

Fenoplast

Vs

State of A.P. and Others

Civil Appeals Nos. 9064-9066 of 1996

(S. P. Bharucha, V. N. Khare JJ)

15.09.1998

ORDER

1. The appellants are manufacturers of rexine cloth. Rexine cloth, being coated fabric, cotton or otherwise, is covered by Entry 59.03 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. This Act was enacted to impose additional duties of excise in replacement of the sales levied by the Union and the States, inter alia, on mill-made textiles, and to distribute the net proceeds to the Union Territories and the States. Section 3 of this Act is the charging section and provides for the levy and collection of additional duties on goods described in the First Schedule thereof at the rates therein specified. The headings, sub-headings and chapters within the Schedule mean the headings, sub-headings and chapters in the Schedule to the Central Excise Tariff Act, 1985.

2. By reason of Section 5 of the Andhra Pradesh General Sales Tax Act, 1957, every dealer is required to pay a tax on the quantum of his turnover at the rates specified in the Schedules thereto. Section 6 deals with sales tax on declared goods and states that it shall be paid at the rates specified in the Third Schedule of the Act. It provides for reimbursement of tax in the case of inter-State sales where tax under the Central Sales Tax Act, 1956 has been paid. Section 8 of the Act reads thus :

"Exemption from tax in respect of certain goods. - Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Fourth Schedule shall be exempt from tax under this Act in respect of such goods."

The Fourth Schedule of the Act contains Entry 5 which refers to "cotton fabrics, man-made fabrics and woollen fabrics". The Explanation to the Fourth Schedule states that the expressions in Items 5, 6 and 7 bear the meaning that is assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

3. This being the position, the appellants were paying additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and were exempted from payment of tax under the State Sales Tax Act. Then Item 174 was added in the First Schedule of the State Sales Tax Act. It related to "PVC cloth, waterproof cloth, tarpaulin and rexine". The appellants were sought to be made liable to sales tax under Item 174. The appellants preferred a writ petition in the High Court contending that they were not liable to pay any sales tax under Item 174 by reason of the fact that they fell within Item 5 of the Fourth Schedule of the State Sales Tax Act and were exempted by Section 8 thereof. The High Court, by the judgment which is under challenge, upheld the appellants' contention, except to this extent :

"In our considered view the effect of inclusion of rexine in Entry 174 of the First Schedule to the A.P. GST Act cannot have the effect of taxing the turnover of the sales or purchases of rexine at the rate mentioned in Schedule I in view of the provisions of Section 6 of the A. P. GST Act read with Section 15 of the CST Act, as pointed out above, and thus that entry has to be read down to authorise exigibility of sales tax on the turnover of declared goods including rexine subject to the provisions of Section 6 of the A. P. GST Act read with Section 15 of the CST Act, namely, that sales tax cannot exceed 4% of the turnover and that it shall not be levied at more than one stage."

The appellants are in appeal by special leave.

4. The Explanation to the Fourth Schedule of the State Sales Tax Act makes it clear that the expressions used in Item 5 thereof have the meaning that is assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The words "cotton fabrics, man-made fabrics and woollen fabrics" in Item 5 must, therefore, be read in the light of Item 59.03 of the First Schedule to the said Additional Duties of Excise (Goods of Special Importance) Act, 1957 which refers to textile fabrics, impregnated cloth - covered or laminated. The appellants' product, rexine cloth, is covered by Item 59.03 and the appellants were, at the relevant times, liable to pay and paid additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. By reason of Section 8 of the State Sales Tax Act, therefore, they were exempt from tax thereunder in respect of their rexine cloth. The inclusion of Item 174 in the First Schedule to the State Sales Tax Act could make no difference to this position. The High Court was in error in its attempt to read down Item 174 it failed to give due weight to the categorical terms of Section 8.

5. The appeal is, therefore, allowed. The judgment of the High Court is set aside to the extent aforesaid. There shall be no order as to costs.