

(1964) 08 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 151 of 1963 (Revision No. 103)

Sapt Textile Products (India) Private Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 28-08-1964

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1965) 16 STC 267

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The assessees are dealers in cotton waste. Out of their turnover in 1955-56, it was found that they had purchased nearly

rupees eighteen lakhs worth of cotton waste and then exported them to buyers outside the Madras State. Relying upon Rule 4-A(iv) of the Madras

General Sales Tax (Turnover and Assessment) Rules, 1939, applicable to the assessment year 1955-56, the authorities of the Sales Tax

Department assessed the assessee on the abovesaid turnover. Rule 4-A(iv) states that in the case of cotton including kapas sold to a spinning mill

in the State the tax shall be levied on the amount for which it is bought by it, and in the case of cotton which is exported outside the State the tax

shall be levied from the dealer who buys it in the State and is the last dealer not exempt from taxation u/s 3(3) on the amount for which the cotton is

bought by him.

2. After the Central Sales Tax Act came into force cotton was declared as

declared goods liable only to a single point levy. In defining the declared goods the Central Legislature excluded cotton waste from the category of cotton. Correspondingly the Madras State with effect from 1957, in the Madras General Sales Tax Act, incorporated a provision in regard to the single point levy of cotton, that cotton shall not include cotton waste. But the authorities in this case held that so far as the assessment year 1955-56 is concerned, there was no such exemption in regard to the cotton waste, and that cotton waste would be assessable as cotton at a single point on the purchases. Consequently the assessee was directed to pay tax on the turnover on cotton waste mentioned above. When the matter came up before the Sales Tax Appellate Tribunal the majority expressed one view and the minority consisting of the Accountant Member expressed a different view. The majority made a distinction in the case of cotton waste and held that part of it described in the trade as "slivers", "bondas" and "strippings", which are used for spinning coarse yarn, would still be cotton, but not the other parts of cotton waste. The Accountant Member, who gave the minority opinion, wanted a fresh examination to be made to find out whether the cotton waste sold by the appellant had come out of cotton that had already suffered tax at the hands of the spinning mills under Rule 4A(iv), and in which case they could not be taxed again. However, the view of the majority prevailed and the case was remanded to the Appellate Assistant Commissioner for finding out what part of the cotton waste was of spinnable quality so that that part alone could be assessed again.

3. From the above decision the present revision is filed by the assessee. Learned Counsel appearing for the assessee before us urged that "cotton waste" and "cotton" are terms very well-known in the cotton trade, and that one cannot be confused with the other for the purpose of levy of sales tax. Thus, in a standard work on "Cotton" by Brown published by the McGraw Hill Book Company, New York and London, at page 538, it is observed,

Cotton waste from spinning mills consists principally of short fibres that have been rejected by machines in the process of combing and carding;

and also floor sweepings, odds and ends from weaving, and various scraps.

According to the estimate by Lomax, 25 per cent. of the raw cotton that enters

spinning and weaving mills in England is resold in the form of cotton

waste as a by-product. This gives some idea of the quantity of waste produced in cotton mills.

The better grades of waste are used in making quilts, blankets, domestic sheets, towels, and flannelettes. The flat cylinder strips made in the

process of carding are frequently used as raw material for products in which strength is required, such as warps, twine, ropes, and nets. Large

quantities of strips from Egyptian cotton are mixed with wool, on account of the strength of their fibres, and used in making mixed woollen goods.

Lower qualities of waste are used in making sponge cloth, carpet yarns, and low quality mixed woollen goods. Floor sweepings and fibres unfit for

spinning are bleached and used in making gun-cotton, cellulose, and artificial silk. Thready material that cannot be broken up or spun again is made

into cleaning waste for engines and machines.

4. In another work, Textile Research Journal, Volume 20, 1950, at page 685, it is observed,

The marketing of cotton waste is quite different from the marketing of raw cotton. In the waste trade there is no equivalent of the cotton spot and

futures markets because there are no recognised standard grades or staple lengths for the various types of cotton waste.... Mills consider cotton

waste a necessary evil incidental to the manufacture of yarn or cloth.... The entry of the mill into the waste business would also require the

development of markets, merchandising of the product, storage, and the assumption of all the normal risks such as credits, claims, rejections and

repudiations, and fluctuations of price and value. All these functions are assumed by the dealer when he takes the mill's waste contract.

5. It will be clear, therefore, that in the trade, "cotton" and "cotton waste" have distinct meanings, and one commodity cannot be confused with the

other. Cotton waste may be still cotton, in the sense that it is composed of cotton fibres, and that some part of it still possesses the capacity of

being spun out, but the capacity for being used for spinning cannot alone form the sole test for cotton. Many materials which possess the quality of

being staple fibre lend themselves to spinning. Similarly cotton, which has passed through the bowels of a mill and has come out as a waste

product, may retain the capacity of being spun out again, no doubt, into coarser,

varieties of textile products. But since the two terms cotton and cotton waste have come to be associated in the trade with distinct meanings, and with distinct incidents of marketability, it will be more appropriate to confine the provision for single point levy in the Madras General Sales Tax Act and Rules in regard to the commodity known as cotton, to that form of it which has not entered a mill and come out of it as a waste product. Once it has entered a mill and been used in the process of manufacture and has emerged as a waste product, it has lost its character as cotton for the purpose of marketability, and is a different commodity, namely, cotton waste. The sales tax assessment being intended primarily for assessment of dealers engaged in the trade, one cannot dissociate the meaning which a particular commodity has acquired in the market, for the purpose of identifying the commodity for levy of sales tax. The proper rule in such cases will be to give to the commodity the particular meaning, which the buyer and the seller in the market usually give to it, unless the statute has taken care to prescribe any special marks of description or identification. That the Legislature itself realised that cotton has to be distinguished from cotton waste, could be seen from the fact that after the enactment of the Central Sales Tax Act, the distinction between the two has been recognised in the statute itself. We are, therefore, of the opinion that in the present case there is no scope for assessing ""cotton waste once over again as ""cotton"" at the purchase point in the hands of the assessee, on the ground that after purchase he was proposing to export it outside the State. It has been also submitted by the learned Counsel for the petitioner, that practically the entire turnover in cotton waste has been purchased by the assessee from spinning mills, and consequently the commodity has already suffered tax at single point. By viewing it as cotton and subjecting it to a fresh taxation, Section 5(ii) of the Madras General Sales Tax Act which prescribes only a single point levy for cotton is also violated. We therefore allow the revision case and set aside the assessment order on the disputed turnover. In the circumstances of the case there will be no order as to costs. Since the assessee has got no turnover in cotton as such, the prayer for refund of licence fee has also to be allowed and it is also granted.