(1973) 04 OHC CK 0010

In the Orissa High Court

Case No : S.J.C. No. 73 to 75 of 1972

State of Orissa — APPELLANT

Vs

Kejriwal Cloth Mart — RESPONDENT

Date of Decision : 27-04-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 24(1), 5(1), 6

Citation : (1973) 39 CLT 631

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

R.N. Misra, J.—The learned Member. Sales Tax Tribunal. Orissa, has referred? the following three questions u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the Act) for determination of this Court:

(1) Whether in the facts and circumstances of the case the expression excluding woollen fabrics and handmade kambals and hand-loom and power-looms woven woollen cloth mentioned in serial 46 of the List of taxable goods exempts from tax the sale of such commodities not only excludes them from tax at 7 per as contemplated therein?

(2) Whether in the facts and circumstances of the case the Tribunal was right in inferring that sale of hand-made kambals is exempted from tax because they are classed in the same category as woolen fabrics and hand-loom and power-loom woven woolen cloth which are exempted from tax as mentioned in serial 19 of the List of tax free goods?

(3) Whether the sale of hand-made Kambals is exigible to tax under the provisions of the O.S.T. Act?

2. The facts germane for answering the references as found in the Statement of facts sent to this Court are these: The Assessee is a registered dealer at

Sambalpur and carries on business in mill-made and hand-loom cloth hosiery goods and hand-loom rugs, etc He was assessed to sales tax for the years ending 1963-64. 1964-65 and 1965-66. The Assessee had not paid tax on the turnover of sales of hand-loom rugs treting the same to be tax-free. After assessments were completed the escapement of assessment relating to the turnover of rugs was noticed and action u/s 12(8) of the Act was taken. The Assessee contended before the Sales Tax Officer that the Kambals in question were not exigible to sales tax. The Assessee relied upon serial No. 19 of the Schedule of Tax-free goods which exempted sale of hand-loom or power-loom woolen cloth from tax. Reliance was also placed on serial No. 46 of the Schedule of that notification to support the contention that kambals were not taxable at all.

The Sales Tax Officer rejected the Assessees? contention and held that hand-loom kambals were liable to tax at 5 per cent. The Assessee?s appeals before the first Appellate authority were dismissed. In second appeal the Tribunal was of the view that hand-loom rugs were exempted from tax and accordingly directed the lessening of the assessment of that turnover. Thereupon the State of Orissa asked fer referring the aforesaid three questions to this Court.

3. The Tribunal was absolutely justified in repelling the Assessee?s contention based upon serial 19 of the List of tax free goods. Serial 19 of the tax-free Schedule and serial 46 of the taxable schedule are as hereunder:

Serial Number

Description of Goods

Conditions and exceptions subject to which exception has been allowed.

19

Hand-loom or power loom woven cloth of all kinds excepting pure silk cloth of handloom origin when the price exceeds rupees ten a piece.

46

All woollen goods including Seven Per Cent. woollen, yarn and thread but excluding woollen fabrics and hand-made kamabls and handloom and power-loom woven woollen cloth.

Under the Act, sale of goods is taxable. Section 5(l) declares that the tax payable under the Act is 5 per cent of the taxable turnover. Power has been vested in State Government under the first two provisos to Sub-section (1) of that section to vary the rate of taxation, by notification. u/s 6 provision has been made conferring jurisdiction on the State to exempt from tax the sale of any goods or class of goods by notification. The notification No. 33927-CTA 130/57-F dated 30th December. 1957, has been made in exercise of the powers vested in the State of Orissa u/s 5(1), first proviso of the Act, while the other notification of the same date bearing No. 33925 CTA 120/57-F has been made in exercise of the power vested u/s 6 of the Act, Law is when settled that exemption provisions from taxation have to be strictly construed. The Tribunal is entirely right, in our opinion, that Kambals in the absence of a definition have to be given their meaning of common parlance and therefore, cannot be taken to be hand-loom or power-loom woven cloth.

The shorter Oxford English Dictionary states that a blanket is a undyed woollen stuff used for clothing. Blanket also means a large oblong sheet of soft less woollen cloth used chiefly as a bed covering. We are not prepared to adopt this meaning because the notification does not refer to blanket but to Kambal. Kambal in common parlance in this part of the country is a hard (sic) and certainly cannot be taken to be included in the classification of cloth as ordinarily understood. Serial 19 of the tax-free List, therefore, is not at all attracted for exempting the turnover of sale of Kambal from tax.

4. On a strict construction of serial 46 we hold that while the ordinary rate of taxation as indicated in Section 5(1) of the Act is 5 per cent. Government in exercise of their powers under the first proviso to that sub-section have notified that the turnover on all woollen goods including woollen yarn and thread would be liable at 7 per cent and they have clarified that the turnover on the sale of hand-made Kambals and hand-loom and power-loom woven woolen cloth would not be exigible to the higher rate of tax as having been excepted from the purview of the notification. Between serial 19 of the tax-free list and serial 46 of the taxable list, there is no inconsistency. Serial 33 of the tax free list deals with mill-made woollen cloth while serial 46 of the taxable list deals with all woollen goods including woollen yarn and thread. These two serials have to be read in such a way that there would be no inconsistency.

5. In view of what we have stated above our answers to the questions referred to us are:

(1) The expression excluding woollen fabrics and hand-made kambals and handloom and power-loom woven woollen cloth in serial 46 of the List of taxable goods, excludes from the operation of the notification the named items but the turnover on sales of those items is not exempted from taxation. The rate of tax indicated u/s 5(1) of the Act is applicable.

(2) The tribunal was not right in inferring that sale of hand-made kambal is exempted from tax.

(3) Answer to this question is already covered by the first question, that is, sale of hand-made kambal is exigible to tax u/s 5(1) of the Act.

The Assessee did not appear before us in spite of notice. We make no order as to costs of these references.

B. K. Ray, J.

6. I agree.

