Shalimar Wires Indus. Ltd. Vs Asstt. Commr. of Commercial Taxes

Court: Calcutta High Court

Date of Decision: Aug. 30, 2012

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 24

Citation: (2012) 286 ELT 12

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: R.N. Bajoria, Sumit Kumar Chakraborty, Debanuj Basu Thakur and Piyal Gupta, for the Appellant; Seba Roy, for the Respondent

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.
By this application the petitioner before us has impugned the judgment and order dated 3rd January, 2011

passed by the learned West Bengal Taxation Tribunal by which the petitioner"s case No. RN 77 of 2009 has literally been dismissed. It appears

from the records that the petitioner brought different issues before learned Tribunal, however before this Court the petitioner has challenged the

judgment and order so far as it relates to classification of the products namely ""Synthetic Wire Fabric"". The short fact relevant to this matter is set

out hereunder :-

The petitioner is a manufacturer of Synthetic Wire Fabric industries it is woven fabric of nylon polyester monofilament yarn. The product attracts

excise duty, which was levied earlier under Schedule II of Central Excise Act, 1944 thereafter under present Act. In this case additional excise

duty under the (Goods of Special Importance) Act, 1957 was levied under enactment of 1985 Tariff Act and thereafter no such additional duty to

excise has been levied. Exemption was granted under the West Bengal Finance (Sales Tax) Act, 1941 (hereinafter 1941 Act) and the West

Bengal Sales Tax Act, 1994 (hereinafter referred to 1994 Act) on sales of the said goods. The Sales Tax Authorities sought to withdraw such

exemption from payment of tax after additional duty of excise ceased to be levied on the said goods. The proceedings for same assessment years

between the petitioner and the Sales Tax Authorities are pending before this Hon"ble Court. In another proceeding before the West Bengal

Commercial Taxes Tribunal for several assessment year was decided in favour of the petitioners holding that said goods were pliable textile fabric

of artificial silk applicant herein was entitled to exemption from payment of duty as additional of excise under 1957 Act thereon was not condition

precedent to such exemption. All the authorities below however in this case held against the petitioner, and the petitioner was denied relief of

exemption from payment of the sales tax. All those authorities held that said goods were textile fabric of artificial silk but it is not lustrous and

pliable like pure silk.

2. Mr. R.N. Bajoria, learned Senior Counsel appearing for the petitioner contends that his client being the manufacturer of the said goods is

entitled to exemption u/s 24 of 1994 Act as it is classifiable under Serial No. 81. He submits that the said goods are textile fabrics of artificial silk

irrespective of the use to which it is put and this is legally permissible on the strength for the judicial pronouncement of the Supreme Court in case

of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana,). The benefit of such exemption cannot be denied just because additional duty is not

being levied thereon. He further submits that it is well settled that there cannot be any correlation between the additional duty of excise under the

1957 Act and the State Legislature"s power to levy sales tax on goods subjected to such additional duty. In support of this legal submission he had

referred to a decision of this Court in case of Prime Impex Limited and Another Vs. Assistant Commissioner of Commercial Taxes and Others, .

Additional duty on excise is not being levied since 1985. Disputes arose since then till in 1994 Act so no such condition as to levy on duty was

made. Such exemption was withdrawn only under the West Bengal Value Added Tax Act, 2003. It is well settled that exemption available under

clear provisions of the law cannot be denied on the basis of legislative intent. To support this legal submission he has placed reliance on the

following decisions of the Supreme Court:

(a) Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others,

(b) Commissioner of Central Excise, Hyderabad Vs. Sunder Steels Ltd.,

(c) Union of India and Ors. v., Tata Iron and Steel Company Limited 1977 (1) ELT 61 (SC) .

Therefore all the judgments and orders inclusive that of the learned Tribunal ought to be set aside by this Court.

3. Learned counsel for the respondent Smt. Seba Roy submits that the product of the petitioner namely synthetic wire cloth/fabric itself is not

covered under Entry No. 1 and the ingredients namely nylon and polyester by which the product is manufactured are not covered by the said

entry. The product of the petitioner nor its ingredients thereof are not exempted from payment of sales tax straightway. Textile fabric is genus of

which cloth is species. Tribunal came to finding that the goods of the petitioner being manufactured by the process of weaving and the manmade

artificial fabric. So it is textile fabric in nature that means there is doubt to declare the disputed goods as textile fabric straightway the disputed

clothes can be declared as textile fabric. If the disputed goods is same and identical as the artificial silk then its nature and characteristic features

would be the same as artificial silk. Taxation Tribunal observed that it is not being as soft and lustrous as silk in the popular parlance test. The

decision of the Constitution Bench of the Hon''ble Supreme Court reported in Filterco and Another Vs. Commissioner of Sales Tax, Madhya

Pradesh and Another, in case of Filter Co. & Another v. Commissioner of Sales Tax, Madhya Pradesh clearly ruled the pliabilities and is an

essential feature of cloth. But the characteristic feature of pliability of synthetic wire cloth is not so as it is in the artificial silk is. As such it cannot be

said that disputed goods is same and identical as artificial silk. After having examined the characteristics, properties of the textile fabrics mentioned

in Serial No. 81 of the Schedule I of 1994 Act it is neither artificial silk from common parlance test nor it is artificial silk on the point of pliability

condition. The disputed goods in question itself are not covered by Entry No. 81 of the Schedule I of 1994 Act as such petitioner''s claim for tax

free goods cannot be entertained. So far as the species of the goods is concerned it is treated differently from artificial silk for the impost of Tax

and is made subject to sales tax. There is another aspect according to Additional Duties of Excise (Goods of Special Importance) Act, 1957 if any

additional excise duty is leviable on any goods of special importance, no sales tax can be levied on the sale of the said goods manufactured in

India, if the State was to take the benefits under the ADEA that textile fabric is specially important goods but no additional excise duty is levied on

synthetic wire cloth/fabric as such on this angle also in this case the petitioner cannot claim any exemption from payment of Sales Tax if additional

duty under ADE Act has been levied.

4. She submits that there is another aspect of the matter for not allowing the claim of exemption is that First Schedule to the Additional Duty of

Excise (Goods of Special Importance) Act, 1957 specifies the goods on which additional excise duty is leviable. Synthetic wire cloth has not been

mentioned in the said schedule of the ADE Act. Hence no interference of the judgment and order of the authorities below are called for and this

application should be dismissed.

5. After hearing the learned counsel for the parties and having gone through the impugned judgment and order of the learned Tribunal, bereft of all

details we think in this matter moot question is whether the petitioner''s product synthetic wire fabric can be treated to be textile fabrics of all

varieties mentioned in Serial No. 81 of the first schedule of the 1994 Act. We therefore set out the exact text of Entry 81 :

Textile fabrics of all varieties made wholly or partly of cotton, rayon, artificial silk or wool, including handkerchiefs, towels, bed-sheets, bed

spreads, table cloth, napkins, dusters, cotton velvets and velveteen tapes, niwars and laces, whether embroidered or not, but excluding pure silk

cloth, rubberized cloth, belting, pipes (including hose pipes) sataranchi, carpets and druggets, when such textile fabrics are manufactured or made

in India.

6. It appears from the record that the petitioner has clearly stated the manufacturing process of its product. It is stated that the same is woven

fabric and nylon and polyester monofilament yarns and no dispute with this regard has been raised. Even the learned Tribunal has accepted this

admitted factual position. The learned Tribunal has examined the samples of the goods produced before it, who however, did not feel so soft

lustrous like silk. So it was held that it is not artificial silk. We think the learned Tribunal''s approach is legally erroneous as the silk is one of the

materials of the products. Therefore the attribute of lustree is not a relevant factor. What is relevant is whether the product satisfies the attributes of

the textile fabrics or not. In this context Mr. Bajoria appropriately drawn our attention to the decision of the Supreme Court in the case of Porritts

and Spencer (Asia) Ltd. Vs. State of Haryana, The Three-Judges Bench of the Apex Court considering earlier decisions of the Apex Court has

clearly laid down guidelines when a particular product can be said to be textile. At page 437 of the report the Apex Court concluded taking note

of dictionary meaning of the textile as well as previous decision of the same Court on the same subject in a legal sense as follows :-

The word ""textiles"" is derived from the Latin ""texere"", which means ""to weave"" and it means any woven fabric. When yearn, whether cotton, silk,

woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a ""textile"" and it

is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving

adopted may be the wrap and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is

such phenomenal advance in science and technology, so 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. Whatever be the mode of weaving employed, woven fabric would be ""textiles"". What is necessary is no

more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric.

In the said case factually Supreme Court found that dryer felt could meet the tests laid down by the Supreme Court and it was held that the dryer

felts are textiles.

7. In this case it was found that the product of the petitioner is woven product however upon examining the materials tests are satisfied. We think

that the petitioner''s products comes within the purview of textile fabrics. The phrase ""textile fabrics of all varieties"" has sweeping coverage of every

description as far as ingredient is concerned. In an opinion trustee of silk is not the material nor relevant in this matter. It appears that learned

Tribunal has been swayed by the decision of the Constitution Bench of the Supreme Court in case of Filterco and Another Vs. Commissioner of

Sales Tax, Madhya Pradesh and Another, According to the learned counsel for the respondent the Constitution Bench of the Supreme Court is the

decisive factor in the matter, we are unable to agree with his submission. Supreme Court in this case has noted that Porritts case was wholly

different. Significantly Porritts case is substantial guidance in this matter to conclude what are the textile materials. However, we notice in the Filter

Co. the Supreme Court was dwelling upon as to whether woollen felts comes within the purview of the definition of cloth. Having gone into the

factual score on manufacturing process of the woollen felt there is no involvement of any weaving process as such it does not fall within the purview

of definition cloth as mentioned in the concerned statute. At page 323 of the report it is held as follows :-

In order to attract the benefit of the exemption conferred by entry 6 of Schedule I of the Act, the goods must fall within the description ''all varieties

of cloth''.

What would be the cloth has been stated by the Supreme Court after considering the dictionary meaning and other decisions of the Supreme Court

is as follows :-

Going by the meaning given in dictionaries as well as by its generally accepted popular connotation ''cloth'' is woven, knitted or felted material

which is pliable and is capable of being wrapped, folded or wound around. It need not necessarily be material suitable for making garments

because there can be ''cloth'' suitable only for industrial purpose; but nevertheless it must possess the basic feature of pliability....

At page 324 of the report the Supreme Court observed that there is no conflict at all between the decision of the Apex Court in case of Porritts

and Spencer (Asia) Limited v. State of Haryana and the decision in case of Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills,

8. It is therefore clear from the aforesaid case that reliance was placed by the learned Tribunal is a goods of a cloth which is also a textile items.

The textile is a general term whereas cloth is the species namely products thereof. In this case this characteristics and attributes are satisfied.

Learned Tribunal has not found that it is not a pliable. It is recorded that it is pliable but not lustrous like a silk. We think artificial silk is one of the

items of the textile fabrics in case if it is claimed exclusively as an artificial silk then obviously the element lustrous may be a relevant but we have

already held it is textile items.

9. We, therefore, of the view that the learned Tribunal has clearly fell in error not accepting the petitioner''s product as being an item as mentioned

in Entry 81.

10. By the amendment what was the history of bringing back of taxability etc. is not the relevant factor in the matter. The argument advanced by

both the learned counsel in this context are not relevant. The legislative history is required to be considered when any enactment is sought to be

challenged. Therefore the argument advanced in this direction is not relevant at all and this is not considered. We, therefore, allow the writ petition

and reverse the judgment of the learned Tribunal and held as above.

11. There will be no order as to costs.

Joymala Bagchi, J.

I agree.