(1979) 09 AHC CK 0016

In the Allahabad High Court

Case No : Sales Tax Appeal No. 322 of 1978

Omvik Electronics Private Ltd. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 25-09-1979

Acts Referred:
Central Sales Tax Act, 1956 — Section 14

Citation : (1983) 54 STC 260

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The assessee manufactures fused collars and shoulder straps. The method of manufacturing these articles was that pieces of different sizes are cut from buckram cloth and from ordinary cloth. These are fused together and thereafter eyes were cut at two ends so that buttons could be used. The collars prepared by this process were used for being stitched into shirts and bush-shirts. The assessee moved an application before the Commissioner of Sales Tax asking for decision as to whether tax was payable on these articles.

2. By Notification No. ST-4064/X-960(4)-58 dated 25th November, 1958, the Government of Uttar Pradesh in exercise of powers u/s 4(1) of the act directed that certain commodities shall be exempt unconditional, from the payment of tax under the U.P. Sales Tax Act. Item 3 of this notification which is relevant for this controversy is in the following terms :-

3. Textiles of the following varieties manufactured on powerlooms, excluding durries, carpets, druggets, hosiery goods and readymade garments but including the goods specified in the annexure hereunder ;

a) Cotton fabrics of all varieties.

3. The contention of the assessee before the Commissioner of Sales Tax was that

collars and the shoulder straps made by the assessee were cotton fabrics and as such exempt from tax. This contention has not found favour with the Commissioner.

4. The word "cotton fabrics" has not been defined in the notification but the meaning is obvious. It must be a fabric made of cotton and further it must answer the description of textile. So far as the buckram cloth and the other cloth that is used for manufacturing the collars and the shoulder straps is concerned, that is, undoubtedly a textile and a cotton fabric. In the case of Porrilts & Spencer (Asia) Ltd. v. State of Haryana 1979 UPTC 866 (SC), their Lordships have held that the word "textile" means any woven fabric and when yarn, whether cotton, silk, woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric what comes into being is a textile and is known as such. The method of weaving adopted may be the warp and woof pattern or it may be any other process or technique. In the present case, it cannot be denied that both the cloth used as the outer line and the buckram cloth used as the inner line is produced by weaving. As it is not the department''s case that cotton yarn is not used in weaving buckram and the other cloth. Thus the essential constituents of articles is cotton fabric. The question however is as to whether by the fusing, cutting and finishing process a new commercial commodity distinct from cotton fabric comes into existence. Sri S. P. Gupta, appearing on behalf of the assessee contended that the process of manufacture, the fused collars and the shoulder straps did not alter its character of a cotton fabric. He referred me to a decision reported in 1972 Selected Decisions volume XIII page 301. This is a publication issued by the Government of Maharashtra by the sales tax department and probably contains the decision of sales tax authorities constituted under the Bombay Sales Tax Act. The question that arose for decision in that case was as to whether Bondrex Collar Lining manufactured by the assessee fell within the description of cotton fabrics within the meaning of entry 15 of Schedule A to the Bombay Act. The authority held that as Buckram cloth and the laminated cloth individually fall within the expression of cotton fabric, the cut pieces of the cotton fabric though bonded together without use of any other material would continue to fall within the scope of cotton fabrics. This decision undoubtedly supports the contention of the appellant. Reliance was also placed on Porritts'' case 1979 UPTC 866, wherein it was held that dryer felts made out of cotton or woollen yarn were textiles. This case however is not in point, for the manufactured articles, viz., fused collars and shoulder straps are not made by the process of weaving. It is only the raw material that is used for making them that are undisputedly textiles. The method of manufacture of these articles is different as no laminated weaving at all is involved. Reliance was also placed on the case of Narasimha Agencies v. State of Tamil Nadu [1977] 40 STC 217. In that case the question arose as to whether collar stiffening material was a cotton fabric. The process of manufacturing it was this. An oblong piece of buckram cloth was spread out and a cotton collar which was treated with a special kind of adhesive was placed on it. Thereafter both of them were fitted

and the collar became bonded with the buckram cloth. Eyelets were cut at both ends of the collar and the edges of collars were stitched. This was stuffed as the inner lining for collars of shirts which were stitched by the tailors. The linings so used helped to keep the collars stiff and were used in the manufacture of ready-made shirts. The assessee claimed exemption u/s 8 of the Tamil Nadu General Sales Tax Act, which granted exemption to all varieties of textiles. In the alternative it claimed exemption on the ground that they were declared goods u/s 14 of the Central Sales Tax Act. Section 14(iia) of the Central Sales Tax Act is to the following effect:-

Cotton fabrics as defined in item No. 19 of the First Schedule to the Central Excise and Salt Act, 1944.

5. Item No. 19 of the First Schedule to the Central Excise and Salt Act, 1944, runs as under :-

Cotton fabrics'' mean all varieties of fabrics manufactured either wholly or partly from cotton and include dhoties, sarees, chadders, bedsheets, bed-spreads, counterpanes, table cloths, 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 but does not include any such fabric if it contains.

(i)40 per cent or more by weight of wool;

(ii) 40 per cent or more by weight of silk ;

(iii) 60 per cent or more by weight of rayon or artificial silk or

(iv) 50 per cent or more by weight of jute (including Bimlipatam jute or mesta fibre).

6. The Madras High Court held that the collar stiffening material manufactured by the assessee would be cotton fabric as contemplated by Section 14, item No. 14(iia) of the Central Sales Tax Act.

7. Counsel also referred to the decision of the Bombay High Court in the case of Punjab Business and Supply Co. Pvt. Ltd. v. State of Maharashtra [1977] 39 STC 386 wherein it. was held that rags and chindhis were cotton fabrics. This case however is of little help, for, rags and chindhis being pieces of cloth of irregular shapes and sizes would be nothing but cotton fabric.

8. So far as the Madras case is concerned the entry was not similar to the one that we held here, for that entry included within its impress all varieties of fabric manufactured either wholly or partly from cotton. So all that was essential was that the fabrics should be manufactured wholly or partly from cotton. In the present case the relevant part of the notification reads :

Textiles of the following varieties manufactured on powerlooms, excluding durries, carpets, hosiery goods and readymade garments but including the goods specified in the annexure hereunder.

(a) Cotton fabrics of all varieties.

9. A bare perusal of this notification clearly indicates that before exemption can be claimed in respect of the textiles it must be manufactured on power-looms. In the present case it may be conceded that the raw material utilised for making the fused collar is manufactured on power looms, although there is no clear indication in this respect. But the exemption is not being claimed in respect of the convenient of the fused collar but for the fused collar itself. The method of manufacturing the fused collar has already been indicated earlier and it clearly shows that fused collars are not manufactured on powerlooms. This being so the assessee could not claim exemption in respect of fused collar manufactured by it.

10. The appeal fails and is dismissed with costs which is assessed at Rs. 200.