not from any relevant year.

13. We hold accordingly.

14. Treating this as a revision instead of a reference, in view of Section 20(6-A) of U.P. Ordinance No. 27 of 1978, instead of answering the question referred, we allow the revision in part, and hold that the assessee is not entitled to exemption in respect of his turnover of shawls and lohis during the assessment years 1959-60 and 1960-61, but was entitled to the benefit as from 16th February, 1962, up to 31st March, 1962, and not for any other part of the assessment year 1961-62. In view of the partial success and failure of the parties, we direct the parties to bear their own costs.

