(1990) 06 MAD CK 0036

In the Madras High Court

Case No : Tax Case (R) No. 977 of 1980

State of Tamil Nadu APPELLANT

Vs

R.V. Krishniah Chetty and Sons RESPONDENT

Date of Decision : 25-06-1990

Acts Referred:

Citation : (1990) 06 MAD CK 0036

Hon'ble Judges : Venkataswami, J;Raju, J

Bench : Division Bench

Advocate : R. Karuppan, A.G.P. Taxes, for the Appellant; C. Natarajan, for the Respondent

Judgement

Raju, J.—The question for consideration in this tax case filed by the State is as to whether sewing thread falls within the classification of "cotton yarn". The respondent/assessee was assessed, among other things, on a turnover of Rs. 3,71,405.98 representing the second sales of cotton yarn and a turnover of Rs. 37,127.06 at 4 per cent representing the first sales of thread. In respect of the second item of turnover, the claim of the assessee was that sewing thread is only yarn assessable to tax at 3 per cent and not at the rate assessed by the assessing authority. On appeal, the appellate authority came to the conclusion that sewing thread is taxable at multi-point. The contention raised in respect of the other item of turnover was also rejected. On further appeal by the assessee, the Tribunal held that sewing thread falls within the expression "cotton yarn" and is not a different commodity and, therefore, not taxable as a multi-point commodity. Hence, the Tribunal ordered that the second sales of cotton yarn representing the first item of turnover referred to above be exempt and that the second item of turnover referred to above be assessed at 3 per cent as first sales of cotton yarn.

2. Aggrieved against the said orders of the Tribunal, the State has filed the above tax revision case.

3. The learned Additional Government Pleader (C.T.), appearing for the Revenue, relied upon the two decisions reported as Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Khader Kunhi Sons [1976] 37 STC 227 and Pappu & Sons v. State of Kerala [1981] 48 STC 460 of the Kerala High Court and the decision reported in Mohta Trading Co. v. Commissioner of Sales Tax [1976] 38 STC 11 of the Allababad High Court wherein it has been held that sewing thread does not fall within the scope of the entry "cotton yarn". On the other hand, Mr. C. Natarajan, learned counsel appearing for the assessee, relied upon the three decisions of this Court reported in Madura Mills Company Ltd. v. Government of Madras [1970] 25 STC 407 Muthusavari Pillai & Sons v. State of Tamil Nadu [1977] 39 STC 359 and State of Tamil Nadu v. Vaithilingam [1980] 46 STC 297 and the decisions of other High Court reported in Srinivasa Distributing Agencies v. State of Orissa [1981] 48 STC 453 (Ori) and State of Orissa v. Voona Suru Patra & Sons [1982] 51 STC 410 (Ori) and State of Orissa v. Cuttack Monihary Store [1982] 51 STC 411 (Ori) and contended that having regard to the ratio of the above decisions, sewing thread does not cease to be "cotton yarn" and, therefore, is liable to be taxed only as declared goods at single point.

4. So far as the decisions of the Kerala High Court are concerned, they expressly struck a note of dissent from the decision of this Court reported in Madura Mills Company Ltd. v. Government of Madras [1970] 25 STC 407. Even that apart, we are inclined to agree with the ratio of reasoning adopted by this Court in the decisions referred to above in interpreting the entry "cotton yarn". So far as the other judgment pressed into service on behalf of the State is concerned, we are of the view that a too narrow construction of the entry has been adopted. The Allahabad High Court, which dealt with the case reported in Mohta Trading Co. v. Commissioner of Sales Tax [1976] 38 STC 11, further appears to have been concerned more with the particular notification of exemption in that State which exempted "cotton yarn on cops and cones". While so construing, the court proceeded that inasmuch as there is no separate entry in respect of the item "cotton sewing thread on cops and cones", the benefit of exemption as per the notification in issue in that case would not be granted to the assessee therein. Coming to the decisions relied upon by the counsel for the assessee, we find that the decisions of the Orissa High Court reported in Srinivasa Distributing Agencies v. State of Orissa [1981] 48 STC 453 State of Orissa v. Voona Suru Patra & Sons [1982] 51 STC 410 and State of Orissa v. Cuttack Monihary Store [1982] 51 STC 411 took the view that sewing thread is no different from cotton yarn and it does not lose its character or attribute as cotton yarn. The decision in State of Orissa v. Voona Suru Patra & Sons [1982] 51 STC 410 also refers to a decision of the Calcutta High Court reported in Indian Ball Thread Co. Ltd. v. Commercial Tax Officer ILR [1963] Cal 168 wherein the Calcutta High Court also took the view that yarn and sewing thread are one and the same commodity. Coming to the decision of this Court in Madura Mills Company Ltd. v. Government of Madras [1970] 25 STC 407, a Division Bench of this Court which was concerned with the issue as to what is the nature and character of "cotton tyre cord warp"

manufactured by the assessee concerned, ultimately held that the product continues to be cotton yarn. In the decision reported in M. Muthusavari Pillai and Sons Vs. The State of Tamil Nadu, again another Division Bench of this Court, which was concerned with the issue as to whether cotton bandings and cotton ropes sold by the assessee concerned fall within the definition of "textiles" or "cotton yarn", held that yarn does not lose its character as yarn merely by reason of its consisting of a bunch of threads, as in the case of doubling and twisting together of two or more threads to make a stronger or firmer thread in order to manufacture a specified kind of textile. The learned Judges held that a bunch of spun thread could also come within the definition of "cotton yarn" if it can be used for the manufacture of any textile. In the other decision reported in State of Tamil Nadu v. Vaithilingam [1980] 46 STC 297 this Court held that having regard to the entry which uses the expression "cotton yarn", the product sold by the assessee in that case known as cotton thread would continue to be cotton yarn. Thus having regard to the ratio of the decisions referred to above of our High Court, which are very much binding on us, we have no difficulty in coming to the conclusion that sewing thread does not lose its character as cotton yarn and continues to retain its identity and character as cotton yarn notwithstanding the fact that they are sold for being used as sewing thread. In our view, sewing thread is no different from cotton yarn and they are one and the same commodity and consequently we agree with the conclusions of the Tribunal, reject the contention of the State and order that the tax revision case be dismissed. In the circumstances, there is no order as to costs.

5. Petition dismissed.