Porritts & Spencer (Asia) Ltd.

Vs

State of Haryana

Civil Appeal No. 2212 of 1977

(P. N. Bhagwati, V. O. tulzapurkar, R. S. Pathak JJ)

06.09.1978

JUDGMENT

BHAGWATI, J. -

1. The short question which arises for determination in this appeal is whether 'dryer felts' manufactured by the assessee fall within the category of "all varieties of cotton, woolen or silken textile" specified in Item 30 of schedule 'B' of the Punjab General Sales Tax Act, 1948 (herein after referred to as the Act). If they are covered by this description, they would be exempt from Sales Tax imposed under the provision of the Act, otherwise they would be liable to sale tax. The assessing authorities held that the 'dryer felts' manufactured by the assessee were not "textiles" within the meaning of Item 30 of Schedule 'B' and they were, therefore, not exempt from sales tax. The Tribunal, on appeal, also took the same view and rejected the claim of the assessee to exemption from sales tax in respect of sales of 'dryer felts'. The assessee thereupon moved the Tribunal for making a reference to the High Court and on this application, the following question of law was referred by the Tribunal for the opinion of the High Court :

Whether on the facts and circumstance of the case, the products manufactured by the petitioner are not covered by Item 30 of schedule 'B' of the Punjab General sales Tax Act, 1948, and therefore, not exempt from sales tax both under the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956.

The Reference was heard by a Division Bench and on a difference of opinion between the two Judges constituting the Division Bench, the Reference was placed before a third Judge. The third Judge held that 'dryer felts' were not included in the expression 'textiles' occurring in Item 30 of Schedule 'B' of the Act and were, therefore, not exempt from sales tax and on this view the question referred to the High Court was answered against the assessee and in favour of the Revenue. The assessee thereupon preferred the present appeal with special leave obtained from this Court.

2. It is clear from Section 5, sub-section (1) of the Act that it levys sales tax on the taxable turnover of a dealer subject to the provision of the Act. Sub-section (2) of Section 5 defines "taxable turnover" to mean that part of a dealer's gross turnover during any period which remains after deducting therefore inter alia his turnover on the sale of good declared tax-free under Section 6. Section 6 provides that no tax should be payable on the sale of goods specified in the first column of Schedule 'B' subject to the conditions and exception, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section. Schedule 'B' sets out in the first column, various categories of good which are declared tax-free under Section 6 and Item 30 specifies the following

category of tax-free goods :

All varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon whether manufactured by handloom or powerloom or other wise but not including pure silk fabrics, carpets, druggists, woollen duress and cotton floor duress.

The question is : Whether 'dryer felts' manufactured by the assessee fell within this category of goods so as to be exempt from sales tax ? Can it be said that 'dryer felts' constitutes a variety of cotton or woollen textiles ? The answer to the question depends on what is the true meaning of the word 'textiles' as used in Item 30 of Schedule 'B'.

3. Now, the word 'textiles' is not defined in the Act, but it is well settled as a result of several decision of this Court. Of which we may mention only a few, namely, Ramavtar Budhaiprasad v. Assistant Sales Tax officer, Akola (AIR 1961 SC 1325 : (1962) 1 SCR 279 : (1961) 12 STC 286) and M/s. Motipur Jamindary Co. (p) Ltd. v State Bank of Bihar (AIR 1962 SC 660 : 1962 Supp 1 SCR 498 : (1962) 13 STC 1.) and The State of West Bengal v. Washi Ahmad ((1977) 3 SCR 149 : (1977) 2 SCC 246; 1977 SCC (Tax) 278) that in a taxing statue words of every day use must be construed not in their scientific or technical sense but as understood in common parlance. The question which arose in Ramavatar's case (Supra) was whether betel leaves are vegetable and this Court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. State of Madhya Pradesh (7 STC 99, 102 (Nag HC)).

In our opinion, the worlds "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statue before. The term "vegetables" is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

and observed that the world 'vegetables' in taxing statues is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. This meaning of the word 'vegetables' was reiterated in M/s. Motipur Jamindary case where sugarcane was held not to fall within the definition of the word 'vegetables' and the same meaning was given to the word 'vegetables' in Washi Ahmed's case (supra) where green ginger was held to be 'vegetables' within the meaning of that world as used in common parlance.

4. It was pointed out by this Court in Washi Ahmed's case (supra) that the same principle of construction in relation to words used in a taxing statue has also been adopted in English, canadian and American Courts. Pollock B. Pointed out in Grateful v. I. R. C. ((1876) 1 Ex D 242, 248) that if a statue contains language which is capable of being construed in a popular sense, such a state is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words "popular sense" that which people conversant with the subject-matter with which the statue is dealing would attribute it.

So also the Supreme Court of Canada said in planters Nut and Chocolate Co. Ltd. v. The King ((1951) 1 DLR 385) while interpreting the world 'fruits' and 'vegetables' in the Excise Act. "They are ordinary words in every day use and are, therefore, to be construed according to their popular sense." The same rule was expressed in slightly difference language by story, J., in 200 Chests of Tea ((1824) 9 Wheaton (US) 430, 438) where the learned Judge said that : the particular words used

by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists".

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 world ? The word 'textiles' is derived from the Latin 'texere' which means 'to weave' and it means any woven fabric. When yarn, whether cotton, silk, woolen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into begins is a 'textile' and it is known as such. It may be cotton textile, silk textile, woolen 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 textile, 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 from 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 in its character as a textile. It may be used for making wearing apparel, or it may be used as a covering or beadiest 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.

6. Now, what are 'dryer felts'? They are of two kinds, cotton dryer felts and woollen dryer felts. Both are made of yarn, cotton in one case and woollen in the other. Some synthetic yarn is also used. The process employed is that of weaving according to warp and woof pattern. This is how the manufacturing process is described by the assessee authority in its order dated November 12. 1971 "the raw material used by the company is cotton and woollen yarn which they themselves manufactured from raw cotton and wool and the finished products called 'felts' are manufactured on power looms from cotton and woollen yarn". 'Dryer felts' are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word 'textiles'. We do not think that the word 'textiles' has any narrower meaning in common parlance other than the ordinary meaning given in the dictionary, namely, a woven fabric. There may be wide ranging varieties of woven fabric and they may go on multiplying and proliferating with new developments in science and technology and invention of new methods, materials and techniques, but nonetheless they would all be textiles. The analogy of cases where the word 'vegetables' was held not be include betel leaves or sugar-cane is wholly inappropriate. There, what was disapproved by the Court was resort to the botanical meaning of the word 'vegetables' when that word had acquired a popular meaning which was different. It was said by Holmes, J., in his inimitable style : "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to

the circumstance and the time in which it is used". Where a word has a scientific or technical meaning and also an ordinary meaning according to parlance, it is the latter sense that in a taxing statue the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. The reason is that, as pointed out by Story, J., in 200 Chests of Tea (supra), the Legislature does "not suppose our merchants to be naturalists, or geologist, or botanists". But here the word 'textiles' is not sought by the assessee to be given a scientific or technical meaning in preference to its popular meaning. It has only one meaning, namely, a woven fabric and that is the meaning which it bears in ordinary parlance. It is true that our mind are conditioned by old antiquated notion of what are textiles and, therefore, it may sound a little strange to regard 'dryer felts, as 'textiles' : But it must be remembered that the concept of 'textiles' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may by invented which may legitimately, without doing any violence to the language, be regarded as 'textiles'. Take for example rayon and nylon fabrics which have now become very popular for making wearing apparel. When they first came to be made, they must have been intruders in the filed of 'textiles' because only cotton, silk and woolen fabrics were till then recognized as 'textiles'. But today no one can dispute that rayon and nylon fabrics are textiles and can properly be described as such. We may take another example which is nearer to the case before us. It is common knowledge that certain kinds of hats are made out of felt and though felt is not ordinarily used for making wearing apparel, can it be suggested that felt is not a 'textiles'? The character of a fabric or material as textile does not depend upon the use to which it may be put. The uses of textiles in a fast developing economy are manifold and it is quit common now to find 'textiles' beings used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find Chapter 59 occurring in Section XI of the First Schedule that there is a reference to 'textile fabrics' and textile articles, of a kind commonly used in machinery or plant and clause (4) of that Chapter provides that this expression shall be taken to apply inter alia to "Woven textile felts .... of a kind commonly used in paper making or other machinery ....". This reference in a statue which is intended to apply, to imports made by the trading community clearly shown that 'dryer felts' which are "woven textile felts ..... of a kind commonly used in paper making machinery" are regard in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that 'dryer felts' are 'textiles' within the meaning of that expression in Item 30 of Schedule 'B'.

7. We accordingly allow the appeal, set aside the judgment of the High Court and answer the question referred by the Tribunal in favour of the assessee and against the Revenue. The state will pay to the assessee costs throughout.

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