
(1979) 11 MAD CK 0041

In the Madras High Court

Case No : Tax Case (Appeal) No. 201 of 1977

Silver Chem Industries

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-11-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Item 4 Schedule 3

Citation : (1980) 45 STC 315

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant;

Final Decision : Allowed

Judgement

Sethuraman, J.—This is an appeal filed against the order of the Board of Revenue (Commercial Taxes) dated 25th November, 1975. The assessee claimed exemption in relation to a turnover of Rs. 19,872.11 relating to sales of "damping hose cloth" on the ground that it is textiles. The Appellate Assistant Commissioner allowed this claim and the Board of Revenue examined the order of the Appellate Assistant Commissioner on suo motu revision. It was considered by the Board that the order of the Appellate Assistant Commissioner was wrong and required modification. The assessee was heard and the Board held:

The product, damping hose cloth, as it comes out of the factory, is in the shape of a hose, of different lengths. It is used for damping rollers in offset printing machines. It is a finished product. It is not called as textile in ordinary or popular sense and is not commonly understood as textile. Further, the dealers themselves have collected tax on a turnover of Rs. 17,432.72 treating it as liable to tax at multi-point. In view of this fact and the other circumstances, the contentions (of the assessee) have no force.

2. The result was that the order of the Appellate Assistant Commissioner was modified and the turnover was taken to be assessable. It is against this order of

the Board, the assessee has filed the present appeal.

3. The exemption is claimed under item 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959. The said entry ran as follows: "All varieties of textiles (other than durries, carpets, druggets and pure silk cloth) made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including handkerchiefs, towels, napkins, dusters, cotton velvets and velveteen, tapes, niwars and laces and hosiery cloth in lengths.

4. This entry has come in for consideration in Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Printing Tape Factory (1) [1971] 28 S.T.C. 431. After quoting this entry, the learned Judges pointed out that the tape which was in question in that case was used generally in tying up bundles of papers, and is made of threads which lengthwise are pasted together, without employing the process of interlocking or interlacing the threads, as in making cotton cloth and the like. It was held:

There is no doubt, therefore, that the ingredient of textile is necessarily weaving, and what is not woven can hardly be described as textile. The various items mentioned in the entry themselves point to this meaning. Tapes made as a result of weaving would clearly be within the entry. But, would it be so if the normal pattern of producing textile by using the warp and woof pattern of thread is not applied? In our view, that will not be conclusive. We are inclined to think that weaving is not necessarily limited to that type of weaving. In modern advancement of textile technology, it is now possible, without using the warp and the woof pattern to produce tape, by holding the threads together lengthwise by using gum. To a casual look, the product resembles a tape which has been woven in the normal sense on the loom. But it is not the appearance alone, but what is necessary for weaving is that threads are bound together in order to produce a pattern of fabric or tape.

5. It was, therefore, held that any form of using threads so as to evolve a pattern and make them into a product of utility would fall within the definition.

6. Subsequent to this case, another Bench of this Court in State of Tamil Nadu v. East India Rubber Works, Madras - [1974] 33 S.T.C. 399, considered the exemption under item 4 in respect of waterproof cloth, such as rexine, P.V.C. cloth, rubberised or synthetic waterproof fabrics, etc. They were all made with cloth as base. It was held that they were not "textiles" falling within item 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959. The learned Judges observed that as the word "textiles" 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. Subsequent to this decision, there is the decision of the Supreme Court in Porritts and Spencer (Asia) Ltd. v. State of Haryana [1978] 42 S.T.C. 433. In that case, the commodity under consideration was dryer felts made out of cotton or woollen yarn by the process of weaving according to the

warp and woof pattern and commonly used as absorbents of moisture in the process of manufacture in paper manufacturing units. It was held that such dryer felts fall within the meaning of the word "textiles" in item 30 of Schedule B of the Punjab General Sales Tax Act, 1948, and were therefore exempt from tax. There is a very interesting discussion, if we may say so, with respect, of what the word "textiles" means. Their Lordships pointed out at page 437 that the word "textiles" does not have any narrower meaning in common parlance other than the ordinary meaning given in the dictionary, namely, a woven fabric. The use to which it was put was held to be immaterial and did not bear in its character as a "textile". The uses of textiles in a fast developing economy are so manifold that "textiles" used even for industrial purposes would fall within the entry. Having regard to this pronouncement of the Supreme Court, it is clear that it is not necessary that for the goods to fall within the expression "textiles", they must be used only as wearing apparel. They may be made out of any other material which is woven into a fabric so as to be used even for industrial purposes. The "hose" was produced before us. It appears to be in no way different from the cloth used for banians. It is only tubular in shape. It falls within the scope of the said expression. The result is, the Appellate Assistant Commissioner rightly exempted the assessee's claim and the Board's order to the contrary cannot be sustained as correct. The appeal is accordingly allowed and the assessee will be entitled to its costs. Counsel's fee Rs. 250.