(1969) 12 AHC CK 0018

Allahabad High Court

Case No: Sales Tax Reference No. 457 of 1965

Commissioner, Sales Tax	APPELLANT
Vs	
Ballabh Das	RESPONDENT

Date of Decision: Dec. 19, 1969

Acts Referred:

- Uttar Pradesh Sales Tax Act, 1948 - Section 11(3)

Citation: (1970) 25 STC 372

Hon'ble Judges: R.S. Pathak, J; R.L. Gulati, J

Bench: Division Bench

Final Decision: Allowed

Judgement

R.L. Gulati, J.

This is a reference u/s 11(1) read with Section 11(3) of the U. P. Sales Tax Act submitted by the Additional Revising Authority, Sales Tax, Varanasi, at the instance of the Commissioner of Sales Tax, Uttar Pradesh. The question submitted for the decision of the court is :

Whether twisted yarn could be allowed absolute exemption being included in ''hand-spun yarn'' appearing at item No. 7 of List II of Notification No. ST-911/X dated 31st March, 1956

2. The assessee is a, dealer in silk yarn. In respect of the assessment year 1957-58 the assessee disclosed a gross turnover of Rs. 10,93,440-14-0. This figure included a sum of Rs. 4,80,726-13-0 representing the sale of hand-spun yarn. The assessee claimed exemption from the levy of sales tax in respect of his turnover of hand-spun yarn on the basis of a notification, No. ST-911/X dated 31st of March, 1956, which exempts from sales tax the turnover of hand-spun yarn. The Sales Tax Officer accepted the assessee''s claim to the extent of Rs. 3,80,726-13-0 but refused exemption in respect of the remaining turnover of Rs. 1,00,000 on the ground that the same represented the sale of hand-spun yarn which after undergoing a process

of twisting became manufactured yarn. The assessee appealed but he did not succeed in his contention. The Judge (Appeals) also endorsed the view of the Sales Tax Officer and relied upon the fact that the twisting had been done by machine involving a huge expenditure of Rs. 16,069. This according to him was a process of manufacture which changed the identity of the yarn. The assessee then went up in revision and the Additional Revising Authority accepted the assessee''s contention and held that the assessee was entitled to exemption in respect of the twisted yarn also because even after twisting, the yarn did not cease to be hand-spun yarn. The Commissioner was not satisfied with this order of the Additional Revising Authority and at his instance the present reference has been submitted to this court.

3. From the order of the Additional Revising Authority passed u/s 10 of the Act, it is clear that the process of spinning is only a mechanical one in which two or more threads of yarn are twisted together to form a thicker yarn which is suitable for weaving purposes. It is clear, therefore, that the hand-spun yarn even after twisting does not lose its identity but continues to be yarn even though the twisted yarn is of thicker variety. No material has been placed before us to show that the twisted yarn is commercially a different commodity, or that the twisted yarn does not serve the purpose which untwisted yarn does. The intention behind the notification of 31st of March, 1956, appears to be to exempt from sales tax the turnover of "hand-spun" yarn as opposed to "mill-spun" yarn. So long as yarn is hand-spun it would continue to enjoy the exemption granted by the notification even after it undergoes the process of twisting. The process of twisting has nothing to do with the process of spinning. The emphasis in the notification is obviously on the process of spinning. Any subsequent treatment of the yarn by way of colouring and twisting will not destroy its essential nature of being hand-spun yarn.

4. The learned counsel for the department tried strenuously to support the view taken by the Sales Tax Officer and the appellate authority but there is a clear fallacy in the view taken by those two officers. They have laid emphasis upon the process of twisting which in their view was a process of manufacture. In the first instance we do not agree that the process of twisting involves any process of manufacture. At best it can be called processing. Moreover, even if the process can be termed as process of manufacture the same would be immaterial so long as the basic nature of the commodity is not changed so as to become commercially a different commodity altogether. The learned counsel for the parties cited a large number of cases in support of their rival contentions. But we do not think it necessary to refer to all those cases as, in our opinion, most of the cases are not to the point. There are three Supreme Court cases which more or less provide a conclusive answer to the question before us. In Kailash Nath and Another Vs. State of U.P. and Others, the Supreme Court held that the process of dyeing and printing of cloth and yarn did not alter the basic nature of the material and they continued to be cloth and yarn within the meaning of a notification under the U.P. Sales Tax Act which exempted from tax the turnover of cotton cloth and yarn manufactured in Uttar Pradesh.

5. In Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, the Supreme Court had to consider the question as to whether hydrogenated groundnut oil, commonly called vanaspati, continued to enjoy the exemption from sales tax granted to the turnover of groundnut oil under the Madras General Sales Tax Act. It is significant to note that the manufacture of vanaspati from groundnut oil involves a process which brings about an inter-molecular change in the chemical composition of groundnut oil inasmuch as the groundnut oil absorbs two items of hydrogen, and the oil, which before manufacture is in liquid form, becomes solidified. The Supreme Court held that the vanaspati so produced as a result of the chemical process did not become a commodity different from groundnut oil. It is a matter of common knowledge that in the commercial world groundnut oil and vanaspati have two different names yet the Supreme Court expressed the opinion that the two commodities remained essentially the same.

6. In The State of Madhya Pradesh v. Hira Lal [1966] 17 S.T.C. 313 (MP), the assessee concerned purchased scrap iron from the market and after subjecting it to a process of re-rolling in his mills, converted it into bars, flats and plates. The Supreme Court accepted the assessee''s claim that the flats, bars and plates continued to be iron, the turnover whereof was exempt.

7. The learned counsel for the department places reliance upon the judgment of the Maharashtra High Court in Commissioner of Sales Tax, Maharashtra State, Bombay Vs. Fairdeal Corporation Ltd., There the question was as to whether absorbent cotton wool prepared by cleaning, boiling, bleaching, drying and carding the ginned cotton and sold as surgical cotton was raw cotton (whether ginned or unginned) within the meaning of item 1 of Schedule B to Bombay Sales Tax Act. The Maharashtra High Court expressed the opinion that surgical wool ceased to be raw cotton. This case is easily distinguishable. The surgical cotton and raw cotton are definitely commercially two different commodities and they are put to entirely two different uses.

8. The next case related upon by the learned counsel is of the Madras High Court. In Sapt Textile Products (India) Private Ltd. v. The State of Madras [1965] 16 S.T.C. 267, the Madras High Court had to deal with the question as to whether cotton and waste cotton were the same commodities for purposes of the Madras General Sales Tax Act. Under that Act cotton is subjected to single point levy of sales tax. The learned Judge expressed the opinion that the cotton which was intended to be subjected to the single point levy was the raw cotton, commonly so known, before it underwent any process of manufacture. Waste cotton, according to the learned Judges, could not be included in that term as waste cotton was a bye-product of the cotton being subjected to the process of manufacture and it was entirely different in character for the purpose of marketability. This case, in our opinion, does not help the department either.

9. The rest of the cases cited by the learned counsel are not to the point. A reference, however, must be made to a recent decision of the Supreme Court in Commissioner of Sales Tax v. Harbilas Rai & Sons [1968] 21 S.T.C. 17. This case is not directly to the point but brings out clearly the sense in which the term "manufacture" should be understood in the context of the sales tax legislation. In that case the assessee bought bristles plucked by Kanjars from pigs, boiled them, washed them with soap and other chemicals, sorted them out according to their sizes and colours, tied them in separate bundles of different sizes and despatched them to foreign countries for sale. Their Lordships held that the process to which the bristles were subjected did not constitute a manufacturing process. It was observed by their Lordships that the word "manufacture" has various shades of meaning and in the context of sales tax legislation if the goods to which some labour is applied remain essentially the same commercial commodity, it cannot be said that the final product is the result of manufacture.

10. The principle that emerges from the perusal of various authorities cited above is that in answering a question like the one before us, the essential thing to be kept in mind is to see if as a result of any process including a process of manufacture, the Article concerned becomes

11. commercially a different commodity. If the process of manufacture of vanaspati cannot be said to bring about such a change, we see no reason why the mechanical process of twisting should change the nature of yarn.

12. For all these reasons, we answer the question in the affirmative against the department and in favour of the assessee. The assessee is entitled to his costs which we assess at Rs. 100. The fee of the learned counsel for the department is also assessed at the same figure.