**(2007) 01 AHC CK 0148**

**In the Allahabad High Court**

The Commissioner, Trade Tax — APPELLANT

Vs

Moti Lal Duli Chandra Pvt. Ltd. — RESPONDENT

**Date of Decision :** 10-01-2007

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 8

**Citation :** (2009) 21 VST 191

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 18th August, 1999 relating to the assessment year 1984-85 both under the U.P. Trade Tax Act and Central Sales Tax Act.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was carrying on the business of cotton tape, laces and braded cord. Admittedly, the aforesaid items have been manufactured by weaving process. During the year under consideration, dealer had disclosed the turn over of self-manufactured and imported tape and laces at Rs. 35,37,513.33p. and the turn over of the braded cord at Rs. 47,25,956.80p. in U.P. Likewise applicant had disclosed the central sales of tape and laces at Rs.18,77,059.47p. and the sales of braded cord at Rs. 9,05,641.05p. Assessing authority had accepted the books of account and disclosed turn over. There is no dispute in this regard. Dealer had claimed the exemption on the turn over of cotton braded cord, tape and laces both under the U.P. Trade Tax Act and Central Sales Tax Act. Assessing authority had accepted the claim of exemption on the turn over of cotton braded cord and allowed the exemption on the sale of cotton braded cord both under the U.P. Trade Tax Act and Central Sales Tax Act but had rejected the claim of exemption on the turn over of tape and laces both under the U.P. Trade Tax Act and Central Sales Tax Act. Assessing authority had also held that out of the total sales disclosed for

braded cord at Rs. 47,25,956.80p. under the U.P. Trade Tax Act and at Rs. 9,05,641.05p. under the Central Sales Tax Act dealer was not able to prove the sale of braded cord to the extent of Rs. 7,70,310/- and Rs. 8,33,550.18p. respectively and such sales have been treated as sales relating to the tape and laces and accordingly, assessed to tax. Being aggrieved by the order of the assessing authority, dealer filed appeals before the Deputy Commissioner (Appeals), Trade Tax Kanpur. First appellate authority has not accepted the claim of exemption on the turn over tape and laces but remanded back the matter to the assessing authority with regard to the rejection of claim of exemption on the turn over of Rs. 7,77,310/- under the U.P. Trade Tax Act and Rs. 8,33,550.18p. under Central Sales Tax Act. Being aggrieved by the order of the Deputy Commissioner (Appeals), dealer filed appeals before the Trade Tax Tribunal, Kanpur. The Tribunal by the impugned order allowed the appeals. Tribunal allowed the exemption on the turn over of tape and laces treating them as textile relying upon the decision of the Tribunal in the case of Fiber Links, Kanpur. Tribunal further held that the Deputy Commissioner (Appeals) has erred in remanding back the matter for the fresh examination with regard to the braded cord when the assessing authority himself has accepted the braded cord as textile and the books of account of the applicant have been accepted. Being aggrieved by the order of the Tribunal, present revisions have been filed by the Commissioner of Trade Tax.

3. At the instance of the revenue, following question has been raised:

Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to exempt tapes and laces from the levying of trade tax under U.P. Trade Tax Act, 1948 in the wake of the existence of repugnant facts against the impugned assessee, on the relevant taxation record ?

4. Heard learned Counsel for the parties.

5. Learned Standing Counsel submitted that the Tribunal has erred in granting the exemption on the turn over of tape and laces. He submitted that the tape and laces were included under the Entry of "Textile" of Notification No. ST-4064/ X-960(4)-58, dated 25.11.1958 issued in exercise of powers u/s 4 of the Act. Thereafter, by the notification No. ST-7092/X-1012-1965, dated 01.10.1965 tape, laces and niwar have been excluded from the notification No. ST-4064/ X-960(4)-58, dated 25.11.1958 and have been made taxable at the point of sale to consumer @ 4%. Similar, amendment was made in the notification issued in exercise of powers u/s 8(5) of the Act vide notification No. Notification No. ST-7591/X-1012 (1)-65, dated 20.11.1965. He submitted that under the aforesaid notification tape, laces and niwar were liable to tax without any condition. Subsequently, vide notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981, the aforesaid notification has been amended and the words "including cord or string or line used for tying purposes or for drying clothes" have been added. Further vide notification No. ST-7036/X-938 (2)-72-U.P.Act-15-48-Order-84, dated 29.09.1984 "cotton niwar" was excluded

 

from niwar. From the aforesaid history of the notifications relating to tape, laces and niwar, learned Standing Counsel submitted that the notification of tape, laces and niwar is general entry which includes All kinds of tape, laces and niwar, namely plastic tape, rubber tape and cotton tape etc. He submitted that the word "used for tying purposes or drying of cloth" qualifies the item "cord or string or line" only and not to the tape, laces and niwar. Thus, the turn over of tape, laces and niwar were liable to tax whether or not used for tying purposes or drying of cloth. He submitted that once the tape, laces and niwar are notified and subjected to tax under the notification issued u/s 3-A of the Act, tape and laces may be cotton fabrics, are deemed to have been excluded from the Entry of "Textile" and is liable to tax. Reliance is placed on the decision of the Apex Court in the case of CST v. Agra Belting Works reported in 1987 UPTC, 850.

6. Learned Counsel for the dealer submitted that the exemption on the turn over of tape and laces has been rightly allowed by the Tribunal. He submitted that from the perusal of the English version of the notification ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981 it is clear that the word "used for tying or for drying clothes" qualifies tape, laces and niwar. He submitted that though the Hindi version of the aforesaid notification suggests a different meaning but in view of the conflict between the two versions of the notification, English version of the notification is to be preferred in view of the decision of the Apex Court in the case of Park Leather Industry (P.) Ltd. and Anr. v. state of U.P. and Ors. reported in 2001 (Vol.18) NTN, 231, (Para 22). He submitted that the "tape and laces" have been considered by the Division Bench of this Court in the case of The CST v. Ashok Elastic Works, Patthargali, Varanasi reported in 1971 UPTC, 237 (Para 4 and 5). According to Shri Saxena, learned Counsel for the dealer, Division Bench held that the tape and laces are those items, which are used for tying garments. He submitted that the burden lies upon the revenue to prove that the items in dispute falls under the Entry of the notification. He submitted that the tape and laces manufactured and sold by the dealer were not useable for tying and drying clothes but were mainly used in military garments etc. and the revenue failed to prove that these are used for tying and drying the clothes. Thus, they are not covered under the notification of tape and laces. According to Shri Saxena, cotton tape and laces manufactured by weaving process are cotton fabric and are not liable to tax.

7. Having Heard learned Counsel for the parties, I have perused the order of Tribunal and the authorities below.

8. The short question involved in the present revision is, whether cotton tape and laces are exempted from tax both under the U.P. Trade Tax Act and Central Sales Tax Act, under the notification No. ST-II- 5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981 and the notification No. ST-7036/X-938 (2)-72-U.P.Act-15-48-Order-84, dated 29.09.1984. No dispute has been raised by the revenue with regard to the braded cord.

9. To adjudicate the issue involved in both the revisions, the relevant

 

notifications are referred herein below:

Notification No. ST-4064/X-960(41-58. dated 25.11.1958

In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), as amended up-to-date, read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), and in partial modification of Notification No. ST-4485/X-, dated December 14, 1957, the Governor of Uttar Pradesh is pleased to order that, with effect from July 1, 1958, goods mentioned in the list below shall be exempt unconditionally from the payment of tax under the U.P. Sales Tax Act:

LIST

1. Sugar containing more than ninety per cent, or sucrose, but excluding Khandsari sugar, sugar candy, batasha, cooked food, confectionery and sweetmeats.

2. Cigars, Cigarettes, Birid (both machine-made and hand-made) and tobacco in any form, whether cured or uncured and whether manufactured or not, including all its products.

3. Textiles of the following varieties manufactured on powerlooms, excluding durries, carpets, druggets hosiery goods and ready-made garments, but including the goods specified in the Annexure hereunder :

(a) Cotton fabrics of all varities.

(b) Rayon or artificial silk fabrics, including staple fibre fabrics of all varieties.

(c) Woolen fabrics of all varieties.

(d) Fabrics made of mixture of any two or more of the above fibres, viz., cotton, rayon or artificial silk or staple fibre, or wool.

(e) Canvas cloth, tarpaulins and water-proof cloth:

ANNEXURE

(i) ...

(ii) ...

(iii) Tapes, niwars and laces.

Notification No. ST-7092/X-1012-1965, dated 01.10.1965

In exercise of the powers under Sections 3 and 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P.Act No. 1 of 1904), the Governor of Uttar Pradesh is pleased to partially superseded the Notification No. ST-4064/X-960 (4)-58, dated November 25, 1958, to the extent it provides for exemption of tapes, niwars and laces [mentioned in item (iii) of the annexure to the said notification], from the payment of tax and to declare that the turnover of the goods mentioned above shall, in pursuance of the provisions of Sub-section (1) of the aforesaid Section 3, be liable, with effect from October 1, 1965, to tax at the rate of two paise per rupee at all point of sale.

Notification No. ST-7591/X-1012 (1)-65. dated 20.11.1965

Whereas, the State government is satisfied that it is necessary to do so in the public interest:

Now, therefore, in exercise of the powers under Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Governor of Uttar Pradesh is pleased to direct that, with effect from the date of publication of this notification in the official Gazette, the tax payable under the said Act by any dealer having his place of business in Uttar Pradesh, in respect of sale by him from such place of business of tapes, niwars and laces in the course of inter-State trade or commerce, shall be calculated at the rate of two paise per rupee.

Notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981

Sl. No. Description of goods Point of tax Rate of tax 50. Tapes, niwar and laces Sale to consumer 4% including cord, string or line used for tying purposes or for drying clothes. No.ST-7036/X-938(2)-72-U.P.Act-15-48-Order-84. dated 29.09.1984

In exercise of the powers under the proviso to Clause (e) of Sub-section (1) of Section 3-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P.Act No. XV of 1948), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from October 1, 1984, the following amendment in Government Notification No. ST-II-5785/X-10(1)-80-U.P. Act 15-48-Order-81, dated September7, 1981:

AMENDMENT

In the list of the aforessaid notification for Entry 50, the following entry columnwise shall be substituted, namely:

Sl. No. Description of goods Point of tax Rate of tax 1 2 3 4 50. Tapes, niwar (excluding Sales to consumer 4% cotton niwar) and laces including cord, string or line used for tying purposes or for drying clothes. Notification No. ST-II-5785/ X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981 read as follows:

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10. I find substance in the argument of learned Standing Counsel. Tape, laces and niwar made of cotton were exempted under the Entry "Textile" of Notification No. ST-4064/X-960(4)-58, dated 25.11.1958. Subsequently, they have been specifically excluded from the Entry of the "Textile" vide notification No. ST-7092/ X-1012-1965, dated 01.10.1965, and have been taxed @ 2% at the point of sale to consumer. Thus, after the aforesaid notification dated 01.10.1965 even though tape and laces made of cotton by weaving process may be cotton fabrics but they are deemed to be excluded from the Entry "Textile" and taxable under the aforesaid notification issued under the Act. Reliance is placed on the decision of the Apex Court in the case of CST v. Agra Belting Works (Supra). In the said case dealer was manufacturer of cotton belting. Cotton belting has been held as a cotton fabric and there was no dispute in this regard. However, Belting was separately notified under the Entry "All kinds of belting" of the notification issued in exercise of powers u/s 3-A of the Act at the point of sale to consumer. This Court held that since cotton belting was exempted from tax under the notification issued u/s 4 of the Act being cotton fabrics, it could not be subjected to tax under the notification issued u/s 3-A of the Act unless it was specifically excluded from the cotton fabrics. The matter went to the Apex Court. Apex Court held that once the cotton belting was notified as taxable goods vide notification issued in exercise of powers u/s 3-A of the Act, cotton belting is deemed to have been excluded from the exemption notification relating to cotton fabrics and held liable to tax.

11. Earlier tape, laces and niwar were included in "Textile" of notification No. ST-4064/X-960 (4)-58, dated 25.11.1958. By the notification No. ST-7092/ X-1012-1965, dated 01.10.1965 tape, laces and niwar was specifically excluded from the Entry "Textile" and has been made taxable @ 2% at the point of sale to consumer. Therefore, so far as tape, laces and niwar are concerned, even though they may be cotton fabrics but are deemed to have been excluded from cotton fabrics and liable to tax.

12. So far as submission of Shri Saxena, learned Counsel for the dealer that in the Entry "Tape, niwars and laces including cord or string or line used for tying purposes or for drying clothes, only those tape and laces are covered, which are

 

used for tying and drying of clothes, can not be accepted. The history of the notifications relating to tape and laces are very relevant. Tape and laces were earlier included under the Entry of Textile but subsequently vide notification No. No. ST-7092/X-1012-1965, dated 01.10.1965 has been excluded and made taxable. The Entry of tape, laces and niwar was not qualified by any condition. In 1981 in the Entry of "tapes, niwar and laces the words "including cord or string or line used for tying and for drying clothes" have been added. The words "used for tying purpose or for drying clothes" have been included in the notification along with the "cord or string or line". Thus, in my opinion, the word used for "tying purpose or drying cloth" qualifies only to "cord or string or line" and not to "tape, laces and niwar". Further tape and niwar are never used for tying or drying purposes. Thus, if the word used "for tying purpose or drying clothes" are held qualify to tape, laces and niwar under no circumstances tape and niwar can be taxable and notification would partly become redundant.

13. Thus, in view of above, in my view, it can not be said that the word "used for tying purpose or for drying clothes" qualifies tape, laces and niwar. Though the language of the English Version of notification is clear but to interpret the English Version of the Entry, the help of Hindi Version of the Entry can be taken. Hindi Version of the Entry is absolutely clear that the word "used for tying purpose or drying clothes" only qualifies the cord or string or line and not to tape and laces. In the case of Park Leather Industry (P.) Ltd. and Anr. v. State of U.P. and Ors. (Supra), Apex Court held that in case of conflict between the English Version and Hindi Version of the notification. English Version may prevail. However, if there is no conflict, and to remove the doubts, the help of Hindi Version can be taken. In my opinion, there is no conflict between the English Version and Hindi Version of the notification. It is only a question of interpretation of Entry of notification and for that purpose the help of the Hindi Version of the notification can be taken.

14. For the reasons stated above, in my view order of the Tribunal granting the exemption on the turn over of tape and laces is liable to be set aside.

15. In the result, both the revisions are allowed. Order of the Tribunal is set aside and it is held that the tape and laces are liable to tax.