

Delhi Cloth and General Mills Co. Ltd.

Vs

State of Rajasthan and Others

Civil Appeals Nos. 2453-2456 of 1977

(N. L. Untwali, R. S. Pathak JJ)

08.05.1980

JUDGMENT

PATHAK, J. –

1. The question raised in these appeals is whether the "rayon tyre cord fabric" manufactured by the appellant is a rayon fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, and therefore exempt from sales tax under the Central Sales Tax Act.
2. The appellant owns an industrial unit, Shriram Rayons, situated at Kota in the State of Rajasthan. It manufactures a product described as "rayon tyre cord fabric". The appellant claims that the product falls within item 18 of the Schedule to the Rajasthan Sales Tax Act which exempts from sales tax and purchase tax :

All cotton fabrics, rayon or artificial silk fabrics, woolen fabrics as defined in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957).

Section 2(c) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 declares that the expression "rayon or artificial silk fabrics" shall have the meaning assigned to it in item 22 of the First Schedule to the Central Excise and Salt Act, 1944. Item 22 reads :

"Rayon or artificial silk fabrics" means all varieties of fabrics manufactured either wholly or partly from rayon or artificial silk and includes embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials, ...

3. The appellant was assessed to sales tax by the Commercial Tax Officer for the years 1969-70 and 1970-71 on the turnover of rayon tyre cord fabric. The plea that the product was exempt from sales tax was not accepted. Two writ petitions were filed by the appellant in the Rajasthan High Court against the assessments while appeals were also filed before the Deputy Commissioner (Appeals). The Rajasthan High Court dismissed the writ petitions on the ground that disputed questions of fact were involved in the controversy and recourse should be had to the remedy by way of appeal. Against the order of the High Court the appellant obtained from the Supreme Court special leave to appeal under Article 136 of the Constitution. Meanwhile, the Commercial Tax Officer made a provisional assessment on the turnover of rayon tyre cord fabric for the period 1971-72. Against the assessment the appellant filed a writ petition directly in this Court under Article 32 of the Constitution. The two appeals and the writ petition were dismissed by this Court on May 3, 1976

(The Judgment is reported in *Delhi Cloth and General Mills Co. Ltd. v. R. R. Gupta*, 38 STC 113 : (1976) 3 SCC 443 : 1976 SCC (Tax) 332). The court observed that the controversy "requires careful consideration of the technical processes of manufacturing, of the composition of the 'tyre cord fabric', and an evaluation of opinions of experts on the subject, to be able to decide the question satisfactorily", as well as "some examination of commercial usage and terminology or the language of the market in goods of this type". It upheld the view taken by the High Court that the matter was one for determination by the taxing authorities.

4. The Deputy Commissioner (Appeals) was meanwhile seized of not only the two appeals pertaining to the assessment years 1969-70 and 1970-71 but also appeals against the assessment order for 1971-72 and a provisional assessment for the first six months of the assessment year 1972-73. When the appeals were taken up by the Deputy Commissioner (Appeals) voluminous evidence, both oral and documentary, was led before him. The appeals were, nevertheless, dismissed. Thereafter, the appellant applied in revision to the Board of Revenue for Rajasthan, but again met with no success. The Board expressed the view that the product was not a fabric and dismissed the revision petitions by their Order dated October 6, 1977. The present appeals are directed against that order.

5. Some undisputed facts concerning the product manufactured by the appellant may be set out. Rayon fibre is spun into rayon and twisted into cord. The cords are arranged lengthwise, and are commonly described as the "warp". They are packed 25 to the inch. By a process of weaving, cotton threads are wefted through a loom across the cords. The wefts are thinner and fewer than the cords, being not more than two to five per inch. The cord component comprises the major content of the product. The unprocessed rayon tyre cord fabric so produced is sold in the form of rolls in the market. After initial chemical treatment it is put through a process of rubberizing in the tyre manufacturing plant. The rayon tyre cord fabric is used as a reinforcing base in the manufacture of tyres. It is a product generally intended for industrial use. The rayon tyre cord employed as a component in the manufacture of rayon tyre cord fabric is also sold directly as such. It is sold packed on cones, somewhat like yarn is sold. Tyre cord is purchased directly by some tyre manufacturers who by applying the same process of putting in the wefts, convert it into a tyre cord fabric for use in the tyre.

6. In holding that the rayon tyre cord fabric is not a fabric, the Board has noted that the tyre body or carcass consists of a series of layers of cord fabric in the form of plies buried in rubber, and that the significant factor in the tyre cord fabric is represented by the tyre cord. The properties and characteristics of the fibre constituting the tyre cord, it is said, determines the tyre performance. The weft in the fabric, it is pointed out, merely plays the subsidiary role of holding the cord in place before the process of tyre manufacturing is commenced.

7. Now, in determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted. As sales tax the liability falls on the seller, who in his turn passes it on to the consumer. As purchase tax, the liability falls directly on the purchaser. A long train of authorities supports that view, and we need refer only to the recent judgment of this Court in *Porritts and Spencer (Asia) Ltd. v. State of Haryana* ((1978) 42 STC 433 : (1979) 1 SCC 82 : 1979 SCC (Tax) 38), in which reference has been made to some of them.

8. In the record before us, a wide range of material has been incorporated for determining how those who manufacture and deal in fabrics and, in particular, tyre cord fabric, understand them. And so, a brief reference to that material is appropriate at this point.

9. What is a fabric ? The "Mercury" Dictionary of Textile Terms defines "fabric" as a term which covers

all textiles no matter how constructed, how manufactured, or the nature of the material from which made,

and the expression "textile" is described as

any product manufactured from fibres through twisting, interlacing, bonding, looping, or any other means, in such a manner that the flexibility, strength, and other characteristic properties of the individual fibres are not suppressed.

The Man-Made Textile Encyclopaedia (1959) defines fabric as

a collective term applied to cloth no matter how constructed or manufactured and regardless of the kind of fibre from which made. In structure it is planar produced by interlacing yarns, fibres or filaments. Textile fabrics include the following varieties, bonded, felted, knitted, braided and woven.

The Fairchild's Dictionary of Textiles (1959) says that fabric is

a cloth that is woven or knit, braided, petted, with any textile fibre ... and "textile" is said to refer to

a broad classification of any material that can be worked into fabric, such as fibres and yarns including woven and knitted fabric, felt, netted fabric, laced and crouched goods.

In TEXTILE TERMS AND DEFINITIONS (1960) the word cloth is defined as

a generic term embracing all textile fabrics and laminar felts and "textile" is applied in its modern sense to

any manufacture from fibres, filaments, or yarns, natural or artificial, obtained by interlacing.

The 1967 Annual Book of ASTM Standards defines cloth as

any textile fabric but specially one designed for apparel, domestic or industrial use

and textile fabric as

a planar structure consisting of interlaced yarns or fibres.

The 1973 Annual Book of ASTM Standards reproduced those definitions.

10. We may now examine whether a tyre cord fabric has been understood as a fabric. A publication IS : 4910 (Part VI) - 1970, put out by the Indian Standards Institution, defines a "tyre cord fabric" as

a fabric consisting of tyre cord warp with widely spaced weft threads.

Another publication IS 1324 - 1966 of the same institution gives the definition of tyre cord fabrics as

fabrics which comprise the main carcass of pneumatic tyres constructed predominantly of warp cords (cabled yarns) with light wefts. The latter merely serve to hold the cords together for processing.

The "Mercury" Dictionary of Textile Terms defines cord tyre fabric as a

cloth made with strong corded sheets for the warp with as little weft as possible ... the warp takes all the strain

The Fairchild's Dictionary of Textiles declares that a tyre cord fabric is not a true fabric today, but originally a square woven fabric was employed in making the pneumatic automobile tyre :

The modern tyre fabric is not woven or knitted, but consists of cabled yarns with hawser twists formerly mostly cotton, now usually of high tenacity viscose rayon or nylon. These cords are arranged in parallel order and rubberized.

The tyre cord fabric manufactured by the appellant admittedly consists of warp and weft and therefore this definition, which does not refer to an interlaced structure, would not apply. On the contrary, the further definition in the same publication appears to be more pertinent. It says :

When these tyre cords were first made they were assembled as a warp on a loom and held in place until rubberized by an occasional fine single filling yarn, and it is probably due to this that the term "fabric", has remained in use.

Some doubt is created by the definitions included in Linton's Modern Textile Dictionary and River's Dictionary of Textile Terms. But tyre core fabric is clearly described as a fabric by the 1973 Annual Book of ASTM Standards, the Textile Terms and Definitions (1960), and in India by the Indian Standard Glossary of Textile Terms Relating to Man-Made Fibre and Fabric Industry. The Man-Made Textile Encyclopaedia in its chapter on Industrial Fabrics gives a structural description of tyre fabrics and refers to the series of layers of cord fabric buried in rubber in the tyre body or carcass. The Wellington Sears Hand Book of Industrial Textiles describes in some detail the process of manufacturing tyre cord fabrics. It states that

the tyre cords are woven into a 'fabric' with a very fine cotton or rayon filling yarn, just strong enough to hold the cords together during subsequent handling.

11. Now let us see how the Government of India itself, in its various departments, looks at tyre cord fabrics. The Revised Indian Trade Classification (1965) published by the Central Government in the Department of Commercial Intelligence and Statistics lists viscose tyre fabric (Code 653. 6125) under the classification Group 653 - "Textile fabrics, woven (not including narrow or special fabrics), other than cotton and jute fabrics". The Ministry of Foreign Trade Resolution dated February 27, 1971 refers separately to rayon tyre yarn, cord and fabric, and speaks of tyre cord units producing both twisted cords and woven fabric. And the Indian Customs Tariff Guide (11th Edition) shows as item 53 in the Tariff Schedule :

Rayon tyre fabrics, a loosely woven material with extremely thin Cotton threads running breadthwise and introduced merely for keeping the artificial silk threads

running lengthwise in position.

The item is repeated in the same terms in the Tariff Schedule to the Indian Customs Tariff Guide (13th Edition). The Table appended to the Customs and Central Excise Duties Drawback Rules lists "viscose tyre cord fabric" (2621) under Serial No. 26 "Textile Fabrics and Hosiery".

12. On a comprehensive consideration of the material before us, there is no escape from the conclusion that by and large a tyre cord fabric is regarded as a textile fabric. The peculiar feature that the tyre cord constitutes the dominating element indicating the use to which the fabric is put and the close concentration in which it is packed in contrast to the light density with which the weft thread is woven does not detract from the conclusion that what we have is a textile fabric. We are concerned with the product manufactured and sold by the appellant. It is wholly immaterial that once type cord fabric has, in the hands of the tyre manufacturer, undergone the process of rubberizing and is embedded in the tyre body the significance of the weft thread is greatly reduced. It may also be that in the more modern process of manufacturing types what is used is cabled rayon with hawser twists with the cords assembled in parallel order and rubberized without the intermediate process of weaving on a loom. The material on the record, however, indicates that the product manufactured by the appellant does not fall in that category. It is a woven fabric in which the intermediate process of weaving the weft thread across the warp cord is an integral stage of manufacture. When the purchaser buys the product, it is the entire integrated woven fabric which he buys, it is not merely the tyre cord by itself. If tyre cord was all that he desired, he would purchase that commodity, which is readily available, and not tyre cord fabric. We may also point out that item 22 of the First Schedule to the Central Excises and Salt Act speaks of "all varieties of fabrics", language wide enough to include the rayon tyre cord fabric manufactured by the appellant.

13. It was contended by Shri L. N. Sinha, for the respondents, that industrial fabrics are not envisaged within the expression "rayon fabric" in item 22 of the First Schedule to the Central Excises and Salt Act. As we have already pointed out, the item refers to "all varieties of fabrics" and it will be noticed that item 22(3) speaks of fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials which, we are told, would include rubberized cloth, tarpaulin cloth, P.V.C. cloth, water proof cloth and tent cloth. A whole range of fabric is included.

14. It is then urged by Shri Sinha that when the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was enacted Parliament could not have intended the expression "rayon fabric" to include rayon tyre cord fabric. It is pointed out that the Statement of Objects and Reasons pertinent to the Act refers to mill-made textiles, and the submission is that the item in the First Schedule to that Act refers to fabric which affects the common man, which finds place in a popular market and is intended for popular use, and does not refer to a commodity which caters to the needs of a special category of consumers and is devoted to a particular use only. Now, the tyre manufacturing industry is of growing importance and has an increasingly important role to play in everyday life. That is evident from the overwhelming expansion of automobile traffic prompted by the complex needs of a constantly enlarging economy. The daily life of the average citizen is profoundly affected by the automobile, be it passenger bus or a goods truck or the ubiquitous scooter. Tyres are needed for all. In rural areas tyres are now coming into use for bullock carts. It is futile to suggest that the tyre plays a less substantial roll than other popular commodities in modern life. And, therefore, it is but a short to recognising the status of what goes into the manufacture of a tyre - the rayon tyre cord fabric - as "goods of special importance". It may be that unlike the cotton, silk, woollen and rayon fabrics used as wearing apparel or furnishing material the rayon tyre cord

fabric is not directly employed for the satisfaction of a domestic need. Nonetheless, as an integral and vital constituent of an automobile tyre it is intimately involved in the diurnal activity of human life.

15. We are then told that when the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was enacted there was in existence a Circular dated February 11, issued by the Revenue Board laying down that tyre cord fabric could not be described as a "fabric" within the meaning of the Central Excise Tariff. It is said that when that was the popular conception of tyre cord fabrics it could not have been envisaged as a fabric when the statute was enacted. To our mind, the view taken by the Revenue Board cannot be regarded as resolving the question before us. Whether Parliament understood the word "fabric" to include tyre cord fabric must be gathered from all the relevant and with reference to tests and criteria accepted in law rather on the basis of a single notification.

16. We may now turn to the contention of Shri Sinha that the benefit of exemption from sales tax is available to the appellant only if he has paid the additional duty of excise on the product. It is pointed out that the appellant has not been assessed to additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and is, therefore, not entitled to exemption from sales tax under the Central Sales Tax Act.

17. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 came into force on December 24, 1957. Sub-section (1) read with sub-section (2) of Section 3 of the Act provide for the levy and collection of an additional excise duty, over and above the excise duty chargeable under the Central Excises and Salt Act, 1944 on certain goods at the rate specified in the Schedule to that Act. Rayon fabrics are mentioned in the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, and are classified by reference to item 22 in the First Schedule to the Central Excises and Salt Act.

18. In the present appeals, we are concerned with a claim to exemption from sales tax, and in order to consider the contention of the Revenue that no such exemption was available to the appellant because he had not paid any additional excise duty on rayon tyre cord fabric it is necessary to determine whether indeed the exemption from sales tax was subject to the condition of payment of additional excise duty.

19. Section 4(2) of the Rajasthan Sales Tax Act, 1954 empowers the State Government, by notification in the official Gazette, to exempt from tax the sale of any goods or class of goods on such conditions as may be specified in the notification. By a notification dated July 1, 1958, the Rajasthan Government unconditionally exempted all varieties of textiles made wholly or partly of rayon from that date. Section 4(1) of the Rajasthan Sales Tax Act, 1954 provides for exemption from sales tax of the goods specified in the Schedule to that Act provided the conditions mentioned in the schedule are satisfied. Item 18, inserted in the Schedule by the Rajasthan Taxation Laws (Amendment) Act, 1964, included "rayon fabrics" as defined in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. On this, the notification dated July 1, 1958 was withdrawn as redundant. Now when item 18 was inserted in the schedule, no conditions were specified therein as a qualification for the exemption. Therefore, in respect of the assessment years with which these appeals are concerned, the turnover of rayon tyre cord fabric was clearly exempt from sales tax under the Rajasthan Sales Tax Act, and there was no condition in that Act that the exemption was dependent on payment of additional excise duty. That being so, there was an unconditional exemption from central sales tax also.

20. The unconditional exemption from sales tax granted on the sale of rayon fabrics, that is to say, without the condition that additional excise duty was paid by the manufacturer, was withdrawn by a notification dated March 5, 1973 made by the Rajasthan State Government under Section 4(2) of the Rajasthan Sales Tax Act. The notification provided that in the case of unprocessed rayon and artificial silk fabrics the exemption from sales tax would apply only if the additional duty is leviable on them under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and such goods had not specifically been exempted from the said duty and the dealers thereof furnished proof to the satisfaction of the assessing authority that such duty had been paid. Therefore, as from March 5, 1973, the exemption from tax under the Rajasthan Sales Tax Act was available only if additional excise duty was leviable and the dealer had established that he had paid such duty. About the same time, the Rajasthan Taxation Laws (Amendment) Act, 1973 deleted item 18 in the Schedule to the Rajasthan Sales Tax Act with effect from March 5, 1973. It is evident, therefore, that a dealer was entitled to exemption from sales tax up to March 4, 1973 without the requirement of payment of additional excise duty. The conclusion is inescapable that even if the appellant did not pay additional excise duty, he was exempt from sales tax on the turnover of rayon tyre cord fabric for the assessment years under consideration.

21. Finally, it is urged by Shri Sinha that the question whether the rayon tyre cord fabric falls within the expression "rayon fabrics" is a question of fact and the assessing authority, the appellate authority and the Revenue Board are all agreed that it cannot be classified as a rayon fabric and, therefore, this Court should not interfere in these appeals. It is also pointed out that under Section 15 of the Rajasthan Sales Tax Act a proceeding by way of reference is available to the appellant and this Court, even if it were to consider these appeals on the merits, should exercise no wider jurisdiction than that available to it if it had entertained a reference. We are unable to agree that the question is one of fact. It is a question which concerns the construction of item 22 of the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. If the rayon tyre cord fabric manufactured by the appellant is covered by that item it is exempt from sales tax and there is no jurisdiction in the sales tax authorities to assess the appellant on its turnover. The question is one of substantial importance, and having regard to the circumstances there is good reason for entertaining the appeals and deciding them on the merits.

22. In the result the appeals are allowed, the assessments in respect of the turnover of rayon tyre cord fabric manufactured by the appellant relating to the assessment years 1969-70, 1970-71, 1971-72 and the first six months of 1972-73 are quashed. In the circumstances there is no order as to costs.

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