(2005) 04 AHC CK 0095

In the Allahabad High Court

Case No : Trade Tax Revision No. 549 of 1996

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Kamal Yarn Industries — RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10B, 11

Citation : (2005) 04 AHC CK 0095

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Chief Standing, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 12.12.1995 relating to assessment year 1988-89.

2. Opposite Party/Dealer (hereinafter referred to as "Dealer") was carrying on the business of Nylon Yarn. It had imported Nylon Yarn and after some chemical process sold the same to the Shoe maker. It had claimed that by processing the quality of Yam had only been increased, but Nylon Yam remains the same and was used for sewing and knitting. It had also been explained that Shoe makers normally use such Yarns for sewing of Shoes, though, these Yarn can be used for any other purposes also. Claim of dealer was that it was Yam and liable to tax @ 2% under the entry of "All Kinds of Yam" under the Notification No. ST-I1-5785/ X-10 (I)/80-U.P. Act No. 15/48 dated 07.9.1981. Assessing Authority had accepted the claim of dealer and taxed the turnover of the said Nylon Yam @ 2%. Deputy Commissioner (Executive), however, passed order u/s 10-B of the Act on 13.6.1995 and levied tax on the turnover of the said Nylon Yarn @ 10% treating it as an unclassified item. Deputy Commissioner (Executive) held that the Nylon Yarn after processing became a special kind of Yam which was to be used in Shoe making and therefore, it was Shoe material and since there was no

entry of Shoe material, therefore, it was liable to tax as an unclassified item. Against the order of Deputy Commissioner (Executive), dealer filed appeal before the Tribunal. Tribunal vide its impugned order, allowed the appeal. Tribunal held that by chemical process of imported Nylon Yarn, a special kind of thread have been manufactured which remains thread/Yarn. Tribunal held that by chemical processing, only strengthen have been provided to the Yarn, but it remains Yarn.

3. Having heard learned Counsel for the parties and 1 have perused the order of Tribunal and the authorities below. The entry 55 of Notification No. ST-II-5785/ X-10 (l)/80-U.P. Act No. 15/48 dated 07.9.1981 reads as follows-

"55. Yarn of all kinds except those covered by any other Notification."

4. I do not find any error in the order of Tribunal. No one has disputed that after the chemical process, Nylon Yarn remains Yarn. Deputy Commissioner (Executive) had also not disputed this position, therefore, after the treatment of chemical process, since it remains Yarn, it is liable to tax under the entry of "All Kinds of Yarn" @ 2%.

5. In the case of CST v. T. C. Traders reported in 1992 UPTC page 1148, dispute was whether the Untwisted Synthetic Yarn sold after twisting remains the same. This Court held as follows:-

"No material has been placed before this Court by the State to show that Twisted Yarn was commercially a different commodity or that the twisted Yarn did not serve the same purpose which the untwisted yarn did serve. There was no change of nomenclature of Yarn and even if it was twisted it remained Yarn alright. The State has also not suggested that the untwisted Yarn cannot be used for any purpose for which, a twisted yarn can be put. No physical or chemical change is brought out by twisting the Yarn, the Yarn remains the Yarn and in Entry 55, Yarns of all kinds have been included. There is no other Notification which may go to show that the twisted yarn is a Yarn different from untwisted Yarn and is to be taxed separately. Both twisted and untwisted Yarn are covered by Entry 55. It cannot be the intention of the State that the same Yarn should be subjected to tax twice, one it is purchased in the form of untwisted Yarn and secondly when it is sold in the form of twisted Yarn while the commodity remains the same. The view taken by the Tribunal is correct that the twisted Yarn is the same product as was untwisted Yarn and no tax is payable on the twisted Yarn."

6. In the case of Commissioner, Sales Tax, U. P. Lucknow v. Ballabh Das reported in 25 STC, 372, the question was whether the Hand Spun Yarn which undergoes a process of twisting remains Hand Spun Yam. The Division Bench of this Court held the essential thing to be kept in mind in such cases is to see if as a result of any process, including a process of manufacture, the article concerned becomes commercially a different commodity. The treatment of Hand Spun Yarn by way of colouring and twisting will not destroy its essential nature of being Hand Spun Yarn. Therefore, Hand Spun Yarn which underwent a process of twisting would still be exempt as Hand Spun Yarn.

7. In the case of Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam. v. O. Sadasivan reported in 42 STC, 201 question for consideration before the Division Bench of Kerala High Court was whether despite the process of dyeing and colouring ''Cotton Yarn'' would remain ''Cotton Yarn'', the Division Bench of Kerala High Court says that despite the process of dyeing and colouring ''Cotton Yarn'' would remain ''Cotton Yarn''

8. In the case of Commissioner of Sales Tax v. Bareilly Rope Stores, reported in 1987 UPTC, 1200 Coir Yarn has been held falling under the entry of "All Kinds of Yarn".

9. In the case of Commissioner of Sales Tax, U.P. v. Sarin Textiles Mills, 35 STC page 634, Apex Court adverting to the Oxford Dictionary and Webster''s New Dictionary held as follows:-

"Thus, a fibre in order to answer the description of "Yarn" in the ordinary commercial sense must have two characteristics. Firstly, it should be a spun strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making."

10. For the aforesaid reasons, I up held the order of Tribunal. In the result, revision fails and is, accordingly, dismissed.

