(1965) 07 KL CK 0017

In the High Court Of Kerala

Case No : T.R.C. No. 2 of 1964

Lekshmi Powerloom Industrial Co-Operative Society Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 13-07-1965

Acts Referred:

General Sales Tax Act, 1125 — Section 5A(1)(i)

Citation : (1965) 16 STC 864

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : P. Subramonian Potti and S.A. Nagendran, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—The short question arising for determination in this tax revision case is whether the cloth manufactured by the aid of powerlooms is exempted from sales tax in view of Section 5A(1)(i) of the General Sales Tax Act, 1125. The relevant part of the section is in these terms:

5A. Exemption of tax on the sale of mill-made textiles (other than pure silk), tobacco and sugar:--(1) The sale by any dealer of--

(i) mill-made textile, other than pure silk,

(ii) . . .

2. It is agreed that the commodity with which we are concerned in this case is not silk. It is also admitted that the cloth with which we are concerned is manufactured in powerlooms and further that those powerlooms are housed in a factory.

3. The question therefore is whether such cloth can be said to fall within the term "mill-made textile" used in Section 5A(1)(i). Under the Sales Tax Act, as we read it, textiles have been divided into two; those that are made in handlooms and

those that are made with the aid of machines. "Mill" can have two meanings, machine, or a mill understood in the popular sense meaning the building or the factory in which machines are housed. We are inclined to take the view that even if cloth is made in powerloom which is not housed in a factory it will come within the term "mill-made textile". However the question does not specifically arise here in view of the fact that the cloth with which we are concerned was manufactured in a machine housed in a factory. Regarding this we feel no doubt that it is "mill-made textile".

4. Our attention has been invited to the decision of the Madras High Court in Sri Dhandapani Powerloom Factory, Erode v. Commercial Tax Officer, Coimbatore and Anr. [1961] 12 S.T.C. 304, at p. 308 and relied on by the Tribunal. The reasoning of the learned Judge is contained in the following passage:--

Section 2(b) of Act XX of 1954 only refers to cloth etc. made in mills. In the affidavit filed in support of the petition, it is stated that a powerloom is not a mill and the cloth produced on powerlooms would not be liable to the additional tax. No counter-affidavit has been filed controverting this statement that a powerloom is not a mill. The learned Additional Government Pleader contended that mill goods would include powerloom goods, as the essential element in both of them would be employment of machinery. I cannot agree. Mill cloth is a familiar variety of cloth and everybody knows what a mill is. In popular language, a powerloom cloth is never associated with a mill cloth.

5. With great respect we are unable to agree. The distinction is as we have pointed out between cloth manufactured in handlooms and those made with the aid of machinery.

6. In the result, we allow this tax revision case but make no order as to costs.