

(1971) 07 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No. 564 of 1967

Sales Tax Commissioner, U.P.

APPELLANT

Vs

Ladha Singh Mal Singh

RESPONDENT

Date of Decision : 27-07-1971

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : AIR 1971 SC 2221 : (1973) 2 CTR 510 : (1971) 2 SCC 407 : (1971) SCR 941 Supp : (1971) 28 STC 325 : (1971) 3 UJ 900

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Advocate : O.P.Rana, for the Appellant;

Final Decision : Dismissed

Judgement

Grover, J.—The only point for decision in this appeal by special leave is whether the cloth manufactured by means of looms worked by power can be regarded as "cloth manufactured by mills" for which sales tax was payable at the rate of 6 pies in a rupee in terms of the notification dated June 8, 1948 issued u/s 3A of the U.P. Sales Tax Act, 1948. The general rate of tax on sale of cloth otherwise was 3 pies per rupee. The High Court on a reference made under the relevant provisions of the Act held that cloth manufactured by means of power looms could not fall under the term "cloth manufactured by the mills".

2. The approach of the High Court was that since the word "mills" had not been defined either by the Act or by the notification mentioned before the meaning of the words "cloth manufactured by the mills" must be considered according to the common understanding of mankind. Reference was made to the dictionary meaning as given in Websters' New International Dictionary, Vol. 2. According to the dictionary two things were required (1) a building and (2) a machinery, in order to constitute a "mill". The meaning of the word "machine", according to the dictionary in a popular and mechanical sense is "... more or less complex combination of mechanical parts, as levers, gears sprocket wheels, pulleys,

shafts and spindles, ropes, chains, and bands, cams and other turning and sliding pieces, springs, confined fluids etc., together with the frame work and fastenings, supporting and connecting them, as when it is designed to operate upon material to change it in some pre-conceived and definite manner...." According to the High Court looms which are merely worked by power would hardly fall within the meaning of the word "machine". It has been pointed out that looms worked by hand or by power have not been shown by any evidence to be different. It does not appear to have been disputed before the High Court that a building having looms worked by manual labour would not be a mill. The court found no difference between building containing looms worked by manual labour or by power.

3. According to Words and Phrases, Vol. 27 the term "mill" in modern usage, includes various machines or combinations of machinery, as cotton mills, fulling mills, powder mills, etc., to some of which the term "manufactory" or "factory" is also applied. In our judgment although the dictionary meaning may be of considerable assistance in deciding the point before us but what has to be seen is the context in which the word "mills" is used in the notification. It is common ground that if cloth was manufactured by looms worked by manual labour the notification was not applicable and the rate of tax per rupee was 3 pies but if he cloth was manufactured by mills then the rate was to be 6 pies. Thus cloth has been divided broadly into two categories, mill-made and loom-made. It is quite obvious that loom-made cloth would include all cloth manufactured on looms. It is difficult to understand how the energy by which the looms are worked would make any difference. In other words whether the energy is supplied manually or by power cannot convert the essential character of the cloth, namely, its manufacture on looms. As regards mill made cloth the actual process of weaving is more or less automatic, preconceived and definite and it involves the functioning of machinery. Ramchandra Iyer J., in *Sri Dhandapani Power-Loom Factory Vs. Commercial Tax Officer and Another*, was right in observing that mill cloth is a familiar variety of cloth and everybody knows what a mill is. In popular language, a power-loom cloth is never associated with a mill cloth.

4. According to McNaghten J., in *Ellerker v. Union Cold Storage Company Ltd.* [1939] A.E.L.R. 23 a mill is building where goods are subjected to treatment or processing of some sort and where machinery is used for that purpose. The illustrations given were:

The miller in his corn-mill grinds wheat into flour, or oats into oatmeal. So too, at a scutching-mill the miller scutches the flax, to prepare it for spinning. The saw-mill, the rolling mill, the flatting mill, the puffing mill and the cotton mill are all buildings where goods are treated or subjected to some process.

5. It must be remembered that the meaning of the word "mill" or "mills" would vary according to the context in which that word is used. In the above case a company carried on a large cold storage business. In some of the cold stores part of the building was used for the manufacture of ice for sale; others were only

used for the purpose of storage. It was held that all the premises fell within the meaning of the words in Schedule D Cases I and II, Rule 5(2) of the income tax Act which were: Mills factories or other similar premises.

6. Counsel for the appellant has sought to argue that once the looms' worked by power are used in a building the essential characteristics of "mills" would be satisfied and if any cloth is manufactured on those looms it would be cloth manufactured by "mills" within the meaning of the notification. The fallacy in this argument is that by the same reasoning a building in which looms worked by manual labour are to be found would also have to be regarded as "mills". This would be contrary to the accepted and popular meaning of handloom or power loom cloth and mill made cloth. We are satisfied that the distinction which was kept in view when the notification was promulgated was between the aforesaid two categories or types of cloth involving essentially a difference in the process by which it was manufactured.

7. We would accordingly uphold the view of the High Court and dismiss the appeal. There will be no order as to costs.