

(1989) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 18, 21, 23, 24, 27, 31, 42, 46, 62, 86 and 241 of 1986

State of Andhra Pradesh

APPELLANT

Vs

Sri Akkamamba Textiles Ltd. and Others

RESPONDENT

Date of Decision : 23-02-1989

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 33BB, 9

Citation : (1990) 79 STC 357

Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant; S. Parvatha Rao, for the Respondent

Judgement

Jeevan Reddy, J.—The question in this batch of tax revision cases is whether cotton yarn in which the non-cotton content is 10 per cent is "cotton yarn" within the meaning of entry 10 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 ?

2. The assessment years concerned herein are no doubt different, 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 2/3 per cent by weight to that of cotton yarn (i.e., cotton/viscose or cotton/polysonic)."

3. 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. The question is whether cotton yarn ceases 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 Textiles (Cotton) Order, 1948". As amended in 1977, the said Order provided that except where expressly permitted, no manufacture 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 manufacture had used 10 per cent of non-cotton material in manufacturing the cotton yarn. Entry 10 in the Third Schedule read as follows :

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

4. 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 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.

5. The learned Government Pleader submitted that at all points of time "blended yarn" was treated as different commodity than cotton yarn. According to him "blended yarn" is treated as general goods, but second and subsequent sales were exempted by an exemption notification issued u/s 9 of the Act. This aspect, in our opinion, is not very much substance is still cotton yarn within the meaning of entry 10 of the Third Schedule, i.e., prior to July 1, 1985.

6. The tax revision cases accordingly fail and are dismissed. No order as to costs. Advocate's fee Rs. 100 in each.

7. This order does not preclude the authorities from looking into and passing appropriate orders in the light of section 33-BB of the Andhra Pradesh General Sales Tax Act.

8. Petitions dismissed.