

State of Orissa Vs. Modi Stores

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Court : Orissa

Decided On : Jul-01-1969

Reported in : 35(1969)CLT973; [1969]24STC255(Orissa)

Judge : G.K. Misra, C.J. and ;B.K. Patra, J.

Appeal No. : Special Jurisdiction Case No. 77 of 1964

Appellant : State of Orissa

Respondent : Modi Stores

Advocate for Def. : R. Mohanty, Adv.

Advocate for Pet/Ap. : Government Adv.

Judgement :

G.K. Misra, C.J.

1. The Tribunal has referred the following question Under section24(1) of the Orissa Sales Tax Act, for the opinion of the High Court:

Whether mill-made sataranjis are carpets and can be taxed as coming under item 40 in Finance Department Notification No. 33927 C.T.A. 130/57-F dated 30th December, 1957, or they are not to be taxed as coming under item 33 relating to mill-made fabrics of Notification No. 33925 C.T.A. 130/57-F dated 30th December, 1957.

2. The findings of the Assistant Commissioner of Sales Tax and the Tribunal are that sataranjis are carpets. The Tribunal observed thus :

Mr. Das the learned Assistant Commissioner rightly held that carpets are not cloths and so mill-made cotton carpets like sataranjis cannot come under item 33.

It however decided in favour of the assessee ultimately holding that the sataranjis as carpets are taxable but as mill-made cotton fabrics they are not taxable. The learned Government Advocate assails the Tribunal's conclusion as being contrary to law.

3. Before examining the correctness of the Tribunal's view entries 40 and 33 may be quoted :

Entry 40. 'Carpets, pile carpets including kalins and galichas Seven per cent.' Entry 33. '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 ...' (These articles are not taxable)

4. The learned Advocates for both the parties do not dispute that carpets are mill-made fabrics and sataranjis would come within the meaning of 'fabrics'. The law is well settled that if there are two separate and distinct entries, then both the entries must be so construed as to reconcile them. If carpets would come within the definition of 'fabrics' as given in entry 33, then entry 40 will become redundant. The Legislature is not to be attributed with enactment of any redundant entries. It is not necessary to cite many authorities on this point. A reference to *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer* [1961] 12 S.T.C. 286 would be enough. In that case the Supreme Court was construing the meaning of 'vegetables'. As there were two separate entries, one for vegetables and another for betel leaves, their Lordships held that the two distinct entries indicated the legislative intent that betel leaves are not vegetables. The identical principle applies in the present case also. There being two entries, carpets in entry 40 are to be excluded from the meaning of 'fabrics' as given in entry 33. The learned Tribunal missed this essential principle of construction of distinct entries in a statute. We are clearly of opinion that carpets are taxable as per entry 40 and

would not cease to be taxable merely because by dictionary meaning carpets are fabrics as mentioned in entry 33.

5. Mr. Mohanty next contended that sataranjis are not carpets and as such do not fall within entry 40. The question referred to this Court assumes that sataranjis are carpets. In fact, the Tribunal has given a distinct finding that sataranjis are carpets. That is a pure question of fact and on that point there is no reference to this Court. That apart the position of law is also clear. Carpets have not been defined in the Sales Tax Act. In the absence of a definition the word must not be construed in any technical sense, but must be taken as understood in common parlance. Sataranji is a word of everyday use and must be construed in its popular sense, i.e., that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it. That was the pronouncement of the Supreme Court in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer* [1961] 12 S.T.C. 286. Carpet is a generic word. In Orissa carpets are understood to include sataranjis. It appears from *Vrajlal Bhukhandas v. State of Gujarat* [1964] 15 S.T.C. 437, that sataranjis are understood as carpets even in Gujarat. The very opening sentence in the judgment is :

The question arising in this reference is whether sataranjis, i.e. cotton carpets, manufactured on handloom, are handloom cloth within the meaning of entry 29 of Schedule A to the Bombay Sales Tax Act, 1959.

In *Bhashakosh*, an authoritative Oriya dictionary, the English equivalent of sataranji is given as carpet. Thus, the argument of Mr. Mohanty that sataranji does not come within the purview of carpet is not only concluded by the finding of the Tribunal but is also contrary to the accepted meaning of the word in common parlance.

6. Mr. Mohanty next contended that if sataranjis are not carpets, then the rate of tax should not be seven per cent. but would be three per cent. as being declared goods Under section 14 of the Central Sales Tax Act. This question has not been referred to this Court and does not arise out of the order of reference and was never argued at any stage. We express no view on this contention.

7. In the result we would answer the question by saying that sataranjis are carpets and fall within the ambit of entry 40 and outside entry 33. The Tribunal took a wrong view. The reference is accepted. In the circumstances, we make no order as to costs.

B.K. Patra, J.

8. I agree.

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