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(2014) 05 P&H CK 0246

In the Punjab And Haryana At Chandigarh

Case No : VATAP Nos. 25, 134, 135, 143, 144, 145 and 146 of 2013

M/s. A.R. Plastic Pvt. Ltd. APPELLANT

Vs

State of Haryana and Others
 M/s. Taran Trading Co. Vs Haryana Tax Tribunal and Others RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 9(2)
Haryana Value Added Tax Act, 2003 — Section 2(1)(p), 34, 8

Citation : (2014) 05 P&H CK 0246

Hon'ble Judges : Hemant Gupta, J;Fateh Deep Singh, J

Bench : Division Bench

Advocate : Akshay Bhan, Senior Advocate and Mr. Alok Mittal, Advocate for the Appellant; Pardeep Singh Poonia, Additional Advocate General, Haryana, Advocate for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of VAT Appeal Nos. 134 of 2014 and other connected appeals, given in the foot note of the judgment raising identical following question:-

Whether in the facts and circumstances of the present case, HDPE/PP Woven Fabric is "Artificial silk" and therefore falls within the ambit of Entry 51 of Schedule B of Haryana VAT Act, 2003?

2. In the present case the appellant is engaged in the business of manufacturing of High-Density Polyethylene/Polypropylene (for short ''HDPE/PP'') fabric. The stand of the appellant is that it is purchasing HDPE/PP granules from the market as an industrial input in primary form. It is said that the PP granules are Homologous to HDPE granules. The input process is through various machines to produce a sheet. The sheet by another mechanical process is cut into tapes and tapes/yarn is produced. The tapes/yarns are subsequently by use of warp and weft (Tana-Bana) method is converted into HDPE/PP fabric. It is the stand of the appellant that HDPE fabric is exactly similar to PP fabric.

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3. The appellant in its return for the assessment year 2005-06 showed the sale of HDPE fabric as tax free falling within Entry 51 to Schedule B appended to the Haryana Value Added Tax, Act 2003 (for short ''the Act''). The assessing officer treated the sales of HDPE fabric as tax free. But a show cause notice was issued u/s 34 of the Act read with Section 9(2) of the Central Sales Tax, Act 1956 proposing to revise the assessment orders for the reason that the sale of HDPE/ PP fabric should have been taxed. The revision was allowed and tax liability created. The Deputy Excise and Taxation Commissioner exercising the revisional powers relied upon the clarification dated 10.12.2009 (Annexure A-7) issued by Financial Commissioner-cum-Principal Secretary, Government of Haryana, Excise and Taxation, Department.

4. The appellant filed an appeal before the Haryana Tax Tribunal (for short ''the Tribunal). The Tribunal dismissed the appeal relying upon the order passed in STA No. 684 of 2010-11 titled as ''M/s. Suraj Plastic Industries, Panipat Vs. State of Haryana'', decided on 27.06.2011, later reviewed on 21.02.2012. The learned Tribunal noticed its earlier order in the case of M/s. Rishab Farms & Industries Ltd. Gurgaon Vs. State of Haryana and others, VATAP No. 161 of 2013, wherein considering the clarification dated 10.12.2009 held that HDPE will attract rate of tax at 4% in terms of fabric falling in Schedule C. However, the order in review was set aside by this Court and consequently the order dated 27.06.2011 is the order, on the basis of which appeal filed by the appellant was decided by the Tribunal. It is the said order which is subject matter of challenge in the present appeals.

5. Before considering the argument raised by learned counsel for the parties, some of the statutory provisions need to be extracted:-

6. It may be stated that the goods mentioned in Schedule B are the exempted from payment of tax in terms of Section 2(1)(p) of the Act whereas in the case of goods specified in Schedule C, the rate of tax shall be calculated at 4% or such other rate not exceeding 10%. However, in the case of other goods, the rate of tax is at 10% or such other rate not exceeding 15%.

7. Learned counsel for the appellant has vehemently argued that the fabric manufactured by the appellant from HDPE is ''artificial silk'' and thus falls within exempted good from payment of tax in terms of Section 2(1)(p) of the Act. The reliance is placed upon a Division Bench judgment of Madras High Court reported as The State of Tamil Nadu Vs. Polyweb Private Ltd., . The Madras High Court was considering Item 4 of the Third Schedule to Tamil Nadu General Sales Tax Act, 1959 and the question whether High-Density Polyethylene woven fabrics is ''artificial silk''. The entry under consideration in the aforesaid Act reads as "Cotton fabrics, woolen fabrics and rayon or artificial silk fabrics, as defined in items 19, 21 and 22 respectively of the First Schedule to the Central Excises and Salt Act, 1944 (Central Act 1 of 1944)". Item 22 of the First Schedule to the Central Excises and Salt Act, 1944 defines "Rayon or artificial silk fabrics'' means all varieties of fabrics manufactured either wholly or partly from rayon or artificial

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silk and includes embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials."

8. The Hon''ble Division Bench noticed that such item 22 does not precisely define either rayon or artificial silk. The Court examined that what is the sense in which rayon and artificial silk are understood by the Central Excise and Salt Act, 1944. The Court noticed that rayon is understood by technologists and traders, as a fibre made from regenerated cellulose, cellulose being the substance in living plants out of which the skeletal structure of plant cell walls are formed. The expression ''artificial silk'' denotes that it is the opposite of natural silk. This term was originally used to refer to rayon because rayon was the only kind of artificial silk but so many other varieties of artificial silk have subsequently been invented and perfected by scientists and technologists. Thus, artificial silk is not a mere synonym for rayon. The two are not just interchangeable expressions. Artificial silk must be regarded as a genus of which rayon is the species. The artificial silk would seem to be a man-made fibre. In this background the Court held to the following effect:-

4. The claim in the present case for exemption from sales tax is in respect of high density polyethylene. The question is whether it can be regarded as artificial silk. It would appear that polyethylene is a synthetic resin falling under the category of thermoplastic in the same way as nylon or polythene or synthetic plastic resin. In this country, high density polyethylene is imported in granule form. The granules are passed through several processes and stretched into fibres if varying thickness. They are subsequently woven into cloth on looms. The nature of the substance and the manner in which it is made into a fibre to be used as such in the manufacture of fabrics shows that high density polyethylene must be brought under the genus "artificial silk". The sales tax authorities would be hard put to it to maintain the proposition that while high density polyethylene is manufactured out of a substance which itself is not natural silk, the same substance when it becomes a fibre and is used for being made into fabrics, somehow ceases to be artificial silk. We have no doubt that this article must be regarded as artificial silk as defined in item 22 of the First Schedule to the Central Excises and Salt Act.

9. Learned counsel for the appellant relies upon an order passed by the Allahabad High Court reported as Commissioner of Sales Tax Vs. Kanpur Plastic Pack (P.) Ltd., wherein it has been held that HDPE fabric falls within notification dated 25.11.1958 and is artificial silk. Reliance is placed upon order of the Hon''ble Supreme Court reported as Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, that while interpreting items in statutes like the Excise Acts or Sales Tax Act, resort should not be to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them.

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10. On the other hand, Mr. Poonia relies upon a Division Bench judgment of this Court reported as Lakshmi Polyfab Vs. Union Territory of Chandigarh and Another, wherein while examining Entry 52 reading ''textile fabric including terry towels'' of Schedule A appended to Punjab VAT Act, 2005. It has been held that sale of sale of High-Density Polyethylene fabric is not covered by entry 52.

11. We have heard learned Counsel for the parties. A perusal of Schedule B would show that the exempted good in terms of Section 2(1)(p) of the Act are the agricultural implements, the food articles and other consumer goods. Schedule C is list of articles which are basically inputs for manufacturing of other products.

12. We find that the judgment in Lakshmi Polyfab (supra) does not deal with the issue in question. The entry under consideration was ''textile fabric including terry towels''. The Court held that HDPE falls in the list of industrial inputs attracting VAT at the rate of 4% u/s 8 of the Act. It was also not disputed that goods in question were merely used as packaging material in its present form or even in its changed form i.e. bags etc. which again falls in item 162 and 202 of entry 58 of Schedule B. On the other hand, in Polyweb Private Ltd. case (supra), the definition of ''artificial silk fabric'' was relating to entry 22 of the First Schedule to the Central Excises and Salt Act, 1944. The Madras High Court has found that entry 22 of First Schedule to the Central Excises and Salt Act, 1944 precisely define what is rayon and what is artificial silk. It thus proceeded to decide that artificial silk manufactured with the manufacturer of fabrics from High-Density Polyethylene must be brought under the genus "artificial silk". Therefore, the judgment of the Madras High Court in Polyweb Private Ltd. case (supra) also does not deal with the question as is raised in the present appeal. In the Act in question again, neither rayon nor artificial silk or nylon are defined.

13. Entry 51 of the Schedule B of the Act is in two parts. The first part deals with all varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon. Therefore, all varieties of textiles may be cotton, woolen or silken including rayon, artificial silk or nylon fall within entry 51 of Schedule B. The second part excludes certain categories on which additional excise duty in lieu of sales tax is not levied. For the purposes of present appeal, it is a first part of entry 51 which is relevant.

14. Similar entry in the Haryana General Sales Tax Act, 1973 came up for examination before the Hon''ble Supreme Court in a judgment reported as Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, . The Court observed that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance. It observed as under:-

3. Now, the word ''textiles'' is not defined in the Act, but it is well settled as a result of several decisions of this Court, of which we may mention only a few, namely, Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, and

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Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, and State of West Bengal and Others Vs. Washi Ahmed and Others, that in a taxing statute words of every day use must be construed not in their scientific or technical sense but as understood in common parlance. The question which arose in Ramavatar''s case (supra) was whether betel leaves are vegetables and this Court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in AIR 1956 54 (Nagpur) .

In our opinion, the words "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term "vegetables'' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

and observed that the word ''vegetables'' in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table." This meaning of the word.. ''vegetables'' was reiterated in M/s. Motipur Jamindary case where sugarcane was held not to fall within the definition of the word ''vegetables'' and the same meaning was given to the word ''vegetables'' in Washi Ahmed''s case (supra) where green ginger was held to be ''vegetables'' within the meaning of that word as used in common parlance.

4. It was pointed out by this Court in Washi Ahmed''s case (supra) that the same principle of construction in relation to words used in a taxing statute has also been adopted in English, Canadian and American Courts. Pollock B. pointed out in Gretfell v. I.R.C., (1876) 1 Ex D 242, 248 that

if a statute contains language which is capable of being construed in a popular sense, such a statute is to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute it.

So also the Supreme Court of Canada said in Planters Nut and Chocolate Co. Ltd. v. ''The King, (1951) 1 DLR 385 while interpreting the words ''fruits'' and ''vegetables'' in the Excise Act. "They are ordinary words in every day use and are, therefore, to be construed according to their popular sense". The same rule was expressed in slightly different language by Story, J., in 200 Chests of Tea, (1824) 9 Wheaton (US) 430, 438 where the learned Judge said that;

the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists.".

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5. There can, therefore, be no doubt that the word ''textiles'' in Item 30 of Schedule ''B'' must be interpreted according to its popular sense, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it".....

15. In terms of the judgment of the Hon''ble Supreme Court in Indo International Industries case (supra), and Porritts & Spencer''s case (supra), the meaning attached to the entries should be those dealing in them and not the scientific or technical meaning. The word ''artificial silk'' is not defined in the statute. Silk is a thread which is commonly made from fibre produced by silk worms. Therefore, the meaning of such expression is what the common meaning of such expressions is in the normal usage. As per Chambers Dictionary the word ''artificial'' means made by man; synthetic; fictitious, made in imitation, whereas the word ''silk'' also includes artificial silk to be made by forcing a viscous solution of modified cellulose through small holes. In the present case, the issue to be examined is that what is rayon, artificial silk or nylon.

16. The fibre, an essential ingredient for manufacturing of cotton, wool or silken textile, is either natural or man-mad. The natural fibres include those of plant (cellulose based, animal protein based or mineral based). Cotton is a plant based natural fibre whereas wool and silk are animal based fibre. On the other hand, man-made fibres are manufactured by alteration of natural fibres for example rayon from cellulose, or by synthesis of polymers for example nylon. Most man-made fibres are made by a chemical process called polymerization (q.v.), in which many units of simple chemical substances combine to form large molecules whose properties are quite different from those of the basic units. By selecting suitable simple compounds and controlling the degree of polymerization, it is possible to produce new substances whose properties can be predicted. When certain types of simple compounds are polymerized under special conditions the units form long chains. Long-chain polymers can be manufactured into fibres; in nature, cellulose (consisting of long chains of glucose) and wool (consisting of long chains of amino acids) are formed into fibres. This means that it is possible to produce entirely new fibre types with desired combinations of properties. Nylon is the generic name for a group of fibres formed from long-chain polyamides. It was the first synthetic polymer fibre to be produced commercially and can now be made in a number of ways from carbon, hydrogen, nitrogen, and oxygen. (Ref: Encyclopaedia Britannica 1969 Edition Volume 9 Page 226-233).

17. The Hon''ble Supreme Court in Porritts & Spencer''s case (supra) was considering the same entry as in the present case and held that the word "textiles" is derived from Latin ''texere'' which means ''to weave'' and it means any woven fabric. The Court held to the following effect:-

5..... The word textiles is derived from the Latin "texere" which means "to weave" and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description as made out of any other material is

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woven into a fabric, what comes into being is a ''textile'' and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other hind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous i.. the variety of fabrics manufactured from materials hithereto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be ''textiles''. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls: it may be weak or strong, light or heavy, bleach or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. It may-be used for making wearing apparel, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile.

18. In the aforesaid case, Hon''ble Supreme Court further held that the use does not determine the character as textile. Therefore, an argument that "dryer felts" are used only as absorbents of moisture in the process of manufacture which does not fall within the category of "textiles", was rejected. Referring to rayon and nylon fabrics, the Court observed as under:-

6.....Take for example rayon and nylon fabrics which have now become very popular for making wearing apparel. When they first came to be made, they must have been intruders in the field of ''textiles'' because only cotton, silk and woollen fabrics were till then recognized as ''textiles''. But today no one can dispute that rayon and nylon fabrics are textiles and can properly be described as such.

19. In view of the judgment in Porritts & Spencer''s case (supra) and keeping in view the test that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance and the fact that textile means any woven fabric and therefore the fabric manufactured out of HDPE by warp and weft pattern is a textile falling within entry 51 of Schedule B. It will thus be a good exempted from payment of tax. The entry 51 is inclusive entry. It includes all varieties of cotton, woolen or silken textiles and also rayon, artificial silk or nylon. Thus any textile may be cotton, woolen or silk either from natural fiber or man made fiber falls within the scope of exempted goods.

20. It may be mentioned that in respect of similar entry No. 14 in Schedule B, in appeal of the present appellant itself under the Haryana General Sales Tax Act,

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1973, the Haryana Tax Tribunal in ''M/s. A.R. Plastics Private Limited, Gurgaon Road, Jhajjar Vs. State of Haryana, [2004] 24 PHT 130'', has returned a finding that the appellant is a manufacturer of a fabric. It was observed as under:-

6. In The State of Tamil Nadu Vs. Polyweb Private Ltd., , the Hon''ble High Court of Madras held that artificial silk is not a mere synonyan for rayon. The two are not just inter changeable expressions. Artificial silk must be regarded as the genus of which rayon is a species. The modern appellation for ''artificial silk'' would seem to be ''man made fibre''. Therefore, it is proper to include within the scope of the expression ''artificial silk'' and silk like substance which is not natural silk, but which is produced by human agency out of any product or a combination of products by any process. All that is necessary is that ''artificial silk'', like natural silk, must be a fibre. Accordingly, high density polyethylene must be regarded as falling within the generic term ''artificial silk'' and fabrics made out of high density polyethylene, either wholly or in part, whether they are hundred per cent pure or not, qualify for exemption from sales tax as goods falling within the description ''artificial silk fabrics'' set out in item 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959. In the understanding of an expression, courts will not be doing violence to the principles of statutory construction if they pay regard to how such an expression is understood not only by the trade or by high technology in general, but also by the concerned departments of Government, part of whose task it is to put a correct interpretation on the expression in question for the purpose of running their departments. It was submitted by the Learned Counsel for the appellant relying upon the aforesaid judgments that the rejects/wastes is a necessary concomitant of the processes which plastic dana has to undergo for the emergence of HDPE fabrics and therefore rejects/wastes of HDPE fabrics has also to be treated as ''tax free'' on the same footing as HDPE fabrics is falling in entry 14 of Schedule B.

21. The said judgment has attained finality.

22. The clarification issued by the Financial Commissioner-cum-Principal Secretary, Government of Haryana, Excise and Taxation Department on 10.12.2009 that the products manufactured by similar manufacturers are not covered under entry 52 and 53 of Schedule B nor under Schedule C of the Act, therefore, an unclassified good is liable to be taxed at the rate of 12.5%. We find that such clarification runs counter to meaning of the expression "textile" including "artificial silk" given by Supreme Court. In view of the interpretation of the similar provision, in respect of the present assessee itself, we find that the clarification could not be issued against an order passed by the competent authority interpreting similar provision.

23. Consequently, in respect of question of law it is held that HDPE woven fabric falls within entry 51 of Schedule B of Haryana VAT Act, 2003 and is exempted from payment of tax.

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24. All the aforesaid VAT Appeals are disposed of accordingly.

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