
(1983) 09 AHC CK 0062

In the Allahabad High Court

Case No : Writ Petition No. 117 and 124 of 1978

Palco Lining Company and Another

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

Date of Decision : 08-09-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1983) 54 STC 255

Hon'ble Judges : V.K. Mehrotra, J; R.M. Sahai, J

Bench : Division Bench

Advocate : Bhartji Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—These two petitions under Article 226 of the Constitution raise a common question relating to the assessment of the petitioner-firms under the U.P. Sales Tax Act for the year 1973-74.

2. M/s. Palco Lining Company as well as M/s. K.P. Traders, petitioners in the two writ petitions, are partnership firms carrying on the business of purchasing and selling collar lining, etc., which, according to their case, was cotton fabric rendering the turnover of sale exempt from tax.

3. The Sales Tax Officer, while dealing with the case of the petitioners u/s 7(3) of the Act, accepted the account books and found that the purchases made by the petitioners were tally proved and the sales were duly vouched. He then went into the question whether the collar lining sold by the petitioners was a variety of cotton fabric so as to render it exempt from tax or not. A sample of collar lining was produced before him. The Sales Tax Officer accepted the claim that what was sold by the petitioners was nothing but cotton fabric. The turnover was held exempt from any tax liability. This was through an order of 30th June, 1976.

4. Subsequently, a notice u/s 21 of the Act was issued to the petitioners saying

that some part of the turnover had escaped assessment to tax and that the petitioners should appear before the Sales Tax Officer with full records. When the petitioners wanted to know from the Sales Tax Officer the basis upon which this notice was issued, the Sales Tax Officer told them that an examination of the record had disclosed that a partner of the petitioners, Ashok Kumar in the case of M/s. Palco Lining Company and Swadesh Kumar in the case of M/s. K.P. Traders, had accepted in a statement made before the assessing authority that what was sold by the petitioners was collar which had been made out of cloth but no tax had been paid on the turnover of sale of these collars. The petitioners then came to this Court for relief in these petitions. They have founded their case upon the fact that what was actually being sold by them was not "collar" as such but two pieces of cotton cloth, cut out in the shape of a collar and affixed, by pressing, to each other which was only collar lining. The tailors had to cover it with cloth while stitching shirts for making cut a collar (sic). They have also said that the assessing authority had examined the matter on merits once and had concluded that the article sold by the petitioners was cotton fabric, being collar lining and thus exempted from tax. It could not, on a subsequent change of opinion, initiate reassessment proceedings u/s 21 of the Act.

5. Section 21 of the U.P. Sales Tax Act enables the assessing authority to reassess a dealer to tax if it has reason to believe that the whole or any part of his turnover for any assessment year or part thereof has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than that at which it should have been assessed or where any deduction and exemption has been wrongly allowed in respect thereof. It does not permit reassessment of turnover which, after due consideration, had been found not eligible to tax merely because the assessing authority subsequently comes to take a different view of the matter.

6. A perusal of the order of assessment in those cases would show that the assessing authority had, after elaborately considering the evidence before it, taken the view that what was being sold by the petitioners was nothing but cloth, cut in the shape of collar. Its turnover of sales was held exempt from the tax. Notification No. ST-4064/X-960(4)-58 dated 25th November, 1958, provided for such exemption for "cotton fabrics of all varieties" subject to some exceptions.

7. If the petitioners had sold an article which was nothing but cotton fabric, it is obvious that they were rightly held entitled to exemption from tax. The basic question then is about the commodity which the petitioners sold. According to the department, it was a collar which is a distinct commercial commodity known as such to the people in the trade. Even if it was collar lining, as canvassed by the petitioners, it was a distinct commercial commodity than cotton fabric simpliciter, it was, consequently, liable to tax as... an unclassified item and could not be held as within the category of "cotton fabrics of all varieties" in the aforesaid exemption notification.

8. In *Omvik Electronics Pvt. Ltd. v. Commissioner of Sales Tax, U.P.* (printed at

page 260 infra) 1980 UPTC 912 C.S.P. Singh, J., examined the question whether fused collar was entitled to exemption under the aforesaid notification. He found that the method of manufacturing the collar was that pieces of different size were cut from buckram cloth and from ordinary cloth and then they were fused together and thereafter eyes were cut at two ends so that buttons could be used. The collar prepared by this process was used for being stitched into shirts and bush-shirts. The learned Judge answered the question "whether by fusing, cutting and finishing process a new commercial commodity distinct from cotton fabric came into existence." by saying that it did and on the further conclusion that the fused collars were not manufactured on powerlooms held that exemption under the notification was not available in respect of fused collars manufactured by the petitioner before him. The counsel for the department has, naturally, placed strong reliance on this decision.

9. In these cases, it is not in dispute that though cut in the shape of a collar, what was being sold by the petitioners was collar lining. What the department says about its process of manufacture in its counter-affidavit is that "the collar lining is manufactured out of cloth, cut into different sizes and shapes. These cut pieces are treated with some special kind of adhesive and placed on the oblong buckram cloth and by some heating process the two are affixed to each other. The spread out cotton has a lengthwise slit running in the middle". This is virtually the same process as was given out by the petitioners before the assessing authority at the time of the assessment proceedings where they said that they used to cut the cloth into pieces and after pressing two such pieces together by which one of the pieces got stuck to the other, they sold it to tailors who would then cut it to proper size of collar and after covering it with cloth and stitching the same, prepare a collar. The assessing authority mentioned in the order of assessment that an examination of the sample produced by the dealer, revealed that two pieces of cloth were cut and pressed together, one sticking to the other and there was no stitching at all in it. It could not be used as it was as a collar.

10. The article sold by the petitioners having been found to be collar lining, the question to be considered is whether it would attract tax liability as a separate commercial commodity as an unclassified item. This question depends for its answer upon the determination of the fact whether the conversion of a piece of cloth into the shape of a collar lining would make it something different from cotton fabric, out of which it is cut out. Cotton fabric is not defined in the notification under which exemption is claimed. Fabric has been defined in the Man-made Textile Encyclopedia (1959) as "collective term applied to cloth no matter how constructed or manufactured and regardless of the kind of fibre from which made. In structure it is planar produced by interlacing yarns, fibres or filaments. Textile fabrics include the following varieties, bonding, felted, knitted, braided and woven". It cannot be doubted that what is sold is a fabric made out of cotton yarn. How does its cutting to the shape of a collar or affixation of one piece over the other, affect its character as a cotton fabric. The answer can be

found with reference to the principle accepted by the Supreme Court in *Maharaja Book Depot Vs. State of Gujarat*, . The question there was whether the exercise books made out of paper were covered by the expression "paper" u/s 2(a)(vii) of the Essential Commodities Act and item 13 of Schedule I to the Gujarat Essential Articles Dealers" (Regulation) Order, 1971 and this is what was said (in paragraph 6 of the Report) :

...It cannot be disputed that an exercise book is nothing but a collection of sheets of paper (blank or lined) stitched together by a piece of string or pinned together with pins of a stapler and is a substance used for writing and, therefore, would clearly fall within the item "paper". The test would be whether because of stitching or pinning them together such a collection of sheets loses its identity as paper. The answer must be in the negative. Looked at from this angle it is difficult to accept the contention that an exercise book is a distinct commodity other than paper...

11. Judged with reference to the test aforesaid, collar lining would not cease to be a cotton fabric so as not to be comprised within the term "cotton fabrics of all kinds" and entitled to exemption from tax. We find support for our view from the decision of a Division Bench of the Gujarat High Court in *The State of Gujarat Vs. Ghanshyam Stores*, where also question was whether cotton lining prepared by cutting cloth into the shape of collar and two pieces of different kind of cloth being put together and joined by the process of heating or ironing was covered within the concept of cotton fabrics or not. The view taken was that it would and that by cutting cloth in the shape of collar and joining the two pieces together, the resultant article could not be characterised as a separate commercial entity different from cotton fabrics.

12. In *Narasimha Agencies v. State of Tamil Nadu* [1977] 40 STC 217(Mad) upon which great reliance was placed by the learned standing counsel appearing for the department, the question was whether collar stiffening material was liable to exemption from levy of multi-point tax under the Tamil Nadu General Sales Tax Act. While holding that it was not exempt from tax u/s 8 read with the Third Schedule of that Act as a variety of textile, the Bench held that it was exempt as cotton fabric under the Central Sales Tax Act as alternatively claimed by the assessee as declared goods. The Bench found that the stiffening material was a piece of cut cloth with some processing added to it and then observed (at page 220 of the Report) as follows :

...The point to be considered is whether the present piece of cloth can be called a "cotton fabric", which means all varieties of fabrics manufactured either wholly or partly from cotton....The word "fabric" means, a thing put together, woven material. In the present case, there could be no dispute about the fact that the stiffening material is prepared out of cotton and is put together by a process of manufacture. There is nothing to show that by reason of the manufacturing process carried on in a case like this for the purpose of preparing the stiffening material the product is taken out of the category of "cotton fabrics" as used in

item (iia) of Section 14 of the Central Sales Tax Act....

13. The problem before the Supreme Court in *Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh* 1981 UPTC 1249 (SC) upon which too reliance was placed by the Additional Chief Standing Counsel for the respondent, was slightly different. There the question was whether aluminium rolled products and extrusions which were manufactured by the appellant-corporation, could be treated to be metal for purposes of levy of tax at the lower rate of 2 per cent. The High Court had accepted the contention of the department that they were a commercial commodity distinct from aluminium ingots and billets from which they were prepared and unlike ingots and billets they were not entitled to be taxed at the lower rate on the footing that they were metal. Interpreting the relevant notification, as well as the scheme evinced by various entries in several notifications, the Supreme Court took the view that the expression "metal" had been generally implied to refer to the metal in its primary sense, that is the form in which it is marketable as a primary commodity. Having regard to the language used in the notification before us we are not satisfied that this principle will help the department in the present case.

14. We may also notice the submission made on behalf of the department that the matter whether the article sold by the petitioners was a cotton fabric or a different commercial entity rendering it eligible to tax, should be left for determination by the departmental authorities on examination of evidence before them. Reliance in this respect is placed upon some observations of the Supreme Court in *Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others*, . We are not impressed by the submission. The observations of the Supreme Court are to be read in the context of the facts of that case where the Supreme Court had made those observations while dismissing an appeal against the decision of the Rajasthan High Court holding that refusal of exemption to chaddies and banians was not arbitrary and not violative of Article 14 of the Constitution. We find that on undisputed facts in the present case, the question whether the petitioners were entitled to exemption under the notification of 25th November, 1958, or not can be decided without difficulty. In fact, an argument of the nature raised by the learned Additional Chief Standing Counsel in this case was repelled by the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, where it observed (in paragraph 21 of the Report) that:

Finally, it is urged by Shri Sinha that the question whether the rayon tyre cord fabric falls within the expression "rayon fabrics" is a question of fact and the assessing authority, the appellate authority and the revenue board are all agreed that it cannot be classified as a rayon fabric and therefore, this Court should not interfere in these appeals. It is also pointed out that u/s 15 of the Rajasthan Sales Tax Act a proceeding by way of reference is available to the appellant and this Court, even if it were to consider these appeals on the merits, should exercise no wider jurisdiction than that available to it if it had entertained a

reference. We are unable to agree that the question is one of fact. It is a question which concerns the construction of item 22 of the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. If the rayon tyre cord fabric manufactured by the appellant is covered by that item it is exempt from sales tax and there is no jurisdiction in the sales tax authorities to assess the appellant on its turnover. The question is one of substantial importance and having regard to the circumstances there is good reason for entertaining the appeals and deciding them on the merits.

15. In the view that we have taken in the case on its merits it is really not necessary for us to go into the question whether reassessment proceedings could be justified in the present case. However, we may observe that irrespective of the amplitude of the language used in Section 21 of the Act, reassessment proceedings are not permissible on mere change of opinion by the taxing authority at a subsequent stage. The petitioners are right in their submission that issuance of a notice u/s 21 of the Act in the present cases was without authority of law.

16. In the result, we allow the petitions and quash the notices issued u/s 21 of the Act to the petitioners and the proceedings initiated thereby. The petitioners shall be entitled to their costs.