

(1970) 02 OHC CK 0026

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 48 to 60 of 1966

State of Orissa

APPELLANT

Vs

Sri Jaikrishna Rathi

RESPONDENT

Date of Decision : 04-02-1970

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 6

Citation : (1970) 26 STC 76

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : Standing Counsel for Sales Tax, for the Appellant; N.N. Bhattacharya and U.N. Misra, for the Respondent

Judgement

G.K. Misra, C.J.—These references relate to quarters ending 31st December, 1959, to 31st December, 1962. Two questions have been referred. They are:

(1) Whether in the facts and circumstances of the case hand printed mill-made saris on which a second processing is done through manual labour before they are marketed for sale, are mill-made cloth within the meaning of item No. 35 of Notification No. C.T.A. 56/57-32518-F dated 16th December, 1957 and exempt from sales tax.

(2) Whether durries are carpets within the meaning of item No. 40 of Notification No. 33927 C.T.A. 130/57-F dated 30th December, 1957 and as such are taxable under the Orissa Sales Tax Act.

The second question is covered by the decision of this court in *State of Orissa v. Modi Stores*. [1969] 24 S.T.C. 255. It is accordingly answered by saying that durries are "carpets" within the meaning of item 40 of the notification dated 30th December, 1957 and, as such, are taxable.

2. To answer the first question a reference is to be made to serial No. 35 of Notification No. C.T.A. 56/57-32518-F, dated 16th December, 1957, which reads as follows :-

35. All mill-made cotton, woollen or silken including rayon, art silk or nylon, but excluding pure silk cloth.

By virtue of Section 6 of the Orissa Sales Tax Act, the goods covered by serial No. 35 are exempted from tax.

3. The opposite party carries on the business of selling mill-made cloth which is dyed and/or printed by hand after it comes out of the mill. The question for consideration is whether after such dyeing or/and printing, the cloth continued to be mill-made cloth, or ceased to be so because of the dyeing or printing made subsequent to its coming out of the mill.

4. The learned Tribunal answered the question against the revenue. The learned Standing Counsel placed reliance on *Pravin Bros. v. State of Gujarat* [1964] 15 S.T.C. 478 and *Ahmedabad Silk Factory v. Commissioner of Sales Tax, Gujarat* [1966] 18 S.T.C. 23 in support of his contention that after dyeing or printing, such cloths lost their distinctive character as mill-made cloths and as such would not come within the ambit of the exemption.

5. The matter is concluded by the decision of the Supreme Court in *Kailash Nath and Anr. v. State of Uttar Pradesh* [1957] 8 S.T.C. 358. In that case, the dealer was Messrs Kanpur Textiles Mills Ltd. a public limited company. The provisions of Section 3 of the Uttar Pradesh Sales Tax Act, which was the charging section, were not to apply to sales of cotton cloth or yarn, manufactured in Uttar Pradesh, made on or after 1st December, 1949, with a view to export such cloth or yarn outside the territories of India, on condition that the cloth or yarn was actually exported and proof of such export was furnished. A contention was advanced before their Lordships that when a quantity of cloth sold by the dealer was printed, coloured or dyed, it got transformed into some other material and therefore what was exported was not the same cloth. The argument was developed by saying that by such printing and dyeing the original cloth got metamorphosed into a different material, with incidents not the same and the appearance and colour changed. Their Lordships rejected this contention as unsound. They were of the view that the words "such cloth or yarn" would mean cloth or yarn manufactured in Uttar Pradesh and sold. *State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory and Ors.* [1953] 4 S.T.C. 205 which was a case on cashew-nuts, was cited in support of the aforesaid contention. But that case was distinguished on the ground that raw cashew-nuts when processed changed their character and hence that decision had no application. In view of this pronouncement of the Supreme Court, it would be redundant to examine other decisions at length.

6. The two decisions relied on by the learned Standing Counsel may now be examined. In *Pravin Bros. Vs. The State of Gujarat*, . the facts were completely different. There were two entries under consideration. Entry 15 of Schedule A to the Bombay Sales Tax Act related to cotton, fabrics as defined in item 19 of the First Schedule to the Central Excises and Salt Act, 1944. As the expression

"cotton fabrics" was of a general nature, their Lordships held that cut pieces would not cease to be cotton fabrics even if they were used for saris. Entry 3 of Schedule E, however, specifically dealt with saris embroidered or otherwise decorated. So, if a cut piece from a tacca (which means a than) was embroidered, it clearly came within the ambit of entry 3. That case was, therefore, disposed of on the fundamental principle that an article coming within a specific entry must be excluded from a general entry. It cannot be an authority for the proposition invoked here, whether cloth dyed or printed after coming out of the mill would come within the meaning of mill-made cloth. Similarly Ahmedabad Silk Factory v. Commissioner of Sales Tax [1966] 18 S.T.C. 23 is also distinguishable on facts.

7. We are clearly of opinion that this case is concluded by the principle laid down in Kailash Nath and Anr. v. The State of Uttar Pradesh [1957] 8 S.T.C. 358. In that view of the matter the first question must be answered in the affirmative, that is hand-printed mill-made saris on which a second processing is done through manual labour, before they are marketed for sale, are mill-made cloths.

8. In the result, the references are discharged, but in the circumstances there will be no order as to costs.

S. Acharya, J.

I agree.