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Court : Orissa

Decided On : Sep-15-1980

Reported in : 50(1980)CLT523; [1982]49STC115(Orissa)

Judge : R.N. Misra and ;N.K. Das, JJ.

Appeal No. : S.J.C. Nos. 72 and 73 of 1979

Appellant : Jamuna

Respondent : State of Orissa

Advocate for Def. : D.P. Mohapatra, Adv.

Advocate for Pet/Ap. : A.K. Patnaik, Adv.

Judgement :

R.N. Misra, J.

1. The Member, Additional Sales Tax Tribunal, has stated these cases and referred the following common question for opinion of the court at the instance of the assessee :

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was legally correct in holding that sarees when fitted with chumki and embroidery works no more continue to be mill-made fabrics

and as such are taxable as 'embroidery' mentioned in serial 43 of the taxable list ?

2. The assessee is a dealer in mill-made and handloom cloths. The relevant periods are 1973-74 and 1974-75. The assessee commenced business from 1st May, 1972, and suffered an assessment under Section 12(5) of the Act for the year 1972-73. During the periods in question it continued to be an unregistered dealer notwithstanding accrual of liability in the earlier assessment year. During the assessment proceedings the Sales Tax Officer took the view that mill-made cloth when fitted with chumki became 'embroidery' and, though mill-made cloth as such was free of tax, mill-made cloth fitted with chumki became liable to be taxed as embroidery articles. The Member, Additional Sales Tax Tribunal, while disposing of the second appeals placed reliance on a decision of the Gujarat High Court in the case of Pravin Bros. v. State of Gujarat [1964] 15 STC 478, where it has been held:

If a saree piece, which is a cotton fabric, is subjected to the process of embroidery after its manufacture as a cotton fabric has been completed, it can no longer be called a cotton fabric as defined by entry 19 of Schedule I to the Central Excises and Salt Act, 1944, and it becomes an embroidered saree within the meaning of entry 3 of Schedule E. The process of embroidery is not a process incidental or ancillary to its manufacture as defined in Section 2(f) of the Central Excises and Salt Act.(quoted from the Headnote)

After referring to certain other aspects, the following conclusion was reached in second appeals :.Therefore, the chumki and embroidered sarees are to be considered as purely ready-made garments for ladies and cannot be treated as tax-free. Hence the contention of the learned Advocate on this issue is not acceptable.

3. In the course of the hearing, reference was made to several cases, viz., Sri Kittappa Dress . v. Commercial Tax Officer, Central Section, West Bengal [1975] 36 STC 575. We are inclined to think that reference to these authorities would not be of any assistance. There is no dispute that mill-made cloths are exempt from the levy of sales tax. There is equally no dispute that chumki is an embroidery article. In case the mill-made saree is subjected to chumki work, the saree while

continuing to be a saree for all practical purposes might cease to be a plain mill-made cloth and thereby lose the benefit of exemption from tax. Such a change from mill-made cloth to an article of embroidery would depend upon the nature of treatment, the extent to which chumkis are fitted and would very much depend upon the position whether on account of the embroidery treatment, the saree has become a different article. There may be instances where in a saree having ten cubits of length, a small embroidery work would be done ; this might not change the nature of the cloth and the saree may continue to be accepted as a mill-made saree. Where, however, embroidery work is extensive, the saree would certainly cease to be a mill-made cloth and would be considered as a chumki article. This would essentially be a factual question. There has been no consideration by the authorities including the Additional Tribunal as to the extent of embroidery work on the mill-made sarees. It has, therefore, become difficult for us to answer the question referred to us one way or the other. We would, however, indicate that there is no doubt in our mind that if the saree continues to be essentially a mill-made one with little embroidery work on it, it would not pass in the market as a work of embroidery or as a chumki saree, but would still continue to be a mill-made cloth. The Tribunal would do well to remit the matter to the assessing authority for a fresh disposal with a direction that he should look into the specimen articles to find out whether on account of the fittings of embroidery work, the saree has become a new commodity, namely, a chumki or embroidered saree, and can no more be referred to as a mill-made cloth, whether by the process of alteration or conversion, the mill-made saree becomes a chumki or embroidered saree and the exemption would no more be available and the-sale of the article would be liable to tax. The Sales Tax Officer would investigate into the matter properly and thereafter determine whether sale of such sarees continues to be free of tax being mill-made cloth or would attract liability to be taxed as an article of embroidery. In the circumstances, we decline to answer the question referred to us. We make no order as to costs.

N.K. Das, J.

4. I agree.