Amarnath Vishwanath Chowk Vs Commissioner of Trade Tax

Court: Allahabad High Court

Date of Decision: April 6, 2009

Acts Referred: Uttar Pradesh Trade Tax Act, 1948 â€" Section 11

Citation: (2010) 27 VST 351

Hon'ble Judges: Bharati Sapru, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bharati Sapru, J.
Heard learned Counsel for the revisionist Shri Piyush Agarwal and Shri B. K. Pandey, learned standing counsel for the

State.

2. This revision has been filed u/s 11 of the U. P. Trade Tax Act, 1948 for the assessment year 1986-87 against the order passed by the Tribunal

dated December 22, 2000.

3. By this order, the Tribunal has remanded the matter to the assessing authority for a limited purpose to ascertain as to what was the number of

woollen goods/garments, which are to be taxed as an unclassified item. The question of law referred to is as hereunder:

(i) Whether in view of the judgment of this honourable court in the cases of Commissioner, Sales Tax, U. P., Lucknow v. Super Wool House

[1995] 96 STC 576 : [1995] UPTC 378 and Commissioner of Sales Tax v. Har Narain Moti Lal [1983] UPTC 181, the Trade Tax Tribunal was

justified in remanding the matter to the assessing authority ?

(ii) Whether, in view of the facts and circumstances of the case, the Trade Tax Tribunal was justified in holding that the pullovers and cardigans

made out of acrylic and nylon which were sold by the applicant are different and ready made garments of wool ?

(iii) Whether, in view of the facts and circumstances of the case, the Trade Tax Tribunal was justified in allowing the appeal of the Revenue and

remanding the matter to the assessing authority ?

5. The facts of the case are that the assessing authority passed an assessment order on July 26, 1989 and accepted all the contentions as raised by

the assessee but raised a dispute with regard to the purchase of ready made woollen garments, which he said were to be taxed as an unclassified

item, at a higher rate of six per cent or eight per cent.

6. Aggrieved by the assessment order, the assessee filed an appeal u/s 9 of the Act. The first appellate authority, by its order dated April 30, 1990

allowed the appeal of the applicant but placed reliance upon the judgment of this Court in Commissioner of Sales Tax v. Har Narain Moti Lal

reported in [1983] UPTC 181. By this judgement, the court had held that nylon and woollen hosieries were ready made garments and both were

liable to be taxed as hosieries under Notification No. 4949 dated May 30, 1975 and Notification No. 5785 dated September 12, 1981.

7. Aggrieved by the order of the first appellate authority, the Revenue filed a second appeal u/s 10 of the Act. The Trade Tax Tribunal by the

impugned order dated December 22, 2000 has allowed the appeal of the Revenue and has remanded the matter to the Assistant Commissioner as

stated earlier, for the limited purpose of finding out the number of woollen garments that were also purchased and sold.

8. The notification is as given below:

The notification No. 4949 of May 30, 1975 as classified at serial No. 2 is given below:

S. No. Description of goods Point of tax Rate of tax

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2. All kinds of ready made M or I 5 per cent

garments (except woollen

garments) including ties,

bows, mosquito nets,

unfilled razais, lihafs

or pillow covers.

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9. Thereafter by Notification No. 5785 dated September 7, 1981 the relevant entry Nos. 4 and 23 are quoted below:

S. No. Description of goods Point of tax Rate of tax

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4. All kinds of ready made M or I 6 per cent

garments (except woollen

garments) including

ties, bows, mosquito

nets, unfilled razais,

lihafs or pillow covers.

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23. Hosiery made of pure cotton M or I 4 per cent

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10. That thereafter by Notification No. 6561 dated September 12, 1986 the entries with regard to ready made garments were amended and the

only rate of tax was reduced to four per cent instead of six per cent. The relevant entry is quoted below:

S. No. Description of goods Point of tax Rate of tax

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4. All kinds of ready made M or I 4 per cent

garments (except woollen

garments) including ties,

bows, mosquito nets,

unfilled razais, lihafs

or pillow covers.

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11. From the above notifications, it is abundantly clear that although there is no difficulty in understanding that the word ""garment"" and ""hosiery"" are

interchangeable, the words ""wool"" and ""cotton"" are not interchangeable, nor is wool interchangeable with ""nylon"" or ""acrylic"". The entries made in

the notification refer to ready made garments but exclude woollen garments, i.e., to say that garments made out of wool have been specifically

excluded from the entry. It stands to reason. Cotton is a product extracted from plants. Nylon and synthetic fibres are artificially manufactured

yarns, whereas wool is a natural product, extracted from animals. When woollen garments have been excluded from the entry, there can be no

doubt that they stand outside this entry because woollen garments have not been notified at any other place, specifically. They have rightly been

construed to be an unclassified item to be taxed at six per cent or eight per cent.

12. I have heard learned Counsel for both the sides at length and I have also perused the above notifications.

13. Learned counsel for the revisionist very strenuously argued that garments and hosieries are interchangeable and, therefore, in view of certain

decisions of this Court, woollen garments are also garments and, therefore, should be reckoned under the entries of all kinds of ready made

garments.

14. However, in view of the discussions made above, it is difficult to accept the contention of the learned Counsel for the assessee that even though

woollen garments are specifically excluded from the entries whose benefits he seeks, simply because they are garments they should be treated to

be covered under entry No. 4 of Notification dated September 7, 1981.

15. Clearly, as stated earlier, wool is completely different from cotton. The arguments of learned Counsel for the assessee are, therefore, rejected.

The view taken by the Tribunal is correct.

16. I see no reason to interfere in the order passed by the Tribunal. The questions are thus, answered in favour of the Revenue and against the

assessee.

17. This revision is devoid of merit and is, therefore, dismissed.