

(1985) 03 MAD CK 0065

In the Madras High Court

Case No : T.C. No. 582 of 1978 (Revision No. 186 of 1978)

State of Tamil Nadu

APPELLANT

Vs

Venus Trading Company

RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 8

Citation : (1986) 9 ECC 298 : (1986) 26 ELT 731 : (1986) 61 STC 345

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bhaktavatsalam, Additional Government Pleader, for the Appellant; N. Inbarajan for C.S. Chandrasekra Sastry, C. Venkataraman and C. Natrajan, for the Respondent

Judgement

Ratnam J.

1. In this revision petition filed u/s 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act), at the instance of the State of Tamil Nadu, the question that arises for consideration is whether the sales turnover of Rs. 41,189.80 relating to the sales of stove wicks is not exigible to tax u/s 8 of the Act for the assessment year 1975-76. The assessee (respondent herein) is a dealer in pressure cooker, glassware, flask, etc. For the assessment year 1975-76, a total and taxable turnover of Rs. 10,05,986.42 and Rs. 4,19,635.47 respectively was declared by the assessee. On a verification of the accounts of the assessee, the assessing authority found that the total turnover was Rs. 9,72,067.97 inclusive of a turnover of Rs. 41,189.80 referable to sales of cotton wicks used in stoves. Certain other defects were also noticed in the accounts and the assessing authority issued a notice proposing to determine the total and taxable turnovers to the best of its judgment at Rs. 9,80,400.67 and Rs. 4,69,217.97. In the objection letter dated 24th December, 1976, amongst others, the assessee claimed that according to the amended entry in item 4 under the Third Schedule cotton fabrics are exempt from tax and stove wicks

being braided cotton cord would be exempt from tax. The assessing authority noticed that item 4 under the Third Schedule of the Act had been amended with effect from 1st April, 1974, and found that the assessee has not proved that the stove wicks would fall under "cotton fabrics" as defined in item 19 of the Central Excises & Salt Act, 1944, and therefore, the turnover relating to the sale of stove wicks should be included in the taxable turnover. On appeal by the assessee to the Appellate Assistant Commissioner, he took the view that braided cords and/or stove wicks are not found in item 19, 21 or 22 of the First Schedule to the Central Excises & Salt Act, 1944, and, therefore, the claim of the assessee that the stove wicks should be treated as braided cords falling under "cotton fabrics" cannot be countenanced and the claim for exemption u/s 8 of the Act was therefore not in order. In that view, the inclusion of the sales turnover of Rs. 41,189.80 relating to sale of stove wicks in the assessable turnover of the assessee was upheld. Not satisfied with this, the assessee preferred an appeal before the Sales Tax Appellate Tribunal, Madras. The Tribunal, however, differed from the conclusions reached in this regard by the assessing authority as well as the appellate authority and found that the stove wicks made of cotton would fall within "cotton fabrics" as described in item 19 of the Central Excises & Salt Act, 1944. Consequently, the inclusion of a turnover of Rs. 41,189.80 in the taxable turnover of the assessee was deleted. It is the correctness of this order of the Tribunal that is challenged by the State in this revision petition.

2. The learned Additional Government Pleader contended that the Tribunal was in error in holding that cotton wicks of the kind sold by the assessee will fall under entry 4 of the Third Schedule of the Act as neither in common parlance nor in commercial parlance, cotton wicks can be considered as "fabrics". On the other hand, the learned counsel for the assessee submitted that the stove wicks sold by the assessee are made of cotton thread by bonding and braiding the threads and the wick thus fabricated out of cotton would appropriately fall under the head "cotton fabrics" in item 19 of the First Schedule to the Central Excises & Salt Act, 1944. Reliance in support of this was placed by the learned counsel for the assessee on several decisions which we shall notice later in the course of this judgment.

3. In order to appreciate the rival contentions, it would be necessary to briefly notice the relevant provisions of the Act as well as the Central Excises & Salt Act, 1944. u/s 8 of the Act, subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable to pay any tax under the Act in respect of such goods. Item 4 of the Third Schedule as it stood at the time relevant for the assessment year in question read as under :

"Cotton fabrics, woollen fabrics, and rayon or artificial silk fabrics, as defined in item 19, 21 and 22 respectively of the First Schedule to the Central Excises & Salt Act, 1944 (Central Act I of 1944)."

Items 21 and 22 of the First Schedule to the Central Excises & Salt Act, 1944,

relate to woollen fabrics and man-made fabrics and have no application to this case. Item 19 as it stood at the relevant time alone is relevant and it runs as under :-

"Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and include dhoties, sarees chaddars, bed-sheets, bed-spreads, counterpanes, table cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials, but does not include any such fabric if it contains -

(i) 40 per cent or more by weight of wool;

(ii) 40 per cent or more by weight of silk;

(iii) 60 per cent or more by weight of rayon or artificial silk; or

(iv) 50 per cent or more by weight of jute (including Bimlipatam jute or mesta fibre)."

The rest of the entry is not every material for our purpose. We have to examine the question whether the stove wicks sold by the assessee would fall under the head "cotton fabrics" within the meaning of item No. 19 of the First Schedule to the Central Excises & Salt Act, 1944, and if it does, then, it would also fall within item 4 of the Third Schedule to the Act so as to exempt those goods from the levy of sales tax under the Act by virtue of the operation section 8 of the Act. There is no dispute that the wicks sold by the assessee were wholly made from cotton, and therefore, the exceptions enumerated under (i) to (iv) under item 19 would not apply. The only other a question is whether cotton stove wicks would be cotton fabrics within the meaning of item No. 19 extracted above. A brief reference to the meaning of the expression "fabric" at this stage would be appropriate. The word "fabric" has been defined to cover all textiles, no matter how constructed, how manufactured or the nature of the material from which it was made and the expression "textile" is described as "any product manufactured from fibres through twisting, interlacing, bonding, looping or any other means, in such a manner that the flexibility, strength and other characteristic properties of the individual fibres are not suppressed". (Mercury Dictionary of Textile Terms). In the Man-Made Textile Encyclopedia (1959), "fabric" is defined as "a collective term applied to cloth no matter how constructed or manufactured and regardless of the kind of fibre from which made. In structure it is planar produced by interlacing yarns, fibres or filaments. Textile fabrics include the following varieties, bonding, felted, knitted, braided and woven." The Fairchild's Dictionary of Textiles (1959) refers to "fabric" as "a cloth that is woven or knit, braided, netted, with any textile fibre...." and "textile" is said to refer to "a broad classification of any material that can be worked into fabric, lace and crouched goods." "Textile" is defined in "Textile Terms and Definitions" to "any manufacture from fibres, filaments, or yarns, natural or artificial, obtained by interlacing". Earlier we have seen how the stove wicks sold

by the assessee are wholly made of cotton and the Tribunal has also noticed this in paragraph 4 of its order. The stove wick is made by using the cotton threads and by braiding them as to evolve a pattern and make them into a product of utility. Though in a sense there is no interlining or interlacing of the threads and in that sense, the stove wick is not woven as to describe it a textile, yet, it is not the application of warp and woof pattern of thread alone that would make weaving. The bonding together of cotton fibres in the shape of a wick by a process of braiding leads to a pattern and a product of utility and even if the end-product is not obtained by resorting to weaving as commonly understood, nevertheless, it would be a fabric resulting from the bonding of cotton fibres by a process of braiding. We are also of the view that the stove wicks having been fabricated out of cotton will fall within the expression "cotton fabric". Item 19 earlier extracted is an inclusive entry and though it may be that some of the articles included therein under "cotton fabrics" may not in common parlance be so known or called, nevertheless, item 19 is so defined as to take within its sweep cotton fabrics popularly known and recognised as such and also other kinds of fabrics. We are therefore of the view that the cotton stove wicks sold by the assessee would fall within the scope of "cotton fabrics" in item 19 of the First Schedule of the Central Excises & Salt Act, 1944.

4. We may now briefly refer to the several decisions to which our attention was drawn. In *State of Tamil Nadu v. T. T. Gopalier* [1968] 21 STC 451, the question arose whether the term "weaving" is confined to the process of weaving of threads into interlocking pattern and would not extend to any form of using the threads as to evolve a distinct pattern resulting in a product of utility. This court expressed the view that weaving will include weaving of threads into interlocking patterns and is not necessarily restricted to weaving on a loom only using the warp and woof pattern of thread and that any form of using threads so as to evolve a pattern and make them into a product of utility will fall within the definition of "weaving". This decision also clearly lays down that the braided cord is a textile and if it is textile, no matter how it is constructed or how it is manufactured, it would be a fabric as a whole for purposes of item 19 of the First Schedule to the Central Excises & Salt Act, 1944. In *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Printing Tape Factory* [1971] 28 STC 431, the question of exemption u/s 8 of the Act with reference to tapes made of threads pasted together without employing the process of interlocking or interlacing the threads came to be considered. Though in that case, the tape as such was not woven, nevertheless, this court took the view that the tape can be produced without resorting to warp and woof pattern but by holding the threads together lengthwise and it would suffice to constitute weaving, if the threads are bound together in order to produce a pattern or fabric or tape. Though this decision was rendered with reference to entry 4 of the Third Schedule as it stood prior to its amendment on 1st April, 1974, yet, the principle laid down would be applicable with reference to the question whether cotton stove wicks would be cotton fabrics falling under item 19 of the First Schedule to

the Central Excises & Salt Act, 1944. *Narasimha Agencies v. State of Tamil Nadu* [1977] 40 STC 217 had to consider the question whether the collar stiffening materials would be "cotton fabric" falling within the meaning of item 4 of the Third Schedule to the Act and within the scope of section 14(iiia) of the Central Sales Tax Act, 1956. After referring to the cases in *State of Tamil Nadu v. T. T. Gopalier* [1968] 21 STC 451 and *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Printing Tape Factory* [1971] 28 STC 431 and the manufacturing process applied to the cotton material to make it useful in stiffening collars in the manufacture of ready-made shirts, it was held that though when a manufacturing or other operation is carried on the cloth, it ceases to be a textile within the scope of item 4 of the Third Schedule, as it then stood, yet, it would be a cotton fabric under item (iia) of section 14 of the Central Sales Tax Act, 1956. In that context, it was pointed out that the circumstance that the stiffening material is prepared out of cotton and put together by a manufacturing process, would not take that out of the category of cotton fabrics. Here also, by the process of braiding, cotton fibres are transformed into a stove wick for use in homes but on that account, it does not cease to be a cotton fabric made out of cotton. In *Narayan Venkat & Co. v. State of Andhra Pradesh* [1978] 41 STC 437, the assessee contended that cotton rags sold by it fall within the definition of "cotton fabrics" in item 19 of the First Schedule to the Central Excises and Salt Act, 1944, and, therefore, exempt from sales tax under item 5 of the Fourth Schedule to the Andhra Pradesh General Sales Tax Act, 1957. In upholding this contention, it was pointed out that it would suffice to make an article "cotton fabric", if it is manufactured wholly or partly from cotton, as stated in item 19 of the First Schedule to the Central Excises and Salt Act, 1944, and the fact that subsequently the cotton fabric was reduced to rags would not make any difference and such rags, on that account, would not cease to be cotton fabrics. In so holding, emphasis has been laid upon the manufacture or fabrication out of cotton and not the shape of the fabric or the use to which it is put, etc. We are of the view that this decision also supports the case of the assessee, in that, the cotton wicks have been fabricated out of cotton and merely because the product had taken the shape of wick, it does not cease to be cotton fabric. In *State of Tamil Nadu v. Navinchandra and Company* [1978] 42 STC 423, the question was whether cotton belts used for transmitting power generated by electrically operated motor would be "cotton fabric". There also it was not disputed that the belt was made of cotton, but the court ruled that anything fabricated out of cotton can be called cotton fabric. We have earlier pointed out that in this case also the stove wicks have been fabricated out of cotton by braiding and having been so fabricated, would fall within the definition of "cotton fabric" as per the decision referred to earlier. The Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, was concerned with the question whether rayon tyre cord fabric is a rayon fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, and exempt from the Central Sales Tax Act. Pathak, J., after referring to the dictionary meanings of the words "fabric", "textile", etc., pointed out that rayon tyre cord fabric has to be regarded

as textile fabric, though rayon tyre cord is not directly employed for the fulfillment of the domestic needs like cotton, silk, woollen and rayon fabrics used as wearing apparel or furnishing material, and that rayon tyre cord fabric would fall within "rayon fabric" and was clearly exempt from the provisions of the Rajasthan Sales Tax Act, 1954, and also from the Central Sales Tax Act. We are of the view that this decision would govern this case also. *State of Gujarat v. Ghanshyam Stores* [1982] 49 STC 117 considered the question whether the interlining collar cuttings made out of cotton were cotton fabrics covered by entry 37 and entry 51 of Schedule I to the Gujarat Sales Tax Act, 1969, and entry 19 of the Central Excises and Salt Act, 1944. It was pointed out that the cutting of cotton cloth into the required size and shape would not make the end-product a different article than cotton fabric and that the impregnation of the cloth with chemical compounds would not take it outside item 19 of the Central Excises and Salt Act, 1944, and therefore, they would fall under entry 37 of Schedule I to the Gujarat Sales Tax Act, 1969, and hence exempt from sales tax. The principle of this decision would also support the case of the assessee that the sale of the stove wicks fabricated out of cotton would still fall within "cotton fabrics" under item 19 of the First Schedule to the Central Excises and Salt Act, 1944.

5. The Allahabad High Court in *Palco Lining Company v. Sales Tax Officer, Sector IV, Allahabad* [1983] 54 STC 255, had occasion to consider whether collar linings made of two pieces of cloth cut and pressed together on sticking to the other and with no stitching at all in it and which cannot be used as it is as a collar, would cease to be cotton fabric. After examining the details of the process employed, the court opined that the cutting to shape of a collar or the affixing of one piece to the other, does not affect its character as cotton fabric and relied upon the decision of the Supreme Court in *Maharaja Book Depot Vs. State of Gujarat*, . In that decision, the question arose whether the exercise books made out of paper were covered by the expression "paper" u/s 2(a)(vii) of the Essential Commodities Act and item 13 of Schedule I to the Gujarat Essential Articles Dealers" (Regulation) Order, 1971. The Supreme Court observed thus :

"..... It cannot be disputed that an exercise book is nothing but a collection of sheets of paper (blank or lined) stitched together by a piece of string or pinned together with pins of a stapler and is a substance used for writing and, therefore, would clearly fall within the item "paper". The test would be whether because of stitching or pinning them together such a collection of sheets loses its identity as paper. The answer must be in the negative. Looked at from this angle it is difficult to accept the contention that an exercise book is a distinct commodity other than paper....."

Apply this test, collar lining was held to be cotton fabric comprised within the term "cotton fabric of all kinds" and entitled to exemption from tax. The decision in *State of Gujarat v. Ghanshyam Stores* [1982] 49 STC 117 was also referred to and applied by the Allahabad High Court to conclude that the collar lining would fall within "cotton fabric".

6. We thus find that even in cases where other operations have been carried on the cloth to convert it into stiffening collar or collar linings, the courts have taken the view that the material continues to retain its characteristics as cotton fabric. This position would be a fortiori in this case, where apart from braiding the cotton threads or fibres into wicks for use in stoves, no other operation has been carried on. On a due consideration of the facts and the circumstances as well as the principles laid down in the several decisions referred to earlier, we are clearly of the view that the cotton stove wicks sold by the assessee would squarely fall within "cotton fabrics" in item 19 of the First Schedule of the Central Excises and Salt Act, 1944, and consequently would fall within item 4 of the Third Schedule of the Act and exempt from sales tax u/s 8 of the Act. Therefore, the Tribunal was right in the view it took. Accordingly, we dismiss this tax revision case. There will be no order as to costs.