

(1991) 01 MAD CK 0061

In the Madras High Court

Case No : T.C. No. 1213 of 1980 and W.P. No's. 6860 to 6863 of 1980 and 360, 361, 363, 364, 649, 650, 969 and 970 of 1981, and 1484 and 1485 of 1985

Sree Arunachalaeswara Mills

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3, 32, 4

Citation : (1991) 81 STC 137

Hon'ble Judges : Venkataswami, J;Abdul Hadi, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; R. Karuppan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Venkataswami, J.—In all these cases, a common question of law arises for our consideration, namely, whether cotton yarn blended with

staple fibre in small percentage will still be cotton yarn for the purpose of section 14(ii-b) of the Central Sales Tax Act, 1956, and consequently,

will also be "cotton yarn" for the purpose of entry 3 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, as it stood prior to

1st March, 1982. If our answer to the above question is in the affirmative, the further question that also arises for our consideration, is whether the

introduction of entry 18A in the First Schedule to the Tamil Nadu General Sales Tax Act by Tamil Nadu Act 28 of 1980 makes any change in the

above position.

2. Section 14(ii-b) of the Central Sales Tax Act, 1956 (hereinafter called "the Central Act") and entry 3 of the Second Schedule to the Tamil Nadu

General Sales Tax Act, 1959 (hereinafter referred to as "the State Act") as they stood prior to 1st March 1982, read as follows :

Cotton yarn, but not including cotton yarn waste.

3. Broadly put, the rival submissions are the following :

The learned Additional Government Pleader (Taxes) contends that to come under the above classification, the cotton yarn must be 100 per cent

cotton yarn. Any blending to staple fibre or similar material, irrespective of percentage will cease to be cotton yarn. On the other hand, the

contention of Mr. C. Natarajan, learned counsel appearing for all the assessees in these cases, is that in the absence of any definition of "cotton

yarn" in the Sales Tax Acts, and having regard to the definitions of "yarn" and "cotton yarn" in the Cotton Textiles (Control) Orders, 1948 and

1986, "blended" yarn will still be cotton yarn provided cotton forms a major portion in the blending.

4. In W.P. Nos. 6860 to 6863 of 1980 and 360, 361, 363, 364, 969 and 970 and 1981, writs of prohibition are prayed for by different

assessees restraining the respective assessing officers from proceeding with reopening of assessments for the year 1978-79 or 1979-80, as the

case may be, both under the Central Act and the State Act. In W.P. Nos. 1484 and 1485 of 1985, the assessees have prayed for writs of

mandamus directing the assessing officer to give effect to a notification issued by the State Government in G.O.P. 394, C.T. & R.E., dated 19th

March, 1976. In writ Petition Nos. 649 and 650 of 1981, the assessee has prayed for the issue of a writ certiorari to quash the assessment passed

under the Central Act and State Act for the assessment year 1979-80.

5. T.C. No. 1213 of 1980 is against an order of the Sales Tax Appellate Tribunal Additional Bench, Coimbatore, in C.T.A. No. 226 of 1980

dated 11th August, 1980, relating to assessment year 1978-79. In that case, Tribunal has taken the view that the cotton yarn blended with

manmade staple fibre will not fall u/s 14(ii-b) of the Central Act as well as under entry 3 of the Second Schedule to the State Act.

6. As the facts are common, the question is common and common arguments were addressed, we propose to dispose of these cases by this

common order.

7. In all these cases, the assessees are manufacturers and sellers of cotton yarn.

It is the case of the assesseees in all the cases that blending of staple fibre is only below 10 per cent whereas the case of the Revenue, as seen from the counter-affidavit, is that the blending of staple fibre varies from 10 per cent to 16 per cent.

8. The contention of Mr. C. Natarajan, learned counsel appearing for the petitioners are summarised below :

Cotton yarn is an item of declared goods by virtue of article 286(3) of the Constitution of India as the Parliament has declared it so, it being a

commodity of special interest in inter-State trade and commerce and by bringing the same u/s 14(ii-b) of the Central Act. Section 15 of the Central

Act places restriction on the power of the State to levy tax on items of declared goods specified u/s 14 of the said Act. On account of scarcity in

the availability of cotton during the year 1976, the Government of India was forced to insert a clause in the Cotton Textiles (Control) (Third

Amendment) Order, 1976, dated 21st December, 1976, compelling the manufacture of cotton yarn to include not less than 10 per cent of man-

made cellulosic and non-cellulosic staple fibre in the manufacture of cotton yarn. In the light of the above direction of the Central Government there

was no alternative left to the manufacturers except to blend staple fibre at least 10 per cent while manufacturing cotton yarn. As a matter of fact,

the definition of "yarn" under the Cotton Textiles (Control) Order, 1948, was to the effect that "yarn" means any type of yarn manufactured either

wholly from cotton or partly from any other material. There cannot be two meanings for cotton yarn, one for the purpose of the Cotton Textiles

(Control) Order and other for the purpose of the Central Sales Tax Act, especially in the absence of a separate definition for "cotton yarn" in the

latter enactment. It is the international practice to manufacture cotton yarn wholly out of cotton as well as predominantly out of cotton blended with

staple fibre. The definition of "cotton yarn" during the relevant period under the First Schedule to the Central Excises and Salt Act, 1944, also

contemplated only predominance of cotton in weight in the manufacture of cotton yarn. It is the definite case of all the petitioners that they never

used staple fibre beyond 10 per cent of the total fibre content of the yarn. The rest was always cotton. While so, one of the sales tax authorities

raised a doubt about the classification of blended cotton yarn manufactured by

one Kandasami Spinning Mills. The matter was taken up to the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in C.T.A. No. 150 of 1972, and the Tribunal, by its order dated 15th July, 1972, held that the blended cotton yarn which contained less than 40 per cent by weight of staple fibre continued to be cotton yarn for the purpose of section 14(ii-b) of the Central Act. The Revenue, not accepting the decision of the Tribunal, preferred a revision in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills] and a Division Bench of this Court confirmed the view taken by the Tribunal and dismissed the tax revision case. Thereafter, the Revenue itself always treated and classified the yarn as cotton yarn even though it was blended with staple fibre in small quantity. In the light of the circular issued by the then Board of Revenue in B.P. Rt. No. 4155 of 1976 dated 31st August, 1976, the assessing authority considered cotton yarn with less than 12.5 per cent staple fibre blend only as cotton yarn coming u/s 14(ii-b) of the Central Act. However, the same Board of Revenue issued another circular in B.P. Rt. No. 2265 of 1979 dated 4th July, 1979 stating that blended cotton yarn irrespective of the percentage of staple fibre, must be treated multi-point commodity and not as declared goods. On the basis of the second circular, the assessing officers issued notices for reopening assessments already made. The aggrieved assessees, while submitting their objections to the reopening of the assessments, also brought to the notice of the Government through their Association about the second circular dated 4th July, 1979, issued by the then Board of Revenue and its invalidity. The Government, by their communication dated 7th May, 1982, addressed to the Secretary, Southern India Mills' Association, informed that a revised clarification has been issued by the Commissioner of Commercial Taxes on 17th August, 1981, to the effect that the blended cotton yarn will be assessed as cotton yarn at 3 per cent single point up to 4th December, 1979. In fact, on the basis of the clarification issued by the Government, several writ petitions challenging the reopening of assessment were allowed to be dismissed, pointing out the fact that the assessing officers dropped further proceedings - vide W.P. Nos. 3805 of 1981, 5425 and 5426 of 1981, 1578 and 1579 of 1981, 4075 of 1981 and 2082 of 1981. The inclusion of blended yarn under entry 18A of the First Schedule to the State Act

treating it is non-declared goods is contrary to the judgment of this Court in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami

Spinning Mills], and in any event, the restrictions contemplated u/s 15 of the Central Act will apply to entry 18A of the First Schedule to the State

Act. The assumption on the part of the Revenue that by classifying blended yarn as non-declared goods and thereby bringing the same under the

First Schedule to the State Act, they can get over the judgment of this Court in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami

Spinning Mills] is wrong and contrary to the spirit of article 286(3) of the Constitution of India read with sections 14 and 15 of the Central Act.

Therefore, notwithstanding the classification of blended yarn as non-declared goods and bringing the same under entry 18A of the First Schedule,

in the light of the judgment of this Court in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills], the cotton yarn

blended with staple fibre of small quantity will have to be treated as cotton yarn coming u/s 14(ii-b) of the Central Act. In this connection, he also

submitted that a reading of sections 2(h), 3(2) and 4 of the State Act will clearly show that in respect of declared goods, tax shall be levied in

accordance with those provisions which are in conformity with sections 14 and 15 of the Central Act. Therefore, even though the new entry for

blended cotton yarn, namely 18 A, is introduced in the First Schedule to the State Act by Tamil Nadu Act 28 of 1980 with effect from 5th

December, 1979, in event of this Court holding that ""cotton yarn"" blended with minor quantity of staple fibre as manufactured by the assesseees will

still be cotton yarn for the purpose of section 14(ii-b) of the Central Act, the levy on such cotton yarn should be only on the footing that such

goods are declared goods. He also submitted that as between entry 18A under the First Schedule to the State Act and sections 2(h), 3(2) and 4 of

the State Act, the sections will prevail in the event of doubt or conflict between the two.

9. In support of all his submissions, he placed reliance on the following judgments : T.C. No. 47 of 1974 dated 6th March, 1974 [Deputy

Commissioner (CT) v. Kandasami Spinning Mills], Mohammad Siddiq Gautamlal v. State of Madhya Bharat reported in AIR 1956 MB 214,

T.R.C. Nos. 18, 21, etc., of 1986 dated 23rd February, 1989 of Andhra Pradesh High Court (State of Andhra Pradesh v. Sri Akkamamba

Textiles Ltd.) reported in [1990] 79 STC 357, State of Orissa v. Radheshyam Gudakhu Factory reported in [1988] 68 STC 92 , Bhor Industries

Limited v. Union of India reported in Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of

Karnataka and Another, , Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, , Aphali Pharmaceuticals Ltd. v. State of

Maharashtra reported in : 1989(44)ELT613(SC) and Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and

Another, .

10. Contending contra, learned Additional Government Pleader, submitted that ""cotton yarn"" coming u/s 14(ii-b) of the Central Act will not include

any blending and in case of anything blended with cotton yarn, irrespective of the quantum of blending, it will lose the character of cotton yarn. He

also submitted that though the reasoning given by the Tribunal are not quite correct, the conclusion reached by the Tribunal is right and, therefore,

no interference is called for in T.C. No. 1213 of 1980. He also submitted that a reading of the full judgment of the Andhra Pradesh High Court in

T.R.C. Nos. 18, 21, 23, etc., of 1986 dated 23rd February, 1989 in State of Andhra Pradesh v. Sri Akkamamba Textile Ltd. [1990] 79 STC

357, will support his submissions. He also placed reliance on the following judgments : India Jute Co. Ltd. Vs. Assistant Collector of Central

Excise and Others, of the Calcutta High Court, National Fire Works Factory v. Deputy Commercial Tax Officer reported in [1973] 31 STC 132

and Arasappa v. Commissioner of Commercial Taxes reported in [1969] 23 STC 68 .

11. We have considered the rival submissions. It is seen that ""cotton yarn"" is not defined either in the Central Act or in the State Act. As pointed

out by the learned counsel for the petitioner, ""yarn"" is defined under the Cotton Textiles (Control) Order, 1948, to mean any type of yarn

manufactured either wholly from cotton or partly from any other material. Likewise, ""cloth"" has been defined to mean any fabric made either wholly

from cotton or partly from cotton or partly from any other material. It is necessary to bear in mind that the Control Order which defined these

terms was one dealing with cotton textiles. The Cotton Textiles (Control) Order, 1948, was repealed by the Textiles (Control) Order, 1986. This

order defines "'cotton yarn'" or "'cloth'" in clause 3(7) in the following terms :

"Cotton yarn or cloth" means any type of yarn or cloth manufactured either wholly from cotton or partly from cotton and partly from any other material where cotton is predominant by weight.

These Control Orders are issued from time to time by exercising power conferred on the Central Government u/s 3 of the Essential Commodities

Act, 1955. We have also seen the circumstances under which the manufacturers of cotton yarn were obliged to blend a small percentage of staple

fibre in the manufacture of cotton yarn under statutory directions. As seen from clause 20-D(1) of the Cotton Textiles (Control) (Third

Amendment) Order, 1976, dated 21st December, 1976, the manufactures were obliged to blend staple fibre while manufacturing cotton yarn.

That clause reads as follows :

Save in accordance with a permission, in writing, issued by the Textile Commissioner, no manufacturer shall produce yarn without using man-

made cellulosic and non-cellulosic staple fibre which shall in no case be less than 10 per cent of his total fibre consumption in a quarter.

Provided that in computing the total fibre consumption the fibre used in the production specified for exports and the fibre used in the production of

yarn of 18s counts and below shall not be taken into account.

12. While deciding the issue, we have to bear the above in mind. As noticed earlier, this Court had occasion to consider whether "'cotton yarn

manufactured by blending with staple fibre up to 40 per cent will still be "'cotton yarn'" for the purpose of section 14(ii-b) of the Central Act. This

Court in T.C. No. 47 of 1974 (Deputy Commissioner (CT) v. Kandasami Spinning Mills), while confirming the order of the Tribunal in C.T.A.

No. 150 of 1972, held that the "'cotton yarn'" manufactured by blending staple fibre up to 40 per cent will still be cotton yarn. As this Court merely

affirmed the view of the Tribunal, it is necessary to point out the view taken by the Tribunal in that case. The Tribunal, in C.T.A. No. 150 of 1972,

held as follows :

..... It must also be remembered that "blended yarn" manufactured and sold by the appellants is known in the commercial circles as cotton

yarn and that the prices charged are the same for yarn manufactured wholly out of the cotton and yarn manufactured out of an admixture of cotton

and staple fibre. This circumstance would also point out that the goods in question have to be treated as "cotton yarn". There is also a certificate

issued by the Superintendent of Central Excise dated 30-11-1971 to the effect in the assessment year in question the appellants had been licensed

only to manufacture "cotton yarn" and the "cotton yarn" manufactured by the "blended yarn" (cotton mixed with staple fibre up to 40 per cent) as

well as other varieties of "cotton yarn" manufactured by them have been cleared as "cotton only" as per the Central Excise Rules. Under these

circumstances, we hold that the "cotton yarn" sold by the appellants must be held to be declared goods coming under item (ii-b) of section 14 and

liable to be assessed at 2 per cent under the Tamil Nadu General Sales Tax Act read with sections 14 and 15 of the Central Sales Tax Act.

The Revenue, though filed a petition for leave to appeal to the Supreme Court in this Court, which was dismissed, did not pursue the matter

further, and therefore, the view taken by this Court has become final. Presumably on the basis of the judgment of this Court in T.C. No. 47 of

1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills] and on the representation made by the manufacturers of "cotton yarn", the

Government, by their letter dated 7th May, 1982, informed the Secretary, South India Mills' Association as follows :

.....

Sub : Tamil Nadu General Sales Tax Act, 1959 - Sales Tax on cotton yarn containing blend of staple fibre - Reopening of assessment -

Representation - Reply sent.

Ref : Your representation No. 2673/81 dated 20-8-1981.

I am directed to invite attention to the reference cited and to state that the clarification issued by the erstwhile Board of Revenue in its B.P.Rt. No.

2265/79, dated 4-7-1979, holding that blended yarn was taxable at 4 per cent multi-point has been cancelled. A revised clarification has been

issued by the Commissioner of Commercial Taxes in his reference D. Dis. No. 9180/80 dated 17-8-1981, to the effect that blended cotton yarn is

to be assessed as cotton yarn at 3 per cent single point up to 4-12-1979 and as blended yarn (again 3 per cent single point only) from 5-12-1979

under the new entry 18 A the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. Thus the question of levy of tax on blended yarn at

4 per cent multi-point prior to 5-12-1979 does not arise.

Yours faithfully,

Sd/-.....

for Commissioner & Secretary to Government.

Thereafter, the Revenue purporting to treat ""blended cotton yarn"" as non-declared goods, introduced entry 18A to the First Schedule of the State

Act, by Tamil Nadu Act 28 of 1980. In the light of this Court's judgment in T.C. No. 47 1974 [Deputy Commissioner (CT) v. Kandasami

Spinning Mills] holding that ""cotton yarn"" manufactured by blending staple fibre up to 40 per cent will still be ""cotton yarn"" for the purpose of

section 14(ii-b) of the Central Act, it will not be open to the State Government to treat cotton yarn blended with staple fibre not exceeding 16 2/3

per cent by weight as a separate category of blended yarn and also as non-declared goods by bringing that category under the First Schedule.

Because, such a change can be made only by the Parliament by introducing appropriate amendment to section 14 of the Central Sales Tax Act.

13. We shall consider the effect of bringing ""blended yarn"" under the First Schedule by introducing entry 18A in the State Act at the appropriate stage.

14. We shall now continue to consider the issue whether the ""cotton yarn"" manufactured by the assesseees blended in small percentage with staple

fibre will still be cotton yarn or not. A Division Bench of the Andhra Pradesh High Court in T.R.C. Nos. 18, 21, etc., of 1986 batch (State of

Andhra Pradesh v. Sri Akkamamba Textile Ltd. [1990] 79 STC 357, by judgment dated 23rd February, 1989, has considered an identical issue.

In that decision, Jeevan Reddy, J., speaking for the Bench, held as follows :

..... The question is whether cotton yarn cease to be cotton yarn on account of mixing of 10 per cent of non-cotton material. In this

connection, it is necessary to notice that the Central Government had issued a statutory order called ""the Cotton Textile (Control) Order, 1948"".

As amended in 1977, the said Order provided that except where expressly permitted, no manufacturer shall produce yarn without using man-made

cellulosic and non-cellulosic staple fibre, which shall in no case be less than 10 per cent of his total fibre consumption in a quarter. It is because of

this statutory compulsion that the manufacturer had used 10 per cent of non-cotton material in manufacturing the cotton yarn. Entry 10 in the Third

Schedule reads as follows :

"Cotton yarn, but not including cotton yarn waste."

The petitioner's contention is that the very expression "blended yarn" means yarn, where artificial fibre is mixed with cotton yarn. Be that as it may,

it is admitted that there is no separate entry for blended cotton yarn. The fact remains that the goods before us is cotton yarn mixed with man-made

staple fibre to an extent of 10 per cent. Applying the test of predominance, we hold that the blended yarn concerned herein is cotton yarn within

the meaning of entry 10 in the Third Schedule to the Andhra Pradesh General Sales Tax Act. We may also mention in this regard that the reason

for placing cotton yarn in the Third Schedule is because they are goods, which are declared to be essential in the interest of inter-State trade

(declared goods). Placing the above construction would be consistent with the object and purpose underlying the placing of the said goods in the

Third Schedule.

In AIR 1956 MB 214 (Mohammad Siddiq Gautamlal v. State of Madhya Bharat), a Division Bench of that High Court, while considering the

scope of items 19 and 20 of the charging Schedule of the Madhya Bharat Sales Tax Act, has held as follows :

The literal meaning of the term "cotton cloth" would be cloth made of cotton. Where there are embellishments in the texture by making use of a

negligible quantity of other fabrics such as of jari or silk, the cloth in my opinion, will still be cotton cloth. But where the embellishment on account

of use of jari or silk or other fibre is substantial in quantity causing a substantial increase in price it would be difficult to call it cotton cloth. In my

opinion, it is in each case a question of fact as to whether a particular variety of cloth can legitimately fall within the category of cotton cloth or not.

(Para 47)

The object of granting exemption to handloom cotton cloth is to stimulate production of cheap cloth which would provide cloth to the poor and

provide employment to the people. In producing such cloth attention has to be given to popular tests and cloth of different varieties and standards

has to be produced. This will involve use of fibre such as jari or silk.

If even where a small amount of these fibres is used the cloth is to be subjected to a tax, the purpose of exemption will substantially be adversely affected. Where the quantity of fibres other than cotton is substantial and the use of it has substantially increased the value of the cloth it is difficult to call it a cotton cloth. As I held above it will in each case be a question of fact as to particular variety is a cotton cloth or not as explained above.

(Para 48)

.....

As I held above if the admixture of other material is small or negligible the essential description or quality of cloth is not altered. But if the material other than cotton is used to a substantial extent or in a manner so as to increase its value materially principle of apportionment will have to be followed as in my opinion Sales Tax Act is a fiscal statute and taxing provisions and exemptions have got to be strictly construed. The extent and value of apportionment of tax will in each case be a question of fact." (Para 78)

In [1988] 68 STC 92 (State of Orissa v. Radheshyam Gudakhu Factory)" the Supreme Court, while considering the question whether "'gudakhu is a product of tobacco, has held as follows :

..... It appears that "'gudakhu"' is a product of tobacco and that although a major part of molasses and other constituents are added to the tobacco the essential and effective ingredient remains tobacco, and therefore "gudakhu" is known as a product of tobacco in common parlance.

The High Court has referred to "gudakhu" as a form of smoking tobacco and has observed that even though it is also used as a paste for cleansing

the gums of the teeth, it would still be regarded as a product of tobacco. We may point out that the Calcutta High Court in Gulabchand

Harekchand and Another Vs. State of West Bengal and Others, has also held that "gudakhu" is manufactured out of tobacco and that its essential

character is that of a tobacco product even though molasses and other constituents are added to the tobacco and that it is commonly used for

cleansing the teeth. We are satisfied that "gudakhu" is a product which falls within the exemption covered by serial No. 35 of the Schedule to the

Orissa Sales Tax and that the High Court is right in holding that the assesseees in these appeals are entitled to that exemption.

In [1978] 41 STC 394 (Alladi Venkateswarlu v. Government of Andhra Pradesh),

the Supreme Court held and ""muramaralu"" was after all rice even though it was puffed. Likewise, ""atukulu"" even though parched was still called rice. The Supreme Court observed in the said decision as follows :

..... Even if parched rice and puffed rice could be looked upon as separate in commercial character from rice as grain offered for sale in a market, yet, keeping in view the other matters mentioned above, it could not be presumed that it was intended to exclude from entry 66 "rice", which, at any rate, had not so changed its identity as not to be describable as "rice" at all. "Muramaralu" was after all rice even though it was puffed. "Atukulu" even though parched was still called rice. We must also remember that the schedule which we have to interpret is in the English language where the term "rice" is still found in the rendering or description of "pelalu" as well as that of "muramaralu" in the English language. And, in any case, if two interpretations of a provision are possible, we think that we ought to, in such a case, apply the principle that the interpretation which favours the assessee should be preferred.

A Division Bench of the Gujarat High Court, while considering a similar issue, under the Central Excise Act, has held as follows in 1980 ELT 752

(Bhor Industries Limited v. Union of India) :

..... There, can we say that tiles in the manufacture of which 10 per cent of plastic material is used are "articles made of plastics" ? The court has got to bear in mind the part which plastic material in such a case plays. There is no doubt about the fact that the plastic material operates only as a binding agent and not the principal ingredient of the said tiles manufactured by the petitioners. What operated only as a binding agent cannot determine the basic character of the product. The real character of the product is determined, in a case of this type, by materials which are predominantly used therein. The only predominant material which is used by the petitioners in the said tiles is lime-stone. It forms 45 per cent of the total quantity of a tile. The next in importance is asbestos which forms 26 per cent. The rest of the materials are incidentally used in order to transform those two raw materials, by the process of manufacture, into tiles. (Para 8)

In our opinion, Marbled Asbestos Vinyl Floor Tiles manufactured by the

petitioners are not "articles made of plastics" because the plastic material constitutes only 10 per cent to 15 per cent of the total quantity of a tile and works only as a binding agent. It is not the principal ingredient in the said tiles. A blue paper is essentially a paper and not a blue colour merely because the latter has been used therein to impart a blue colour. A garment is essentially cloth and not thread which keeps its different parts together in the form of a garment. Therefore, the said tiles manufactured by the petitioner do not attract excise duty under item 15A(2) in the First Schedule to the Central Excises and Salt Act, 1944. They are, therefore, not liable to pay excise duty in respect of the said excisable goods under the said item. The petitioners have been classifying these goods under item 68 - the residuary item. Mr. Mehta has argued that these excisable goods may as well fall under item 22F in the First Schedule to the Act.

The notice which was issued to the petitioners and which led to the present litigation called upon them to show cause why the said tiles manufactured by them should not be classified under item 15A(2) or under item 22F. Item 22F came into force on 16th March, 1976. Because the Central excise authorities recorded a finding that the said tiles manufactured by the petitioners fell under item 15A(2), they could not record any finding in respect of the applicability of item 22F because an excisable goods would not fall under two tariff items. Mr. Andhyarujina is, therefore, justified in arguing that the show cause notice which the Central excise authorities issued to the petitioners and which has led to the present litigation has exhausted itself. However, if the Central excise authorities intend to hold a fresh enquiry into the applicability of item 22F, they may do so after issuing a fresh show cause notice to the petitioners." (Para 18)

In [1965] 16 STC 310 (Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax), on the scope of article 286(3) of the

Constitution of India, the Supreme Court observed as follows :

The meaning or the intention of clause (3) of article 286 of the Constitution of India is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with section 15(a) of the Central Sales Tax Act, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and condition contained in the law made by Parliament and the rate in the State Act would pro tanto

stand modified.

In : 1989(44)ELT613(SC) (Aphali Pharmaceuticals Ltd. v. State of Maharashtra), the Supreme Court held as follows :

A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An explanation to the Schedule

amounts to an explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition, Vol. 36, para 551 : "To simplify the

presentation of statutes, it is the practice for their subject-matter to be divided, where appropriate, between sections and Schedules, the former

setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a

Schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced." The Schedule may be used in

construing provisions in the body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all

purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency

between the Schedule and the enactment the enactment is to prevail and if any part of the Schedule cannot be made to correspond it must yield to

the Act. Lord Sterndale, in *Inland Revenue Commissioners v. Gittus* [1920] 1 KB 563, said :

"It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act

says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any

rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can

satisfy the language of the section without extending it beyond that purpose you sought to do it. But if in spite of that you find in the language of the

Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the

heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to

give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of

the Schedule contained in the Act."

The above observation was not disapproved in appeal [1921] 2 AC 81 *Gittus v. Inland Revenue Commissioners*. However, the basic principle is

that in case of a conflict between the body of the Act and the Schedule, the former prevails. In the instant case, we do not find any such conflict.

(Page 129 of STC; paras 30 and 31 of AIR)

15. In the light of the above decisions and discussions, in particular, in view of the decision of this Court in T.C. No. 47 of 1974 [*Deputy*

Commissioner (CT) v. Kandasami Spinning Mills] with which we are in agreement, we hold that the "cotton yarn" manufactured by the assesseees

notwithstanding the blending of staple fibre up to 16 2/3 per cent (with which quantity alone we are concerned in this case) will still be "cotton

yarn" within the meaning of section 14(ii-b) of the Central Sales Tax Act and, therefore, will be one of the items of goods declared by the

Parliament as goods of special importance for the purpose of article 286(3) of the Constitution of India and, therefore, all restrictions and

conditions in regard to levy of tax on sale or purchase of such declared goods, namely cotton yarn, will be governed by section 15 of the Central

Sales Tax Act.

16. Regarding entry 18A treating cotton yarn blended with staple fibre up to 16 2/3 per cent as separate category of blended yarn and also of

non-declared goods, we are of the view that that will not take away the character of cotton yarn as declared goods and the consequences thereof.

As pointed out earlier, merely declaring that cotton yarn blended with non-cellulosic fibre not exceeding 16 2/3 per cent by weight to that of cotton

yarn will be treated as non-declared goods under entry 18A will be of no consequence unless such an amendment is made by the Parliament by

appropriately amending section 14(ii-b) of the Central Act, particularly, in the light of the earlier Division Bench judgment of this Court in T.C. No.

47 of 1974 [*Deputy Commissioner (CT) v. Kandasami Spinning Mills*] which is binding on the Revenue. In this connection, the decision of the

Supreme Court in : 1989(44)ELT613(SC) (*Aphali Pharmaceuticals Ltd. v. State of Maharashtra*) is apposite and the relevant passage extracted

above clearly supports the case of the petitioners-assesseees. Therefore, even though the blended yarn is brought under entry 18A of the First

Schedule to the State Act, all the restrictions and conditions contemplated u/s 15 of the Central Act will apply in the matter of levy of tax on cotton

yarn blended with $16 \frac{2}{3}$ per cent of non-cellulosic fibre by weight and the assessment can be sustained only on that basis. We have to point out

that this aspect has not been fully dealt with by the Andhra Pradesh High Court in T.R.C. Nos. 18, 21, etc. of 1986 batch (State of Andhra

Pradesh v. Sri Akkamamba Textile Ltd. [1990] 79 STC 357. In that decision, the learned Judges have, in passing held that after the introduction

of entry 165 in the First Schedule to the Andhra Pradesh General Sales Tax Act (which is similar to entry 18A of the State Act), there will be no

room for controversy. The following are the very words of the learned Judges :

The assessment years concerned herein are no doubt difference, but all of them fall prior to July 1, 1985. The amending Act 18 of 1985 was

brought into force with effect from July 1, 1985. Entry 165, inter alia, was added in the First Schedule. Entry 165 reads as follows :

"Blended cotton yarn with non-cellulosic fibre content not exceeding $16 \frac{2}{3}$ per cent by weight to that of cotton yarn (i.e., cotton/viscose or cotton/polysonic)."

After the introduction of this entry, there is no room for controversy, since the goods concerned herein would fall clearly under entry 165. We are,

however, concerned herein with the position obtaining prior to the introduction of the said entry.

We are of the view that since the learned Judges were not, concerned with that question, they have, in passing, observed as above with which,

with respect, we are not able to agree for the reasons already given, namely, when the cotton yarn blended with certain percentage of non-

cellulosic fibre was considered as declared goods, the State cannot by itself unilaterally treat such declared goods as non-declared goods. We

accordingly answer the further question.

17. Now, about the decisions cited by the learned Additional Government Pleader, we hold that they are not at all helpful. In India Jute Co. Ltd.

Vs. Assistant Collector of Central Excise and Others, , a learned single Judge of the Calcutta High Court, while considering item 18E of the

Central Excise Tariff Act, has taken the view that the "blended cotton yarn" cannot be considered as "cotton yarn". With respect, we are not able

to agree with this view. In [1973] 31 STC 132 (National Fire Works Factory v. Deputy Commercial Tax Officer), a Division Bench of this court

held that matches will not include coloured matches or star matches for the reason that matches, popularly known, will mean only "safety matches".

In [1969] 23 STC 68 (Arasappa v. Commissioner of Commercial Taxes), a Division Bench of the Mysore High Court considered entry 8A of the

Fifth Schedule to the Mysore Sales Tax Act, 1957. The learned Judges were considering the import of the word "pure silk" in that entry. The

learned Judges held that "pure silk" will not include any addition. We are not considering an entry preceded by the word "pure". The entry under

consideration is "cotton yarn but not including cotton waste".

18. For all these reasons, we agree with the contentions raised by the learned counsel for the petitioners, and consequently allow T.C. No. 1213

of 1980. The writ petitions are ordered in the following terms :

The reopening of the assessments or fresh assessments shall be in the light of the conclusions reached by us, namely, "cotton yarn" blended with

non-cellulosic fibre up to 16 2/3 per cent by weight will still be "cotton yarn" within the meaning of section 14(ii-b) of the Central Act and

therefore, will be declared goods. Consequently, notwithstanding entry 18A of the First Schedule to the State Act, the restrictions and conditions

attached to declared goods as contemplated u/s 15 of the Central Sales Tax Act will squarely apply. The writ petitions except W.P. Nos. 649 and

650 of 1981 are ordered accordingly. The Writ Petition Nos. 649 and 650 of 1981 are allowed. There will be no order as to costs in all these

cases.

19. Petitions allowed.