

(1976) 03 MAD CK 0012

In the Madras High Court

Case No : Tax Case No"s. 465 and 466 of 1974 (Revision No"s. 221 and 222 of 1974)

M. Muthusavari Pillai and Sons

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-03-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 4, 8, 8A, 9
Tamil Nadu General Sales Tax Act, 1959 — Section 32

Citation : (1977) ILR (Mad) 418 : (1977) 39 STC 359

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K. Govindarajan, for Additional Government Pleader No. I, for the Respondent

Judgement

V. Ramaswami, J.—In these two tax cases a common question of law is raised, though one case is in respect of the assessment under the

Tamil Nadu General Sales Tax Act, 1959 and the other under the Central Sales Tax Act.

2. The assesseees are dealers in cotton bandings and cotton ropes. In the assessment proceedings the assesseees claimed a certain turnover relating

to bandings and ropes as exempt u/s 8 read with item 4 of the Third Schedule in so far as the assessment under the Tamil Nadu General Sales Tax

Act, 1959 (hereinafter referred to as the Act) is concerned and u/s 9(2) read with Section 8A of the Central Sales Tax Act so far as the

assessment under the Central Sales Tax Act is concerned. The assessing officer held that the bandings and ropes sold by the assesseees are textiles

within the meaning of item 4 of the Third Schedule to the Act and that, therefore, the turnover relating to the same is entitled to exemption.

Accordingly, the said turnover was deleted from the gross turnover under both the assessments.

3. The Deputy Commissioner of Commercial Taxes, Coimbatore, initiated proceedings u/s 32 of the Act in the view that the cotton bandings and

cotton ropes sold by the assesseees would not come within the meaning of "textiles" under item 4 of the Third Schedule. After hearing the objections

of the assesseees and relying on the decision in *K.R. Subbier v. State of Madras* [1973] 31 S.T.C. 205, the Deputy Commissioner held that these

cotton bandings and cotton ropes are not textiles within the meaning of item 4 and that, therefore, they are assessable to sales tax at multi-point.

The assesseees preferred appeals to the Tribunal. The Tribunal held that the goods sold by the assesseees are neither textiles nor cotton fabrics and

that the turnover, therefore, has been rightly assessed to tax under the Act.

4. In these revision petitions the learned counsel for the assesseees raised two contentions : His first contention was that the cotton bandings and

cotton yarn sold by the assesseees are textiles within the meaning of item 4 of the Third Schedule. He alternatively contended that, in any case, it

would fall under the category of "cotton yarn" under item 3 of the Second Schedule which is liable to tax at single point on the first sale in the State

and that the turnover relating to sales of these articles are second sales and hence they are not liable to be included in the taxable turnover. This

second contention was never raised either before the Deputy Commissioner or the Tribunal. Of course, there was no need for him to raise the

same before the assessing officer as he had succeeded even in his contention that they were textiles. Since the question raised related to the

exemption of the same turnover, though under a different provision of law and the facts are also not in dispute, we permitted the learned counsel

for the assesseees to raise this alternative contention also.

5. Before we consider these questions of law arising in these tax cases, it is necessary to give a description of the article which the assesseees were

selling. The cotton ropes which they sold-a sample of which was produced before us-consist of 12 strands of cotton yarn. Four strands each are

twisted in one group and the three sets of four strands are again twisted together so as to make it one rope. In other words, three plies of four

strands each are twisted and formed into a rope. It is stated that the yarn used

in making these ropes is of grades 10 and 15. The cotton bandings which the assessee sold is a twisted three-strand banding which is normally used for tying packings by textile mills and other dealers. Even the cotton ropes which were produced before us, we are of the view, are suited for the purpose of fastening or tying. The learned counsel for the assessee states that apart from the cotton bandings and cotton ropes, which he produced before us as samples, there might be certain other bandings and ropes which might consist of more plies or more strands. Item 4 of the Third Schedule, which exempts textiles, as it stood in the relevant assessment year 1971-72, reads as follows ;

All varieties of textiles (other than durries, carpets, druggets and pure silk cloth) made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including handkerchiefs, towels, napkins, dusters, cotton velvets and velveteen, tapes, niwars and laces and hosiery cloth in lengths.

6. According to the learned counsel, the word "textiles" in this item is used in the generic or technical sense and has to be understood as such and not in the popular sense or as understood in common parlance. So understood, any manifestation of spun yarn by reason of the grouping, banding, braiding, twisting or by the conventional form of weaving would be textiles. He also relied on the items included in the inclusive part of the item, such as tapes, niwars and laces as indicating that the word "textiles" is not used in this provision as what is popularly known but only in the technical sense. His further argument is that the article produced and sold by them is the result of grouping the yarn and twisting into a definite shape which is cylindrical in form and that, therefore, it is textile. In support of his argument he relied on a number of decisions and the meanings for certain words given in "The Mercury Dictionary of Textile Terms" compiled by the staff of "Textile Mercury" and published by Textile Mercury Ltd., 41, Spring Gardens, Manchester-2, England. In the Mercury Dictionary of Textile Terms the meaning of "textile" is given as follows :

Textile : Any product manufactured from fibres through twisting, interlacing, banding, looping or any other means, in such a manner that the flexibility, strength and other characteristic properties of the individual fibres are not suppressed.

7. The earliest case, which considered the word "textiles" under item 4 of the

Third Schedule is the one reported in *State of Madras v. T.T.*

Gopalier [1968] 21 S.T.C. 451. In that case, the question for consideration was whether "braided cords" are textiles. It was held therein :

The entry excludes certain products like durries, carpets, etc., but it is clear that braided cord does not come under the articles excluded.

Therefore, one has to address oneself to the question whether braided cord is really a textile for the purpose of the entry. "Textile" is defined in the

dictionary (*Funk & Wagnall's Dictionary*) as woven fabric or material suitable for weaving. The term "weaving" will include also weaving of

threads into interlocking patterns. It cannot necessarily be restricted to weaving on a loom, using the warp and woof patterns of thread. Any form

of using threads so as to evolve a pattern and make them into a product of utility will fall within the definition of "weaving".

8. In support of that judgment the learned Judges also relied on *Subbaier v. R.P.F. Commissioner* AIR 1963 Mad. 112, which was a case

decided under the Employees' Provident Fund Act. In *Government of Madras v. Madurai Braided Cord and Tape Producers Co-operative*

Industrial Society [1968] 22 S.T.C. 470 also, the question for consideration was whether "braided cord" would come within the description of

cotton fabrics u/s 14 of the Central Sales Tax Act. This court held that "fabric" is a woven material and cotton fabric and textile bear the same

content and appear to have similar scope. In that view, following the decision in *State of Madras v. T.T. Gopalier* [1968] 21 S.T.C. 451, it was

held that "braided cord" comes within the description of cotton fabrics.

9. An interesting question arose for consideration in *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Printing*

Tape Factory [1971] 28 S.T.C. 431. The question was whether "tape", which is produced by cotton threads pasted together parallelwise, is textile

within the meaning of entry 4 of the Third Schedule. It was argued that the essential ingredient of textile is weaving and since the article in question

was not a woven material but was produced by pasting the cotton threads together parallelwise, it could not be treated as textiles. This court

observed :

"Fabric" itself is, according to the *Concise Oxford Dictionary*, "thing put together ; woven material; texture, tissue". There is no doubt, therefore,

that the ingredient of textile is necessarily weaving and what is not woven can hardly be described as textile. The various items mentioned in the

entry themselves point to this meaning. Tapes made as a result of weaving would clearly be within the entry. But, would it be so if the normal

pattern of producing textile by using the warp and woof pattern of thread is not applied ? In our view, that will not be conclusive. We are inclined

to think that weaving is not necessarily limited to that type of weaving. In modern advancement of textile technology, it is now possible, without

using the warp and the woof pattern to produce tape, by holding the threads together lengthwise by using gum. To a casual look, the product

resembles a tape which has been woven in the normal sense on the loom. But it is not the appearance alone, but what is necessary for weaving is

that threads are bound together in order to produce a pattern of fabric or tape.

10. In *K.R. Subbier v. State of Madras* [1973] 31 S.T.C. 205, the assessee claimed his turnover relating to sales of cotton ropes, which are

normally used for tying cattle, as falling under the category of braided cords and therefore exempt. This court held that unless weaving is involved in

the production of the article, it would not be textile. The article in question, a sample of which was produced before the court, was found to consist

of rope yarns twisted into three strands and then in turn are twisted together so as to form a thick cord. There was no intertwining or interweaving.

Therefore, it was held that it was not a braided cord.

11. While considering the question whether waterproof cloth is textile, this court in *State of Tamil Nadu v. East India Rubber Works, Madras-1*

[1974] 33 S.T.C. 399 held that the expression ""textiles"" usually refers to cloth or fabrics made by weaving, knitting, netting or braiding and

classified according to their component fibres such as silk, wool, cotton, linen and such synthetic fibres as rayon, nylon, etc. The essence of textiles

consists in the basic process of spinning and weaving. In *Commissioner of Sales Tax, U.P. v. Ashok Elastic Works, Patthegali, Varanasi* [1971]

28 S.T.C. 743, the Allahabad High Court held that a cotton fabric is a fabrication of cotton yarn and that ""tapes, niwars and laces"", which were the

articles considered in that case and which were used for tying garments are cotton fabrics.

12. *Kesavan and Company v. Assistant Commissioner of Sales Tax, Ernakulam*

[1976] 37 S.T.C. 221, relied on by the learned counsel for the assessee, is not of much assistance except to say that in whatever form an article is produced and manufactured, if rayon yarn is used, it would be rayon fabric.

13. A consideration of all these decisions would show that the essence of textiles is the spinning of the cotton or other fibre and weaving such yarn

so as to produce a definite patterned article or commodity. Though, normally weaving is a process of interlocking using the warp and woof pattern

of thread, it cannot necessarily be restricted to that sense, as held in Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v.

Madurai Printing Tape Factory [1971] 28 S.T.C. 431. With the advancement of science and technological methods it had become possible even

without using warp and woof pattern to produce textiles. But whatever be the form of using the threads, it should be so as to evolve a pattern and

make them into a product of utility and the yarn should cease its quality as yarn and the product must be adaptable as a textile. Thus, while we

agree with the learned counsel for the assessee that in order to produce textiles any method of grouping, banding, braiding, twisting or weaving

could be adopted, merely by reason of twisting of yarn the article produced would not become textile. We are also unable to agree with the

learned counsel for the assessee that the word "textiles" in item 4 of Schedule III would have to be understood in the technical or generic sense

and not in the popular sense. In fact, this court in State of Tamil Nadu v. East India Rubber Works, Madras-1 [1974] 33 S.T.C. 399 held that it

must be interpreted according to its ordinary or popular sense, that is, in the sense in which it is commonly understood in ordinary parlance and not

in its technical sense. Even the Supreme Court in Commissioner of Income Tax, Andhra Pradesh v. Taj Mahal Hotel [1972] 82 ITR 44 held that in

cases where there is no definition of the word it has to be construed in its popular sense if it is a word of every day use, that is, in the sense in

which people conversant with the subject-matter with which the statute is dealing would attribute to it. The Supreme Court in State of Gujarat Vs.

Prakash Trading Co., Ahmedabad, also held that normally user of the article could be put as a test for determining the character of an article as

understood in common parlance. If we apply this test also, the article in question

could not be considered as textile as nobody purchases it as a textile as understood in common parlance. No assistance could also be derived to understand the meaning of the word "textile" in the technical sense by use of the words which are included by reference to the articles which are included in the entry along with textiles. Neither is it possible to restrict the meaning of textiles with reference to the specified articles included, nor is it possible to enlarge the meaning by a reference to the same. We are accordingly of the view that cotton bandings and cotton ropes sold by the assesseees are not textiles within the meaning of item 4 of the

Third Schedule to the Act.

14. The alternative contention of the learned counsel is that it is "cotton yarn" falling under item 3 in Schedule II. Under that entry read with Section 4, cotton yarn could be taxed only at single point at the point of first sale in the State. In support of his contention that the articles sold by the assesseees, viz., cotton bandings and cotton ropes, still retain the character of cotton yarn, the learned counsel relied on the decision of this court in *Madura Mills Company Limited v. Government of Madras* [1970] 25 S.T.C. 407. In that case, the question for consideration was whether "cord" sold by the assesseees is cotton yarn. While considering this question, the court held :

Ordinarily "cord" is understood as rope of small diameter or a thick string. String, cord and rope are, no doubt, different species of the same genus, namely, yarn. But yarn as such means spun thread. It may form one of the threads of a string, cord or rope. But cotton yarn is distinct by itself and does not evade analysis. The Tribunal, after meticulously explaining the words "cord", "string" and "rope", comes to the conclusion that the material before it was not cotton yarn. No reason is given why the word "cord" is not cotton yarn. The "cord" in question is a bunch of spun thread spread to a particular shape for a definite commercial purpose. Nevertheless it does not cease to be yarn.

15. It is true that yarn does not lose its character as yarn merely by reason of its consisting of a bunch of threads, as in the case of doubling and twisting together of two or more threads to make a stronger or firmer thread in order to manufacture a specified kind of textile; it still retains its character as yarn. Thus, merely on the ground that the yarn in question consists

of a bunch of spun thread, it could not be held that it is not yarn. At the same time all bunches of spun thread, irrespective of the purpose for which it is intended to be used, could not be held to be yarn. If the bunch of spun thread forms the basic spun yarn for weaving, it will still retain the character of yarn. In other words, its capability of being used for making textiles within the meaning of item 4 of the Third Schedule would determine its character as yarn. Once the produce is not and could not be used for such manufacture of textiles, it ceases to be yarn within the meaning of item 3 of the Second Schedule.

16. We may also, in this connection, cite the decision of the Supreme Court in *State of Gujarat Vs. Prakash Trading Co., Ahmedabad*, , where the user test was applied to determine the character of an article. This court also applied this test of user in determining the character of the article in

State of Tamil Nadu v. East India Rubber Works, Madras-1 [1974] 33 S.T.C. 399. The learned counsel for the assessee brought to our notice

another decision of the Kerala High Court reported in *Deputy Commissioner of Agricultural Income Tax and Sales Tax (Law), Board of Revenue*

(Taxes), Ernakulam v. A. Khader Kunhi Sons, Cannanore [1976] 37 S.T.C. 227, where the learned Judges have taken a different view from that

of this court in *Madura Mills Company Limited v. Government of Madras* [1970] 25 S.T.C. 407. As we have pointed out earlier, though this court

held that a bunch of spun thread spread to a particular shape for a definite commercial purpose, may nevertheless not cease to be yarn, this court

did not say that in every case irrespective of its capability of being used for the purpose of making textiles it could be considered as yarn. In that

case, the question of its adaptability or usability for manufacture of textiles was not disputed and, therefore, this court did not go into that question.

We, therefore, consider that a bunch of spun thread could also come within the definition of "cotton yarn" if it is capable of being used for the

manufacture of textiles under item 4.

17. In this case, as we have already stated, this point was not raised before the Tribunal or the Deputy Commissioner. We have permitted the

assessee to raise this contention for the first time at this stage for the reason already stated. It, therefore, becomes necessary for the Tribunal now

to go into the question as to whether the articles sold by the assessee still

retain the character of yarn or capable of being used for the manufacture of any textile falling under item 4 of the Third Schedule. We also notice from the facts in this case that the assesseees purchased cotton yarn of 25s to 50s from either registered dealers or mills. After such purchase, they twist the yarn by adopting 2 to 10 strand yarn, each twist constituting one ply. For the sake of strength and durability two plies are again twisted together. In big textile mills, the twisting operation of various strands of yarn is done by doubling machines. The assesseees also state that though they could have marketed the product as thick yarn or twisted yarn, due to trade practice this was described as bandings or cords. It, therefore, becomes necessary for the Tribunal also to consider whether the article sold by the assesseees should be considered as commercially different from the article purchased by them in order to determine whether the sale by the assesseees is a first sale or a second sale. Therefore, the Tribunal will have to consider the question whether the sale by the assesseees is a first sale or a second sale. Thus solely for the purpose of deciding whether the article sold by the assesseees still retains the character of yarn and whether it is commercially different from the one they had purchased, in order to attract a fresh single point taxation, we are remanding the case to the Tribunal. The assesseees will be permitted to adduce such evidence as they may choose before the Tribunal. Needless to say that if the Tribunal considers that it could be better disposed of by any other authority, it is open to the Tribunal to remand the matter to such authority as it may choose.

18. Since the assesseees have failed in the main point which they had raised and we have allowed them only to raise an additional point in this court, we consider that the revenue will be entitled to the costs of these revision petitions, though we remand the case to the Tribunal. There will be an order accordingly and the revenue will be entitled to its costs. Counsel's fee Rs. 150 in each.