**Radhika Vs. State of Orissa**

**Radhika Vs. State of Orissa**

**SooperKanoon Citation** : sooperkanoon.com/528438

**Court** : Orissa

**Decided On :** Sep-20-1976

**Reported in** : 42(1976)CLT1273; [1977]39STC93(Orissa)

**Judge** : R.N. Misra and ;K.B. Panda, JJ.

**Appeal No.** : S.J.C. Nos. 58 to 60 of 1975

**Appellant** : Radhika

**Respondent** : State of Orissa

**Advocate for Def.** : The Standing Counsel (S.T.)

**Advocate for Pet/Ap.** : B.K. Mohanti, Adv.

**Judgement** :

**R.N. Misra, J.**

1. At the instance of the assessee, two questions have been referred under Section 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the 'Act'), for opinion of the court:

(1) Whether, in the facts and circumstances of the case, bed sheets, napkins and towels, after being manufactured in the mill when cut into sizes and stitched at both ends and pillow covers manufactured by stitching three ends of mill-made

cloth after being cut into particular sizes are cloths or clothes ?

(2) Whether, in the facts and circumstances of the case, the petitioner's dealing in pillow covers and napkins are covered under entry No. 33 of the Schedule of exempted goods under the Orissa Sales Tax Act ?

2. The petitioner carries on business in the name and style of 'M/s. Radhika' at Cuttack and deals in mill-made cloth. Some of the items sold by the dealer are pillow covers which are stitched on three sides, bed sheets stitched at the two ends, towels cut into pieces and napkins stitched at both ends. The assessee claimed that these were not liable to sales tax. The assessing officer, however, overruled the assessee's stand and completed assessment for the quarter ending 31st March, 1968, under Section 12(5) of the Act. Subsequently, the assessee was assessed for the periods 1968-69, 1969-70 and 1970-71 also under Section 12(5) of the Act and with these assessments we are now concerned. The assessee contended while challenging the assessments that the items were mill-made goods and came within entry No. 33 relating to tax-free items. The assessee's contention has been rejected throughout.

3. The entry in question reads thus :

All mill-made fabrics made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including processed fabrics, made in the processing mills.

The learned standing counsel does not dispute the fact that mill-made cloth is exempt from tax. The contention, however, is that even if manufactured by mills, the four commodities referred to here are not mill-made cloth simpliciter but have been otherwise processed and become different commodities which would not be covered by the entry. We agree with the submission of the learned standing counsel that if mill-made cloth is converted into a different item of goods, the exemption would not extend to such goods. The question, however, is whether bed sheets and towels are different marketable commodities than mill-made cloth. So far as bed sheets are concerned, mill-made cloth is cut into pieces and the two ends are said to be stitched. There is indeed no conversion and bed sheets continue still to be mill-made cloth. So far as towels are concerned, the same process more or less is adopted. We do not think, merely because a long sheet of mill-made cloth is cut into pieces and its sides are stitched, a different commodity emerges and what was mill-made cloth ceases to be so when it is in the shape of a bed sheet or a towel. There is no substantial alteration. It may be that for purposes of use a new commodity comes into existence, yet, it does not cease to be mill-made cloth. The exemption is in relation to mill-made cloth and there is no basis for holding that it does not continue to be mill-made cloth in its new shape. The same logic would apply to napkins.

4. As far as pillow covers are concerned, the Tribunal found that pillow covers are made by cutting into different sizes, stitching and making them ready for use in a particular way. The operation is neither incidental nor ancillary to the process of manufacture and there is a change of substantial nature. In view of this finding, we would agree that pillow covers would not come within the exemption.

5. We may refer to a recent decision of the Calcutta High Court in the case of Delhi C. & G. Mills Co. Ltd. v. Commercial Tax Officer [1975] 36 S.T.C. 575, where the question for consideration was whether bed sheets, bed spreads, towels and napkins cut in consumer lengths from running pieces of cotton fabrics and stitched at both ends by a mill manufacturing cotton fabrics continued to be cotton fabrics within the meaning of entry 19 of the First Schedule to the Central Excises and Salt Act, 1944 and, therefore, to be exempt from sales tax by virtue of Rule 3(28) of the Bengal Sales Tax Rules, 1941. A learned single Judge of the said court held that mere cutting into shorter length and stitching the end by themselves did not result in a new product. We agree with the view expressed by the learned Judge.

6. Our answer to the questions are :

(1) On the facts and in the circumstances of the case, mill-made cloth when cut into pieces and stitched into sizes of bed sheets, napkins and towels continue to be mill-made fabrics within the meaning of serial No. 33 of the list of tax-free goods and, therefore, sale thereof would be exempt from tax.

(2) In the facts and circumstances of the case, sale of pillow covers is exigible to sales tax not being covered by the aforesaid entry.

We make no order for costs of these references.

**K.B. Panda, J.**

7. I agree.