

(1964) 11 GUJ CK 0001
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1964

The State of Gujarat

APPELLANT

Vs

Umedram Lallubhai

RESPONDENT

Date of Decision : 23-11-1964

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52

Citation : (1965) 16 STC 1059

Hon'ble Judges : P.N. Bhagwati, J; J.M. Shelat, J

Bench : Division Bench

Advocate : J.M. Thakore, -General, instructed by M.G. Doshit, Additional Government Pleader, for the Appellant; K.H. Kaji, for the Respondent

Judgement

Bhagwati, J.—The short question that arises on this reference is whether borders woven on handloom out of pure silk, art silk and jari thread are handloom cloth within the meaning of entry 29 in Schedule A of the Bombay Sales Tax Act, 1959. The assesseees are dealers registered under the Act and they carry on business as manufacturers and dealers in all kinds of sarees, blouse pieces, borders etc. The assesseees in the course of their business sold certain borders at the rate of Rs. 3.50 per yard under a bill No. 965 dated 11th August, 1961, and submitted an application to the Deputy Commissioner of Sales Tax u/s 52 for determination of the tax payable on the sale of the borders. The borders were woven on handloom out of pure silk, art silk and jari thread and the proportion of pure silk was more than 60 per cent. It was contended before the Deputy Commissioner of Sales Tax that the borders were exempt from tax inasmuch as they were handloom cloth covered by entry 29 of Schedule A. The Deputy Commissioner of Sales Tax, however, took the view that borders though woven on handloom were not handloom cloth within the meaning of that expression as used in entry 29 of schedule A and were taxable under entry 9 of Schedule E. The assesseees thereupon preferred an appeal before the Tribunal. The same contentions which were urged before the Deputy Commissioner of Sales Tax were repeated before the Tribunal. The Tribunal held that the borders were handloom cloth within the

meaning or entry 29 of Schedule A and the sale of the borders was, therefore, exempt from tax. The State being aggrieved by this decision of the tribunal preferred an application for a reference and on the application the Tribunal referred the following two questions for the opinion of the Court :

"(1) Whether Indori borders containing more than 60 per cent. of pure silk and woven on handloom out of silk, art silk and jari threads are handloom cloth within the meaning of entry 29 in Schedule A to the Bombay Sales Tax Act, 1959 ?

(2) If the answer to question (1) above is in the affirmative, whether sale of such borders can be taxed as sale of goods falling within the ambit of entry 9 of Schedule E to the Bombay Sales Tax Act, 1959."

2. It will be seen from the frame of the questions that the second question would arise for consideration only if the first question is answered in favour of the assessee. But we may point out straightaway for reasons which will become apparent from what follows that if the borders can be said to be handloom cloth within the meaning of entry 29 of Schedule A, the sale of the borders would be exempt from tax and there would be no question of the State being entitled to tax the sale of the borders under entry 9 of Schedule E.

3. Schedule A contains entries specifying goods the sale or purchase of which is exempt from tax. This exemption is granted by section 5 which declares :

"(1) Notwithstanding anything in this Act, but subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule.

* * *

Entry 29 of Schedule A specifies the following class of goods as exempt fro tax :

"Handloom cloth of all varieties excluding pure silk cloth".

4. If, therefore, handloom borders fall within the expression "handloom cloth" as used in entry 29 of Schedule A, their sale or purchase would be exempt from tax notwithstanding that they fall within any entry in any of the other Schedules of the Act. As a matter of fact handloom borders of the type sold by the assessee would be covered by entry 9 of Schedule E which refers to the following class of goods :

"9. Braids, borders, laces and trimmings when sold by weight at a price of not less than fifty naye paise per tola or when sold by length at a price of not less than fifty naye paise per yard."

and prescribes sales tax at the rate of eight naye paise in the rupee and general sales tax at the rate of two naye paise in the rupee on the sales of such goods. But despite that, the sale or purchase of handloom borders would be exempt

from tax if they can be said to be handloom cloth within the meaning of entry 29 of Schedule A, for the exemption granted u/s 5 is an overriding exemption which prevails notwithstanding anything contained in any other provision of the Act. The only question which, therefore, requires to be considered is whether handloom borders of the kind sold by the assessee are handloom cloth within the meaning of that expression as used in entry 29 of Schedule A. If they are, their sale would be exempt from tax but if they are not, their sale would be taxable under entry 9 of Schedule E.

5. Now what does "handloom cloth" in entry 29 of Schedule A connote ? Does it mean any fabric woven on handloom or does it have a limited meaning ? If the word "cloth" is given its primary and technical meaning, it would include any woven fabric and in that view any fabric woven on handloom would be handloom cloth and handloom borders being admittedly fabrics woven on handloom would be handloom cloth. But words often have a secondary or popular meaning and when that is the case, the principle to be applied in interpreting the meaning in which a word is used in a statute is to construe the word in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." See *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, . The question which must be asked in such a case is, what is the meaning of the word in ordinary parlance; what do the people dealing with the subject-matter of the statute understand it to mean ? This is the principle which we must apply in the present case, for the word "cloth" has a secondary or popular meaning which is more limited than its primary technical meaning. As a matter of fact we had occasion to apply this principle to the interpretation of the word "cloth" in this very entry last year in *Vrajlal Bhukhandas Vs. The State of Gujarat*, . In that case the question was whether carpets made of cotton yarn on handloom were included in the expression "handloom cloth" in entry 29 of Schedule A. The assessee contended that they were because in that event they would be exempt from tax; but the Revenue contended that they were not. When the matter came before us on a reference made by the Tribunal, we applied the principle of interpretation to which we have just referred and held that carpets were not handloom cloth within the meaning of that expression as used in entry 29 of Schedule A. My Lord the Chief Justice delivering the judgment of the Court, after referring to the decision of the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, and citing the observations of the Supreme Court in that case laying down this principle of interpretation, asked the question :

"The question, therefore, is, what is the meaning of the word "cloth" which people conversant with the subject-matter with which the statute is dealing, would attribute to it, that is to say, people dealing with handloom cloth of all varieties which is dealt with by entry 29 ? In other words, would a merchant dealing in handloom cloth regard a carpet as handloom cloth ? Though in the technical or technological meaning given by a dictionary, a carpet is a woven fabric, can it be said that the Legislature, while making Schedule A, preferred to

give it such a dictionary meaning rather than the meaning attached to the word carpet in the ordinary and common parlance"

and answered it by saying - and these words are determinative of the question arising in the present reference -

"We think not. We are of the view that the Legislature intended to give to the expression "handloom cloth of all varieties" that meaning to this expression as understood in ordinary parlance, that is, as understood commonly by those conversant with and dealing in such cloth and not the general or technical connotation of the word "cloth" as given in the various dictionaries"

6. He thereafter proceeded to apply this meaning to the facts of the case before us and concluded in the following words :-

"The expression "cloth" has acquired a secondary meaning, that is to say, a meaning attached to that expression in common parlance by those dealing in and conversant with handloom cloth, and the carpet of the type we have before us would not, in our view, be included in the expression "handloom cloth of all varieties". On the principle laid down by the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, , and by the Andhra High Court in the case of *Kosuri Subba Raju Vs. State of Andhra*, , we would hold that the carpet in question would not be covered by entry No. 29. ..."

7. Having regard to these observations it is clear that the word "cloth" in entry 29 of Schedule A must be interpreted according to its secondary or popular sense and not in its primary or technical sense meaning any woven fabric by whatever name be it known or called in trade and amongst the people. Mr. Kaji, learned Advocate appearing on behalf of the assessee sought to throw some doubt on the validity of this proposition by relying on another decision of this Court in *Commissioner of Sales Tax v. Sumatilal Popatlal & Co.* ([1964] 15 S.T.C. 498(SC)). We however do not find anything in this decision which in any way militates against what we have stated above. The question in this case was whether hessian was cloth within the meaning of entry 1 of Schedule 1 to the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, and a Division Bench of this Court considering of K. T. Desai, C.J., as he then was, and myself held that it was. What was pressed upon us was not that hessian was not cloth according to the secondary or popular meaning of the word but that the word "cloth" should be given a limited meaning so as to exclude hessian having regard to the object for which the Bombay sales Tax Laws (Special Exemptions) Act, 1957, was enacted. This argument was rejected by us and after referring to the observations of the Supreme Court in *Ramavatar Budhaiprasad's* case ([1961] 12 S.T.C. 286(SC)), where the principle of interpretation to which we have referred a little while ago was enunciated, we applied that principle to the construction of the word "cloth" before us and observed that :-

"So construed, the word "cloth", as used in Schedule I to the Exempting Act, would cover hessian, i.e., cloth manufactured from fibres of hemp or jute."

8. It will, therefore, be seen that far from rejecting this principle, we actually applied it in order to reach the conclusion that hessian was cloth within the meaning of entry 1 of Schedule 1 to the Bombay Sales Tax Laws (Special Exemptions) Act, 1957.

9. Mr. Kaji then contended that even if it be true as a general principle that words used in a statute must be interpreted according to their popular sense, a sense in which they are commonly understood in ordinary parlance, the application of that principle was displaced in the present case by reason of the express words of entry 29 of Schedule A. He urged that the entry referred to handloom cloth of all varieties and the words "of all varieties" were words of expansion which indicated the width and amplitude of what was connoted by the expression "handloom cloth" and showed that the expression was used in its wide primary sense and not in its narrow or limited popular sense as contended by the Revenue. The argument was that handloom cloth of all varieties meant handloom fabric of any kind, whatever be the name by which it may be known in the trade or amongst the people, whether as cloth or otherwise, and whatever be the use to which it may be put, whether for the purpose of preparing garments or for covering or as an adjunct of other wearing apparel and any fabric woven on handloom was therefore covered by the expression "handloom cloth". This argument is, in our opinion, not well-founded. It is defective in that it assumes that the words "of all varieties" enlarge the true meaning and content of the expression "handloom cloth" as used in the entry. Of course handloom cloth within the meaning of the entry may be handloom cloth of any variety but it must still be handloom cloth and the words "of all varieties" do not control or affect the true connotation of what is handloom cloth within the meaning of the entry. The Legislature used the words "of all varieties" for purpose of bringing within the ambit of the exemption all varieties of handloom cloth provided they satisfied the basic requirement that they were handloom cloth. And the reason for adding these words was obvious. Entry 15 referred to cotton fabrics as defined in item No. 12 of the First Schedule to the Central Excises and Salt Act, 1944. Entry 41 mentioned rayon or artificial silk fabrics as defined in item No. 12-A of the First Schedule to that Act. Entry 43-A specified silk fabrics as defined in item No. 12-B of the First Schedule to that Act while woollen fabrics as defined in item No. 12-C of the First Schedule to that Act were mentioned in Entry 51. All the four kinds of fabrics namely, cotton fabrics, rayon or artificial silk fabrics, silk fabrics and woollen fabrics were, therefore, exempted from tax under the Act, the legislative intent clearly being that since they would be subject to duties of excise, they should not be subjected once again to another form of impost namely sales tax or purchase tax. Now if we look at the definitions of all these different kinds of fabrics in the First Schedule to the Central Excises and Salt Act, 1944, we find that all the definitions exclude fabrics woven on handloom. If, therefore, there were any fabrics woven on handloom, they would not be exempt under any of the entries 15, 41, 43-A and 51. The Legislature, however, wanted to encourage handloom industry and, therefore, with a view to granting

exemption the Legislature enacted entry 29 but in granting the exemption the Legislature confined it to handloom cloth of all varieties and did not extend it to handloom fabrics of all varieties. The Legislature obviously added the words "of all varieties" because handloom cloth may be made of any of the materials of which cotton fabrics, rayon or artificial silk fabrics, silk fabrics or woollen fabrics as defined in the various entries of the First Schedule to the Central Excises and Salt Act, 1944, may be made and the Legislature wanted to include all these different varieties of handloom cloth except the variety denoted by the expression "pure silk cloth". These words were certainly intended to be words of amplification, but the amplification was within the framework of what would be connoted by the expression "handloom cloth" and they did not have the effect of enlarging the scope and content of the expression "handloom cloth" nor were they indicative of any legislative intent to use the expression "handloom cloth" in its primary or technical sense. As a matter of fact if the Legislature wanted to include within the ambit of the exemption handloom cloth in its primary or technical sense as meaning any fabric woven on handloom, the Legislature would have used the words "handloom fabrics" and not "handloom cloth". The Legislature was aware of the expression "fabrics" and in fact used that expression in entries 15, 41, 43-A and 51 but when it came to entry 29, the Legislature deliberately did not use that expression but instead chose to use another expression, namely, "cloth". This would clearly indicate that in entry 29 the Legislature did not intend to use the expression "cloth" in its primary or technical sense as meaning any fabric but used it in its secondary or popular sense.

10. Taking then, secondary or popular meaning of the word "cloth" the question which we must ask ourselves is : would a trader dealing in handloom cloth regard borders as handloom cloth ? Would in ordinary parlance borders be referred to or known as handloom cloth ? The answer is obviously no. When one talks of handloom cloth in common parlance, one means handloom cloth which can be used for preparing garments or as wearing apparel or for covering or for similar other purpose. One would not think of borders when the expression "handloom cloth" is used. Borders are a distinct commercial commodity known as such and no one in the trade or amongst the public would regard borders as handloom cloth. No one would refer to borders as pieces of cloth though of course technically they are pieces of cloth in the same manner and to the same extent as carpets in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, and nawar tapes in *Kosuri Subba Raju's case* ([1956] 7 S.T.C. 479(SC). But just as carpets and nawar tapes are not cloth in the sense in which that expression is commonly understood, so also, borders are not cloth in that sense. The argument urged on behalf of the assesseees was that borders are an adjunct to sarees which constitute wearing apparels and therefore like sarees they should also be regarded as cloth even according to its popular sense. But we do not see how this particular factor can have any bearing on the question whether borders are in common parlance included in "cloth". It may be that borders are an

adjunct to sarees in the sense that they may be attached to sarees as embellishments but for that reason they cannot be regarded as cloth. There are many things which are attached to sarees as embellishments and yet they are admittedly not cloth. Take for example laces. Though they are affixed to sarees by way of decoration, they cannot under any circumstances be regarded as cloth. The test is not whether borders are used as an adjunct of wearing apparel. This would be an entirely wrong way of looking at the matter. The question which must be asked is : what in common parlance according to the understanding of common man is the meaning of "cloth" ? Would "cloth" include borders or, in other words, would men in the trade, men who have to deal with this commodity, regard borders as cloth or would they regard borders as a distinct commercial commodity not described by the word "cloth" according to its ordinary popular meaning ? To that our answer clearly is that in ordinary parlance borders cannot be regarded as sloth and they are, therefore, not covered by entry 29 of Schedule A.

11. In the result our answer to the first to the first question referred to us is in the negative. In view of this answer to the first question, the second question does not arise for consideration. The assessee will pay the costs of the reference to the State.

12. Reference answered accordingly.