(1995) 01 OHC CK 0031

In the Orissa High Court

Case No : O.J.C. No. 3385 of 1989

Utkal Woven Sacks APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:

Citation : (1995) 1 OLR 407

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : M. Kanungo, for the Appellant; Additional Government Advocate for opp. parties 1, 2 and 4 and Standing Counsel (C.T.) for opp. party No. 3, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Petitioner calls in question legality of assessments framed by the Sales Tax Officer, Bhadrak for the assessment years 1987-88 and 1988-89 under the Orissa Sales Tax Act, 1947(in short, the ''Act''). Petitioner was held not to be entitled to incentives/benefits available to industrial units under the Industrial Policy Resolution, 1986 (in short, IPR'') of the Government of Orissa.

2. Facts situation is almost undisputed. Petitioner, a partnership firm carries on business of manufacturing High Density Polythene (in short, ''HDP'') at the factory situated at Bhadrak. The assessing officer was of the view that one of the ineligible industries is a tailoring unit (other than manufacturing units for readymade garments), and since process of cutting and stitching of sacks was involved, petitioner-unit was a tailoring unit. According to him, petitioner purchased HDP fabrics from other manufactures, cut and tailored them into sacks for sale.

3. Petitioner''s stand is that expression ''tailoring'' has been misconstrued by the assessing officer. All acts of cutting and stitching do not constitute tailoring. The State in its counter affidavit has stated that the District Industries Centre,

Balasore (in short, ''DIC'') has already granted sales tax exemption certificate of raw materials and finished products to the petitioner, and has in essence supported stand of petitioner. According to learned counsel for the Revenue, however, tailoring is nothing but cutting and stitching, and process involved in the manufacturing of woven sacks involves cutting and stitching and therefore, view of the assessing officer is irreversible,

4. In common parlance, a tailor is one whose business is to make clothes and is maker of outer garments. Tailoring normally means making of garments. Tailoring units, other than these manufacturing readymade garments are not eligible to the incentives/benefits under the IPR. All acts of cutting and stitching would not constitute an act of tailoring. The meaning of ''tailor'' as given in the Oxford English Dictionary is as follows :

"One whose business is to make clothes-a maker of the outer garments of men also sometimes those of women."

Chambers Dictionary defines a "tailor" to be one whose business is to cut out and make outer garments esp. for men also." According to Corpus Juria Secundum, Volume 83, "tailor" is one who makes or repairs men''s outer garments, or makes cloaks, heavy close-fitting gowns, etc. for women ; usually restricted to one who makes clothes to order. According to the Permanent Edition of Words and Phrases, Volume 41 published by West Publishing Company, while dealing with the expression ''"tailors to the trade" it has been stated that the business of "tailors to the trade" consists in cutting, making, and trimming garments for merchant tailors in different parts of the United States. (See Magid v. Tannanbaumi: 149 N.Y.S. 445, 164 App. Div. 142). In Halsbury''s Laws of England, Fourth Edition, Volumes 28, while dealing with the question of lien it has been stated that a tailor''s lien is well known for labour of expenditure upon chattels entrusted to him, i.e. upon clothes, for their price. (See Blake v. Nicholson ; (1914) 3 MAS 167 per Lord Ellenborough, CJ. While dealing with the question of general liens, it has been observed that a general lien has been established in favour of a tailor on any part of a suit for the price of the whole.

5. Conclusion of the assessing officer that petitioner-unit was a tailoring unit does not stand to reason. He has misconstrued the expression "tailoring". Orders of assessing are accordingly quashed. Assessing Officer shall make fresh assessment in accordance with law. We, however, do not express any opinion as to the date from which entitlement, if any, of the petitioner to the incentives/ benefits under the IPR would be available. That aspect shall be considered by the assessing officer. It is open to the petitioner to bring to the notice of the assessing officer the certificate issued by the DIC.

The writ application is allowed. No costs.

P.C. Naik, J.

6. I agree.

