(1991) 01 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Sales Tax Ref. No. 1 of 1986

Khanna Cotton Works APPELLANT

Vs

Excise and Taxation Commissioner RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:
Himachal Pradesh General Sales Tax Act, 1968 — Section 33

Citation : (1991) 2 ShimLC 135

Hon'ble Judges : P.C.B. Menon, C.J;Davinder Gupta, J

Bench : Division Bench

Advocate : Kapil Dev Sood, for the Appellant; Chhabil Dass, Advocate-General, for the Respondent

Judgement

P.C. Balakrishna Menon, C.J.—The Financial Commissioner (Appeals) Himachal Pradesh. Shimla has, u/s 33 of the Himachal Pradesh General Sales Tax Act, 1968, referred the following question of law for the decision of this Court:

Whether, on the facts and in the circumstances of the case, the "quilts" sold by the Petitioner are ''ready-made sewn garments'' within the meaning of Item No. 11 of the Excise and Taxation Department notification dated April I, 1969.

The Assessee is a dealer in ready-made quilts or Razais The Assessment relates to the year 1971-72. The statutory authorities under the Act have taken the view that quilts or Razais do not qualify for the concessional rate of tax, under the notification issued by the State Government on 1st April, 1969 The relevant part of the notification reads:

(11) the rate of tax on ready-made sewn garments made out of handloom or mill made cloth excluding fur coats and garments prepared out of pure silk cloth but including umberalla cloth covers and pillow covers except when made out of pure silk cloth, shall be two paise in a rupee.

2. There is no dispute that the quilts or Razais dealt with by the dealer are made out of handloom or mill made cloth and are also ready made sewn for use by the

purchaser. The only question for decision therefore, is as to whether the quilts or raja is sold by the dealer would fall under the notification aforesaid for concessional rate of tax If the quilt or razai is to be treated as a garment it satisfies the other requirements of the notification being ready made and sewn and made out of handloom or mill made cloth. Webster''s Third New International Dictionary gives the following meaning for the word ''garment'' at page 986:

Garment-often attrib (ME garment, garnement, fr. MF garnement, garniment article of clothing or armor, fr. OF. fr. garnir to equip prepare -ment-more at GARNISH) 1 a : an article of outer clothing (as a coat or dress) usu exclusive of accessories b : an article of under-clothing : specif: FOUNDATION GARMENT (a-that gives you the bust and waistine contours the new fashions demand-McCall''s) 2 : the outward dress in which something is seen (cloth his ideas in a-of reality-Ber-trand Russell)(our birch in its spring-Richard Semon.

The same dictionary at page gives the following meaning for word ''clothing'':

Clothing-(ME, fr gerund of clothen to clothe) 1 a : covering for the human body or garments in general : all the garments and accessories worn by a person at any one time b obs : LIVERY c : the equipment (as blankets, hoods or bandages) used to cover and protect a domestic animal (as a horse) d : characteristic exterior properties and aspects, style, and atmosphere in which something intangible is discerned (the moral-of legislation). 2 CLEADING 2. 3 A : SAILS b : the bowsprit rigging 4 : CLOTHING WOOL 5. [Kloth-also klath-] : CARD CLOTHING 6 : the felts and wires of paper making machines.

3. The Concise Oxford Dictionary, Sixth Edition, at page 437 gives the following meaning to the word ''Garment'':

garment. Article of dress, clothes, outward and visible covering of anything, 2. v. t. (rhet., use. in p.p.) Attire (ME f. OF garnement (as GARNISH; see-ment).

The Oxford Encyclopedic Dictionary at page 689 gives the meaning of the word ''garment'' as:

garment n. Article of dress (pl) clothes

4. A Division Bench of the Allahabad High Court in Commissioner of Sales Tax, U.P. v. H.M. Ashiq (1979) 43 STC 281, states at page 282:

''Garment'', according to Webster''s Dictionary, means an article of clothing. It is thus a very wide term and includes everything that can be called on article of clothing. In that sense, even hosiery goods would be covered by the term ''garments''. The term ''hosiery'' originally meant knitted garments like socks and stocking, which were meant to cover the feet and the legs This term has, however, now come to acquire a wider meaning and means knitwear (Webster''s Dictionary). Topas and mufflers are knitted garments and, as such, would fall in the category of hosiery goods.

It is further stated at the same page:

The learned standing Counsel appears to be right that if the notification intended to confine it to readymade clothes then the entry would have read "ready-made dresses". The use of the word "garment" is in the widest sense. Socks, topas and mufflers may be hosiery goods and liable to tax under a separate notification but all the same they are ready-made garments as they are used to cover the body.

5. In Firm Jaswant Rai Jai Narain v. Sales Tax Officer and Ors. (1955) 6 STC 386, the Allahabad High Court observed at page 391:

The word "cloth" is to be distinguished from "clothes" or garments. Cloth is the fabric or material from which "clothes" are made as wearing apparel or as other articles of personal use. What is exempted under the notification is "cloth" and not "clothes". What the applicant does is to take handloom cloth and either cut it into specific sizes or to have them manufactured into specific sizes, so that the pieces can be used as saris, bed covers, lihafs (quilt covers) etc and then to print them so that they can be readily used for the purpose, for which they are meant. It is quite obvious that the articles in which the applicant deals are "clothes" or garments and not "cloth" within the meaning of the notification.

Garments are generally used for clothing and need not be confined to wearing apparels In places like Himachal Pradesh where the winter is too severe, the razai or quilt is also a wearing apparel for the poor man to protect himself from the biting cold and it serves as an outer covering of the body. We are, therefore, clearly of the view that quilts or razais would clearly fall under the notification aforesaid and qualify for concessional rate of tax under the notification. The question referred to us is answered in the affirmative that is, in favour of the Assessee and against the revenue.

6. A copy of this order under the signature of the Registrar and under the seal of the High Court be forwarded to the Financial Commissioner (Appeals) Himachal Pradesh, Shimla. The parties will bear their own costs.