

Asstt. Commissioner Sales Tax, Kerala

Vs

P. Kesavan and Co., Cochin

Civil Appeal Nos. 1899-1900 of 1976

(M.M. Punchhi, S.C. Agarwal JJ)

30.10.1990

ORDER

1. The dispute herein is whether the sale of "Caristrap Rayon Cord strapping" is taxable under the Kerala General Sales Tax Act, 1963. All varieties of fabric manufactured wholly or partly from rayon is exempt under Entry 7 of Schedule III of the Act. The meaning assigned to rayon and its fabrics is the same as in Entry 22 in the Schedule attached to the Central Excises and Salt Act, 1944. The process of making strapping is said to be a sophisticated one and of recent origin by which process rayon cords are pasted together by a strong glue which is resilient and elastic to some extent. The process ends in producing a tap-like structure.

2. It is admitted that the product is not as a result of the conventional method of weaving fabrics in warp and woof pattern. In *Porritts and Spencer (Asia) Ltd. v. State of Haryana* [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : (1979) 1 SCR 545] a three Judge bench of this Court observed that due to phenomenal advance in science and technology 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. It was further observed that what is necessary is no more than weaving of yarn and weaving would mean banding or putting together by some process so as to form a fabric. The assessee-respondents cling to these observations to contend that by the process of manufacture the tape-like structure is the result of binding in a tape-shape fabric or rayon cords. This is disputed by Mr. Poti, learned counsel for the appellant, who additionally submits that even if it be so, the common man's test would oust it as a fabric because no one on the street would term the end product to be a fabric.

3. Additionally, there are two other cases - *Union of India v. Gujarat Woollen Felt Mills* [(1977) 2 SCC 870 : 1977 SCC (Tax) 399 : (1977) 3 SCR 472] again a three Judge bench, and *Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan* [(1980) 4 SCC 71 : 1980 SCC (Tax) 348 : (1980) 3 SCR 1109] a two Judge bench which have taken the view that fabric means woven material. These cases may have to be blended with *Porritt* case [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : (1979) 1 SCR 545] to give a consistent thought. We thus feel that in view of the importance of the question, as such like tape is often being used as a binding and packing material on the industry, there is need to test and elaborate the views expressed in *Porritt* case [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : (1979) 1 SCR 545]. We would thus order the case to be placed for disposal before a three Judge bench.

Court Master.

</html