(1981) 03 AHC CK 0015

In the Allahabad High Court

Case No : Sales Tax Appeal No. 155 of 1980

Plastipack Private Ltd. — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 12-03-1981

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 35

Citation : (1982) 49 STC 75

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—M/s. Plastipack Private Ltd. manufacturing and selling woven fabrics known as HDPE fabrics approached the Commissioner u/s 35 of the U. P. Sales Tax Act and claimed that fabrics manufactured by them were rayon textiles within the meaning of Notification No. ST-4064/X-960 dated 25th November, 1958, and therefore, it be unconditionally exempt from payment of tax. The Commissioner did not agree as the word "textile" in common parlance, according to him, should be confined to clothing meant to cover or clean the body such as shirting, suiting, towel, etc., and furnishing used in connection with covering and decorating walls and furniture such as curtains, carpets, etc. He, further held that fabrics manufactured by the assessee were laminated fabrics, the process of which comprised of impregnation of plastic material pressed together thereby producing air and water proof fabric. And as woven textile fabrics are neither air nor water proof, the assessee was not entitled to any exemption.

2. Before considering the controversy it may be pointed out that in paragraph 5 of the application filed in this Court it has been claimed by the assessee that the assessee has been selling plain woven fabrics manufactured by it as well as laminated fabrics. This appears to have been the case of the assessee even before the Commissioner as is clear from the following observations made by him:

It is stated in the application u/s 35 itself ''the warp and weft'' are weaved into a fabric or cloth on looms; the plain or laminated fabric is then sold to consumer.

3. The Commissioner, however, did not record any finding whether plain woven fabrics would be covered in the entry "rayon textiles". He decided the case only of laminated fabric.

4. It has been argued by the learned counsel for the assessee that fabric is a wide term. It cannot be confined to shirting or suiting or the items meant for furnishing. Reliance was placed on Porritts and Spencer (Asia) Ltd. v. State of Haryana 1979 UPTC 866 and it was urged that the concept of the word "textile" cannot remain static and it must go on changing and expanding with the advancement of society. The learned counsel urged that lamination does not change the commodity. It is only a process. It does not change the nature of fabrics. Reliance was placed on Encyclopaedia Britannica Macropaedia, Volume 18, page 184, wherein it has been laid down that "the term finishing includes all the mechanical and chemical processes employed commercially to improve the acceptability of the product, except those procedures directly concerned with colouring". At page 186 it has been laid down :

Water-proofing is a process applied to such items as raincoats and umbrellas, closing the pores of the fabric by application of such substances as insoluble metallic compounds, paraffin, bituminous materials, and drying oils.

5. From these extracts the learned counsel attempted to argue that lamination is only a process and it does not bring about any change in the commodity.

6. In Porritts and Spencer (Asia) Ltd. 1979 UPTC 866 (SC) it has been observed that whatever be the mode of weaving employed, woven fabric would be "textile".

7. This decision, therefore, gives a very wide meaning of textile. The question, however, is whether the fabrics manufactured by the assessee can be considered to be textile. As pointed out earlier it is admitted that in the process of manufacturing, lamination is involved which comprises of impregnation of plastic material pressed together. It is, therefore, not manufactured by warp and weft method. The Commissioner did not commit any error in concluding that laminated fabrics manufactured by the assessee were not entitled to exemption.

8. In the result this appeal fails so far as laminated fabrics are concerned. The Commissioner of Sales Tax, however, is directed to decide the appeal afresh in respect of plain woven fabrics. There shall be no order as to costs.

