

The Commissioner of Sales-Tax, U. P.

Vs

M/s. Sarin Textiles Mills

Civil Appeals Nos. 1934-1935 of 1970 and 1172-73 of 1974

(R. S. Sarkaria, A. C. Gupta JJ)

21.04.1975

JUDGMENT

SARKARIA, J. –

1. These appeals by special leave are directed against the judgment of the High Court of Allahabad answering in favour of the assessee the following question referred to it under Section 11 of the U. P. Sales Tax Act, 1948 (for short called the Act) :

Whether the articles "carpet woollen yarn" is covered by the terms 'yarn' mentioned in item No. 4 of notification No. ST-907/X, dated March 31, 1956 and item No. 33 of notification No. ST-1365/X, dated April 1, 1960 taxable of 6 pies and 3 pies per cent respectively or a kind of woollen goods as mentioned at item No. 46 taxable at one anna per rupee according to notification No. ST-905/X, dated March 31, 1956 or whether it is an unclassified item taxable at 2%.

2. M/s. Sarin Textile Mills, Agra is a manufacturer of and dealer in "woollen carpet yarn", popularly known as "kati". The relevant assessment years are 1959-1960 and 1961-62. The only dispute, is whether such kati should be taxed as "yarn" at 3 % or as "woollen goods" at one anna per rupee, under the relevant notification issued under Section 3-A or as an unclassified item at 2% under Section 3 of the Act.

3. The Sales-tax Officer by his order, dated October 6, 1965, regarded it as a 'kind of yarn' covered by Entry No. 4, Notification No. ST-907/X, dated March 31, 1956, and so taxed it at six pies per rupee for 1959-60 and at three per cent for the year 1961-1962 in view of subsequent Notification No. ST-1365/X, dated April 1, 1960.

4. On appeal by the assessee, the Assistant Commissioner (Judicial) reversed that interpretation and held that woollen carpet kati was an "unclassified item" taxable at the rate of two per cent.

5. The Commissioner of Sales-tax moved the Revisional Authority under Section 10 of the Act against the order of the Assistant Commissioner (Judicial). The Judge (Revisions) agreed with the interpretation adopted by the Assistant Commissioner (Judicial) and dismissed the revision application.

6. On applications filed by the Commissioner under Section 11(3) of the Act, the Judge (Revisions), referred the aforesaid question to the High Court.

7. The High Court also held that the woollen carpet kati is not 'yarn' since it is unspun fibre not used in weaving, and, as such, it is not taxable as a 'kind of yarn' under the aforesaid notifications. It further rejected the alternative contention of the Revenue that 'woollen carpet kati' is taxable under the Notification No. ST-905/X as "woollen goods". In the result, the High Court answered the question against the Revenue. Hence these appeals.

8. Mr. Rana, learned Counsel for the appellant contends that the term "yarn" used in the aforesaid notifications should be interpreted in the sense in which it is understood by persons engaged in the trade. Stress has been placed on the fact that in English, even the assessee has been describing the article in question as "woollen carpet yarn". Such kati, it is pointed out, is used in the manufacture of carpets by a process of 'knotting', which in ordinary parlance is described as 'weaving'. According to Mr. Rana, the distinction drawn by the High Court, between 'weaving' and 'knotting', being too fine and artificial, is not justified. It is maintained that the Sales-tax Officer had rightly held that all twisted wool fibres are 'yarn'. Since this woollen kati is such a fibre, it is yarn and taxable as such under the aforesaid notifications. In the alternative, Counsel submits that this article falls within the purview of "woollen goods" and is taxable as such under notification No. ST-905/X of 1956.

9. As against this, Mr. Manchanda, learned Counsel for the assessee contends that in the past for about 8 years, the Revenue had been understanding and treating for the purpose of taxation, "woollen carpet kati" as an article different from "yarn" and "woollen goods" within the contemplation of the aforesaid notifications. It is stressed that for the first time it was on September 23, 1963 that the Sales-tax Officer departed from this time-honoured interpretation and held "woollen carpet kati" to be "yarn" within the said notifications. It is submitted that the High Court's opinion, that woollen carpet kati is neither "yarn" nor "woollen goods", proceeds on facts found by the Assessing Authority on the basis of evidence adduced regarding the nature and use of this article. On those facts, it is maintained, no other reasonable interpretation than the one accepted by the High Court is possible.

10. The notifications concerned issued under Section 3-A of the Act, are these :

(i) Notification No. ST-907/X, dated March 31, 1956.

It declares that the turnover of certain commodities mentioned therein should be taxed at a single point, at the sale by the manufacturer of the importer, at the rate of six pies per rupee. The relevant entry of this notification is No. 4, which reads :

Yarn of all kinds, including unspun fibre used in weaving, other than handspun yarn but excluding cotton yarn in cops and cones.

(ii) Notification No. ST-1365/X-990-1956, dated April 1, 1960.

It is also a notification under Section 3-A of the Act and the relevant entry is at time No. 33 which reads :

Yarn of all kinds including unspun fibre used in weaving other than handspun yarn but excluding cotton yarn.

(iii) Notification No. ST-905/X, dated March 31, 1956

The relevant entry is at item No. 46 which reads :

Woollen goods excluding carpet but including knitting wool.

The rate of tax prescribed is one anna per rupee.

11. The first point to be considered is, whether "woollen carpet kati" is "yarn" within the meaning of Notifications (i) and (ii) catalogued above.

12. "Yarn" has not been defined either in the Act and the Rules, or in the notifications. We have therefore to construe this term in its ordinary grammatical sense. According to "Oxford Dictionary" "yarn" means :

Any spun thread specially of kinds prepared for weaving, knitting or rope-making.

13. Webster's New World Dictionary also, gives its meaning thus :

Any fibre, as wool, silk, flax, cotton, nylon, etc. spun into strands for weaving, knitting or making thread.

14. Thus, a fibre in order to answer the description of "yarn" in the ordinary commercial sense, must have two characteristics. Firstly it should be a spun strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making.

15. Now, it is an undisputed fact, in the instance case, that "woollen carpet kati" is unspun fibre. It lacks the first characteristic of "yarn". It is therefore possible to say that, by itself, the expression "yarn of all kinds" in the notification, quoted above, would not cover unspun fibres. But the succeeding phrase "including unspun fibre used in weaving" qualifies the preceding expression "yarn of all kinds". This phrase, which, in one sense, extends the connotation of "yarn" by including in it unspun fibre, pinpoints and highlights, on the other hand, the usability of such unspun fibre in weaving as a determinative circumstance.

16. The question thus narrows down into the issue : Is woollen carpet kati - which is admittedly unspun fibre - "used in weaving" within the contemplation of these notifications ? Again, "weaving" has not been defined in these notifications or the other statutory provision. We have therefore to fall back upon its ordinary dictionary meaning. In that sense, 'weaving' implies the process of forming thread into fabric by interlacing :

The most important method by which wool products are produced is weaving, the interlacing at right angles of two or more systems of threads. Variations are almost limitless but all are derived from three basic weaves, plain, satin and twill. Hundreds of yarns, wound on large spoon or beam form the warp. Each yarn is drawn through the eye of a heddle or wire mounted on a harness frame. The alternate raising and lowering of the frames, each with its hundreds of heddles controlling the warp yarns, forms the shed, the space through which the weft or filling yarn is carried by the shuttle, a long streamlined box holding a bobbin of yarn in its hollowed centre. Each trip of the shuttle is called a pick. After each pick the harness frames shift position in accordance with the predetermined pattern, producing a new shed or different combination of raised and lowered warp yarns. The filling yarn are beaten down with a weaver's reed to make a tighter weave. (Encyclopaedia Britannica, Vol. 23, p. 342, 1971 Edn.)

17. Thus "weaving is the process of combining warp and weft components (respectively lengthwise and cross-wise) to make a woven structure". The threads that lie lengthwise are called the warp. The other threads which are combined with the warp and lie widthwise, are called the "weft", also known as "woof". An individual thread from the warp of indefinite length, is called an end; each individual length of weft from one edge to the other is called a pick. Consecutive picks are usually consecutive lengths of one piece of weft yarn that is repeatedly folded back on itself. In all methods of weaving before a length extending from the cloth already formed, into two sheds. The process is called shedding. The sequence of primary operations in one weaving cycle is thus shedding, picking and beating in. (Encyclopaedia Britannica, Vol. 23, p. 342)

18. "Weaving is differentiated from both warp and weft, knitting from braiding, and from net making, in that these processes all make use of only one set of elements. In addition, there are geometrical differences." (Encyclopaedia ibid.)

19. The ground having been cleared, it is to be seen whether the process by which woollen carpet kati is used in preparation of carpets, can properly be called "weaving".

20. Now, the facts found on the basis of evidence adduced by the Additional Appellate Commissioner and the Judge (Revisions) Sales Tax are that such woollen kati are short cutpieces of unspun fibre (each of which according to the aforesaid Encyclopaedia is about 2 inches in length). It has very little tensile strength and is not used - as it is not capable of being used - for weaving, knitting or rope-making. The only use to which the kati or pile is put is by attaching each piece by hand around two warp threads. The kati is not a component of the basic fabric of the carpet. It is not an integral constituent of the warp and weft of the carpet which consists of a different spun fibre of great tensile strength, i.e. of yarn. The process of looping or knotting these pile tufts is different and distinct from the process of lengthwise and crosswise combining the warp and weft components, which makes the woven basic structure of the carpet.

21. In view of these primary facts found by the taxing authorities, the conclusion is inescapable, that woollen carpet kati is neither "yarn" nor "unspun fibre used in weaving" within the contemplation of the aforesaid notifications issued under Section 3-A.

22. This takes us to the second question as to whether such kati would fall within the ambit of "woollen goods" under Entry 46 of Notification (iii) set out above.

23. Here also, we find ourselves in agreement with the Division Bench of the High Court that woollen carpet kati is only raw material from which "woollen goods" are prepared. In this connection it is to be noted that yarn used in weaving the warp and weft of carpets, or woollen fibre used in weaving has been made taxable at a far lower rate than "woollen goods" under the notifications. It could never be the intention that a mere component or raw material used in the manufacture of woollen goods, by a manual process, not being a process of weaving, should be taxed at a far higher rate, by treating the same as a finished "woollen goods".

24. For the foregoing reasons, we are of the opinion that "woollen carpet kati" is neither "yarn" nor "woollen goods" falling under the aforesaid notifications issued under Section 3-A. It is an unclassified item and its turnover is liable to tax at the rate of 2% under Section 3 of the Act. Accordingly we affirm the answer given by the High Court to the question referred and dismiss these appeals with one set of costs.

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