

-HIGH COURT OF ANDHRA PRADESH

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TAX REVISION CASE No. 168 of 2003

Between:

The State of Andhra Pradesh
Rep. by the State Representative
Before S.T.A.T,
D.No.5-4-400 to 404,
Nampally,
Andhra Pradesh, Hyderabad

.....PETITIONER

AND

M/s. Mohsin Brothers,
(Dealer in H/W, Electrical Goods)
Harbour Road,
Visakhapatnam

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **23.04.2024**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE HARINATH NUNEPALLY**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

HARINATH NUNEPALLY, J

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! Counsel for the Petitioner : Sri S. A. V. Sai Kumar,
Representing GP for Commercial Tax

Counsel for the Respondent : Sri A. Sarveswara Rao

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> Head Note:

? Cases Referred:

- 1) (1992) 14 APSTJ 182
- 2) 97 STC 316
- 3) 65 STC 251
- 4) TRCs.79&239 of 2003 APHC
(decided on 13.10.2022)

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE HARINATH NUNEPALLY

TAX REVISION CASE No. 168 of 2003

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri S. A. V. Sai Kumar, representing the learned Government Pleader for Commercial Tax for the petitioner and Sri A. Sarveswara Rao, learned counsel for the respondent.

2. This Tax Revision Case under Section 22 (1) of Andhra Pradesh General Sales Tax Act has been filed by the State-Petitioner challenging the Order dated 18.06.2001, passed by the Sales Tax Appellate Tribunal (in short 'Appellate Tribunal') Andhra Pradesh, Hyderabad in T.A.No.81 of 1997.

3. M/s. Mohsin Brothers, Harbour Road, Visakhapatnam, the respondent, is an assessee on the rolls of the Commercial Tax Officer, Kurupam Market, Visakhapatnam and did business in hardware, electrical goods, pipes etc. The Commercial Tax Officer, Kurupam Market, Visakhapatnam finally assessed the assessee for the years 1994-95 under Andhra Pradesh General Sales Tax Act (in short 'APGST Act') in Assessment No.881/94-95. The Assessing Authority assessed the turnover relating to the sale of emery cloth as unclassified item and levied tax accordingly under Seventh Schedule to the APGST Act. It also assessed the turnover relating to the sales of tarpaulins and levied tax at the rate of 9% treating it as covered by item-174 of First Schedule to APGST Act.

4. The assessee filed Appeal No.VSP 84/96-97. The appeal was partly dismissed and partly remanded and partly allowed by Order dated 30.07.1996 by the Appellate Deputy Commissioner, Kakinada. With respect to emery cloth, the contention of the assessee was not accepted. It was held that the said commodity should not be treated as cotton fabric. The appeal with respect to this item was dismissed. With respect to other item – tarpaulins, the claim of the assessee was partly accepted by reducing the rate of tax to 4%. With respect to other items in the appellate Order, there is no *lis* in the present petition.

5. The assessee filed T.A.No.81 of 1997 to the extent of rejection of the claim on emery cloth and tarpaulins. The Appellate Tribunal has allowed the appeal by the impugned Order dated 18.06.2001.

6. The Appellate Tribunal formulated the point for consideration; whether the first sales of emery cloth and tarpaulins are not excisable to the tax under APGST Act. The Appellate Tribunal held that the emery cloth is covered in Item-59.03 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (in short 'Additional Duties Act') and therefore is exempted under Fourth Schedule to the APGST Act, as the same is liable for additional duties of excise under the Additional Duties Act. It held that emery cloth is cotton coated fabric and therefore liable to be exempted from tax. Regarding the levy of tax on tarpaulins, the Appellate Tribunal held that tarpaulin which is waterproof with the base as cloth falls under cotton fabrics in item-5 of the Fourth Schedule to the APGST Act. It further observed that

inclusion of item-174 of the First Schedule would make no difference, and accordingly, it held that no tax was to be levied on tarpaulin. The Appellate Tribunal for its judgment placed reliance in the case of ***State of A.P. v. Binny Limited***¹ wherein the Andhra Pradesh High Court held that the tarpaulin falls under cotton fabric in item-5 of Fourth Schedule to the APGST Act. It also placed reliance on the decision of the Hon'ble Apex Court in the case of ***State of A.P. v. Feno Plast Pvt. Ltd.***² in which it was held that the through rexine as in that case was covered by item-174 of First Schedule, but was a cotton coated fabric and was exempted from levy of tax as per item-5 of Fourth Schedule and Section 8 of APGST Act. Its inclusion in item-174 of the First Schedule would make no difference. The Appellate Tribunal held that like rexine cloth, tarpaulin is also included in item-174 and stands in the same position as rexine cloth which was held to be completely exempt from tax by the Hon'ble Apex Court, consequently applying the said judgment, Tarpaulin would also be exempted and the entry-174 would make no difference.

7. Learned Government Pleader submitted that the emery cloth is based with sand and hence cannot be treated as cloth. He submitted that the emery cloth is for the purpose of shining the wood and other articles and the cloth is useless and of no importance.

8. Learned Government Pleader further submitted that the Tarpaulin being covered in item No.174 of the First Schedule, it was liable to be taxed

¹ (1992) 14 APSTJ 182

² 97 STC 316

and was rightly so taxed @ 4% by the Deputy Commissioner. The Appellate Tribunal erred in interfering with the Order of the Deputy Commissioner.

9. The respondent's counsel submitted that the Order impugned does not call for any interference and is perfectly justified as the items, in question are covered under Entry-5 of Fourth Schedule and exempted from tax.

10. We have considered the aforesaid submissions and perused the material on record.

11. Section 3 of the Additional Duties Act 1957 is the charging section and provides for levy and collection of additional duties on goods described in the First Schedule thereof at the rates therein specified. Headings and sub-headings and chapters within the Schedule mean headings, sub-headings and chapters in the schedule with the Central Excise Tariff Act 1985. By Section 5 of the APGST Act every dealer is required to pay tax on the quantum of his turnover at the rates specified in the schedule thereto. Section 6 deals with sales tax of declared goods and states that it shall be paid at the rates specified in the Third Schedule of the Act. It provides for reimbursement of tax in case of inter-state sales where tax under the Central Sales Act 1956 has been paid.

12. Section 8 of the APGST Act which provides for exemption from tax reads as under:

“Section 8: Exemption from tax in respect of certain goods:- Subject to such restrictions and conditions as may be prescribed a dealer who deals in the goods specified in the Fourth Schedule shall be exempt from tax under this Act in respect of such goods.”

13. Entry-5 of Fourth Schedule to APGST Act reads as under:

“Cotton fabrics, man made fabrics and woolen fabrics (where AED is leviable) (4005)”

Explanation: The goods mentioned in entries 5,6 and 7 of this Schedule shall be goods included in the relevant heads and sub-heads of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, but does not include goods where no Additional Duties of Excise are levied under that Schedule.”

14. Entry-174 of the First Schedule to the APGST Act reads as under:

“174: P.V.C.Cloth, Waterproof cloth, Tarpaulin and Rexine.”

15. Item-59.03 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act is as under:

“59.03: Textile fabrics, of cotton and man-made textile materials impregnated, coated, covered or laminated with plastics, other than those of Heading No. 59.02.”

16. In ***Feno Plast Pvt. Ltd.*** (supra) it has been held that the words “cotton fabrics, man-made fabrics and woolen fabrics” in item-5 must therefore be read as item-59.03 of the First Schedule to the Additional Duties Act 1957, which refers to textile fabrics, impregnated cloth-covered or laminated. It is evident from the impugned judgment that it was not disputed before the Appellate Tribunal that the based material for emery material was cloth and it was described as textile fabrics in item-59.03 which was to cover of any cloth which was impregnated covered or laminated. The emery cloth even if is based with, sand, for the purpose of its use, that does not change the basic nature of it being a cloth covered in item-5 read with item-59.03 of the First Schedule to the Additional Duties Act.

17. In ***Feno Plast Pvt. Ltd.*** (supra) the Hon'ble Apex Court held as under in para-3 to 5:

“3. This being the position, the appellants were paying additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and were exempted from payment of tax under the State Sales Tax Act. Then Item 174 was added in the First Schedule of the State Sales Tax Act. It related to “PVC cloth, waterproof cloth, tarpaulin and rexine”. The appellants were sought to be made liable to sales tax under Item 174. The appellants preferred a writ petition in the High Court contending that they were not liable to pay any sales tax under Item 174 by reason of the fact that they fell within Item 5 of the Fourth Schedule of the State Sales Tax Act and were exempted by Section 8 thereof. The High Court, by the judgment which is under challenge, upheld the appellants' contention, except to this extent:

“In our considered view the effect of inclusion of rexine in Entry 174 of the First Schedule to the A.P. GST Act cannot have the effect of taxing the turnover of the sales or purchases of rexine at the rate mentioned in Schedule I in view of the provisions of Section 6 of the A.P. GST Act read with Section 15 of the CST Act, as pointed out above, and thus that entry has to be read down to authorise exigibility of sales tax on the turnover of declared goods including rexine subject to the provisions of Section 6 of the A.P. GST Act read with Section 15 of the CST Act, namely, that sales tax cannot exceed 4% of the turnover and that it shall not be levied at more than one stage.”

The appellants are in appeal by special leave.

4. The Explanation to the Fourth Schedule of the State Sales Tax Act makes it clear that the expressions used in Item 5 thereof have the meaning that is assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. **The words “cotton fabrics, man-made fabrics and woollen fabrics” in Item 5 must, therefore, be read in the light of Item 59.03 of the First Schedule to the said Additional Duties of Excise (Goods of Special Importance) Act, 1957 which refers to textile fabrics, impregnated cloth — covered or laminated.** The appellants' product, rexine

cloth, is covered by Item 59.03 and the appellants were, at the relevant times, liable to pay and paid additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. **By reason of Section 8 of the State Sales Tax Act, therefore, they were exempt from tax thereunder in respect of their rexine cloth. The inclusion of Item 174 in the First Schedule to the State Sales Tax Act could make no difference to this position.** The High Court was in error in its attempt to read down Item 174 it failed to give due weight to the categorical terms of Section 8.

5. The appeal is, therefore, allowed. The judgment of the High Court is set aside to the extent aforesaid. There shall be no order as to costs.”

18. In *M/s. Anasuya Traders v. State of A.P.*³ a Coordinate Bench of this Court also considering the judgment of the Hon'ble Apex Court in *Feno Plast Pvt. Ltd.* (supra) held that explanation to Fourth Schedule of the State Sales Tax Act made it clear that the expression used in item-5 thereof has the meaning that it has assigned to the Central Act 1957 and hence the words 'cotton fabrics, manmade fabrics and woolen fabrics' in item-5 of Fourth Schedule have to be read in the light of item-59.03 of the First Schedule to Central Act 58 of 1957, which refers to textile fabrics, impregnated cloth covered or laminated. It was further observed that the appellants' product therein was covered by item-59.03 and they were liable to pay additional duty of excise under the Central Act 1957 and consequently, he was liable for exemption under Section 8 of the APGST Act.

³ TRC Nos.79&239 of 2003 APHC
(decided on 13.10.2022)

19. With respect to tarpaulin, in ***Binny Limited*** (supra) it was held that 'tarpaulin' falls within the meaning of the expression 'cotton fabrics' under item-5 of the Fourth Schedule to APGST Act.

20. It is apt to refer paragraphs- 12, 13, 20, 21 and 22 of ***Binny Limited*** (supra) as under:

"12. In view of the extended meaning, the expression "cotton fabrics" as understood in common parlance will not be conclusive for the purpose of the present case. Fabrics impregnated or coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials will also be "cotton fabrics" by reason of the inclusive definition. It was not disputed that the goods in question in the present case, i.e., the cotton canvas or tarpaulins were waterproof cloth and were fabric falling within the description of "fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials"; that they contained the requisite cotton content was also not disputed before the Tribunal or the Appellate Deputy Commissioner. We are, therefore, satisfied that they are cotton fabrics as defined in the said item No. 19 at the relevant time and fall within item No. 5 of the Fourth Schedule to the Act. While dealing with the question whether "rexine" fell within the meaning of the expression "cotton fabrics" in the said item No. 5, a Division Bench of this Court interpreted the said expression in the same way in ***State of Andhra Pradesh v. Budha Vinyl (P) Ltd.*** [1992] 84 STC 131. On the same basis and applying the test of predominance also, another Division Bench of this Court in ***State of A.P. v. Goodyear India Ltd.*** [1989] 74 STC 47, held that cotton fabric subjected to the process of rubberising fell within the meaning of the expression "cotton fabrics" in the said item No. 5.

13. We are supported in this view by the decision of the Gujarat High Court in ***Pokardas & Brothers v. State of Gujarat*** [1982] 51 STC 88, wherein also the question that arose for consideration was whether tarpaulin was a cotton fabric as defined in the said item No. 19 at the relevant time. After elaborately considering all aspects of the matter, the Gujarat High Court held that tarpaulin

came within the said enlarged definition of "cotton fabrics". The Karnataka High Court also took the same view in *Bharat Textile and Proofing Industries v. State of Karnataka* [1988] 71 STC 10 and held that tarpaulin and P.V.C. rexine cloth fell within the meaning of the expression "cotton fabric" as defined by item No. 19 of the First Schedule to the Central Excises and Salt Act, as amended by the Finance Act, 1969.

20. We do not find any substance in the contention of the learned Government Pleader that "tarpaulin" dealt with by the assessee is different from "cotton canvas" inasmuch as the ends were stitched and eyes were provided for and therefore is not a "cotton fabric" even though "cotton canvas" it may be. He relied on the decision of the Madras High Court in *Jeewajee & Co. v. State of Tamil Nadu* [1974] 34 STC 4, that tarpaulin as a finished product was a different marketable commodity from processed canvas cloth and therefore could not be treated as "textile". We do not agree. The Supreme Court observed in *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978] 42 STC 433 in the following terms:

"Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls; it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in its character as a textile. It may be used for making wearing apparel, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile. It is, therefore, no argument against the assessee that 'dryer felts' are used only as absorbents of moisture in the process of manufacture in a paper manufacturing unit. That cannot militate against 'dryer felts' falling within the category of 'textiles', if otherwise they satisfy the description of 'textiles'."

21. Thus the use of "cotton canvas" as tarpaulin or its size cannot alter its character. Does the stitching of the edges with "eyelets" make any difference? We do not think so. Its essential character remains the same and no material change is effected. A Division Bench of this Court observed in *Ram Chemical*

Industries v. State of A.P. [1983] 54 STC 189, while considering whether "deodorised kerosene" was also "kerosene", that the fact that commercially they were two different products did not make any difference because commercially speaking, groundnut oil too was different from vanaspati, following the decision of the Supreme Court in *Tungabhadra Industries Ltd. v. Commercial Tax Officer* [1960] 11 STC 827. A Division Bench of this Court also held in *Nathmal Manghilal and Company v. State of Andhra Pradesh* [1983] 54 STC 91, that "buckram collars", which serve as lining in the collars of ready-made shirts, were "cotton fabrics". The buckram collar considered in that case consisted of cotton collar treated with special kind of adhesive and bonded on an oblong buckram cloth; the spread out collar had a lengthwise slit running in the middle and there were also eyelets at either end of the collar. This Court held that merely because it was stiffened, etc., it did not cease to be a cotton fabric and that it was not a different product. This decision negates the contention of the learned Government Pleader. This decision clearly supports our view that tarpaulin, which is a hemmed piece of cotton canvas with eyelets, is cotton fabric under the said item No. 5.

22. We are, therefore, of the view that the Tribunal correctly held that "tarpaulin" fell within the meaning of the expression "cotton fabrics" under item No. 5 of the Fourth Schedule to the Andhra Pradesh General Sales Tax Act. We do not find any error of law in the judgment of the Tribunal."

21. By reason of Section 8 of APGST Act, Tarpaulin cloth was exempt from tax and the inclusion of this item in item No.174 made no difference.

22. The Appellate Tribunal rightly concluded that once tarpaulin falls under cotton fabrics in item-5 of the Fourth Schedule to the APGST Act, inclusion of it in item-174 of the First Schedule would make no difference.

23. It could not be disputed by the learned Government Pleader that these two goods emery cloth and tarpaulin were covered in item-59.03 of the First Schedule to the Additional Duties Act.

24. Learned Government Pleader submitted that there is no proof by the dealer that the emery cloth suffered levy of additional excise duty under the Additional Duties Act 1957.

25. A perusal of the Order of the learned Appellate Tribunal (at internal page-3) shows that the emery cloth was covered under item-59.03 and was exempted as the same was liable for additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act 1957.

26. Thus, considered, We do not find any illegality in the order of the Appellate Tribunal. No case is made out for interference, inasmuch as the Appellate Tribunal has neither failed to decide any question of law nor has decided the question of law erroneously.

27. The Tax Revision Case is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

HARINATH NUNEPALLY, J

Date: 23.04.2024

Note:

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