

(1981) 07 MAD CK 0023

In the Madras High Court

Case No : T.C. No. 737 of 1977 (Revision No. 187 of 1977)

The Deputy Commissioner (C.T.), Coimbatore Division

APPELLANT

Vs

The South India Traders

RESPONDENT

Date of Decision : 23-07-1981

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 8

Citation : (1982) 50 STC 106

Hon'ble Judges : S. Ratnavel Pandian, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; C. Natarajan, for the Respondent

Judgement

Balasubrahmanyam, J.—The question in this revision by the State Government is whether mill-made handkerchiefs sold by the assessee in

this case are exempt from sales tax u/s 8 of the Tamil Nadu General Sales Tax Act, 1959, read with item 4 of the Third Schedule to the Act.

2. Item 4 of the Third Schedule exempts from taxation cotton fabrics, woollen fabrics and rayon or artificial silk fabrics, as defined in items 19, 21

and 22, respectively of the First Schedule to the Central Excises and Salt Act, 1944 (Central Act 1 of 1944). Item 19 defines "cotton fabrics" as

all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads,

counterpanes, table-cloths, embroidery in the pieces, in strips or in motifs, and fabrics impregnated or coated with preparation of cellulose

derivatives or of other artificial plastic materials. The definition includes certain certain fabrics, the contents of which are not pure cotton but other

fibrous substances included therein in varying degrees. Item 21 relates to

woollen fabrics, which do not concern us in this case. Item 22 relates to rayon or artificial silk fabrics, which again, are not relevant to the present discussion.

3. The Government's objection to treat handkerchiefs as cotton fabrics is perhaps due to the fact that the kerchief is not woven to size as a fabric in itself, but cut to size by hand or mechanical process.

4. We are satisfied that the expression ""fabric"" is of sufficient amplitude to cover not only a handkerchief woven as a fabric in its own size but also

a handkerchief made out of a bigger dimension of fabric. Whether the handkerchief is manufactured by the textile process as such, or is a cut piece

of a larger fabric, it would qualify for exemption under item 4 in the Third Schedule. What is important is not how and in what size the handkerchief

is manufactured in the original form, but whether it is a commercial commodity marketable as such. There can be no doubt that the handkerchief, in

this case, though mill-made is a commercial commodity, distinct and separate from the larger fabric, out of which it might be cut to size. If one were

to go to a shop dealing in these things and ask to be seen varieties of handkerchiefs for selection, we have no doubt that the shop-keeper would

not withhold the display of kerchiefs of the kind under discussion.

5. To a layman, therefore, and to a shop-keeper, a question of this kind ought to have posed no problem whatever, and might even raise a smile, if

posed. It is a matter of surprise that a case of this utter simplicity should, in all seriousness, have been brought before this Court. What is doubly

surprising is that similar questions should have reached other High Courts as well. Luckily, for commonsense, the popular idea of a kerchief has

found favour with the Calcutta, Orissa and Kerala High Courts, who have had to administer more or less similar provisions of exemption in their

respective sales tax enactments. Vide the Calcutta High Court's judgment in Delhi Cloth and General Mills Co. Ltd. v. Commercial Tax Officer,

Central Section, West Bengal [1975] 36 STC 575, the Orissa High Court's judgment in Radhika v. State of Orissa [1977] 39 STC 93 and the

Kerala High Court's judgment in Deputy Commissioner of Sales Tax (Law) v. M. M. Mohammed Abdul Khader [1980] 46 STC 512.

6. We uphold the sensible decision of the Tribunal that mill-made handkerchiefs, sold by the assessee in this case, are entitled to tax exemption

under item 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959. Since the revision filed by the State Government is dismissed,

the department will pay the assessee their costs. Counsel's fee Rs. 150.

7. Petition dismissed.