
(1979) 11 MAD CK 0053

In the Madras High Court

Case No : T.C. No"s. 232 to 236 of 1977 (Revision No"s. 62 to 66 of 1977)

T.M.A. Yacub Hussain

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 4, 8

Citation : (1980) 46 STC 470

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; P. Suryaprakasam, for the Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—The assessee is a dealer in cotton ropes and coir products. He returned a total and taxable turnover of Rs. 52,046.41 and Rs. 3,342.78. The total and taxable turnovers were fixed by the assessing authority at Rs. 9,58,581.00 and Rs. 5,01,250.00 respectively. The dispute was on a turnover of Rs. 3,87,316 relating to sales of ropes. The ropes are called and there were other ropes required by agriculturists. The assessing authority considered that these items did not fall within item 4 of the Third Schedule as goods exempted from tax by Section 8 of the Tamil Nadu General Sales Tax Act. The Appellate Assistant Commissioner confirmed the assessment as made by him. The assessee took the matter on appeal to the Sales Tax Appellate Tribunal. The Tribunal, after elaborately considering the several decisions cited before it, came to the conclusion that it is difficult to conceive of a textile shop selling rope or a person doing business of the type of the assessee selling any commonly accepted textile article like cloth in his shop just because he sells ropes. In other words, it proceeded on the view that a person requiring rope does not go to a textile shop to get these ropes and, under the circumstances, the assessee's case that ropes sold by the assessee would fall under entry 4. of the Third Schedule was not

accepted. There was an alternative argument before the Tribunal that the assessee was dealing in yarn and these were second sales of yarn. The Tribunal negated this contention also. It was pointed out that the alteration from yarn to rope by the process of twisting altered the commercial character of the goods. The result was that both the contentions of the assessee failed and the matter is now in revision before us.

2. Item 4 of the Third Schedule as it was then in the statute ran 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.

3. The learned counsel for the assessee contended that the word "textile" did not require that there should be a warp and woof pattern, and that even where yarn was arranged in parallel lines and pasted together, it has been considered to be a textile. It would therefore, according to him, follow that yarn which was merely twisted in the shape of ropes under consideration here should also retain the character of textile. We are unable to agree with this submission. As rightly pointed out by the Tribunal, one does not go to the textile shop for the purpose of getting this kind of yarn, nor does one go to the assessee's shop for getting textile. The two varieties of goods are so wholly different that both cannot be grouped under "textiles" which would have to be understood in the ordinary and accepted commercial sense.

4. The Supreme Court in a recent decision, *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978] 42 S.T.C. 433, pointed out that the word "textile" must be interpreted according to its popular sense, meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Their Lordships referred to the Customs Tariff Act where there was a reference to "textile fabrics" and in connection with "dryer felts", which was under consideration in that case, and pointed out that the inclusion of "dryer felts" in the Customs Tariff Act under the head "textile fabrics" would clearly show that "dryer felts" which were "woven textile felts...of a kind commonly used in paper-making machinery" were regarded in common parlance, according to the sense of ordinary traders and merchants, as textile fabrics. Therefore, the test to be applied is whether under common parlance or by the commercial community, the ropes in question are taken as "textiles". The result of the test would be clearly against the assessee as cotton ropes of the thickness with which we are now concerned would not constitute any kind of textile.

5. The learned counsel then advanced the alternative argument that the commodity dealt with was only yarn and its thickness was of no consequence. The Second Schedule describes the declared goods in respect of which a single point tax only is leviable u/s 4. Item 3 of the said schedule contains the following narration :

Cotton yarn, but excluding cotton yarn waste.

6. The cotton yarn considered by this entry was liable to sales tax at the point of first sale in the State. The learned counsel contended that the cotton yarn had been produced only locally and that, therefore, the ropes could not be subjected to taxation at the point of second sales. Unfortunately for him, it is not possible to classify the present ropes with which we are concerned as yarn. Though the ropes are made of yarn, still they have undergone a transmutation into a different commercial commodity. A common man or a merchant would not call the rope "yarn". The type of ropes used for tying cattle or for passing through their nose or for being used as whips cannot be classified as yarn, so as to fall within the above-mentioned item.

7. In *Muthusavari Pillai & Sons v. State of Tamil Nadu* [1977] 39 S.T.C. 359, this Court had to go into the question whether cotton yarn twisted into bandings and similar ropes could be classified as "textile" or "yarn". In the course of the judgment, it was pointed out at page 365 after referring to the relevant authorities :

It is true that yarn does not lose its character as yarn merely by reason of its consisting of a bunch of threads, as in the case of doubling, and twisting together of two or more threads to make a stronger or firmer thread in order to manufacture a specified kind of textile ; it still retains its character as yarn. Thus, merely on the ground that the yarn in question consists of a bunch of spun thread, it could not be held that it is not yarn.... If the bunch of spun thread forms the basic spun yarn for weaving, it will still retain the character of yarn. In other words, its capability of being used for making textiles within the meaning of item 4 of the Third Schedule would determine its character as yarn. Once the produce is not and could not be used for such manufacture of textiles, it ceases to be yarn within the meaning of item 3 of the Second Schedule.

8. These observations apply with full force here.

9. The Supreme Court in *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978] 42 S.T.C. 433 pointed out that the use to which the goods may be put was immaterial and did not bear in its character as a textile. This was strongly relied upon by the learned counsel for the assessee. Observations in judgments cannot be put to the process of literal construction or understood divorced from their context. The real problem in that case was whether the word "textiles" was to be understood only in the sense of materials used for wearing apparel, drapery, etc. The dryer felts were meant for industrial use. Their Lordships negated a restricted use of the expression. The observation was made in such a context. The Supreme Court has in more than one place in the said judgment pointed out that the expression should have to be understood in the popular or commercial sense. The purpose for which the commodity is used is often a guiding factor to determine its character. But, in some contexts, the purpose may not furnish a conclusive answer. Judged by these considerations, the ropes in

question cannot by any stretch of imagination be classified as yarn. Under these circumstances, we do not find that there is any scope for accepting the assessee's contention. The revision petitions accordingly fail and they are dismissed with costs. Counsel's fee Rs. 250 ; one set.