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## State of West Bengal and Others Vs Madanlal Shroff and Others

F.H.S.T. No. 3498 of 1979

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**Court:** Calcutta High Court

**Date of Decision:** March 6, 1987

**Acts Referred:**

Central Sales Tax Act, 1956 "Section 14, 15

**Citation:** (1989) 20 ECC 105

**Hon'ble Judges:** Chittatosh Mookerjee, C.J; Padma Khastgir, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### Judgement

Chittatosh Mookerjee, C.J.

These appeals are at the instance of the State of West Bengal and others and they are directed against the

judgment and order dated 13th November, 1979 of his Lordship the Honourable Mr. Justice D.K. Sen inter alia declaring that the impugned

notification amending Rule 3(28) of the Bengal Sales Tax Rules, 1941 is ultra vires and also commanding the State not to give effect or further

effect to the said amended Rule 3(28) and not to withdraw exemption allowed under Sections 14 and 15 of the Central Sales Tax Act, 1956 in

respect of carpets.

2. Under Clause (x) of Section 14 of the Central Sales Tax Act, 1956, woollen fabrics as defined in item No. 21 of the First Schedule to the

Central Excises and Salt Act, 1944 are "goods of special importance" in inter-State trade or commerce. u/s 15 of the Central Sales Tax Act, 1956

every sales tax law of a State imposing or authorising the imposition of a tax on the sale or purchase of declared goods is subject to the restrictions

and conditions mentioned in Clauses (a) to (d) of the said Section 15 of the Act. Under Clause (a) of Section 15, tax payable under the State sales

tax law in respect of sale or purchase of goods of special importance inside the State shall not exceed the rate specified in the said Clause (a) of

the sale or purchase thereof and such tax shall not be levied at more than one stage. The different clauses of Section 5 of the Bengal Finance (Sales

Tax), Act 1941 prescribe the rates of tax payable by a dealer on his taxable turnover. In respect of taxable turnover as representing sale of goods

included in Schedule II [other than those specified by the State under Clause (ccc), Clause (d) of Section 5(1) of the Bengal Finance (Sales Tax)

Act] the prescribed rate of sales tax is 11 per cent. Entry No. 24 of Schedule II of the Bengal Finance (Sales Tax) Act is as follows:

Carpets of all varieties and descriptions.

3. In case woollen carpets are ""woolen fabrics"" as defined in item No. 21 of the First Schedule to the Central Excises and Salt Act, 1944 then the

same being goods of special importance within the meaning of Section 14, Clause (x) of the Central Sales Tax Act tax payable under the Bengal

Finance (Sales Tax) Act in respect of sale or purchase thereof cannot exceed the maximum rate specified by Section 15(a) of the Central Sales

Tax Act, 1956. In other words, tax under the Bengal Finance (Sales Tax) Act upon taxable turnover representing sales of woollen carpets shall be

at a rate not exceeding the maximum laid down in Section 15(a) of the Central Sales Tax Act.

4. The petitioner-respondents stated in their respective writ petitions that prior to the substitution by notification No. 1823-F.T. dated 1st April,

1975 Clause (28) of Rule 3 of the Bengal Sales Tax Rules, 1941 provided for deduction from a dealer's gross turnover of sales of woollen

fabrics. Prior to the substitution of the said rule the sales tax authorities treated woollen carpets as woollen fabrics and used to exempt payment of

sales tax upon sales and purchases of woollen fabrics.

5. At the outset, it is necessary to clarify that the State Government had competence to issue the impugned notification No. 1823-F.T. dated 1st

April, 1975 for substitution of the said Clause (28) in Rule 3 of the Bengal Sales Tax Rules, 1941. It is open to the State Government to amend,

alter or vary the different clauses of Rule 3 which contain the list of commodities whose sales and purchases are to be deducted from the gross

turnover of a dealer liable to pay tax under the Bengal Finance (Sales Tax) Act. In fact, Mr. Bajoria, appearing on behalf of the writ petitioner-

respondents, did not dispute that the said notification was not liable to be struck down and therefore, the learned trial Judge, with respect, was not

right in striking down the said notification. Mr. Bajoria's submission was that the State Government's power to tax sales and purchases of woollen

carpets was subject to the restrictions imposed by Section 14 of the Central Sales Tax Act and therefore, the rate of State sales tax upon the

taxable turnover of woollen carpets cannot exceed the maximum rate prescribed by Section 15, Clause (a) of the said Act. In other words, the

mandate ought to be issued upon the State not to levy sales tax upon sales and purchases of woollen carpets at the rates specified in Section 5(1)

(d) of the Bengal Finance (Sales Tax) Act which was in excess of the maximum rate laid down by Section 15(a) of the Central Sales Tax Act.

6. We are in entire agreement with the finding of the learned trial Judge that carpets manufactured wholly of wool or which contain 40 per cent or

more by weight of wool, are included within the expression ""woollen fabrics"" specified in Section 14(x) read with item No. 21 of the First Schedule

to the Central Excises and Salt Act, 1944. The expressions ""textile"" and ""fabrics"" in common parlance have been always given very wide meanings.

Carpets clearly come within the range of the very wide sweep of the expression ""fabrics"". Products made by different varieties or processes of

binding or putting together have been considered as fabrics (vide pronouncement of the Supreme Court in the cases of Porritts and Spencer (Asia)

Ltd. Vs. State of Haryana, , Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, and Commissioner, Sales Tax Vs. Agra

Belting Works, .). The learned Advocate for the respondents also relied upon the meaning of the word ""carpet"" given in different dictionaries to

establish the common and accepted meaning of the said expression that it was a floor covering fabric having a pile surface made from yarn and

woven by traditional methods but also produced by other methods of interlacing components. The various actions and processes of carpet making

clearly result in products which are fabrics. When such carpets are made wholly of wool or contain 40 per cent or more by weight of wool, they

must be considered as woollen fabrics within the meaning of item No. 21 of the First Schedule to the Central Excises and Salt Act, 1944. In other

words carpets manufactured wholly of wool or containing 40 per cent or more by weight of wool are goods of special importance u/s 14 of the

Central Sales Tax Act, 1956.

7. The writ petitioners annexed to their writ petitions a number of notices and communications issued by the Directorate of Commercial Taxes,

Government of West Bengal, which indicated that woollen carpets were to be considered as woollen fabrics. These communications are not

binding upon the State Government but they at least indicate that the views expressed therein were in accord with the commonly accepted opinion

that woollen carpets were covered by the expression ""woollen fabrics"". The writ petitioners also relied upon a letter dated 28th April, 1976 issued

by the Assistant Collector (Tech.) and the Public Relations Officer, Central Excise, Calcutta, inter alia, expressing the opinion that tufted carpets

and pile carpets were governed by the definition of ""woollen fabrics"" as given in tariff item No. 21 of the First Schedule to the Central Excises and

Salt Act, 1944. Similar opinion was conveyed by the letter dated 16th December, 1971 by the Secretary, Government of India, Finance Ministry,

Revenue and Insurance Department.

8. Before us, Mr. Dutt, learned Advocate appearing on behalf of the appellants, submitted that carpets with jute backing cannot be considered as

woollen fabrics and that only those carpets which are made by weaving woollen thread ought to be considered as woollen fabrics. Decision in

these cases ought to be confined to the broad question whether carpets manufactured wholly of wool or which contain 40 per cent or more by

weight of wool are woollen fabrics within the meaning of item No. 21 of the First Schedule to the Central Excises and Salt Act read with Section

14 of the Central Sales Tax Act. We have upheld the contention of the writ petitioner-respondents that the said goods are woollen fabrics and,

therefore, they are goods of special importance. The said item No. 21 includes all varieties of fabrics manufactured wholly of wool or which

contain 40 per cent or more by weight of wool and does not limit the said item only to fabrics manufactured by any particular method or process.

Therefore, as at present advised, we are unable to limit the scope of the said item No. 21 of the First Schedule to the Central Excises and Salt Act

only to carpets which are manufactured by weaving of woollen threads. Neither the process of manufacture nor application or use of the product

would be decisive. What would be relevant is whether the produce was manufactured wholly of wool or it contained 40 per cent or more by

weight of wool and secondly, whether the finished product is commonly considered as a carpet. Unless the particular method of manufacture result

in production of a commodity, what is commonly considered as different from a carpet, the process of manufacture would not be very germane.

We may also point out that in case a particular dealer of carpets claims that any particular item sold by him was covered by Section 14(x) of the

Central Sales Tax Act, then the Commercial Tax Officer would be required to consider whether the said particular item was in fact manufactured

wholly of wool or it contained 40 per cent or more by weight of wool. The Commercial Tax Officer has to also decide whether the manufactured

produce were carpets or some other produce not covered by item No. 21 of the First Schedule to the said Act. If, on the other hand, a dealer

substantiates his claim that he sold or purchased carpets manufactured wholly of wool or containing 40 per cent or more by weight of wool, then

the Commercial Tax Officer will be bound to uphold its claim that the same were woollen fabrics, and, therefore, the dealer was was liable to pay

sales tax for them at a rate not exceeding the maximum prescribed by Section 15(a) of the Central Sales Tax Act, 1956.

9. For the foregoing reasons, we dismiss these appeals and uphold the judgment and order of the trial court subject to the modification that the trial

court's declaration that the impugned notification amending Rule 3(28) of the Bengal Sales Tax Rules, 1941 was ultra vires be set aside and prayer

for mandamus directing the respondents not to give effect or further effect to the amended Rule 3(28) of the said Rules be rejected. The writ

petitioners are, however, entitled to declaration that the State and its officers have power to levy and realise sales tax upon sales and purchases of

carpets manufactured wholly of wool or containing 40 per cent or more by weight of wool at the rate not exceeding the maximum prescribed by

Section 15(a) read with Section 14(x) of the Central Sales Tax Act, 1956. The sales tax authorities would be at liberty to enquire into and

determine if the carpets sold and purchased by the petitioners as dealers contain the required quantity of wool specified in item No. 21 of the First

Schedule to the Central Excises and Salt Act, 1944.

Padma Khastgir, J.

I agree.