

(1999) 03 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No's. 2009 and 2460 of 1997, 245 and 747-749 of 1998 and 3955 and 3956 of 1999

Ramdev Agencies

APPELLANT

Vs

Addl. Asstt. Commr. of Commercial Taxes

RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Citation : (1999) 114 ELT 17

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : B.P. Gandhi, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—These petitions are disposed of by this common judgment since the controversy involved is also common.

The dispute is with regard to levy of tax on sale of handkerchiefs which are claimed to be exempted under Entry 8A of the Fifth Schedule to the Karnataka Sales Tax Act. The said entry is as under :

"All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon, whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths."

Entry (ii-a) of Section 14 of the CST Act has declared the cotton fabric as commodity of special importance in inter-State trade and commerce. The entry reads as under :

"(ii-a) cotton fabrics covered under Heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, 59.01, 59.03, 59.05, 59.06 and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5

of 1986)."

Entry 12 of the Fourth Schedule is as under :

Textile (Sale by the first or earliest of 1-4-1992 to 31-3-1996 4% fabrics the successive dealers in the From 1-4-1996 2% State liable to tax under this Act.)

Entry 7A in Part T of the Second Schedule is as under :

7A. Textile and fabrics but excluding 1-4-1992 to 31-3-1996 4% ing such textiles and fabrics as From 1-4-1996 2% are covered, described or specified elsewhere in any of the Schedules. 2. Sale of handkerchiefs was exempt till March 31, 1992 as falling within the definition of "cotton fabric" under Entry 19 of the Central Excises and Salt Act, 1944. Clarification dated June 18,1987, September 29,1987 and November 29,1989 were also issued by the Commissioner in this regard. It is stated that amendment to entry 8A of the Fifth Schedule does not change the basic character or connotation of textile. Change in the Central Excise Act is stated to be on the basis of Modvat system. It is stated that there was no change under the Central Excise Act or Additional Duties of Excise Act and therefore the interpretation which prevailed for a considerable time has to be adopted for the purpose of taxation of handkerchiefs. Change of view by the department is stated to be opposed to fair play.

Reliance is placed on the decision given in the case of Deputy Commissioner of Sales Tax (Law) Vs. M.M. Mohammed Abdul Khader, wherein it was observed that handkerchiefs are manufactured wholly out of cotton and the mere fact that as part of the process of manufacture, the edges of the cloth have been stitched would not in any way affect the character of the handkerchief as a cotton fabric. Process of stitching was considered as essentially involved in the manufacture of several of the items enumerated in the inclusive portion of the definition of "cotton fabrics" contained in entry 19 of the First Schedule to the Central Excises and Salt Act. Since the mill-made handkerchiefs were sold in the same condition in which they were supplied by the mill of which excise duty was paid they were held exempt under the Kerala General Sales Tax Act also.

Reliance is also placed on the judgment given in the case of Bangalore Wood Industries Vs. Asst. Commissioner of Commercial Taxes (Assessment), Hassan and another, wherein it was held that the circular issued by the Commissioner has no relevance because the circulars were issued before the insertion of entry 8A in the Fifth Schedule.

3. It is also stated that cotton fabric is described in the Additional Duties of Excise (Goods of Special Importance) Act, and is covered by entry Nos. 9,10,11 and 28 apart from entry 62. Entry 62 is stated to be relevant for the purpose of assessment under the Central Excise Act and the Modvat scheme. In spite of the specification under entry 62.02 it is stated that the handkerchiefs fall under Chapter 52 of the Central Excise Act and Additional Duties of Excise (Goods of Special Importance) Act.

4. In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, a note is given that "in this Schedule "heading", "sub heading" and "Chapter" mean respectively a heading, sub-heading and Chapter in the Schedule to the Central Excise Tariff Act, 1985". From this note it is clear that the definition given under the Central Excise Tariff Act, 1985 is adopted in the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

After the insertion of entry 8A in the Fifth Schedule to the KST Act, the decision given in the case of Deputy Commissioner of Sales Tax (Law) Vs. M.M. Mohammed Abdul Khader, is not relevant, because the decision was based on interpretation of Item 19 of the First Schedule to the Central Excises and Salt Act, 1944.

5. Entry 62 refers to articles of apparel and clothing accessories not knitted or crocheted including handkerchiefs, shawls, scarves, mufflers, mantillas, veils, ties and bow ties, cravats, gloves. According to the department since handkerchiefs have been considered to be articles of apparel and clothing accessories, they do not fall under the category of "textile". "Textile fabrics" has been defined in different chapters under the Central Excise Tariff Act, 1985. Chapter 52 refers to cotton fabric. Chapter 53 is regarding vegetable textile fibres. Chapter 54 is regarding man-made filament yarn and Chapter 55 is man-made staple fibre and Chapter 56 deals with non-woven articles. Chapter 57 is regarding carpets and other textile floor coverings. Chapter 58 refers to special woven fabrics and Chapter 59 is regarding impregnated, covered laminated textile fabric and textile articles, etc.

6. Chapter XI deals with textiles and textile articles. Different Chapters deal with fabric. It appears that distinction between the fabric which is stated to be processed and which is stated to be not processed have been made by the Central Excise Tariff Act, 1985. The word "textile" as used in entry 8A of the Fifth Schedule can be considered in the light of the judgment given in the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , where a broad meaning was given. But the law has changed thereafter and Entry 8A of the Fifth Schedule has restricted the definition to those items which are specified in the First Schedule to the Act of 1957 which in turn has adopted the Central Excise Tariff Act, 1985. The meaning as given by the Central Excise Tariff Act, 1985, therefore, is to prevail. This is beside the fact that u/s 14 of the CST Act, "cotton fabric" has been defined. Entry 8A refers to the textile which may be of cotton, woollen or artificial silk. "Cotton fabric" has been defined under entry (ii-a) and "man-made fabric" under entry (vii) and "woven fabric of wool" under entry (x) of Section 14 of the Central Sales Tax Act. Since the controversy is with regard to cotton fabric, entry (ii-a) of Section 14 of the CST Act would also be relevant. In entry (ii-a) only those fabrics which are covered under the entry mentioned thereunder are considered to be cotton fabric. Circulars which have been issued earlier by the Commissioner ceases to be effective because of change of law with effect from April 1, 1992.

7. The contention that there was no change in the Central Excise Act or Additional Duties of Excise Act after April 1, 1992 is not relevant because it is not the assessment under the Excise Act. Under the sales tax law, if the definition of another Act is adopted it is from the date the adoption is made it has to be applied. Entry 62.02 refer to above has dealt with handkerchief falling in the category of articles of apparel and clothing accessories. It is an established principle of law that if there is a special entry then general entry would not be applicable. The contention, raised is that entry 52 also covers handkerchiefs as it deals with woven fabric which are subjected to process and which are not subjected to process and there is no exclusion of handkerchiefs from entry 52. Similarly attention has been drawn to other Chapters.

I am not convinced that the contention raised has any force because once the handkerchiefs are specifically included in Chapter 62, then it will be deemed to be excluded from other Chapters. It has not been considered by the Central Excise Tariff Act, 1985 and accordingly by the Additional Duties of Excise (Goods of Special Importance) Act, 1957, as cotton fabric is stated as an article of apparel and clothing accessories, exemption under the KST Act cannot be claimed.

8. The contention that basic concept and character of the textile is not changed has no substance because of change of law. Entry Nos. 52.05 to 52.12 do not contain specific mention of handkerchiefs. The processes which are contemplated under Chapter 52 refers to bleaching, mercerising, dyeing, printing, water proofing, shrink proofing, organdy processing, etc., and specific mention in entry 62.02 of Chapter 62 excludes handkerchiefs from the purview of cotton fabric.

9. The Fourth Schedule is in respect of declared goods and since it is considered that handkerchiefs do not fall in the category of declared goods as defined u/s 14 of the CST Act, benefit of rate of tax in the Fourth Schedule cannot also be availed of.

Petitions having no force are accordingly dismissed.

After the pronouncement of orders, learned Counsel for the petitioners prayed for instalments for which he may move the Commissioner, who will consider the application without raising the question of limitation.