

**(1952) 08 GAU CK 0004****Gauhati High Court****Case No:** Sales Tax Reference No. 5 of 1951

Ram Narayan Nandalal

APPELLANT

Vs

The State of Assam

RESPONDENT

**Date of Decision:** Aug. 6, 1952**Citation:** AIR 1953 Guw 58**Hon'ble Judges:** Ram Labhaya, J; Haliram Deka, J**Bench:** Division Bench**Advocate:** J.C. Sen and J.B. Das, for the Appellant; D.M. Medhi, Sr. Govt. Advocate, for the Respondent**Judgement**

Ram Labhaya, J.

This is a reference u/s 32(3) of the Assam Sales Tax Act 1947 from the Commissioner of Taxes, Assam.

2. The assessees were registered dealers under the Assam Sales Tax Act. In their return they claimed exemption from sales tax on their turnover from cloth of the value of Rs. 2,77,024 under item 16 of Schedule III of the Assam Sales Tax Act. This amount represented the sale proceeds of cloth sold in pieces (Thans) of 20 to 30 yards. But the quality of the entire cloth was such that the price of a unit of six yards was less than Rs. 10/-. The deduction claimed was not allowed by the Superintendent of Taxes. The Assistant Commissioner of Taxes agreed with the Superintendent and dismissed the appeal. The assessee's second appeal to the Commissioner of Taxes met with no better fate. The view of the taxing authorities was that the price per yard calculated on the basis of Rs. 10 for six yards was not the only criterion for determining the availability or otherwise of the exemption under item No. 16 of Schedule III of the Assam Sales Tax Act and the length of the cloth actually sold was another relevant factor of the test. In their view exemption could be claimed under item No. 16 of Schedule III of the Act only if pieces of cloth sold did not exceed six yards in length and the price of each piece did not exceed Rs. 10. The assessee disputed the correctness of the interpretation placed on this item and

applied for a reference. The question referred by the Commissioner of Taxes is as follows:

"Whether the criterion in the qualification-

"when the price per piece of six yards does not exceed Rs. 10"--in Col. 2 against item 16 of Schedule III is the price per yard (calculated on the basis of Rs. 10 for six yards) irrespective of the actual length sold at any one time?"

The question is not happily worded. What is meant to be conveyed is whether for purposes of claiming exemption from tax under item No. 16 of Schedule III, the price per yard calculated on the basis (not more than Rs. 10 per six yards) is the only criterion regardless of the length sold at any one time.

3. In the reference the learned Commissioner expressed the view that in item No. 16 there was emphasis not on price alone but also on the yardage sold. The claim to exemption, therefore, depended on two factors--the price per yard and the yardage sold at any one time. He thought the words "per piece" appearing in Col. 3 of the Schedule against item No. 16 supported this view.

4. Item No. 16 of Schedule III reads as follows: --

	Conditions and exceptions subject to which exemption has been allowed.
"Description	
Handwoven and hand-spun cotton cloths from mill-made yam.	When the price per piece of six yards does not exceed Rs. 10."

Col. 2 of Schedule III gives the description of goods on commodities exempted from the operation of the Act. In Col. 3 conditions and exceptions subject to which the exemptions have been allowed are stated. As regards item No. 16 the condition of exemption is that the price per piece of six yards should not exceed Rs. 10 in the case of handwoven and hand-spun cotton cloth made from mill-made yarn. We had

some difficulty in getting at the exact import of the opinion expressed by the learned Commissioner of Taxes. He stated that the claim to exemption depended on 2 factors--the price per yard and the yardage sold at any one time. He may have meant that exemption could be claimed only if a piece of six yards is sold at one time. In other words if more than six yards is sold at one time, the case could not be covered by item 16. If this is what he meant, the view would hot bear scrutiny. For there is nothing in item 16 which would go to indicate that the Legislature intended that in the case of cloth described in item 16, the lengths sold at any one time must not exceed six yards if exemption was to be availed of.

From the preamble of the Act it appears that the object of the Sales Tax Act was to add to the revenues of Assam and for that purpose it was considered expedient to impose a tax on the sale of goods. Additional revenue was sought to be raised by taxing sales. Section 7(1) of the Act provides that subject to the conditions and exceptions, if any, set out in Schedule III attached to the Act, the sale of goods specified therein shall be exempt from taxation under this Act. The section has to be read with Schedule III. An examination of Schedule III would show that exemptions relate mainly to commodities which may be regarded as essential for the life of the community. Most of them are necessities of life. The very first item relates to cereals and pulses. Goods or commodities exempted had to be described. As regards item No. 2 relating to agricultural implements the condition of exemption was that the price per piece should not exceed Rs. 15. Now the sale of all agricultural implements satisfying the value or the price test would be exempt from sales tax. The number of implements sold at any given time is wholly immaterial. One thousand different implements may be sold. But if the price per piece does not exceed Rs. 15 the entire transaction is exempt from taxation under the Act. It will be clear that so far as this item is concerned the price test is the only criterion for determining whether the transaction is taxable or not. The quantity sold at a given time is immaterial. Item No. 6 deals with cheap cloth. The exemption in the case of sale of this cloth can be claimed where the cloth is of that variety and price as may be notified by the Provincial Government. Even here it is the variety of the cloth and the price which would afford the criterion for determining whether exemption can be claimed or not. The quantity sold at a given time is not relevant for determining whether exemption can be claimed or not.

Similarly so far as item No. 16 is concerned, we have the description of the cloth and the price level which supply the test. The language used in this item may not be happy but it does not bring in the idea of quantity at all. The description of the cloth is found in Col. No. 2--it should be handwoven and handspun made from mill-made yarn and the price "per piece" of six yards should not exceed Rs. 10. The two parts of item No. 16 read together give no indication that there was any intention to lay down that exemption could be claimed only if a certain length say of six yards was sold. The Act itself was intended to add to the revenues. The exemptions from sale tax were limited to essential commodities. Restriction on quantities sold at a given

time would serve to defeat the purpose of the Act. No kind of control on the sale of cloth described in item No. 16 was intended.

The idea behind the price test was, not to extend the exemption to sales of expensive cloth which partakes of the character of luxury goods. To exclude expensive varieties of cloth which may be regarded as luxury goods the price test became necessary and for laying down this a unit of six yards was adopted. If the length sold at one time must be six yards an anomalous situation would arise. Exemption could be claimed where a piece of six yards is sold but it could not be claimed where the piece sold is less than six yards in lengths even though it satisfies the price test. The learned Government Advocate has not supported the view that exemption can be claimed only when a piece of six yards is sold at one time. He concedes that the Act does not seek to impose any limit on the quantity or the length sold. He contends that the quantity or the length must be sold in six yard pieces. He urges that a man may have any number of six yard pieces at one time. These pieces may be cut out from pieces of 20 or 30 yards length, or they may be manufactured in those lengths. But it is necessary that cloth should be sold in pieces of six yards. If one piece of 12 yards or one piece of 18 yards is sold even though the price test is satisfied, the case is outside the ambit of the exemption. If this interpretation is placed on item No. 16 it is obvious that it will serve no purpose. A man may purchase any number of pieces. There is no limit on the quantity that a consumer or a purchaser may have at any one time. There will be no point in insisting that a man if he wants an exemption under the Sales Tax Act, must have three pieces of six yards each and not 13 yards in one length. Once he is allowed to purchase as much as he needs or he likes, all that has to be seen is whether he has purchased hand-woven cloth made from mill-made yarn and that its price per piece of six yards does not exceed Rs. 10. The expression "per piece" shows that a piece of six yards was intended to be utilised merely as a unit for calculating the price.

5. Again if the intention was that whatever quantity is purchased, it must be in six yards pieces, the provision would be extremely difficult to enforce and this aspect of the matter would have attracted notice. When cloth exceeding six yards in length is sold, it can easily be described as sold in pieces of six yards length, to the extent that the length purchased is a multiple of six. But quite apart from this difficulty even this interpretation would create an anomalous situation. A deader sells three pieces of six yards each and a fourth piece of 2 yards. No tax will be payable on the sale of the three pieces. But the balance of two yards would not be a six yards piece and would be liable to tax according to the learned Government Advocate. This could not have been contemplated. The legislature in my opinion was not interested and had no object in laying down the units in which the cloth was to be sold. It wanted to exempt a given quality of hand-woven and handspun cotton cloth made from mill-made yarn. That quality is distinguished by its price. When stating the price it has adopted a unit of six yards. It has been argued that there should be some reason for choosing a six yard unit, particularly when the words "per piece" are also

used along with this unit. It is difficult to say with any degree of certainty what induced the legislature to adopt this particular unit. But one thing seems fairly obvious. Fixing Rs. 10 as the maximum price of 6 yards for the purposes of exemption affords a certain facility to the purchasers. Quite a number of varieties could be covered by this description. On the other hand if for instance price per yard had been specified, the varieties of cloth available at that price would have been limited and the purpose of the exemption might have been defeated to a great extent. In any case we do not find anything in the language of this item which would justify the view that the legislature laid it down that cloth must be sold in six yard pieces in order that exemption may be claimed from the Sale Tax under item 16.

6. The language of item 16 is not wholly free from ambiguity. The result has been that three different interpretations of it were suggested. Where the language used in a fiscal statute is ambiguous and two interpretations or even more are possible, the interpretation most favourable to the subject ought to be adopted. "Behari Lal v. Commr. of Income Tax, C. P. and U. P." 1940 All L J 860;--"Lalchand Gopalji v. State of Bombay" 1952 3 STC 102 ;--"Central India Spinning, Weaving and Manufacturing Co. Ltd.; Empress Mills, Nagpur v. Municipal Committee, Wardha" ILR 1950 Nag 403 . In ILR 1950 Nag 403 it was held that:

"All doubts in fiscal statutes must be resolved in favour of the subject, and in cases of ambiguity of the language a construction which is beneficial to the subject is to be favoured."

The principle of interpretation laid down in the cases referred to above is well settled and supplies an additional ground for preferring the interpretation favourable to the assessee. For the reasons given above I hold that where the price per piece of six yards does not exceed Rs. 10 and the cloth is of the variety covered by item No. 16 of Schedule III, the transaction is exempt from taxation irrespective of the actual length sold at any one time. The criterion laid down is the price per yard calculated on the basis of Rs. 10 for six yards and the conditions laid down in the item have no reference to the actual lengths sold or to the units in which they are sold. The question is answered in the affirmative. We make no order as to costs.

Deka, J.

7. In spite of my best efforts, I could not wholly agree with the view expressed by my learned brother as to the interpretation of Item No. 16 in Schedule III to the Assam Sales Tax Act, 1947. I, however, agree as to the conclusion solely on the ground that the description of cloth entered in the right hand column of Item No. 16 in Schedule III presents some degree of ambiguity in its interpretation. The interpretation given by the assessee cannot altogether be ruled out because of the inadequacy of expression--defining the exact class or measure of cloth which is exempted from assessment.

8. My view, however, is that in order to be exempted from assessment,--one of the, conditions in Item No. 16 is that the cloth sold should be cut or made pieces of not exceeding six yards in length--and the other condition is its price level as mentioned in the Schedule. I cannot agree with my learned brother in the view that the words "piece of six yards" are used only to indicate the price level. If price was the only thing to be indicated,--and no limit set to the maximum quantity of cloth permissible for sale at one time free of sales tax (to Which I agree)--the wordings in the right hand column should have been--"when the price per six yards does not exceed Rs. 10/-" or to be more precise,--"when the price per yard does not exceed Re. 1-10-8 pies"--there was no use of tacking thereto the word--"piece"--unless some emphasis was intended to be given to it. If we accept the interpretation sought to be given by the assessee,--the word "piece" becomes completely redundant.

9. To me it appears that the intention of the legislature was--that the tax shall not be levied when handwoven cloth of mill-made yarns was sold in pieces of not exceeding six yards in length--whether they were woven with that length or cut into such pieces. The exemption is allowed only subject to those conditions--as are indicated in the right hand column of Schedule III. The words "piece of six yards" were introduced only to keep down the quantity of cloth (as described in Item No. 16)--sold free from sales tax and to help the poorer class of consumers. If cloth of a particular variety is sold in pieces of six yards only the necessity of the buyer is perforce limited as one would not like to have many pieces of cut cloth of a given size unless he is a dealer. If sold in pieces of six yards length,--due to the paucity of buyers comparatively a small quantity of cloth escapes assessment. Suppose a customer wants two bed sheets of 2 1/2 yards length, totalling a length of 5 yards,--he will not go in for a six yards piece--which alone is for argument's sake free from sales tax,--or a man of limited means who wants ten yards of cloth will not ordinarily purchase two pieces of cloth of six yards length,--he might buy only one piece of six yards and another piece of four yards only if they can be properly utilised without wastage,--otherwise he is likely to buy just a ten yards piece --by paying sales tax--instead of blocking his money in the two yards that he buys in excess of his needs. It is only the richer class of people who buy spare cloth--& not the poorer who want the barest quantity of cloth just to cover their needs. The Intention of the legislature obviously was not of pushing the sales of cheaper variety of cloth but of giving relief in payment of taxes to the poorer class of people who might convert a piece of six yards of hand-woven mill yarn cloth to some personal use. The assessee in the present case is a big dealer in cloth and his dealings, particularly those that have been taxed relate evidently to big quantities of hand-woven mill yarn made cloth sold to retailers in thans (long pieces) --which the legislature never meant to exempt from assessment of sales tax. The defects lay in the wordings of column 2 in Item No. 16 the word "piece" not being qualified with any attributes like "cut" or "made".

10. In view, however, of the fact,--that the clause in the right hand column presents some ambiguity in the matter of its interpretation--and the sales tax on the variety of cloth described in item No. 16 has now been altogether abolished, as we have been given to understand, I agree that the clause may be interpreted to the advantage of the assessee for the assessment under reference.