

(1973) 07 MAD CK 0058

In the Madras High Court

Case No : Tax Case No. 393 of 1969 (Revision No. 268 of 1969)

The State of Tamil Nadu

APPELLANT

Vs

East India Rubber Works

RESPONDENT

Date of Decision : 10-07-1973

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 32

Citation : (1974) 33 STC 399

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; V. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The assesseees in this case claimed exemption in respect of a turnover of Rs. 6,77,896.55 relating to the sales of waterproof cloth in the course of the assessment under the Madras General Sales Tax Act, 1959, for the assessment year 1959-60 on the ground that waterproof cloth is covered by item 4 of the Third Schedule to the said Act. The assessing authority allowed exemption from tax on the said turnover, accepting the assesseees' case that waterproof cloth came within item 4 of the Third Schedule.

2. The Deputy Commissioner of Commercial Taxes, acting u/s 32 of the Act, revised the order of the assessing authority granting the said exemption and held that the assesseees were not entitled to the exemption as the waterproof cloth dealt with by the assesseees would not fall within item 4 of Schedule III.

3. The matter was taken by the assesseees to the Sales Tax Appellate Tribunal. The Tribunal, however, disagreed with the view taken by the Deputy Commissioner and held that the waterproof cloth will fall under item 4 of Schedule III. The State is aggrieved against the order of the Tribunal. Thus, the only point for consideration in this case is as to whether the waterproof cloth

dealt with by the assessee falls under item 4 of the Third Schedule.

4. It appears that the Board of Revenue had issued clarifications on this point on more than one occasion. For the first time in L. Dis. A. 1524/60 dated 2nd April, 1960, the Board had intimated the assessee that waterproof cloth made from base cloth is exempt from sales tax. Later in B.P. Misc. No. 257/61 dated 20th October, 1961, the Board had clarified that rexine, P.V.C. cloth, processed cotton cloth, rubberised or synthetic waterproof fabrics, etc., are to be treated as processed cloth made from base cloth and that they are exempted from payment of sales tax under the Act. The Government by G.O. Rt. No. 498 dated 27th May, 1967, directed that in respect of transactions from 1st April, 1967, the assessments in respect of those articles would have to be made in accordance with law and not with reference to the instructions issued by the Board of Revenue. By a subsequent G.O. Rt. No. 707 dated 6th July, 1967, the Government directed that as hardship is likely to be caused to the assessee who have not collected tax on their sales based on the earlier clarifications issued by the Board of Revenue, no tax need be collected on the transactions prior to 2nd April, 1967, and the tax payable can, therefore, be waived in cases where the dealers have not collected tax from the customers on their sales of several kinds of processed cloth on the strength of the clarification issued by the Board of Revenue. The Tribunal has taken the view that the above clarification issued with reference to the goods falling under item 4 of the Third Schedule should be held applicable even from the time of the commencement of the Act and, therefore, the assessee is entitled to exemption in relation to the sales of waterproof cloth during the assessment year. But the Deputy Commissioner had proceeded on the basis that the clarification can be taken advantage of by the assessee only from 2nd April, 1960, and that as the assessment year in question is anterior to that date, the assessee will not be entitled to rely on the said clarification.

5. From what has been stated above, it is clear that even the revenue was not clear in its mind as to whether processed cloth such as rexine, P.V.C. cloth, waterproof cloth, etc., will fall under item 4 of Schedule III. Though initially it took the view that such cloth being "textile" will come under item 4, it later changed its view and was of the opinion that it would not fall under that item. Admittedly, the earliest clarification was issued on 2nd April, 1960, subsequent to the assessment year in question. It cannot, therefore, be said that during the assessment year 1959-60, the assessee had not collected tax on the transactions of sales of waterproof cloth on the basis of the said clarification. We have to, therefore, proceed to construe item 4 of Schedule III without reference to the various clarifications issued by the Board of Revenue and the Government and decide as to the taxability of the transactions in question, leaving open the question of waiver based on G.O. Rt. No. 707 dated 6th July, 1967. No doubt for making rexine, P.V.C. cloth, rubberised or synthetic waterproof fabrics, etc., the base used is cloth. The process of making cloth into rexine, P.V.C. cloth and waterproof cloth by rubberising or by using chemicals, it is urged by the

assessee, does not change the character of the cloth which continues to be a textile product. The learned counsel for the assessee showed us samples of the various types of rubberised or P.V.C. cloth and also explained to us how they are all manufactured. It is said that all these articles are made with cloth as base. The base cloth is spread over rollers and the solution of coloured polyvinyl chloride or liquid rubber melted on hot plate is applied on the roller cloth uniformly, the excess solution or liquid being scraped off by means of an equalising rod or blade. These materials are then pressed and dried. There are also certain varieties of goods in which rubber solution is applied in the centre and there is a double covering of cloth on both sides of the rubber solution or P.V.C. solution. The main purpose of this manufacturing process of applying rubber or P.V.C. solution to the base cloth is to get the quality of waterproofing. It is pointed out that whatever be the manufactured article, the cotton base is always there and, therefore, the manufactured material continues to be a woven material, i.e., "textile", that the character of the cloth as a woven material is not at all lost by the application of rubber or P.V.C. solution, and that the cloth always retains its identity. It is also said that by peeling off the rubber or P.V.C. coating the base cloth can be seen to be intact. It is also stressed that the process of application of rubber or P.V.C. solution is no way different from the normal process of starching or dyeing or mercerising or sanforising used in textile mills to better the quality of the mill cloth.

6. On the other hand, the revenue contends that the processing done on the base cloth alters the basis, character and user of the base cloth and converts the base cloth into a new product which is not "textile". It is also urged by the revenue that the expression "textiles" normally means cloth which are usable as wearing apparel and that the use to which these manufactured articles are put are entirely different and the process of converting the base cloth into a new product having different characteristics like waterproofing, etc., cannot be compared to the process like starching, dyeing, mercerising or sanforising where even after processing the cloth remains as cloth.

7. The learned counsel for the assessee would, however, counter the submissions of the revenue by saying that whether the articles in question are commercially different products or whether they are used for a different purpose, are not relevant or conclusive on the question as to whether the manufactured articles continued to be textiles. He invites our attention to item 19 of the Central Excises and Salt Act, 1944, and the various Central excise tariff notifications to show that "cotton fabrics" have been understood to include fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials. But it is not possible for us to import the definition of "cotton fabrics" in item 19 of the Central Excises and Salt Act, 1944, and the various tariff notifications issued in the context of that definition in interpreting item 4 of Schedule III unless that definition of "cotton fabrics" is specifically made applicable by the provisions of the Madras General Sales Tax Act as in the case of the Bombay Sales Tax Act where entry 15 of Schedule A in terms refers to item

19 of the Central Excises and Salt Act, 1944. We have to, therefore, construe item 4 of Schedule III independent of any definition given under any other statute. Item 4 of Schedule III is as follows:

All varieties of textiles (other than durries, carpets, druggets and pure silk cloth) made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including handkerchiefs, towels, napkins, dusters, cotton velvets and velveteen, tapes, niwars and laces and hosiery cloth in lengths.

8. The expression "textiles" usually refers to cloths or fabrics made by weaving, knitting, netting or braiding and classified according to their component fibres such as silk, wool, cotton, linen and such synthetic fibres as rayon, nylon, etc. The essence of textiles consists in the basic process of spinning and weaving. In *State of Madras v. T.T. Gopalier* [1968] 21 S.T.C. 451, this court held that the term "textile" as used in entry 4 of Schedule III should be interpreted broadly in the sense of products obtained by weaving and that, if so interpreted, "braided cords" would also be entitled to the exemption provided under that entry. In *Government of Madras v. M.B.C. and T.P.C. Industrial Society* [1968] 22 S.T.C. 470, this court had to consider the meaning of the words "fabric" and "textile". "Fabric" has been understood in that case as thing put together; woven material; texture, tissue. The word "textile" has been taken to mean woven, suitable for weaving as textile fabrics. *Deputy Commissioner of Commercial Taxes v. Madurai Printing Tape Factory* [1971] 28 S.T.C. 431, considered the question as to whether "tape" will fall within entry 4 of the Third Schedule. It was held that as the ingredient of textile is weaving what is not woven can hardly be described as textile, and that "tapes" made as a result of weaving would clearly be within that entry. The learned Chief Justice, speaking for the Bench, expressed the view that weaving is not necessarily limited to using warp and woof pattern and that what is necessary for weaving is that threads are bound together in order to produce a pattern of fabric or tape and make them into a product of utility and that in modern advancement of textile technology, it is possible, without using the warp and woof pattern, to produce tape by holding the threads together lengthwise by using gum. Therefore, such a tape made without using warp and woof would also be a textile falling within item 4 of Schedule III. In all these cases, the court, following the dictionary meaning of the word "textile", has held that textile in its broad sense means woven, suitable for weaving textile fabrics.

9. The above decisions deal with braided cords and tapes which are admittedly woven materials, either of warp or woof pattern or otherwise, and those cases may not be of much help in the present case. Here though the base cloth is woven and, therefore, a textile, the superimposition of rubber or P.V.C. solution makes it a different article of commerce such as rexine, P.V.C. cloth and rubberised or waterproof cloth. The learned counsel for the assessee relies on the decision in *Workers v. United Bleachers (P.) Ltd.* AIR 1960 Mad. 131, to substantiate his contention that the mere application of the rubber or P.V.C. solution to the base cloth will not alter the character of the material as a woven

fabric. In that case, the process of colouring has been held not to change the character of the articles as textiles.

10. The learned counsel also states that applying rubber or P.V.C. solution to the base cloth is only to make the cloth waterproof and, therefore, it cannot be taken to be a different kind of goods. It is stated that this process of applying rubber or P.V.C. solution to the cloth is not in any way different from the usual process of starching, mercedising or sanforising used in textile mills to better the quality of the cloth. But we are not able to understand how the process of applying rubber or P.V.C. solution to cloth, which makes the cloth a different commercial product, can be taken to be the same as the process of starching, mercedising or sanforising or the process of dyeing and colouring the cloth. The process of starching, mercedising or sanforising or dyeing and colouring the cloth is only intended to better the quality of the cloth or to make it more attractive or acceptable to the customers. But the same thing cannot be said of the process of application of rubber or P.V.C. solution to the cloth for, by the application of this process, the cloth is converted into a different commercial article, the user of which is also different from that of the cloth out of which it is manufactured. The fact that by peeling off the rubber or P.V.C. coating, the cloth can be seen cannot mean that the cloth used as base continues to have the same properties or characteristics.

11. The learned counsel would, however, refer to the wording in item 4 and contend that as the rexine, P.V.C. cloth or waterproof cloth is made partly of cotton it should be taken to be textiles. But we are unable to accept this submission. A proper reading of the said item suggests that any woven material made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool will be textiles. What is contemplated is that the woven material need not be exclusively of cotton yarn but it may be partly of cotton yarn and partly of staple fibre, rayon, artificial silk or wool. If the interpretation suggested by the learned counsel for the assessee is accepted, any article which has as its base cloth will be textiles. We can take the case of car tyre. It is also made partly of canvas cloth. From the mere fact that cloth has been used as base in the manufacture of tyre, can it be said that tyre is a textile? The assessee's learned counsel would say that in the case of tyre, cloth has been used to strengthen the rubber, but in the case of articles like rexine, P.V.C. cloth and waterproof cloth, rubber or P.V.C. solution has been used to strengthen the cloth and wherever the rubber or P.V.C. solution is used to strengthen the cloth which forms the base, it should be taken that the manufactured article is textile. But we are of the view that the proper test is to find out whether after the application of rubber or P.V.C. solution the base cloth continues to be cloth or whether it has become a different product intended for a different user. If we apply this test, then the articles in question cannot be held to be textiles.

12. In *Vrajlal Bhukhandas v. State of Gujarat* [1964] 15 S.T.C 437, the question arose as to whether cotton carpets manufactured on handloom would come

within the expression "handloom cloth of all varieties excluding pure silk cloth", found in entry 29 of Schedule A to the Bombay Sales Tax Act, 1959. The court held that when the Legislature used the expression "handloom cloth of all varieties" it should have given the meaning 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. The Supreme Court in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Anr.* [1961] 12 S.T.C. 286, construed the word "vegetables" in item 6 of Schedule I of the C.P. and Berar Sales Tax Act, 1947, not in any technical sense, but in the sense in which it is normally understood in the common parlance. Their Lordships said that being a word of everyday use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". In *State of Gujarat v. Prakash Trading Co.* [1972] 30 S.T.C. 348, the Supreme Court adopted the "user" test for determining the character of an article as understood in common parlance. In that case, as tooth-brush is used for cleaning one's teeth and is an article of toilet it was held to be a toilet article within the meaning of entry 21A of Schedule E of the Bombay Sales Tax Act, 1959. It was held that shampoo which is used as a liquid soap and which has all the essential ingredients of soap will fall within the meaning of entry 28 of Schedule C to the said Act.

12. In *Kores (India) Ltd. v. State of Uttar Pradesh* [1970] 26 S.T.C. 126, the Allahabad High Court took the view that in the ordinary sense "paper" refers generally to the material used for writing, printing or wrapping and that carbon-paper cannot be considered in that sense. There also the process adopted is somewhat similar. The process of manufacture of carbon-paper was found to be this. The tissue paper is taken and a paste coated thereon with a thermosetting ink based mainly on wax, non-drying oils, pigments and dyes. The ink is made to a liquid consistency and applied on the tissue from a suitable coating roller, the excess of ink being scraped off by means of a suitable equalising rod. The paper is then passed through different chilled rolls, whereby the ink sets on the paper. The finished product thus obtained is called carbon-paper and the same is primarily used for making an impression on paper so that a number of copies of writing or typing can be obtained by a single impression. The court held that having regard to the fact that the important element involved in the use of carbon-paper is not the paper itself but the chemical medium with which it is coated, the paper on which the coating is spread is of secondary importance inasmuch as it constitutes merely a convenient base for the coating, that when carbon-paper is sold it is not sold as tissue paper but as a material whose value and significance lies entirely in the chemical coating spread thereon and that, therefore, carbon-paper cannot be considered as "paper". The same High Court in *Kilburn and Co. v. Commissioner of Sales Tax* [1973] 31 S.T.C. 625, held that ammonia paper and ferro paper used for obtaining prints and sketches of site plans are not "paper" as understood generally in the ordinary parlance and,

therefore, will not come within the expression "paper" and that paper as understood in common parlance is paper used for printing, writing and packing purposes. The process by which ammonia and ferro paper is made is as follows: Paper of rough and special texture is given chemical coating by applying a chemical process. The chemicals which are used are dyes, tartaric acid, theriac, ethylene, glycol and some other chemicals. These chemicals are absorbed by the base paper and the coated paper is again passed through another set of rollers so that the chemicals are properly and evenly impregnated in the base paper. It is only the chemical coating which is important for making it useful as ammonia and ferro paper, otherwise it is nothing but an ordinary rough base paper. This ferro and ammonia paper has got only this specific use of obtaining prints and sketches of site plans and it cannot be used as an ordinary paper because of the special texture and its chemical properties. The use test applied by the learned Judges in both those cases is, in our view, the proper test.

13. In respect of the articles before us what is significant is the rubber or P.V.C. coating over the base cloth which gives the quality of waterproofing, and the cloth on which the coating is spread is only of secondary importance inasmuch as it constitutes merely a convenient base for the coating. The processed articles are not sold as cloth but as a material whose use, value and significance lie entirely in the rubber or P.V.C. coating spread thereon. The use of the articles also depends on the thickness of the rubber or P.V.C. coating given on the base cloth. In *Calcuttawala v. Commissioner of Sales Tax* [1967] 19 S.T.C. 230, an identical question as the one before us was considered. In that case, P.V.C. rexine cloth which is manufactured with cloth as base and given coating or coatings of polyvinyl chloride in processing factories by special spreading machines was held to be a leather cloth within the meaning of item 38 of Schedule II of the Madhya Pradesh General Sales Tax Act, 1958, which was as follows:

Leather cloth, rubber cloth, oilcloth, waterproof cloth and linoleum, tarpaulin and goods made thereof excepting sport goods.

14. The court, in that case, took note of the fact that P.V.C. rexine cloth resembles leather and is known in trade circles as "artificial leather" or "leather cloth" and that the mere fact that it is an article with cloth as base will not make it a cloth or textile. In *Hind Engineering Co. v. Commissioner of Sales Tax* [1973] 31 S.T.C. 115, the Gujarat High Court had held that rubber beltings manufactured by superimposing rubber or rubber compound on both sides of canvas and used in machineries employed for transmission of power are not "cotton fabrics" within the meaning of entry 15 of Schedule A to the Bombay Sales Tax Act, 1959. The court observed that the process of superimposition of rubber brings about such a basic change in the character, nature and form of the base cloth that it loses its identity and it is converted into an altogether different commercial commodity.

15. In this case though item 4 of Schedule III begins with the words "all varieties

of textiles", the words "all varieties" cannot be taken to control or affect the true construction of the word "textile" within the meaning of that item. The Legislature has used the words "all varieties" for the purpose of bringing within the ambit of the expression "all varieties of textiles" provided they satisfy the basic requirement that they are "textiles". The word "textile" has not been defined in the Act. Therefore, it must be interpreted according to its ordinary or popular sense, the sense in which they are commonly understood in ordinary parlance, and not in its primary or technical sense.

16. On a due consideration of the matter, we are not inclined to accept the assessee's case that as the articles in question have been made with cloth as the base, the processed article has to be taken as cloth or textile. As already stated, the processed articles have different properties and characteristics and are intended for different use and in commercial circles, they are treated as entirely different from cloth or textile. We, therefore, hold that the articles in question are not textiles falling within item 4 of Schedule III to the Act and, as such, not exempt from tax. In this view we set aside the decision of the Tribunal.

17. The result is the tax case is allowed with costs. Counsel's fee Rs. 150.