

**(1981) 07 KL CK 0009**

**In the High Court Of Kerala**

**Case No : T.R.C. No"s. 31 and 32 of 1980**

Radha"s Fancy Piece Goods Merchants

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 03-07-1981

**Acts Referred:**

Kerala General Sales Tax Act, 1963 — Section 9

**Citation :** (1982) 1 ILR (Ker) 193 : (1981) 48 STC 361

**Hon'ble Judges :** P. Subramonian Poti, Acting C.J.; George Abraham Vadakkal, J

**Bench :** Division Bench

**Advocate :** K. Sukumaran and K.P.G. Menon, for the Appellant; The Government Pleader, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

George Vadakkal, J.—The question raised in these cases preferred by the same assessee is whether embroidered cotton sarees are cotton fabrics falling within entry 7 in the Third Schedule to the Kerala General Sales Tax Act, 1963 (hereinafter, the Act).

2. The assessments relate to 1974-75 and 1975-76. The Tribunal found that the assessee had effected sale of embroidery sarees purchased as such and also sarees got embroidered by him. The Tribunal held that the embroidery saree sold by the assessee is a different commodity and will not fall under entry 7 in the Third Schedule to the Act. The Third Schedule enumerates goods exempt from tax u/s 9 of the Act. There is no dispute that but for the embroidery on the sarees, they are cotton fabrics falling under entry 7 in the Third Schedule to the Act.

3. Entry 7 in the Third Schedule to the Act reads:

7. Cotton fabrics, woollen fabrics and rayon or artificial silk fabrics as defined in items Nos. 19, 21 and 22 respectively of the First Schedule to the Central Excises and Salt Act, 1944.

4. This Court in *Ateesee (Agro-Industrial Trading Corporation) v. State of Kerala* [1978] 41 S.T.C. 1 held:

The concept of "cotton fabrics" in the Central Excises and Salt Act seems to be integrally linked with the provisions of the General Sales Tax Act, and we do not think that we would be justified in regarding the latter Act as unaffected by the growing concept of the term "cotton fabrics" in the Central Excises and Salt Act. We feel too, that unless the extended definition of the Central Excises and Salt Act is imported into the Sales Tax Act, the latter Act would become unworkable and ineffectual.

5. The relevant portion of item 19 in the First Schedule to the Central Excises and Salt Act, 1944, is as follows:

19. Cotton fabrics-

"Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bedspreads, counter-panes, 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. At the outset it is to be noted that the definition of "cotton fabrics" in item 19 is not an "inclusive definition" but a "definition by exclusion", that is to say, one which excludes those fabrics enumerated under the caption "but does not include any such fabric if it contains-". While one of the objects of an "inclusive definition" is to rope in things which but for that device would not fall within the definition, the device of "definition by exclusion" is resorted to make it clear that the excluded matters are outside the scope of the concept of the expression in the statute, though that expression, as popularly and ordinarily understood may take in the excluded matters also. Therefore we start on the footing that the expression "cotton fabrics" is used in item 19 in the First Schedule to the Central Excises and Salt Act, 1944, in its popular sense and excludes from its ambit such of the cotton fabrics as are specifically enumerated therein. Now, there is an inclusive clause also in the definition, for the expression "cotton fabrics" is defined as meaning "all varieties of fabrics manufactured either wholly or partly from cotton" and as including "dhoties, sarees, chadders, bed-sheets, bedspreads, counter-panes, 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". Any one of these things, dhoties, sarees, etc., unless it is manufactured either wholly or partly from cotton would not be a cotton fabric and if it is manufactured either wholly or partly from cotton would be a cotton fabric in the very wide sense that expression is defined in the opening portion of the definition. Therefore, the object of the inclusive device in the first part of the definition is not to rope in within the scope of the definition things which otherwise are not cotton fabrics but some other kind of fabrics. It appears to us that this device is resorted to therein only "by way of illustration or of enumeration of the forms the thing defined (here, cotton fabrics) commonly assumes, by naming things that clearly come within the meaning given" which is one of the objects achieved by the device of an inclusive definition : see *Krishnan Nair v. Sivaraman Nambudiri* 1967 KLT 78 .

7. Under the substantial definition in item 19, "cotton fabrics" means "all varieties of fabrics manufactured either wholly or partly from cotton". One of the meanings given to the word "fabric" in Chambers's Twentieth Century Dictionary is : "texture", and "texture" means "anything woven". Of the several meanings given to that word in Concise Oxford Dictionary and Shorter Oxford Dictionary the following meanings are apposite here : "woven material, texture, textile". Therefore, all varieties of woven materials manufactured either wholly or partly from cotton except those that fall under the exclusion clause are as per the definition "cotton fabrics". The exclusion clause says that fabrics manufactured partly from cotton and partly from other materials (wool, silk, rayon or artificial silk or jute including Bimlipatam jute or mesta fibre) are not cotton fabrics if the percentage of the non-cotton material is that specified therein or more.

8. However, to attract the definition in item 19 it is necessary that the woven material shall not lose its identity as a woven material. For example when a shirt, a frock or any garment or a pillow-case is made by cutting and stitching cotton fabric, it loses its identity as a woven material. No one will speak of a shirt, a frock, or any other kind of garments or a pillow-case as a fabric but only as a shirt, a frock and so on. The question for consideration in these cases is whether a cotton saree, which retains its identity as a woven material and it is so stated (not in so many words but by the inclusive device) in the definition, would lose its identity as such by embroidering it.

9. The definition itself proceeds on the basis that a cotton saree will not lose its identity as a cotton fabric merely by embroidering it. The inclusive clause in the definition says that "cotton fabrics" includes "embroidery in the" piece" also. One of the dictionary meanings of the word "piece" is: "a definite quantity, as of cloth or paper" (Chambers's Twentieth Century Dictionary); "definite quantity (of wall-paper 12 yds., of muslin 10 yds., etc.) in which the thing is made up" (Concise Oxford Dictionary); "piece-goods" is a very familiar popular term and both in the popular sense and according to the dictionary that expression means "cotton, linen, woollen or silk fabrics sold retail in varying lengths" (Chambers's

Twentieth Century Dictionary).

10. Therefore, embroidered cotton sarees are "cotton fabrics" provided the rest of the definition in item 19 of that term is satisfied. As already stated the revenue has no case that the rest of the definition is not satisfied so far as the cases on hand are concerned. We, therefore, hold that the embroidered cotton sarees are cotton fabrics falling within entry 7 in the Third Schedule to the Act.

11. In *Delhi Cloth and General Mills Co. Ltd. v. Commercial Tax Officer* [1975] 36 S.T.C. 575, relied on by the revenue and the Tribunal, the Calcutta High Court said as follows:

I find no substance in the contention raised on behalf of the petitioner that entry No. 19 included only those "cotton fabrics" which are manufactured as chadders, bed-sheets, bed-spreads, etc., as such, and not those which are prepared by cutting woven textile materials into shorter lengths and then stitching up the two ends. Entry No. 19 did not specify that bed-sheets, bed-spreads, etc., whose ends have been stitched shall be excluded. As already stated, the said entry has specified that all varieties of cotton including dhoties, sarees, bed-sheets, bed-spreads, etc., would be included. Only when by such stitching the essential nature or character of cotton fabrics is altered or changed the particular article would be outside the ambit of the said entry No. 19. On the other hand, in case such cutting into shorter lengths and stitching of the two ends are accessory to and therefore part of the process of manufacturing such bed-sheets, bed-spreads, chadders, etc., cutting and stitching cannot result in putting the finished articles beyond the scope of entry No. 19. In my view, the materials on record do not indicate that, in the instant case, by executing works of cutting into shorter lengths and stitching the bed-spreads, bed-sheets, towels, etc., cease to be cotton fabrics. On the other hand, the same continued to be cotton fabrics in their natural and accepted meaning. Such cutting and stitching were really part of the process of manufacturing bed-spreads, bed-sheets, etc.

12. With respect, it has been rightly noticed that item 19 in the First Schedule to the Central Excises and Salt Act, 1944, does not exclude "cotton fabrics" which are prepared by cutting woven textile materials into shorter lengths and then stitching up the two ends so as to constitute the cut-pieces, bed-sheets, bed-spreads, etc. However, it appears that it was (as contended for on behalf of the revenue) so held on the ground that such cutting into shorter lengths and stitching of the two ends are accessory to and therefore part of the process of making bed-sheets, bed-spreads, etc., which are enumerated in the inclusive clause. The argument is that this decision proceeds on the basis that the inclusive clause in the definition is exhaustive and such of the things as are enumerated in that clause alone have been roped in within the meaning of the term "cotton fabrics". It seems that for that reason and because as it stood then the inclusive clause in the definition in item 19 in the First Schedule to the Central Excises and Salt Act, 1944, did not contain the words "embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparation of

cellulose derivatives or of other artificial plastic materials", the Calcutta High Court, lower down in that decision, made the observation that "in the case of embroidery work or execution of any other artistic work on "cotton fabrics" obviously something is added to the cotton fabrics so as to make new and distinctive materials". Relying on this observation it is argued that "embroidered saree" is not mentioned in the inclusive clause, that it is a commodity different from plain saree and that, therefore, it is not "cotton fabrics".

13. Now as the words "embroidery in the piece, etc." are in the inclusive clause, it does not fall to be decided as to whether an embroidered cotton saree is commercially a different commodity from an unembroidered cotton saree; but it is necessary to reiterate that the real test, in our view, is not whether, going by mini classifications of sarees such as plain, embroidered, printed, etc., on the one hand and manufactured by so and so or such and such manufacturers or manufactured in so and so or such and such place on the other (which considerations may perhaps weigh with the purchaser) the saree is commercially a different article, nor whether the same is by its commercial or trade name included in the inclusive clause, but whether the cotton fabric retains its identity as such in the popular sense of that term even after artistic or embroidery work is done thereon. For, an ordinary woman wanting to buy a cotton embroidered or printed saree would normally require the dealer to show her cotton sarees or the cotton saree section, and then ask for the different varieties of cotton sarees, embroidered, printed and so on, and of such and such or so and so manufacturer. If the test to be applied is as contended for the revenue, a piece of cotton cloth, say malmal, cut in mundu-length would not be a cotton fabric for simply by cutting in that length and for that purpose it acquires the character of a different commercial commodity not mentioned in the inclusive portion of the definition, viz., a mundu, which no one in these parts would dare to say as anything but cotton fabric, thuni (1).

14. It is not necessary to examine the other cases cited at the Bar, *Shreeram Vastra Bhandar v. Sales Tax Officer* [1980] 46 S.T.C. 107, *Deputy Commissioner of Sales Tax v. Mohammed Abdul Khader* [1980] 46 S.T.C. 512 and *Radhika v. State of Orissa* [1977] 39 S.T.C. 93, since in our view, the question as to whether cotton fabric retains its identity as such is one to be decided with reference to the concerned article or commodity, and it is neither possible nor feasible to catalogue those articles that retain such identity and those which do not.

15. There was a feeble attempt on the part of the learned Government Pleader to contend that the inclusive clause in the definition in item 19 in the Central Excises and Salt Act, 1944, does not cover embroidered sarees. The argument is that the words "embroidery in the piece, in strips or in motifs" connote embroidery as such and not embroidery on the saree. We have already discussed the expression : "embroidery in the piece". We may also hereunder extract explanation I to the definition which defines "base fabrics", an expression that occurs in the proviso to the main definition of "cotton fabrics" :

Explanation 7.-"Base fabrics" means fabrics falling under sub-item I of this item which are subjected to the process of embroidery or which are impregnated or coated with preparations of cellulose derivatives or of other plastic materials.

And sub-item I is as follows:

I. Cotton fabrics other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials.

These provisions speak for themselves, and no further discussion is necessary to repel the contention advanced by the learned Government Pleader.

In the result we set aside the Tribunal's order to the extent it holds embroidered cotton sarees are not cotton fabrics falling within entry 7 in the Third Schedule to the Act, and hold that they come under the said entry. These revisions are allowed to that extent, but without any order as to costs.

The learned Government Pleader asks for leave to appeal. We do not think that this is a fit case of general importance that needs to be decided by the Supreme Court or that this involves any substantial question of law that needs to be decided by that court. Leave declined.

1 Word in Malayalam is not printed here