

(1998) 07 KAR CK 0096

In the Karnataka High Court

Case No : Writ Petition No"s. 10767-770 and 10771-91 of 1997 and 17514-17, 12888 and 3260 of 1998

Varalakshmi Enterprises and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Central Excise Tariff Act, 1985 — Section 15

Karnataka Sales Tax Act, 1957 — Section 29 (1) (c), 29 (1) (e), 29 (2) (c)

Citation : (1998) 111 STC 800

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Ajitkumar L. Raheja, S. Parthasarathi, M.G. Kumar, S.N. Murthy and Somashekar, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Judgement

V.K. Singhal, J.—All these writ petitions are disposed of by this common order since the controversy is with regard to taxability of the item of fabrics which is claimed to be exempt by the petitioners and taxable by the respondents. Penal provisions have also been invoked. In few cases, the assessments/reassessments have been framed levying the tax while in others only proposition notices have been issued.

2. The controversy hinges on the interpretation with regard to the exemption which has been granted by entry 8A of the Fifth Schedule to the Karnataka Sales Tax Act by which exemption has been given on the sales of all varieties of textiles, etc. The said entry reads as under :

"8A. All varieties of textiles namely, cotton, woollen or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths as described from time to time in column 2 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957."

In the above entry, a condition has been put that the variety of textile should be as defined in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Item No. 22 till March 15, 1995 was narrow woven fabrics (other than tulles, other net fabrics) ; there was no dispute with regard to exemption of the tax on the narrow woven fabrics manufactured and sold by the petitioners till March 15, 1995. Additional Duties of Excise (Goods of Special Importance) Act, 1957 was amended by Finance Act, 1995 and heading 58.06 was worded as under :

"Narrow woven fabrics (other than tulles, other net fabrics and goods of heading Nos. 58.07, 58.08, 58.09 and 58.10)."

3. The expression narrow woven fabrics in entry 58.06 was explained as under :

"For the purposes of heading No. 58.06, the expression "narrow woven fabrics" means :

(a) Woven fabrics of a width not exceeding 30 cm., whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges ;

(b) Tubular woven fabrics of a flattened width not exceeding 30 cm. ; and

(c) Bias binding with folded edges, of a width when unfolded not exceeding 30 cm."

4. In the Notes under the Fifth Schedule, it is mentioned that in the Additional Duties of Excise (Goods of Special Importance) Act, 1957, for the First Schedule, the following Schedule shall be substituted, viz. :

"In this Schedule, "heading", "sub-heading" and "chapter" means respectively a heading, sub-heading and chapter in the Schedule to the Central Excise Tariff Act, 1985, the section and Chapter Notes and the General Explanatory Notes of the said Schedule shall, so far as may be, apply to the interpretation of the Schedule."

It is on the basis of the above amendment of the Additional Duties of Excise (Goods of Special Importance) Act, the provisions of the Central Excise Tariff Act, 1985 have been made applicable. Entry 58.06 have to be read with entries 58.07, 58.08, 58.09 and 58.10 which have been excluded from the purview of narrow woven fabrics. The relevant entry is 58.07 which is as under :

"Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered."

5. The question which is agitated is as to whether the narrow woven fabrics manufactured and sold by the petitioners would fall in the category of "similar articles of textile materials". The words "similar articles of textile materials" are qualified with the words, labels and badges. It may be in pieces, the strips or cut to shape or size.

6. The following questions have been raised before me :

(1) That the narrow woven fabrics (labels) falling under heading 56.06 of the Central Excise Tariff and being the goods falling under First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 they are exempted from levy of sales tax as they are goods falling under entry 8A of the Fifth Schedule to the K.S.T. Act.

(2) That entry 58.07 of the Central Excise Tariff Act which has been excluded from the purview of entry 58.06 has not taken out the labels as they are neither similar articles or labels or badges nor they are manufactured item.

(3) That the provisions of Section 29(1)(e) and 29(2)(c) of the K.S.T. Act are not applicable in a case where the entire turnover is closed and exemption is claimed.

7. Elaborating the above points, it is stated that textile fabrics are declared as goods of special importance in the inter-State trade and commerce and since the last 15 years there was no tax. Even the looms for the manufacture of these items have been classified under the Customs Tariff and Central Excise Tariff under heading 84.46. They are manufactured on looms known as shuttle or shuttle less looms and the commodities manufactured is known as narrow woven fabrics because the width does not exceed 30 cms. At the time when Additional Duties of Excise (Goods of Special Importance) Bill No. 101 of 1957 was moved in the Parliament it was with the following Statement of Objects and Reasons :

"The object of the Bill is to impose additional duties of excise in replacement of the sales taxes levied by the Union and the States on sugar, tobacco and mill-made textiles and to distribute the net proceeds of these taxes, except the proceeds attributable to Union territories, to the States. The distribution of the proceeds of the additional duties broadly follows the pattern recommended by the Second Finance Commission. Provision has been made that the States which levy a tax on the sale or purchase of these commodities after the 1st April, 1958 do not participate in the distribution of the net proceeds. Provision is also being made in the Bill for including these three goods in the category of goods declared to be of special importance in inter-State trade or commerce so that following the imposition of uniform duties of excise on them, the rates of sales tax if levied by the States are subject from 1st April, 1958, to the restrictions in Section 15 of the Central Sales Tax Act, 1956."

Even in Bombay when Bombay Sales Tax Laws (Special Exemptions) Bill, 1957 was moved, the following Statements of Objects and Reasons were given :

"To minimise evasion of tax and also to remove the difficulties of the trade regarding the existing diversity in the sales taxes of different States and maintenance of elaborate accounts, the Government of India with the concurrence of the State Governments, have decided that sales tax levied in States on certain mill-made textiles, sugar and tobacco including tobacco products, should be replaced by additional Union excise duties on these

commodities. The proceeds of the additional duties will be distributed by the Government of India to the States with a view to compensate them for the loss of corresponding sales tax revenue. It has been decided that the distribution of excise duties shall be made according to the award of the Finance Commission in this respect contained in their report."

8. In order to examine the first contention as to whether the labels manufactured by the petitioners fall under entry 58.06, it is sufficient to observe that the commodity manufactured is narrow woven fabric. It is only the exclusion clause which has to be examined as to whether the goods fall under the heading 58.07. Narrow woven fabrics have been defined and it is undisputed that the width of the item manufactured and sold by the petitioners is of the width not exceeding 30 cms. Had there been no exclusion, then the item would have fallen under entry 58.06. In order to see whether narrow woven fabrics manufactured and sold by the petitioners fall in the category "similar articles of textile materials". The condition for the similar articles is that they can be in pieces or strips which may be cut to shape or size or not. Another requirement is that the textile material should be similar to labels and badges. According to the respondents the commodity falls in the category of strip which can be cut to shape or size. The word "strip" have been defined in the Concise Oxford Dictionary of Current English as under :

"Strip, n. Long narrow piece (a--of card, paper, cloth, garden, territory, board) ; narrow space in newspaper for small pictures telling a comic or special story (--cartoon) ;

Odhams Dictionary of the English language has defined the word "strip" as under :

"Strip(1)--a long narrow piece or band ; an edge or border ; a shred."

9. From the above definitions, it is evident that the commodity in dispute being a narrow piece in width comparatively long will be considered to be a strip.

10. On the question whether it is a similar article of textile material much stress laid that it should be a manufactured item from textiles. The word "article" cannot be interpreted to be an item manufactured from textile. The word "article" has been defined in Odhams Dictionary of the English language, as under :

"Article (1)--an object distinct from others of a class, an item ; a commodity or merchandise ; a prose contribution on a subject published in a periodical ; a tenet of belief ; an item in a legal document or contract ; part of a stem between two joints ; a definite or indefinite demonstrative."

In Encyclopaedia Britannica, at page 556, the word "article" is defined as under :

"article, in grammer, a word that signals the function or class of another word. The articles in English are a (or an) and the. They have grammatical rather than

lexical meaning."

In Black's Law Dictionary, 6th Edition, the meaning of "article" is as under :

"Article. A separate and distinct part of an instrument or writing ; one of several things presented as connected or forming a whole. A particular object or substance, a material thing or a class of things."

In Concise Oxford Dictionary the word "article" is defined as under :

"article, n. Separate portion of anything written ; separate Clause (of agreement, etc.) as thirty-nine--Apprenticeship, Association ; literary composition forming part of magazine, etc., but independent ; leading--in newspaper, expressing editorial opinion ; particular ; particular thing, as the next--, (Gram.) definite--, "th", indefinite--"

In Words and Phrases Permanent Edition--4, the meaning of "article" is as under (page 486) :

"As used in Tariff Act, 1890, par. 373, 26 Stat. 594, relating to the duties on laces, tuckings, lace window curtains, and other similar tamboured articles, "article" should be construed in its general sense as indicating a commodity."

Again at page 487, the word "article" is defined as under :

" "article" is derived from the Latin word "articulus", meaning connecting two parts of the body ; one of the parts thus connected ; a separate member or portion of anything ; a single clause in any writing ; a particular item of several that make up an account ; a portion of a complex whole ; a distinct portion of an instrument ; a distinct part."

11. From the above definitions of the word "article" it has to be construed in its general sense indicating that it is a commodity and not necessarily a manufactured commodity. A contention was also raised that in the Statements of Objects and Reasons of the Finance Bill, 1995 the tariff entry has been brought in consonance with the First Schedule to the Customs Tariff Act, 1975. The Statements of Objects and Reasons for Clause 81 are as under :

"Clause 81 seeks to amend the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The proposed amendment seeks to substitute the tariff descriptions with the corresponding proposed descriptions in the Schedule to the Central Excise Tariff Act, 1985 and restructure the duty rates in respect of unmanufactured tobacco, cigars and cheroots, fabrics of silk, wool, cotton and man-made fibres, special woven fabrics, tufted textile fabrics, lace and embroidery, impregnated, coated, covered or laminated textile fabrics, knitted or crocheted fabrics."

It is stated that the commodity is also governed by Textiles (Control) Order, 1986, wherein "cloth" has been defined to mean any fabric made either wholly or partly from cotton, wool, or man-made fiber (continuous) or man-made fibre

(discontinuous), natural silk, or wastes of any of these materials and includes cloth containing any other yarn, but does not include.... (various items). It is stated that the exclusion clause of items mentions that the item is not excluded and therefore it is a cloth. Reliance is placed on the observations of the apex Court in the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , where the word "textiles" was interpreted as under (para 5) (pages 436-437 of STC) :

"5. There can, therefore, be no doubt that the word "textiles" in item 30 of Schedule "B" 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". There we are in complete agreement with the Judges who held in favour of the Revenue and against the assessee. But the question is : What result does the application of this test yield ? Are "dryer felts" not "textiles" within the ordinary accepted meaning of that word ? The word "textiles" is derived from the Latin "texere" which means "to weave" and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a "textile" and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be "textiles". What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls ; it may be weak or strong, light or heavy bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. It may be used for making wearing apparel, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile. It is, therefore, no argument against the assessee that "dryer felts" are used only as absorbents of moisture in the process of manufacture in a paper manufacturing unit. That cannot militate against "dryer felts" falling within the category of "textiles", if otherwise they satisfy the description of "textiles"."

The word "textile" was also interpreted in Delhi Cloth and General Mills Co. Ltd. and Others Vs. R.R. Gupta, Commercial Tax Officer, Jaipur and Another, that it must acquire a body and texture. Presumably it is not just the skeleton of a textile. Apparently, it is more than that. It is also submitted that since there was

a longstanding practice of 40 years, the change is not permissible in view of the judgment of the apex Court in Collector of Central Excise, Madras Vs. Indian Oxygen Ltd., .

12. It is submitted that in a case where two views are possible, then the matter should be interpreted in favour of the subject as held in Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., and Naffar Chandra Jute Mills Ltd. and Others Vs. The Assistant Collector of Central Excise and Others, . The respondents are not justified in changing the settled law as has been held in Collector of Customs and Central Excise and Another Vs. Oriental Timber Industries, , Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others, and Naffar Chandra Jute Mills Ltd. and Others Vs. The Assistant Collector of Central Excise and Others, . The just claim of the citizens cannot be defeated or delayed by resorting to technicalities as observed in Madras Port Trust v. Hymanshu International 1979 ELT 396. The decision of the Madras High Court in the State of Madras v. T.T. Gopalier [1968] 21 STC 451 is also alleged to be binding in this case, following the Bombay High Court decision in Godawari Devi Sharaf case (1978) ELT 624 and Godrej & Boyce Manufacturing Co. Pvt. Ltd. case 1984 ELT 172. The various contentions raised by the learned counsel for the petitioner have no force because under entry 8A of the Fifth Schedule to the KST Act, all textiles which have been exempted are those who have been specified in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and if any item is excluded therefrom the exemption cannot be availed. Even if the amendment is made subsequently then the amended law has to be applied in respect of the period after the amendment. It is therefore, necessary that only the entries of the Act 1957 have to be considered for the purpose of determining varieties of textiles. As observed above, the strip of labels manufactured by the petitioners are narrow woven fabrics. But there is an exclusion in the entry 58.06 then that excluded items would not fall in the category of textile for the applicability of exemption clause. Entry 58.07 has included not only labels and badges but similar articles of textile materials. Strip of labels/badges manufactured or sold by the petitioners are similar to labels and badges and they are articles of textile material. It is not necessary that for the purpose of commodity falling in the category "articles of textile material" they should be further manufactured from textile. Textile material itself is an article and different species thereof will be falling under the category of articles of textile material. This contention, therefore, having no force is rejected. The action of assessing authority in levying tax by framing assessment order or issuing proposition notices, therefore, cannot be considered to be without jurisdiction.

13. Regarding the contention that the act of the petitioners does not fall within the purview of Section 29(1)(e) or 29(2)(c) so as to attract the penal provision. It may be observed that so far as the non-production of the books of account is concerned, u/s 29(1)(e) it is a factual matter and only proposition notices have been issued and therefore, this controversy is not adjudicated.

14. Regarding invoking the provisions of Section 29(2)(c) for the fraudulent evasion of tax, it is submitted that there is no fraudulent evasion of tax and an interpretation of the entry in a different manner, then the respondent would not bring the act of the petitioners as fraudulently evading tax.

15. I have considered on this point. In *Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Private Ltd. v. Commissioner of Sales Tax, M.P.* [1979] 44 STC 100 it is observed by the Madhya Pradesh High Court that a return will not be a false return if the facts are correctly disclosed. Raising of a false plea cannot make the return false. In *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax* [1980] 45 STC 197 it is observed by the apex Court :

".....It is elementary that Section 43 of the Madhya Pradesh General Sales Tax Act, 1958, providing for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty. If the view canvassed on behalf of the revenue were accepted, the result would be that even if the assessee raises a bona fide contention that a particular item is not liable to be included in the taxable turnover, he would have to show it as forming part of the taxable turnover in his return and pay tax upon it on pain of being held liable for penalty in case his contention is ultimately found by the court to be not acceptable. That surely could never have been intended by the Legislature."

In *Vijai Hosiery Mills Vs. The State of Rajasthan*, in a case where exemption was claimed on the sale of banian considering it to be garment and not hosiery product, it was held by the Rajasthan High Court that the provisions of imposition of penalty and prosecution which are penal in character could be applied when non-payment of tax is accompanied by guilty mind. Without multiplying the citations and in view of the fact that the position is not seriously disputed by the learned counsel for the respondents, I am of the view that whenever turnover is fully disclosed and a plea of exemption is raised, even if it is found that such exemption is not available to the assessee, penalty or prosecution provision u/s 29(2)(c) cannot be invoked.

16. In view of the above, the writ petitions are disposed of with a direction that the petitioners are liable to pay tax on the sale of strip of labels and are not entitled for exemption under entry 8A of the Fifth Schedule. The dispute regarding Section 29(1)(c) of the Act is not adjudicated. There would be no liability of penalty on the petitioners u/s 29(2)(c) of the Act. If there is any dispute with regard to the turnover or any other factual aspect, the petitioners may file appeal within four weeks from today. In cases where proposition notices have been issued, objections may be filed within four weeks from today. The matter regarding Section 29(1)(e) of the Act would be examined by the assessing authority and no action u/s 29(2)(c) in accordance with the notice would be taken.