
(1963) 11 GUJ CK 0002
In the Gujarat High Court
Case No : Sales Tax Reference No. 10 of 1963

Vrajlal Bhukhandas	Vs	APPELLANT
The State of Gujarat		RESPONDENT

Date of Decision : 01-11-1963

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 3, 5, 52, 6

Citation : (1964) 5 GLR 191 : (1964) 15 STC 437

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

Bench : Division Bench

Advocate : I.M. Nanavaty, for the Appellant; A.D. Desai, Assistant Government Pleader, instructed by Bhaishanker Kanga and Girdharilal, for the Respondent

Judgement

Shelat, C.J.—The question arising in this reference is whether shetranjis, i.e., cotton carpets, manufactured on handloom, are handloom cloth, within the meaning of entry 29 of Schedule A to the Bombay Sales Tax Act, 1959.

2. The petitioners are dealer registered under the Act and they sold a shetranji or a carpet for a sum of Rs. 8 under a bill dated the 8th of February, 1961. u/s 52 of the Act, they applied to the Deputy Commissioner of Sales Tax for determining whether any tax was payable in respect of the sale of the aforesaid carpet, contending that the aforesaid carpet was covered by entry 29 in Schedule A to the Act. The Deputy Commissioner, by his order dated 30th May, 1961, held that the carpet was not "cloth" and was not therefore covered by the said entry. The petitioners thereafter preferred an appeal before the Sales Tax Tribunal, contending that the word "cloth" should be interpreted in a wider sense so as to include all kinds of fabrics woven out of cotton yarn and, therefore, the aforesaid carpet should not be considered as an article made from cloth but "handloom cloth" covered by entry 29. The Tribunal dismissed the appeal, confirming the view of the Deputy Commissioner. At the instance of the petitioners, the Tribunal referred the following question to us :-

"Whether on the facts and circumstances of the case sales of shetranjis woven

on handloom to of cotton yarn are covered by entry 29 of Schedule A to the Bombay Sales Tax Act, 1959 ?"

3. Schedule A contains entries in respect of goods. The sale or purchase of which is free from all taxes. Entry 29 in that Schedule, with which we are for the moment concerned in this reference, provides as follows :-

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

4. Mr. Nanavaty for the petitioners argued that since the carpet in question was admittedly made of cotton yarn and further that it was manufactured on handloom, the view taken by the Deputy Commissioner and confirmed by the Tribunal that it did not fall within entry 29 was erroneous and that the Deputy Commissioner and the Tribunal ought to have held that a carpet of the kind we have before us was handloom cloth. He contended that the entry speaks of handloom cloth of all varieties, that the only variety of cloth that is excluded therefrom is pure silk cloth and, therefore, the entry should be given a wider meaning and cloth of all varieties should be held to be inclusive in that entry. He further contended that inasmuch as the carpet in question is made from cotton yarn and prepared on handloom, must make it cloth as any other variety of cloth made of cotton yarn and woven on handloom and, therefore, was one of the varieties of cotton cloth. He also argued that the word "cloth" used in entry 29 was not used as a term of art and, therefore, must be given its ordinary dictionary meaning. In Webster's New International Dictionary, 2nd Edition (1959) the word "cloth" has been stated to mean -

"a. A pliable fabric woven, felted or knitted from any filament; commonly fabric of woven cotton, woollen, silk, rayon or linen fiber, used for garments etc.;

b. A particular kind of fabric distinguished by a simple weave in which the warp and weft threads pass over and under each other alternately;

c. A piece of fabric of a kind, size, texture adapted for washing, wiping or polishing something specified; as, shoe cloth; window cloth."

5. In the Shorter Oxford Dictionary, Third Edition (1959), the word "cloth" has been stated to mean -

"A fabric woven, felted or otherwise formed, of filaments, as of wool, hair, silk, the fibres of hemp, flax, cotton, asbestos, spun glass, wire."

6. In the Oxford English Dictionary, the word "cloth" has been shown to mean -

"A piece of pliable woven or felted stuff, suitable for wrapping or winding round, spreading or folding over, drying, wiping or other purpose; a swaddling or winding cloth, wrap, covering, veil, curtain, handkerchief, towel, etc."

7. In the Webster's New 20th Century Dictionary, its meaning has been shown as -

"A woven knitted or pressed fabric of fibrous material, as wool, hair, cotton, flax,

hemp, synthetic fibres etc., used for garments or other covering and for various other purposes, as household furnishings

8. Relying on these passages, Mr. Nanavaty contended that the carpet in question satisfied all the characteristic associated with "cloth" in the sense that it was a woven fabric made from cotton yarn in which the warp and weft threads passed over and under each other alternately and, therefore, must be regarded as cloth. He also relied upon the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, an Act exempting sales and purchases of certain goods which became assessable to additional duty of excise and of certain handloom textiles and other goods from the sales tax laws in force in the State of Bombay. Particular reliance was placed on the Preamble of that Act where it is stated that the Act was passed in view of the Central Government proposing to levy an additional duty of excise on certain goods and that, therefore, it was expedient to exempt the sales and purchases of those goods and of certain handloom textiles, and other goods from the sales tax laws in force in the State of Bombay. Section 3 of that Act provides that notwithstanding anything contained in the relevant sales tax law or any rules made thereunder etc., no tax shall be payable under the relevant sales tax law on the sale or purchase of designated goods effected on or after the appointed day, subject to the conditions or exceptions, if any, set out in the corresponding entry in column II of Schedule II. Section 4 of that Act then provides that notwithstanding anything contained in the relevant sales tax law or any rules made thereunder, no tax shall be payable under the relevant sales tax law on the sale or purchase of any scheduled goods effected on or after the appointed day. Schedule I sets out all varieties of cloth manufactured in mills or on power looms excluding pure silk cloth, and Schedule II sets out any variety of handloom cloth excluding pure silk cloth, as goods exempted under the aforesaid Act. These provisions of the Exemption Act of 1957 were relied upon first to show that all cotton fabrics, which were subject to the additional excise duty by the Central Government, were exempted under the Act and secondly, that they indicated that even the Legislature regarded cotton fabrics and cotton cloth as synonymous. It was contended that a cotton carpet being undoubtedly a fabric must, therefore, be regarded as cloth and must fall within the ambit of entry 29. Mr. Nanavaty also pointed out entries in Schedule A to the Bombay Sales Tax Act, 1959, such as entries Nos. 15, 41, 43A and 51 where the word "fabric" and not "cloth" is used, and stated that the word "fabric" was used in those entries and not "cloth" because the First Schedule to the Central Excises and Salt Act, 1944, has used the word "fabric" and that, therefore, the use of the two different words in those entries and entry No. 29 did not mean that the Legislature, while enacting Schedule A to the present Act, meant to give different connotations to the words "fabric" and "cloth", and argued that the two words were interchangeable. There was therefore no reason, argued Mr. Nanavaty, for not accepting the dictionary meaning of the word "cloth" and not including in the word "cloth" the carpet in question.

9. A dictionary, as is well known, often sets out different meanings which are

primary, technical and technological meanings of a general word, such as "cloth" as in the present case. But it is not possible sometimes to adopt such dictionary meaning while interpreting a statute, although the statute may not have given the definition of such a word. The Legislature in such a case might use such a word without considering the necessity of defining it where it uses the word in a meaning which it has acquired in ordinary parlance. Thus, the Supreme Court in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Another* (1961) 12 S.T.C. 286, accepted the secondary meaning of the word "vegetables" used in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, rather than its dictionary meaning. Item 6 in that Schedule related to "vegetables" and item 36 in that Schedule related to betel leaves. Item 36 however was deleted by the Amendment Act 16 of 1948, but it was contended that in spite of that deletion, betel leaves must be held to be exempted as according to the dictionary meaning, they were vegetables. The Supreme Court rejected this contention on two grounds, (1) that the fact that there were two distinct entries, entry 6 for vegetables and entry 36 for betel leaves, indicated the legislative intent that betel leaves were not vegetables, and (2) that apart from that fact, the word "vegetables" in a taxing statute must be understood and was held in several decided cases, as having that meaning attached to it in common parlance. Dealing with the latter aspect, the Supreme Court has observed at page 288 of the report as follows :-

"But it was submitted that betel leaves are vegetables and therefore they would be exempt from sales tax under item 6. Reliance was placed on the dictionary meaning of the word "vegetables" as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and 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."

10. 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. 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. We are supported in this view by a decision of a Division Bench of the Andhra High Court consisting of Subba Rao, C.J., (as he then was) and Viswanatha Sastry, J., in *Kosuri Subba Raju v. The State of Andhra* [1956] 7 S.T.C. 479. The petitioner in that case was the proprietor of Prabhat Tape Manufacturing Company, Palakol, and had obtained a licence u/s 5 of the Madras General Sales Tax Act, to deal in cloth woven on handloom wholly or partly with mill yarn. During the year 1952-53, he sold nawar tape of the value of Rs. 48,337 and claimed exemption u/s 5(iii) of the Act. The Commercial Tax Officer, and on appeal the Tribunal, held that the petitioner was not entitled to the exemption on the ground that nawar tape was not cloth within the meaning of the aforesaid section. Before the High Court, it was contended on behalf of the petitioner that the object underlying the exemption, namely, to encourage production of handloom cloth or to help weavers whose livelihood depended upon that industry, applied as much to nawar tape as to cloth, for both were woven on handloom with mill yarn and by the same class of persons for whom the protection was designed. Dealing with this contention, the learned Judges observed that the word "cloth" was not a word of art and in common parlance it designated fabrics used for garment, covering and such other purposes. They further observed that it was impossible to conceive that the Legislature, which presumably knew the popular meaning of that word, would have used it in so comprehensive a sense as to take in nawar tape and that the simple test was, would any person go to a bazar and ask for cloth when he wanted nawar tape. Though the process of manufacture for both may be the same, the two words had acquired secondary meaning and, therefore, if the Legislature intended to exempt nawar tape, they would have used that word specifically, as the Government had done in a subsequent notification dated 18th November, 1954. After examining the various dictionary meanings of the word "cloth", they stated that it was clear from them that the word "cloth" was used in a wider sense as also in a narrower sense, that in the wider sense it might take in every fabric woven of yarn or other material, but in the narrower sense, it connoted a woven material used for garments or clothing. They therefore held that in the context of the section and in view of the essential distinction between cloth and tape, and above all, in view of the secondary meanings the two words had acquired in popular parlance, the word cloth in section 5(iii) could not take in nawar tape. It is clear from this decision that though nawar tape might be said to be a cotton fabric and though it was an article which was woven on handloom with mill yarn, it was not regarded as cloth within the meaning of section 5(iii) of the Madras Act. The Tribunal in its judgment, has relied upon a decision of the High Court of Rajasthan in *Inder Singh v. Sales Tax Officer, City Circle, Jodhpur* [1961] 12 S.T.C. 557. That was a case which was concerned with Durries which are equivalent to carpets, and the question there was whether such a Durry was included in the expression "handloom cloth", within the meaning of item 3 of the notification dated the 14th of April, 1955, issued under the Rajasthan Sales Tax Act of 1954. The High Court declined to accept the wider or the primary meaning of the word "cloth" and negatived the contention that a Durry was handloom

cloth. But we prefer not to base our judgment on the authority of that decision as the decision there appears to be founded upon the specific words of the notification which was before the High Court and not upon a principle, as in the case before the Andhra High Court. Mr. Nanavaty however relied upon another decision of the Andhra High Court in *The Government of Andhra Pradesh v. Pachipulsi Venkata Subba Rao Vallamkonda Venkateswarlu and Others* [1960] 11 S.T.C. 561 and Mr. Nanavaty's contention was that the High Court there has laid down the principle that the words "cotton cloth" in item 1 of sub-section (2-A) of section 3 of the Madras General Sales Tax Act, 1939, and clause (v) of section 6 of the Hyderabad General Sales Tax Act, 1950, should be given a wider meaning, thereby not accepting the view taken in the earlier decision of that High Court in the case of *Kosuri Subba Raju* [1956] 7 S.T.C. 479. In that decision, the Andhra High Court laid down that the words "cotton cloth" were used in the aforesaid provisions to denote every fabric used for any purpose including the use as a wearing apparel and that cloth did not cease to be cloth merely because it was used as a dhoti or a sari. But in laying down that proposition, the Andhra High Court was replying to the contention urged before it that saris and dhotis would not fall within the meaning of cloth and it was while negating that contention that the High Court observed that the expression "cotton cloth" need not be given that narrow meaning contended for by the dealer there. It is clear from the judgment that this decision did not dissent from the earlier decision of that High Court and in fact, it relied upon it, for, at page 563 of the report, the learned Judges adopted the meaning of cloth as understood in common parlance as was done in the earlier case by Subba Rao, C.J., and Viswanatha Sastry, J., by observing that "in common parlance, the word 'cloth' is used to denote every fabric used for any purpose including the use as a wearing apparel." Mr. Nanavaty therefore was not right in arguing that the Andhra High Court had laid down some principle different from the one laid down in its earlier decision or that it had dissented from the observations made by Subba Rao, C.J., and Viswanatha Sastry, J. in the earlier decision. Mr. Nanavaty also referred to the case of *Sri Kittappa Dress Manufacturing and Embroidery Works v. The State of Madras* [1962] 13 S.T.C. 34. That decision however is not useful for the purpose of this reference, for, the only question there was whether choli bits and saris were cloth and not clothes. Finally, he pointed out the Bombay decision in *The Collector of Sales Tax, Bombay State v. Gaurimal Mahajan and Sons* [1959] 10 S.T.C. 452, where Shah and S. T. Desai, JJ., held that the sale of dressed poultry could be regarded as sale of meat within the meaning of entry 4 of Schedule II to the Bombay Sales Tax Act, 1946. The learned Judges first considered the dictionary meaning of the expression "meat" as flesh of animals used as food as distinguished from fish or fowl and also considered the meaning of the word "meat" as used in common parlance, which they said also meant only the flesh of cattle, swine, sheep, goats, etc. and did not include dressed poultry but held that the expression "meat" in its wider connotation included dressed poultry. What appears to have weighed with them was the fact that the Legislature had sought to exclude from liability to pay the sales tax practically all materials normally

used as food-stuffs or condiments for seasoning food-stuffs and therefore they thought that a very strong indication to the contrary was required to fortify the proposition that poultry, which also was a recognized food, was not included in the expression "meat". They pointed out that fish was exempt from payment of sales tax and so also fresh eggs, and observed that if the expression "meat" in its wider connotation included dressed poultry, there was no reason, looking to the context in which the word "meat" was used, for holding that it was not used in its wider connotation in entry No. 4 of the Second Schedule of the Bombay Sales Tax Act of 1946. It is thus clear that the learned Judges there were impressed by the fact that poultry was a recognised food, that that being so, and the intention of the Legislature being clearly to exempt food-stuffs, it was necessary that it should be held to be inclusive in the expression "meat" as after all, dressed poultry was flesh of fowl, though the flesh of fowl may not be included in the meaning of the word "meat" as given in the dictionaries or the attached to that expression in common parlance. What the learned Judges therefore in reality held was that where the context in which a particular expression was used, required a wider connotation to be given to the expression in question, such context for the purpose of construction would be an overriding consideration. The decision, therefore, is not really one which would throw light upon the question of construction before us, it being a decision solely dependent upon the context in which the expression "meat" was used in entry No. 4 of the Second Schedule of the Bombay Sales Tax Act, 1946. Mr. Nanavaty has not been able to point out any such context in entry No. 29 governing its construction which can be considered to be an overriding factor, as was the case in the Bombay decision. The expression "cloth" has acquired a secondary meaning, that it 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* [1961] 12 S.T.C. 286 and by the Andhra High Court in the case of *Kosuri Subba Raju* [1956] 7 S.T.C. 479, we would hold that the carpet in question would not be covered by entry No. 29, and therefore, we would answer the question referred to us in the negative. The petitioner will pay to the respondents the cost of this reference.

11. Reference answered in negative.