

(1983) 03 MAD CK 0060

In the Madras High Court

Case No : T.C. No. 122 of 1983 (Revision No. 70 of 1983)

Saravanan Rexine

APPELLANT

Vs

The Union Territory of Pondicherry

RESPONDENT

Date of Decision : 29-03-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 14

Citation : (1983) 54 STC 77

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : T.C. Raghuraman, for T. Srinivasamoorthi, for the Appellant;

Judgement

Shanmukham, J.—The assessees' tax revision case is laid u/s 42 of the Pondicherry General Sales Tax Act, 1967 (hereinafter referred to as the Act), and coming up for admission.

2. The problem posed is whether the final product, rexine-coated cotton fabric is a textile within the meaning of entry 31 of the Third Schedule in the said Act.

3. The facts are in a narrow compass. The assessees are dealers in rexine cloth at 10, Leports Street, Pondicherry. For the assessment year 1979-80, they were assessed by the Joint Commercial Tax Officer for a total and taxable turnover of Rs. 1,61,687.44 and Rs. 22,448.34 respectively. The assessees claimed exemption on the ground that the rexine-coated cotton fabrics come under "textiles" as defined in item 31 referred to supra. The said exemption claimed by the assessees found favour with the Deputy Commercial Tax Officer. However, the Deputy Commissioner in exercise of his power u/s 35 of the said Act suo motu called for and examined the order passed by the Deputy Commercial Tax Officer and as, in his view, the finished product would not come under item 31, he caused a notice to be issued to the assessees of his proposal to revise and modify the assessment. The assessees filed their written objection and also requested a personal hearing. In such inquiry, the Deputy Commissioner

following a judgment of this Court in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399 held that the finished product will not come within the ambit of item 31 in the Third Schedule and therefore, made the assessment as follows :

Turnover of rubber sheets, foam leather boards and adhesives, wire springs, etc., taxable at 3 per cent Rs. 22,448.34 Turnover of coated cotton fabric taxable at 3 per cent M.P. Rs. 1,39,239.10 Total and taxable turnover proposed Rs. 1,61,687.44

4. The assessee's appeal to the one-man Sales Tax Appellate Tribunal was unsuccessful, because the said Tribunal also followed the decision of this Court referred to supra. It is seen that the finished product under consideration is made up of two elements, viz., a cotton cloth which is textile and a solidified paste.

5. The question posed is not *res integra*. For there is a direct authority in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399. One of us has rendered an excellent exposition of law on the identical issue. The headnote reflects the ratio as laid down in the said decision and so, we quote :

"Waterproof cloth, such as rexine, P.V.C. cloth, rubberised or synthetic waterproof fabrics, etc., made with cloth as base, are not textiles falling within item 4 of Schedule III of the Tamil Nadu General Sales Tax Act, 1959, inasmuch as the processed articles have different properties and characteristics and are intended for different use, and in commercial circles they are treated as entirely different from cloth or textile.

Item 4 of Schedule III should be construed independent of any definition given under any other statute.

The proper test is to find out whether after the application of rubber or P.V.C. solution the base cloth continues to be cloth or whether it has become a different product intended for a different user.

Though item 4 of Schedule III begins with the words "all varieties of textiles, the words "all varieties" cannot be taken to control or affect the true construction of the word "textiles". The legislature has used the words "all varieties" for the purpose of bringing within the ambit of the expression "all varieties of textiles" provided they satisfy the basic requirement that they are "textiles". As the word "textile" has not been defined in the Act, it must be interpreted according to its ordinary or popular sense, the sense in which they are commonly understood in ordinary parlance and not in its primary or technical sense."

6. The product that was subject-matter of consideration in the said decision is waterproof cloth. The details of preparation of the said finished product are : (1) The articles are made with cloth as base. (2) The base cloth is spread over rollers and the solution of coloured polyvinyl chloride or liquid rubber melted on hot plate is applied on the roller cloth uniformly, the excess solution of liquid being

scraped off by means of the equalising rod or blade. (3) These materials are then pressed and dried. (4) There are also certain varieties of goods in which rubber solution is applied in the centre and there is a double covering of cloth on both sides of the rubber solution or P.V.C. solution. The main purpose of this manufacturing process of applying rubber on P.V.C. solution to the base cloth is to get the quality of waterproofing. The said finished product was not a textile, is the ratio laid down by the Division Bench in the said case. It is at once necessary to notice that item 31 of the Third Schedule in the Act is the carbon copy of item 4 in Schedule III in the Tamil Nadu General Sales Tax Act, 1959. Therefore, the principle laid down in the above decision squarely applied to the facts in the instant case. Here also though the base is a cotton fabric and "textile" yet, the final product ceased to be a "textile".

7. Nonetheless, the learned counsel for the assessee contended that the decision of this Court cited *supra* might require reconsideration in view of the later Supreme Court decision in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, . The further contention was that according to the definition in item 31, anything made wholly or partly of cotton will be a "textile" and that as the finished product is made up of a cotton cloth which is a textile, it will simply fall within the said entry. The last contention was that as the word "textile" is not defined in the Act, guidance may be had from the decisions rendered by courts which had construed that particular term in relation to other statutes such as the Central Excises and Salt Act. In this context, the learned counsel also relied upon the decision in *Commissioner, Sales Tax v. Arora Material Store* [1982] 51 STC 235.

8. None of these contentions appears to be sound. It is true that the Supreme Court in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, held that the use of which the finished product may be put is immaterial and does not bear on its character as a textile and that it may be used even for industrial purposes. But, at the same time, the Supreme Court has laid down the principle thus :

"The concept of "textiles" is not a static concept. It has, having regard to newly developing materials, methods, techniques and process, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as "textiles"."

9. Thus, what is emphasised by the Supreme Court is that the finished product must be regarded as textiles as understood in common parlance irrespective of its use. It is interesting to notice that in *State of Gujarat Vs. Prakash Trading Co., Ahmedabad*, noticed in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399 the "user" test was adopted for determining the character of an article as understood in common parlance and that the said decision was not noticed by the Supreme Court in the above later decision. Be that as it may, the emphasis laid down by the Supreme Court de hors the user is that the finished product should be a textile and should be regarded as textile in common parlance without doing any violence to the language. The finished product in this

case cannot be regarded as "textile" even though the base is, or the product is made up of, cotton, which is a textile. As a matter of fact, even a new invention is possible, because of bewildering advancement in science, yet according to the Supreme Court, such a finished product should be regarded as textile in common parlance. Therefore, the decisive test is whether any finished product even made up of textile should continue and remain to be a textile in popular sense. We find that in the finished product, in the instant case, cotton loses its identity and the finished product becomes a totally different property. Though in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399 two alternative tests, viz., whether the finished product continues to be a cloth or it has become a different product intended for a different user, are laid down, the user test may not be good law in view of *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, . Nonetheless, the other test formulated by the said Division Bench is still a good law. To reiterate that the principle laid down therein applied on all fours to the instant case.

10. It is true that the finished product has its base as cotton cloth or is made of cotton cloth. But, that is not the sole and decisive factor to determine whether that product falls within entry 31 of the Third Schedule. On the other hand, as earlier pointed out, the finished product - be it made up of cotton cloth - should continue to be a textile. As a matter of fact, entry 31 prescribes that the product must be one among several varieties of the textiles. Thus it is so obvious that unless the finished product is one among the varieties of textiles, that will not fall within the said entry.

11. Even the last contention cannot be countenanced in view of the ratio laid down in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399 where it is pointed out that any item in any schedule should be construed independent of any definition given under any other statutes. What has to be examined and understood is item 31 in the Third Schedule to the Act. It is rather hazardous to draw any inspiration from the decisions of any court rendered on a totally different definition of "textiles" and in different statutes. The Allahabad High Court in *Commissioner, Sales Tax v. Arora Material Store* [1982] 51 STC 235 was concerned with the construction of "cotton fabrics of all varieties" as defined in entry 3 (Notification No. ST-4064/X - 960(4)/58 dated 25th November, 1958) under the U.P. Sales Tax Act. A learned Judge of the Allahabad High Court has held :

"The principles which stand almost settled by the decision of the Supreme Court in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, and the one in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, is that aid could be taken for interpreting the scope of an entry from the meaning given to an article mentioned therein in a cognate statute dealing with it. The Central Sales Tax Act is an Act which deals with levy of sales tax, inter alia, upon goods declared to be of special importance. Parliament itself held that the meaning given to cotton fabrics in section 14 of the Central Sales Tax Act should be the

same as was given by it to the commodity in the Central Excises and Salt Act, 1944. In the absence of any words of limitation or extension, the same meaning should appropriately be attributed to the words "cotton fabrics" for purposes of the U.P. Sales Tax Act. More so, when the Commissioner of Sales Tax himself feels that cotton-coated fabric is comprised within the entry in that regard in the notification dated 25th November, 1958."

12. In the face of this Court's decision in *State of Tamil Nadu v. East India Rubber Works, Madras* [1974] 33 STC 399 we decline to follow the above decision of a single Judge of the Allahabad High Court. It may not be out of place to point out that in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, the Supreme Court was concerned with dryer felts. The raw material used by the company is cotton and woollen yarn and the finished products called felts are manufactured on powerlooms from cotton and woollen yarn and it is therefore that the Supreme Court held that dryer felts are clearly woven fabrics and must be held to fall within the ordinary meaning of the word "textile". The present product, viz., rexine-coated cotton fabric cannot be brought within the process of manufacture referred to above by the Supreme Court. Indeed, the dryer felts continued to be cotton even as a finished product unlike the present product.

13. Thus, we reiterate that all the contentions carry no merit.

14. The only other decision which requires reference is *Silver Chem Industries v. State of Tamil Nadu* [1980] 45 STC 315. This is brought to our notice by the learned counsel for the assesseees. That again does not really help the assesseees. For, there a Division Bench of this Court was concerned with the question whether "damping hose cloth" fell within item 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, and the Division Bench found that the hose in the present case was tubular in shape and was in no way different from the cloth used for banians. It is not in dispute that banian is a textile. Quite rightly, therefore, the Division Bench held the product which is in no way different from the cloth used for banian is a textile. In the instant case, the finished product as earlier pointed out ceases to be a textile and is new commercial product.

15. The revision is therefore dismissed.