
(2009) 01 P&H CK 0186
In the Punjab And Haryana At Chandigarh

Raj Paul and Brothers

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22(1)

Citation : (2010) 251 ELT 29 : (2009) 23 VST 389

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant reference u/s 22(1) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act") has arisen out of the order dated September 29, 1989 passed by the Sales Tax Tribunal, Punjab, Chandigarh (for brevity, "the Tribunal") in Revision Nos. 71 to 73 of 1985-86 in respect of the assessment years 1977-78, 1978-79 and 1979-80. The Tribunal while accepting the application of the assessee has referred the following questions of law for opinion of this Court while exercising power u/s 22(1) of the Act:

- (i) Whether mill-made handkerchiefs are cotton fabric and covered under item 30 of Schedule "B" appended to the Punjab General Sales Tax Act, 1948?
- (ii) Whether handkerchief is covered under the words "ready-made garments"?
- (iii) Whether mill-made handkerchiefs which are manufactured wholly out of cotton, manufactured in a textile mill and sold in the same condition on which excise duty has already been paid is covered under item 30 of Schedule "B" appended to the Act?
- (iv) Whether the Tribunal was justified in law to exclude handkerchief manufactured as such by the textile mills, when item 30 of Schedule "B" of the Act clearly except all variety of textile covered by item 30 on which the knitting and embroidery has been done?

2. Brief facts of the case are that the applicant is engaged in the resale of

general mercantile including handkerchiefs on wholesale basis. Assessments in respect of the years 1977-78, 1978-79 and 1979-80 were finalised by the Assessing Authority, Jalandhar. However, the assessment orders were taken up for suo motu action on the ground that deductions regarding sale of handkerchief are not correct and handkerchiefs are not items of textile. Consequent on revisional proceedings additional demand was created vide order dated February 14, 1985 by taxing the handkerchief by treating them as not textile items. Aggrieved against the order dated February 14, 1985, the applicant approached the Tribunal. The Tribunal vide order dated September 29, 1989 upheld the order of the Revisional Authority. The argument of the learned State Counsel that handkerchief is not an item of textile but it forms a part of ready-made garments was * accepted by the Tribunal by observing that tailored Article made of cloth does not remain as cloth and as such it cannot be treated as item of textile and it is not eligible for exemption.

3. The Tribunal accepted the same argument and placed reliance on a Division Bench judgment of the Madras High Court rendered in the case of Sri Kittappa Dress Manufacturing and Embroidery Works v. State of Madras [1962] 13 STC 34 as it comes into ready use and after hemming the Article can no longer retain its previous character of cloth though it is made of cloth.

4. We have heard the learned Counsel for the Revenue and have gone through the paper book with her able assistance. In order to appreciate the legal issue raised, it would be necessary to read Section 6 of the Act and entries 29 and 30 in Schedule "B", which give the list of goods which are tax-free and the same read thus:

Section 6:

6. Tax-free goods. - No tax shall be payable on the sale of goods specified in Schedule "B" subject to the conditions specified therein:

Provided that the State Government after giving by notification, not less than ten days" notice of its intention so to do, may by like notification, add to or delete from this Schedule, and thereupon the Schedule shall be deemed to have been amended accordingly:

Provided further that if the State Government is satisfied that circumstances exist, which render it necessary to take immediate action, it may dispense with the conditions of previous publications.

Entries 29 and 30 of Schedule "B"

29. All varieties of cotton, woollen or silken textiles, including rayon, artificial silk or nylon whether manufactured by handloom or powerloom or otherwise but not including carpets, druggets, woollen dress and mono-filament niwar.

30. All varieties of textiles covered by item 29 on which knitting and embroidery work has been done.

5. A perusal of Section 6 along with entries 29 and 30 would show that all varieties of cotton, woollen and silken textile including rayon, artificial silk, etc., are not to attract any tax on sale. Likewise, all varieties of textiles covered by item 29 on which knitting and embroidery work has been done are also tax-free as per entry 30. When the aforesaid entry is compared with the entry considered by the Division Bench of the Madras High Court in the case of Sri Kittappa Dress Manufacturing and Embroidery Works [1962] 13 STC 34, it is found that the contents and language is entirely different. However, the definition of expression "cloth" has been culled out by the Division Bench from the judgment of the Andhra Pradesh High Court rendered in the case of Rai Saheb Chedra Durvasulu v. Sales Tax Officer [1961] 12 STC 158. The Andhra Pradesh High Court has defined the expression "cloth" as under: (at pages 160)

It follows from the above observation that "cloth" as understood in its ordinary sense takes in every fabric used for any purpose including the use as wearing apparel whether it is sold by unit or by yards. When the cloth has, in its generic sense, so wide a connotation, there is no reason why for purposes of item 22 it should be given a narrower meaning unless there are specific words of limitation therein or there is sufficient context to warrant the same....

6. The Division Bench of the Madras High Court accepting the aforesaid definition of term "cloth" has held that the term "cloth" in accordance with its dictionary meaning and its ordinary popular meaning has to be understood as any woven fabric or stuff till it is transformed into an Article like dress, garment or bed cover, etc., which comes into ready use as such articles. It has further been held that after such transformation the Article can no longer retain its previous state of cloth though it is made of cloth. The Division Bench rejected the argument that any workmanship or embroidery made on a length of cloth should, by reason of some labour or money, being spent over the cloth, deprive the cloth of its true and existing character. However, entry 30 of the Schedule specifically includes in the list of tax-free items all varieties of textiles covered by entry 29, namely, cotton, woollen or silken textile on which knitting and embroidery work has been done.

7. But the question then is whether it would include handkerchiefs because handkerchiefs are not subjected to any knitting and embroidery. As already observed, handkerchiefs are hemmed and, therefore, it may fall within the meaning of "cotton, woollen or silken textiles on which knitting and embroidery work has been done".

8. However, the question directly fell for consideration before the Division Bench of the Kerala High Court in Deputy Commissioner of Sales Tax (Law) v. M.M. Mohammed Abdul Khader [1980] 46 STC 512. The facts in that case are akin to the facts of the case in hand. The assessee in both the cases have purchased excise-duty-paid handkerchief from the mill and without subjecting those to any process sold it in the market. The handkerchiefs have been sold in the same condition in which it had been supplied to the assessee from mills. The further

fact and position has not been denied that the handkerchiefs have been produced wholly out of cotton. In the wake of the aforesaid fact and position, the Division Bench opined as under: (at page 514)

...It is not in dispute that the kerchiefs have been manufactured wholly out of cotton. The mere fact that as part of the process of manufacture the edges of the cloth have been stitched will not in any way affect its character as a cotton fabric. In fact, such process of stitching is essentially involved in the manufacture of several of the items enumerated in the inclusive portion of the definition of cotton fabrics contained in entry No. 19 of the First Schedule to the Central Excises and Salt Act, for example, bed-sheets, bed-spreads, counterpanes, table-cloths, etc. It is not therefore possible to accept the plea put forward by the learned Government Pleader that the fact that the edges of the kerchiefs have been stitched will take the Article out of the scope of the entry "cotton fabrics". We find that the same view has been taken by the Calcutta High Court in *Delhi Cloth and General Mills Co. Ltd. v. Commercial Tax Officer, Central Section, West Bengal* [1975] 36 STC 575, with which ruling we are in respectful agreement.

9. In view of the above question Nos. 1, 3 and 4 are answered in affirmative and the view taken by the Tribunal is set aside. Accordingly, question No. 2 is also answered against Revenue. It is held that in the facts and circumstances of the case, handkerchief cannot be regarded as ready-made garment.