Ramdev Agencies Vs. Additional Assistant Commissioner of Commercial Taxes

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Court : Karnataka

Decided On : Oct-25-2005

Reported in : (2007)6VST644(Karn)

Judge : H.L. Dattu and ;H.N. Nagamohan Das, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 5(4), 7A and 8A; Central Sales Tax Act, 1956 - Secions 14 and 15; Central Excise Act, 1944; Additional Duties of Excise (Goods of Special Importance) Act, 1957; Central Excise Tariff Act, 1985; Central Excise Act, 1944; Kerala General Sales Tax Act, 1963 - Sections 9; Tamil Nadu General Sales Tax Act, 1959; Rajasthan Sales Tax Act, 1954; Andhra Pradesh General Sales Tax Act, 1957 - Sections 8; Punjab General Sales Tax Act, 1948

Appeal No. : Writ Appeal Nos. 2606 to 2611 of 1999

Appellant : Ramdev Agencies

Respondent : Additional Assistant Commissioner of Commercial Taxes

Advocate for Def. : S. Sujatha, Additional Govt. Adv.

Advocate for Pet/Ap. : B.P. Gandhi, Adv.

Disposition : Appeal rejected

Judgement :

H.L. Dattu, J.

1. This appeal is filed against the common order passed by the learned single Judge in Writ Petition Nos. 3955 and 3956 of 19991 and connected matters disposed of on March 8, 1999.

2. Appellant is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957 ('the KST Act', for short) and the Central Sales Tax Act, 1956 ('the CST Act', for short) and is engaged in the business of sales of mill-made and handloom cotton handkerchiefs. In the annual returns filed, it had claimed exemption on the sales of handkerchiefs, on the ground that the mill-made and handloom cotton handkerchiefs are exempt from levy of sales tax by virtue of entry 8-A of the Fifth Schedule to the KST Act. This claim of the assessee was rejected by the assessing authority, who has levied tax on the sales of mill-made cotton handkerchiefs and handloom cotton handkerchiefs by applying entry 7-A of Part 'T' of the Second Schedule to the Act. Aggrieved by the orders of assessment so made, the assessee was before this Court, inter alia, seeking a writ of certiorari to quash the orders of assessment on the ground that the same is illegal and is in violation of some of the constitutional provisions. The other prayer in the petitions was for a declaration that the mill-made cotton handkerchiefs and handloom cotton handkerchiefs are exempted under entry 8-A of the Fifth Schedule to the Act.

3. In support of the reliefs sought in the writ petitions, it is averred that the Sales Tax Department right from the year 1958 up to March 31,1992 had exempted the sales of mill-made cotton handkerchiefs and handloom cotton handkerchiefs under entry 8-A of the Fifth Schedule to the Act and the exemption was based on the ground that handkerchiefs are covered by entry 19 of the Central Excise Act and also the circular instructions issued by the Commissioner of Commercial Taxes from time to time. It is further averred that the amendment made to entry 8-A of the Fifth Schedule to the Act, with effect from April 1, 1992, does not change the basic character of textiles, nor does it change the connotation. The amplification of the entry 8-A of the Fifth Schedule to the Act does not in any way change the earlier

legal and factual position. Textile handkerchiefs continue to be textile and once they are cotton textiles, they are covered by entry 8-A of the Fifth Schedule to the Act and Section 14 of the CST Act. It is further stated that the Additional Duties of Excise Act does not describe any commodity and description in this Act is by reference to the Central Excise Act. The description of cotton fabrics under the Central Excise Act, 1944 has not undergone any change with effect from April 1,1992. Hence, even earlier to April 1,1992, 'cotton fabrics' entry in Chapter 52 of the Central Excise Act existed and likewise entry in Chapter 62 and the department had adopted the description of Chapter 62 when the Commissioner of Commercial Taxes had issued circular exempting handkerchiefs from levy of sales tax and therefore, it is not open to the Department to change its stand on cotton fabrics. In support of these assertions, the assessee had relied on the observations made by the apex court in the case of Porritts & Spencer (Asia) Ltd. v. State of Haryana [1978] 42 STC 433 and the decision in the case of Deputy Commissioner of Sales Tax v. M.M. Mohammed Abdul Khader [1980] 46 STC 512 (Ker) and also the observations made by the division Bench of this Court in the case of Bangalore Wood Industries v. Asst. Commissioner of Commercial Taxes (Assessment) [1994] 92 STC 603.

4. The learned single Judge, after careful consideration of the issues raised and canvassed, has come to the conclusion that in view of the amendment brought into entry 8-A of the Fifth Schedule to the Act by Karnataka Act No. 4 of 1992 with effect from April 1, 1992, the sale of handkerchiefs are exigible to levy of tax under entry 7-A of Part 'T' of the Second Schedule to the Act. It is the correctness or otherwise of this conclusion reached by the learned single Judge that is called in question in this appeal.

5. Section 8 of the Act provides for exemption of tax on the sale of goods specified in the Fifth Schedule to the Act, subject to the conditions and exceptions, if any, set out in the Schedule itself.

6. By Karnataka Act No. 9 of 1964, entry 8-A was inserted in the Fifth Schedule, The entry was in force with effect from April 1, 1964 till December 31, 1969. The entry provided exemption of sales tax on all varieties of textiles enumerated in the

entry itself. The entry read as under:

8-A. All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon, whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths.

7. Entry 8-A was substituted by Act No. 3 of 1983. This was in force from January 1,1970 to March 31,1979. Under this entry, tyre-cord fabrics specified in Serial No. 7-A of the Fourth Schedule to the Act was excluded from the general expression 'all varieties of textiles'. The entry read as under:

8-A. All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths, but excluding tyre-cord fabrics specified in Serial Number 7-A of the Fourth Schedule.

8. By the very same amendment Act No. 3 of 1983, the original entry as it existed earlier was brought back into the statute book. That was for a period April 1,1979 to March 28,1981 and for the period March 29,1981 to March 31, 1992. Under the said amendment, the word 'silk' was deleted from the general expression 'all varieties of textiles'.

9. By Karnataka Act No. 4 of 1992, several amendments were brought into Second, Fourth and Fifth Schedules of the Act. For the purpose of disposal of this appeal, entry 7-A of the Second Schedule, entry 12 of the Fourth Schedule and entry 8-A of the Fifth Schedule to the Act require to be noticed.

Entry 7-A of Part 'T' of the Second Schedule to the Act is as under:

7-A. Textile and fabrics but excluding such textiles and fabrics as are covered, described or specified elsewhere in any of the Schedules.

Entry 12 of the Fourth Schedule to the Act is as under:

12. Textiles and fabrics-Sale by the first or earliest of the successive dealers in the State liable to tax under this Act.

Entry 8-A of the Fifth Schedule to the Act is as under:

8-A. All varieties of textiles, namely, cotton, woollen or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths as described from time to time in column (2) of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, but excluding tyre-cord fabrics specified in Serial Number 7-A of the Fourth Schedule.

10. By Karnataka Act No. 4 of 1992, which has come into force with effect from April 1,1992, by reference to the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Legislature has substituted in the entries relating to Serial Number 8-A for the words 'cloth in lengths', the words 'cloth in lengths as described from time to time in column (2) of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957.'

11. The entry begins with the expression 'all varieties of textiles' followed by the word 'namely'. By this expression, the Legislature has made it clear that the enumerated list in the entry is exhaustive and not illustrative. The enumerated list contains commodities like cotton, woollen or artificial silk including rayon or nylon whether or not manufactured in mills, power-looms or handlooms. The enumerated list also speaks of hosiery cloth in lengths. The Legislature by reference to the provisions of the Additional Duties of Excise Act, mandates that the 'cloth in lengths' requires to be understood as described from time to time in column (2) of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Therefore, in order to understand the meaning of the expression 'cloth in lengths', which finds a place in the entry, reference requires to be made to the description provided in the Additional Duties of Excise Act.

12. To begin with, what requires to be noticed is, Clause 1 of the notes appended to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ('the Act', for short), which makes a reference to the provisions of the Central Excise Tariff Act, 1985, for understanding the meaning of the expression 'heading', 'sub-heading' and 'chapter' in the Schedule.

13. Clause 2 of the First Schedule to the Act also adopts the provisions of the Central Excise Tariff Act, for the purpose of interpretation of the section, Chapter Notes and the General Explanatory Notes of the said Schedule.

14. Columns (1), (2), (3) and (4) of the First Schedule to the Additional Duties of Excise Act, 1957, provides for 'heading', 'sub-heading', 'description of the goods' and 'the rate of additional duty payable', respectively.

15. The Additional Duties of Excise Act, under the Heading Nos. 50.03 up to 60.01 provides for various types of fabrics/textiles manufactured in mills, powerlooms or in handlooms, but does not include Chapters 61, 62 and 63 of the Central Excise Tariff Act.

16. Chapter 61 of the Tariff Act provides for articles of apparel and clothing accessories, knitted or crocheted.

17. Chapter 62 of the Tariff Act provides for articles of apparel and clothing accessories, not knitted or crocheted.

18. Heading No. 62.01 provides for articles of apparel, not knitted or crocheted of all sorts; and

Heading No. 62.02 provides for clothing accessories, not knitted or crocheted including handkerchiefs, shawls, scarves, mufflers, mantillas, veils, ties, bow-ties, cravats and gloves.

19. It is pertinent to notice that the Additional Duties of Excise Act, which in turn has adopted the Central Excise Tariff Act has not considered the 'handkerchiefs' as cotton fabrics. In Central Excise and Tariff Act, it is only those items which would fall under the heading Nos. 50.03 up to 60.01 are included within the meaning of the expression 'cotton fabrics'. Handkerchiefs are included in Chapter 62 of the Schedule to the Act which speaks of articles of apparel and clothing accessories and therefore, handkerchiefs though made of 'cotton cloth in lengths' cannot be brought under entry 8-A of the Fifth Schedule to the KST Act which speaks of cotton cloths as described in the Additional Duties of Excise Act. In view of this specific language employed by the Legislature while inserting entry 8-A in

the Fifth Schedule to the Act, Chapters beyond heading No. 60.01 of the Central Excise Tariff Act are specifically excluded from entry 8-A of the Fifth Schedule to the Act. If understood in this manner, the sale of handkerchiefs, whether manufactured in mills, powerlooms or handlooms, go out of the purview of entry 8-A of the Fifth Schedule to the Act.

20. The next question would be whether the cotton made handkerchiefs could be brought under entry 12 of the Fourth Schedule to the KST Act? The Fourth Schedule to the Act enumerates declared goods in respect of which tax is leviable under Section 5(4) of the Act. Entry 12 of the Fourth Schedule to the Act provides for levy of tax on sales of textiles and fabrics by the first or the earliest of the successive dealers in the State liable to tax under the KST Act. To fall under entry 12 of the Fourth Schedule to the Act, the commodity should necessarily fall under Section 14 of the CST Act. Sub-entry (ii-a) of Section 14 of the CST Act has declared the cotton fabric as a commodity of special importance in inter-State trade and commerce. The sub-entry (ii-a) of Section 14 of the CST Act reads as under:

Clause (ii-a). Cotton fabrics covered under Heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, 59.01, 59.03, 59.05, 59.06 and 60.1 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

21. Fourth Schedule goods are declared goods in respect of which tax is leviable under Section 5(4) of the Act. Entry 12 of the Fourth Schedule to the Act speaks of textiles and fabrics. For the purpose of this entry, reference requires to be made in respect of the goods enumerated under Section 14 of the CST Act. Entry (ii-a) of Section 14 of the CST Act provides for cotton fabrics as one of the goods of special importance. The entry without anything else only says, cotton fabrics covered under headings Nos. 52.05 to 60.01 of the Schedule to the Central Excise Tariff Act. Apparently, it does not include Chapter 62 of the Central Excise Tariff Act, which applies to articles made of any textile fabrics other than wadding, excluding knitted or crocheted articles other than brasseries, girdles, corsets, braces and the like. Since handkerchief does not fall under the categories of the

declared goods, benefit of reduced rate of tax envisaged in the Fourth Schedule to the KST Act cannot be applied.

22. Before we proceed further, we intend to refer to the reliance placed by the learned Counsel for the appellant Sri B.P. Gandhi. In order to suggest that if there is any ambiguity in the provision, there could be no tax liability in law, the learned Counsel has brought to our notice the decision of the apex court in the case of Mathuram Agrawal v. State of Madhya Pradesh : AIR 2000 SC109 , wherein the apex court has stated that 'if there is no tax liability in law and if there is ambiguity in the provision as to any of the three components of tax law, namely, subject of tax; person-who is liable to pay tax; and rate at which tax is to be paid, in any such circumstance only the Legislature can amend the provision or repeal it and enact a new one'. Proceeding further, the court has stated that 'in a taxing statute, it is not possible to assume any intention or governing purpose beyond what is stated in plain language. Economic results sought to be obtained by a particular taxing provision are not relevant in interpreting the fiscal statute'.

23. The learned Counsel has nextly relied on the decision of the Kerala High Court in the case of Deputy Commissioner of Sales Tax (Law) v. M.M. Mohammed Abdul Khader [1980] 46 STC 512. In the said decision, two questions had been raised. Firstly, whether mill made handkerchiefs are cotton fabrics and exempt from tax? and secondly, whether the process of stitching alters the character of handkerchiefs? The court while answering the aforesaid two issues has stated:

Mill-made handkerchiefs, which are manufactured wholly out of cotton and are sold in the same condition in which they are supplied by the mills, and on which excise duty has already been paid and no further process of manufacture is applied, are cotton fabrics falling within the scope of entry 19 of the First Schedule to the Central Excises and Salt Act, 1944, and therefore, are exempt from tax under Section 9 of the Kerala General Sales Tax Act, 1963, read with entry 7 of the Third Schedule thereto. The mere fact that as part of the process of manufacture the edges of the cloth have been stitched would not in any way affect the character of the handkerchief as a cotton fabric.

24. The Madras High Court in the case of Deputy Commissioner (CT), Coimbatore Division v. South India Traders [1982] 50 STC 106, was again considering the question whether the mill-made handkerchiefs are cotton fabrics and exempt from payment of tax under the Tamil Nadu General Sales Tax Act, 1959? The court while answering the issue has stated:

The expression fabric is of sufficient amplitude to cover not only a handkerchief woven as a fabric in its own size but also a handkerchief made out of a bigger dimension of fabric. Therefore, mill-made handkerchiefs are entitled to exemption under entry 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959.

25. The learned Counsel Sri B.P. Gandhi nextly relies on the observations made by the apex court in the case of Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan [1980] 46 STC 256. In this decision, the question was whether the 'rayon tyre cord fabric' manufactured by the assessee is a rayon fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, and therefore, exempt from sales tax under the Central Sales Tax Act, 1956? The court while answering this issue has observed:

The 'rayon tyre cord fabric' manufactured by the appellant for use in the manufacture of tyres is a woven fabric in which the intermediate process of weaving the weft, thread across the warp cord is an integral stage of manufacture. It is, therefore, a rayon fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, and exempt from sales tax under the Central Sales Tax Act, 1956, during the assessment years 1969-70, 1970-71, 1971-72 and for the first six months of 1972-73, and this exemption was not dependent on payment of additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

26. Our attention is also drawn to the observations made by the apex court in the case of Fenoplast v. State of A.P. [1999] 114 STC 559. In this decision, the court has stated:

Section 8 of the Andhra Pradesh General Sales Tax Act, 1957, grants an exemption in respect of goods listed in the Fourth Schedule to the Act. Entry 5 of the Fourth Schedule refers to 'cotton fabrics, man-made fabrics and woollen fabrics'. The Explanation to the Fourth Schedule states that expressions in entries 5, 6 and 7 bear the meaning assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Rexine cloth, being a coated fabric, is covered by entry 59.03 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and therefore, exempt from sales tax by virtue of Section 8. The inclusion of item 174 in the First Schedule to the Andhra Pradesh General Sales Tax Act, relating to 'PVC cloth, waterproof doth, tarpauline and rexine' can make no difference to this position. To read down entry 174 so as to permit a levy thereunder subject to the provisions of Section 6 of the Andhra Pradesh General Sales Tax Act and Section 15 of the Central Sales Tax Act, 1956 , i.e., at a rate not exceeding four per cent and at not more than one stage would not be permissible. Due weight must be given to the terms of Section 8 of the Andhra Pradesh General Sales Tax Act, 1957 which are categoric.

27. Lastly, the learned Counsel Sri B.P. Gandhi has invited our attention to the observations made by the apex court in the case of Porritts and Spencer (Asia) Ltd. v. State of Haryana [1978] 42 STC 433. The question before the court was whether dryer felts manufactured by the dealer fell within the category of 'all varieties of cotton, woollen or silken textiles' specified in item 30 of Schedule 'B' of the Punjab General Sales Tax Act, 1948? and whether they would be exempt from sales tax both under the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956? The court while answering these issues has observed:

Dryer felts made out of cotton or woollen yarn by the process of weaving according to the warp and woof pattern and commonly used as absorbents of moisture in the process of manufacture in paper manufacturing units fall within the ordinary and common parlance meaning of the word 'textiles' in item 30 of the Schedule 'B' to the Punjab General Sales Tax Act, 1948, and are exempt from tax.

The word 'textiles' in item 30 of Schedule 'B' must be interpreted according to its popular sense, meaning that sense which people conversant with the subject-

matter with which the statute is dealing would attribute to it. That word has only one meaning, namely, a woven fabric, and that is the meaning, which it bears in ordinary parlance.

When yarn, 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. The method of weaving adopted may be the warp and woof pattern, as is generally the case in most of the textiles, or it may be any other process or technique. 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. Moreover, a textile need not be of any particular size, strength or weight. It may be bleached or dyed. The use to which it may be put is also immaterial and does not bear on its character as a textile. It can be used even for industrial purposes.

The concept of 'textiles' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as 'textiles'.

28. In our view, none of the decisions on which reliance is placed by learned Counsel would in any way assist the appellant, since the fact-situation in each one of the decision is different from the one that is raised in this appeal. The only decision which is nearer to the facts and circumstances of this case is the decision of Deputy Commissioner of Sales Tax (Law) v. M.M. Mohammed Abdul Khader [1980] 46 STC 512 (Ker), but even that decision would not come to the aid of the appellant, since the view expressed by the court was based on the interpretation of item 19 of the First Schedule to the Central Excise Act and the principle enunciated therein cannot be applied in view of the language employed in the amended entry 8-A of the Fifth Schedule to the Act with effect from April 1, 1992.

29. In the present case, by Karnataka Act No. 4 of 1992, the Legislature has amended entry 8-A of the Fifth Schedule to the Act, by inserting the expression 'as described from time to time in column (2) of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957', immediately after the

words 'cloths in lengths'. That only means that, to claim exemption under this entry, 'cotton handkerchiefs' that the appellant is dealing in, must be a commodity as described in the Additional Duties of Excise Act, which in turn primarily adopts the entries made in Central Excise Tariff Act. As we have already noticed, the First Schedule to the Additional Duties of Excise Act would not include Chapter 62 of the Act, which provides for an inclusive definition. In view of this legal position, we are of the view that the learned single Judge is justified in holding that in view of the amendment to entry 8-A of the Fifth Schedule to the Act, the sale of man-made or mill-made handkerchiefs is not exempt from payment of sales tax under the KST Act. Therefore, we concur with the findings and the conclusion reached by the learned single Judge.

30. In the result, appeal requires to be rejected and accordingly, it is rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.