

(1959) 07 BOM CK 0023

Bombay High Court

Case No: Sales Tax References No"s. 34 and 35 of 1958

The Aryodaya Spinning and
Weaving Company Limited

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision: July 23, 1959

Citation: (1960) 11 STC 141

Hon'ble Judges: Shah, J; S.T. Desai, J

Bench: Division Bench

Advocate: S.P. Mehta, for the Appellant; M.J. Mistree, for the Respondent

Judgement

Shah, J.

The assessee in these two references is a limited company which carries on business of manufacturing cotton textiles and yarn in the town of Ahmedabad. The assessees have a factory with a spinning and weaving plant. The assessees applied for registration under the Sales Tax Act for sale of the goods manufactured by them and in that application they stated that they were carrying on the business of selling yarn, cloth, cotton, waste stores etc. and accordingly the assessees were registered as dealers. The assessees sold in the relevant period some excess cotton and also cotton waste. These sale transactions were sought to be charged to sales tax by the authorities. The contention of the assessees was that they were not carrying on business of selling cotton or cotton waste, and, therefore the price received on those sales could not be included in computing the turnover of the assessees. These contentions were negatived by the Sales Tax Authorities and also by the Sales Tax Tribunal.

2. The assessees then applied for reference to this Court and the Sales Tax Tribunal has referred the following question :-

"Whether on the facts and under the circumstances of the case the Tribunal was right in holding that the applicants were dealers in respect of cotton and cotton

waste and that accordingly the sales of cotton and cotton waste were liable to be taxed ?"

3. The application submitted by the assesseees for registration and the registration certificate issued to them may not be decisive of the question whether the assesseees are dealers in cotton or cotton waste. But it appears from the facts found by the Tribunal that the assesseees from time to time sold cotton which was surplus and they also regularly sold cotton waste which was produced in their factory. Now, cotton waste is cotton which is discarded in the process of carding on account of its short staple and unsuitable for manufacturing yarn of the type required by the factory. If such cotton waste not required for use in the factory is disposed of normally and regularly, it must be regarded as an incident of the business of the assesseees. It is true that the normal business of the assesseees was the business of manufacturing and selling cotton textiles and cotton yarn, but if the activity pursued by the assesseees of selling cotton waste has a reasonable relation to the normal activity pursued by them, it must be regarded as an allied business activity. The normal business being manufacture of yarn and cloth, a subsidiary product resulted. This product was normally sold. In the circumstances, an intention to carry on business of selling the subsidiary product as a part or an incident of the business of the assesseees may readily be inferred and the transaction of sale may be regarded as an activity in the course of the business of the assesseees. If that be the true position, the assesseees must be regarded as dealers in cotton as well as in cotton waste. By selling cotton regularly, the assesseees may also be regarded as dealers in cotton.

4. On that view of the case, the answer to the question will be in the affirmative.

5. Assesseees to pay the costs of the State of Bombay in one set.

6. Reference answered in the affirmative.