(1991) 02 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 411 of 1983

Technological Institute of Textiles, Bhiwani APPELLANT

Vs

Municipality, Bhiwani RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Citation : (1991) PLJ 255 : (1991) 2 RRR 549

Hon'ble Judges : J.V.Gupta;CJ., J and R.S.Mongia, J

Advocate : K.L. Malhotra, Advocate, G.C. Garg, Advocate,, Advocates for appearing Parties

Judgement

R.S. Mongia, J.

1. This judgment will dispose of Letters Patent Appeals Nos. 411, 412 and 548 of 1983, as these arise out of the same judgment of the learned Single Judge and common question of law and fact is involved.

2. Facts are being taken from L.P.A. No. 411 of 1983, arising out of the judgment in C.W.P. No. 5766 of 1975.

3. Briefly the facts of the case are that the appellantThe Technological Institute of Textiles, Bhiwani, import "Staple Fibre" from outside the State of Haryana. It has been importing the said fibre for more than 10 years prior to the filing of the writ petition in this Court. The appellants had been paying octroi on the said import under Entry No. 52 of the Octroi Schedule of Municipality of Bhiwani (hereinafter referred to as ''the Municipality'') which was calculated at the rate of Rs. 0.35 per 100 Kilograms of import. In 1967, the Schedule of the Municipality was amended and Entry No. 48A was introduced, in terms of which manmade fibres like nylon and terene were made liable for octroi duty at the rate of Rs. 2.10 per 100 Kilograms. The case as put forth in the petition was that even after the inclusion of Entry 48A in the Schedule of the Municipality of Bhiwani, the Municipality continued to charge the appellant octroi duty on the import of staple fibre at the rates stipulated by Entry 52.

4. In the month of May, 1972, the Municipality stopped charging octroi on staple fibre and instead began to issue 05 Forms to the appellant Institute. Form 05 which is prescribed under Rule V18(2) of the Municipal Account Code (Octroi) is issued when either the consignment is one which the Octroi Moharrir was not empowered to assess or is such in respect of which the importer disputes the said Moharrir''s assessment. The issuance of Form 05 continued for almost three years as the Muncipality failed to make up its mind in respect of assessment of octroi duty on the staple fibre imported by the appellant. The matter had been referred to the Examiner, Local Funds (Accounts), Haryana, for his opinion. Ultimately, the Examiner, Local Funds, gave an opinion that the staple fibre was taxable under Entry 48A of the Octroi Schedule and not under Entry 52, and, therefore, the Municipality requested the appellant to pay octroi duty on staple fibre at the rate of Rs. 2.10 per hundred kilograms. Since the appellant did not accept this demand of Municipality, it filed a writ petition in this Court. The learned Single Judge held that no fault could be found for charging the octroi under Entry 48A of the Schedule, and, consequently dismissed the writ petition. Aggrieved by the judgment, as stated above, the appellants have come up in the present appeals.

5. To appreciate the rival contentions of the counsel for the respective parties, it would be appropriate to notice Entry 48A, which was introduced in the year 1967 and Entry 52 of the Schedule :

Rate per 100 Kilograms.

"Entry No. 48A : Manmade fibres like Nylon and Terene and hand knitting yarn made out of Nylon fibres.

Rs. 2.10

Entry No. 52 : Munj loose, jute, coir, Patha, dib and other fibres and articles made thereof including cotton waste, gunny bags, tats, hessian cloth and articles made thereof except those mentioned against No. 108.

Rs. 0.35."

6. As observed above, the learned Single Judge held that the staple fibre imported into the Municipal limits by the appellant fell under Entry No. 48A and not under Entry No. 52. The learned Single Judge came to the conclusion that the staple fibre was a manmade fibre and the indication in Entry No. 48A that the manmade fibres like nylon and terene would fall under the said entry are only illustrative and not necessarily that the manmade fibre has to be of that type.

7. The learned counsel for the appellant did not dispute that the staple fibre imported by the petitionerappellant is a manmade fibre. What he disputed was that this manmade fibre to fall under Entry 48A has to be like nylon and terene. In other words, if the fibre is made of only chemicals in a test tube in a laboratory, it is that type of manmade fibre which would fall under Entry 48A. Since, according to the learned counsel for the appellant, the staple fibre is not

made out of chemicals, but is a cellulose based and not derived completely out of the chemicals, it cannot be said that the staple fibre is like nylon and terene.

8. There is no dispute on the point that while interpreting entries in taxing statutes whose primary object is to raise revenue, resort should be had not to the scientific or technical meaning of the terms or expression used both the popular meaning attached to them by those who deal in the articles sought to be taxed. It has to be seen what the people in general understand by these terms. There is no doubt that nylon and terene as well as staple fibre are generally understood as manmade fibres. However, the question is whether staple fibre is a fibre like nylon or terene. In common parlance nylon cloth or cotton or staple cloth is differently understood and one cannot confuse one for the other. A common man when asks for nylon cloth, he understands that it is not cotton or staple. Nylon and terene may be understood to be same thing but not nylon or terene on one side and cotton and staple on the other side. It seems that when Entry 48A was introduced, the manmade fibres like nylon and terene were sought to be taken out from Entry 52 and not all manmade fibres. Otherwise, if intention was to include all manmade fibres in Entry 48A the entry would have read ''manmade fibres'' and there was no necessity to clarify the manmade fibres by the words "like nylon and terene". Apart from the above, even the Municipality for almost five years after the insertion of Entry 48A, was charging octroi from the appellant under Entry 52 and not under Entry 48A.

9. The learned counsel for the appellant argued that wherever there is doubt in a taxing statute, the Court should lean towards the interpretation which would help the taxpayers and not the revenue. In support of this contention, he cited Union of India v. Kanunga Industries, AIR 1990 S.C. 2190 and Punjab Khandsari Udyog v. Addl. E. and T. Officer and others, 1983 S.T.C. 409.

10. Mr. Chandra Singh, learned counsel for the respondents, argued that for interpreting the entries it has to be seen as to what use the imported item was being put to and since the staple fibre was also used for making cloth in which nylon and terene may also be used, the staple fibre would fall under Entry 48A. We are unable to agree with the contentions of the learned counsel for the respondents. For interpreting the entry like in hand, the user of the article is wholly immaterial.

11. For the reasons recorded above, we allow these appeals, set aside the judgment of the learned Single Judge and hold that the staple fibre was and is chargeable under Entry 52 and not under Entry 48A. The respondent Municipality has been charging all this period from 1975 onwards under Entry 48A. Instead of ordering the refund of the excess amount payment to the appellant, we deem it proper in the circumstances of the present case to direct the respondentMunicipality to adjust the excess amount paid by the appellant on all the items which may be imported into the Municipal limits by the appellant in future. It may be made dear that the appellant shall not be entitled to any interest on the excess amount that had been paid by it to the

respondentMunicipality. There will be no order as to costs.

