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Court : Gujarat

Decided On : Nov-23-1978

Reported in : [1980]45STC318(Guj)

Judge : B.K. Mehta and; P.D. Desai, JJ.

Acts : Gujarat Sales Tax Act, 1969 - Sections 5, 62 and 69

Appeal No. : Sales Tax Reference No. 18 of 1976

Appellant : The State of Gujarat

Respondent : Dilipkumar Kiritkumar and Co.

Advocate for Def. : K.H. Kaji, Adv.

Advocate for Pet/Ap. : G.T. Nanavati, Assistant Government Pleader, i/b., Bhaishanker Kanga and Girdharlal, Government Solicitors

Judgement :

Mehta, J.

1. At the instance of the revenue, this reference has been made to us under section 69 of the Gujarat Sales Tax Act, 1969. We will state a few facts which have led to this reference before we set out the question referred to us, so that the question can be appreciated in its proper perspective.

2. The opponent is a registered dealer under the Gujarat Sales Tax Act, 1969, and carrying on business in handloom, art-silk and silk jari saris as wholesaler and retailer. By bill No. 123 of 26th November, 1971, the assessee had sold two saris described as (i) Banarsi georgette sari for Rs. 300.25 and (ii) Banarsi katarwa sari for Rs. 441.87 (which are hereinafter referred to as 'first sari' and 'second sari' respectively for the sake of convenience). The first sari is said to contain the following materials by weight :

37 per cent viscose rayon, 35 per cent metallic, and 28 per cent silk.

Similarly, the second sari was said to contain the following materials :

59 per cent metallic, 23.20 per cent silk and 17.80 per cent cotton.

3. The assessee had made an application before the Deputy Commissioner of Sales Tax under section 62 of the aforesaid Act for determining the rate of tax payable on the sales of the aforesaid two saris. The assessee, in effect, contended that having regard to the weight of the different materials used in the saris, both the saris were not liable to tax as they fell within entries 40 and 37 respectively of Schedule I to the aforesaid Act, they being respectively rayon or artificial silk fabric and cotton fabric as defined in items 22 and 19 of the First Schedule to the Central Excises and Salt Act, 1944. The Deputy Commissioner of Sales Tax was not impressed by this contention as he was of the opinion that on a true construction of the respective entries, namely, entries 40 and 37 of Schedule I to the Sales Tax Act, the basic materials, viz., rayon or artificial silk under entry 40 and cotton under entry 37, should be between 40 per cent and 60 per cent and since the saris in question did not comply with this requirement of the said two entries, they would not be entitled to claim exemption from the liability of being subjected to sales tax under the aforesaid Act.

4. The assessee, therefore, carried the matter in appeal before the Gujarat Sales Tax Tribunal, which, by its order of 29th March, 1974, allowed the appeal on the ground that the Deputy Commissioner was in error in construing entries 40 and 37 of Schedule I to the Gujarat Sales Tax Act, which by reference incorporated the definitions of the terms 'rayon', 'artificial silk fabrics' and 'cotton fabrics' contained

in items 22 and 19 of the First Schedule to the Excise Act, 1944. In the opinion of the Tribunal, the Deputy Commissioner committed an error in spelling out that under the respective entries the basic materials should be between 40 per cent and 60 per cent of the article in question. The Tribunal considered the main enactment of the definition, which prescribed that a fabric in order to be a rayon or artificial silk fabric or cotton fabric, must have been manufactured either wholly or partly from the respective base material and must not have been excluded by the exclusion clause of these respective items. The Tribunal found, on the facts before it, that the first sari contained 28 per cent silk, 48 per cent viscose yarn and 24 per cent metallic of the total weight of the sari, while the second sari contained 23.20 per cent silk, 17.80 per cent cotton and 18 per cent viscose yarn and 41 per cent metallic of the total weight of the second sari. The Tribunal, therefore, reached the conclusion that the first sari was partly containing viscose yarn and, therefore, fell within entry 40 of Schedule I to the Sales Tax Act and the second sari was partly containing cotton and, therefore, fell within entry 37 of the said schedule to the Sales Tax Act. The Tribunal, therefore, accepted the appeal of the assessee and held that the saris in question were not liable to sales tax as they were exempted under section 5 of the Sales Tax Act, 1969. At the instance of the Commissioner of Sales Tax, therefore, the following question has been referred to us for our opinion :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the order of the Deputy Commissioner of Sales Tax and holding that the first sari worth Rs. 300.25 would be covered by entry 40 and the second sari worth Rs. 441.87 would be covered by entry 37 of Schedule I to the Gujarat Sales Tax Act, 1969 ?'

5. At the time of hearing of this reference, the learned Assistant Government Pleader, appearing on behalf of the revenue, urged that the Tribunal has committed an error of law in construing items 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944, which have been incorporated by reference in entries 37 and 40 of Schedule I to the Sales Tax Act, 1969, for purposes of exempting cotton fabrics and rayon or artificial silk fabrics from the liability of payment of sales tax. In the submission of the learned Assistant

Government Pleader, the Tribunal has not appreciated that it was dealing with a provision of a fiscal statute exempting certain articles and commodities from the purview of the impost of tax. In other words, it was dealing with an exemption clause of a fiscal statute which ought to have been construed strictly. He urged that the Tribunal has not given proper meaning to the word 'partly' and has wrongly construed it by holding that it would not amount to 'predominantly' or 'substantially'. According to the learned Assistant Government Pleader, on a true construction and effect of items 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944, and, consequently, therefore, of entries 37 and 40 of Schedule I to the Gujarat Sales Tax Act, 1969, it should be held by necessary implication that the contents of the basic fabrics, namely, of cotton in cotton fabrics and rayon or artificial silk in rayon or artificial silk fabrics, must be in the range of 40 per cent to 60 per cent of the total weight of a particular article.

6. On the other hand, on behalf of the assessee it was urged that no wrong emphasis should be placed on the word 'partly' as used in the respective items 19 and 22, but it should be given its ordinary plain meaning that 'in some measure or degree' as contradistinguished from illusory, and the relevant entries should be construed in the overall context of the other entries relating to fabrics in the First Schedule to the Central Excises and Salt Act, 1944; since the legislature has though fir in its wisdom to exempt cotton fabrics, rayon and artificial silk fabrics from the liability of sales tax in view of the fact that these fabrics are subjected to additional excise duty.

7. In order to find out what is the true construction of entries 37 and 40, we will read the said entries together with item 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944, wince the definitions of 'cotton fabrics' and 'rayon or artificial silk fabrics' have been incorporated by reference in the aforesaid entries of Schedule I to the Gujarat Sales Tax Act, 1969. Entries 37 and 40 of Schedule I to the aforesaid Act read as under :

'SCHEDULE I ----- Goods, the									
sale	or	purchase	of	which	is	free	from	all	taxes
-----						Sl.	No.	Description	of

goods Conditions and exceptions subject to which exemption is granted1 2 3
 ----- 37 Cotton fabrics as
 defined in item No. 19 of the First Schedule to the CentralExcises and Salt Act,
 1944. 40 Rayon or artificial silk fabrics as defined in item No. 22 of the First
 Schedule to the CentralExcises and Salt Act, 1944.'

8. The material parts of the corresponding items 19 and 22 of the First Schedule to
 the Central Excises and Salt Act, 1944, as they stood at all the relevant times of
 this reference, provided as under :

'THE FIRST SCHEDULE -----

Item	No.	Description	of	goods	Rate	of	duty	1	2	3
----- 19. COTTON FABRICS										

'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly
 from cottonand includes dhoties, sarees, chadders, bed-sheets, bedspreads,
 counterpanes, table-clothes, embroidery in the piece, in strips or in motifs and
 fabrics impregnated or coated withpreparations of cellulose derivatives or of other
 artificial plastic materials but does not includeany such fabric if it contains - (i) 40
 per cent or more by weight of wool; (ii) 40 per cent or more by weight of silk; (iii) 60
 per cent or more by weight or rayon or artificial silk; or (iv) 50 per cent or more by
 weight of jute (including Bimlipatam jute or mesta fibre). 22. RAYON OR
 ARTIFICIAL SILK FABRICS 'Rayon or artificial silk fabrics'means all varieties of
 fabrics manufactured either wholly or partlyfrom rayon or artificial silk and includes
 embroidery in the piece, in strips or in motifs andfabrics impregnated or coated
 with preparations of cellulose derivatives or of other artificialplastic materials, but
 does not include any such fabric - (i) if it contains 40 per cent or moreby weight of
 wool; (ii) if it contains 40 per cent or moreby weight of silk; (iii) if it contains cotton
 and less than 60 per cent by weight of rayon or artificial silk; (iv) it is contains no
 cotton and less than 40 per cent by weight of wool and less than 40 per cent by
 weightof rayon or artificial silk; or (v) if it contains 50 per cent or more by weight of
 jute (including Bimlipatam jute or mesta fibre).'

9. At the outset it should be noted that we are concerned with the interpretation of entries 37 and 40 of Schedule I to the Gujarat Sales Tax Act, 1969, which provides for exemption of various articles and commodities as provided in section 5 of the said Act. In other words, they are provisions providing for exemption and it is, therefore, necessary that they should be, on well-known principles of interpretation of statutes, construed strictly against the person who makes the claim for exemption. It is no more open to doubt that before an exemption can be recognised, the person or property claimed to be exempted from tax must come clearly within the language apparently granting exemption (vide Statutory Construction and Interpretation by Crawford, page 506, and *Kedarnath Jute Mfg. Co. Ltd. v. Commercial Tax Officer* [[1965] 16 S.T.C. 607 (S.C.); A.I.R. 1966 S.C. 12]). We have, therefore, to see whether the articles in question with which we are concerned, namely, the two saris in question fall within the respective entries 37 and 40 of Schedule I to the Gujarat Sales Tax Act, 1969. On a plain reading of these entries, we have to necessarily refer to the corresponding items 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944, since this being an incidence of referential legislation, inasmuch as the legislature has adopted by reference the definitions of the terms 'cotton fabrics' and 'rayon or artificial silk fabrics' as given in the Central Excises and Salt Act, 1944, for the purposes of defining the said articles with a view to entitle them to exemption under the Gujarat Sales Tax Act, 1969. If this is the nature of the legislation, which indeed it is, in our opinion, we have to construe items 19 and 22 of the First Schedule to the Central Excise Act. Now it is also axiomatic to say on the recognised principles of interpretation of statutes that 'the construction of a section is to be made of all the parts together' and that 'if not permissible to omit any part of it, the whole section should be read together' (vide *S. Gurmej Singh v. Pratap Singh Kairon* [A.I.R. 1960 S.C. 122]). The definitions of the terms 'cotton fabrics' and 'rayon or artificial silk fabrics' in items 19 and 22 have, in the first place, defined positively in the main part of the said enactment and also simultaneously stated as to what type of fabrics would be excluded therefrom and under what circumstances. The main provision in items 19 and 22 prescribed that cotton fabrics and rayon or artificial silk fabrics would mean all varieties of fabrics manufactured either wholly or partly from cotton or from rayon or artificial silk, as the case may be. The definitions then

proceed to include certain types of fabrics which would not have been otherwise included within the respective fabrics and thereafter excluded the fabrics containing cotton or rayon or artificial silk, as the case may be, and mixed with other types of fabrics if the mixed fabric exceeded a particular percentage. As stated above, therefore, we have to read the main enactment in items 19 and 22 simultaneously with the inclusive and exclusive part thereof. It would be an artificial dichotomy of the provision if we made an attempt to read the same in parts. That attempt would not only go contrary to the accepted and recognised principles of interpretation but would manifestly result in absurdity. We have to construe the relevant items for purposes of finding out whether a particular article falls within the definition as given in the said item strictly because the attempt is for purposes of granting exemption from the liability of sales tax. If a fabric is wholly made from cotton or for that matter from rayon or artificial silk fabric, there would be no difficulty in construing the same either as cotton fabric or rayon or artificial silk fabric. The real difficulty arises then a particular fabric is made partly from cotton or partly from rayon or artificial silk, as the case may be. What meaning we would ascribe to the word 'partly' - that is the real crux of the problem before us. Would the main part of the enactment defining the fabric in question be satisfied if the basic fabric has gone into production to a degree or measure It was urged on behalf of the assessee that the main part of the definition would be satisfied if the basic fabric has gone into production to a degree or measure, though it should not be so small as to be merely illusory part thereof. It cannot be gainsaid that part is not a particle, nor it should be so minute in its extent and so trifling in its nature, as observed by different Law Lords in *Chatterton v. Cave* [(1878) 3 App. Cas. 483], as not to bear the character of the article concerned. So far as this position is concerned, there is not much dispute between the revenue and the assessee. The agreement between the parties ends here, and it is claimed on behalf of the revenue that the word 'partly' in the main enactment of the definition should be held by necessary implication that the basic material should be between the range of 40 per cent and 60 per cent of the total weight of the article in question. It is no doubt true that 'part' does not necessarily mean a substantial part as held by the Supreme Court in *Somawanti v. State of Punjab* [A.I.R. 1963 S.C. 151 at 169], though that observation of the Supreme Court was in the context of the question

whether the contribution made by the State in that case could be said to be wholly or partly from the public funds. We have to find out the meaning of the word 'partly' in the set up of the definitions of the terms 'cotton fabrics' as well as 'rayon or artificial silk fabrics' given in items 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944. The contention of the revenue is that by reading the two entries as a whole, the conclusion is inescapable that the extent of the basic material, namely, cotton in cotton fabrics and rayon or artificial silk in rayon and artificial silk fabrics, must be in the range of 40 per cent to 60 per cent according to the nature of its mixture with other kinds of fabrics. In support of his contention, the learned Assistant Government Pleader has invited our attention to the reasoning given by the Deputy Commissioner, who did not agree with the assessee that the articles in question were entitled to exemption under entries 37 and 40 of Schedule I to the Gujarat Sales Tax Act, 1969, but were liable to be subjected to tax under entry 13 of Part-A of Schedule II to the said Act. The Deputy Commissioner has succinctly expressed himself in support of the view which he has taken that the extent of the basic material, namely, cotton in cotton fabrics or rayon or artificial silk in rayon or artificial silk fabrics, must be in the range of 40 per cent to 60 per cent, according to the nature of its mixture. The Deputy Commissioner has observed as under :

'It is true that the literal meaning of the word 'partly' would mean anything which is less than the whole. But this word has to be interpreted in the context of the words used in the entries. The word 'partly' may mean anything between 0 and 100. Thus there is some doubt or ambiguity and, therefore, the exact meaning of this word can be interpreted only with reference to the exclusions of certain varieties of fabrics specified in the entries themselves. The Gujarat High Court in the case of *Viswa & Co.* [[1966] 17 S.T.C. 581 at 585] has observed that if the words are ambiguous or susceptible of two meanings, the exclusions following them not only can but must be taken into account for the purpose of arriving at their true meaning Considering the entry as a whole, it is clear that only such rayon or artificial silk fabrics are contemplated which contain the corresponding percentages along with wool, silk or cotton or a combination of one or more such materials, Thus 'partly' would mean certain percentages in relation to wool, silk or cotton or artificial silk and the expression 'rayon or artificial silk fabrics' would

mean such varieties of fabrics which partly have the corresponding percentages of rayon or artificial silk fabrics and partly of wool, silk, cotton, etc.'

10. The Tribunal has conveniently ignored this approach of the Deputy Commissioner and has read the definition in parts. In the opinion of the Tribunal, it should be first found out whether the fabrics in question are made partly of the basic material, viz., cotton or rayon or artificial silk in the present case, and thereafter it is to be found out whether it is an excluded fabric according to the exclusion clause of the definitions. We are of the opinion that this approach of the Tribunal is entirely erroneous and contrary to the recognised principles of interpretation. The Tribunal has not made any attempt to find out as to what is exactly meant by the legislature when it prescribed that the fabric in question must have been made partly from the basic fabric. 'Partly' may mean, as rightly observed by the Deputy Commissioner, that the range may be from 1 per cent to 100 per cent. The contention urged on behalf of the assessee is merely to give the dictionary meaning to the word 'partly' with the result that it ignores the necessary consequences flowing from the exclusion clauses. In our opinion, the true effect of the combined reading of sub-items (i) to (iii) of item 19 and sub-items (i) to (iv) of item 22 is that the extent of the basic material, namely, cotton in cotton fabrics and rayon or artificial silk in rayon or artificial silk fabrics, must be in the range of 40 per cent to 60 per cent of the total weight of the article in question. The prescription of minimum percentage of the other fabric which can be mixed with the basic material without disturbing the original description of the fabric would virtually determine the balance percentage of the basic material. To illustrate the point, fabric would not be treated as cotton fabric if it is found to contain 40 per cent of wool or 40 per cent of silk or 60 per cent of rayon or artificial silk. The minimum percentage of permissible mixture would automatically determine in each case the balance percentage of the basic material. The word 'partly' cannot be construed dehors the exclusion clauses. It would, by necessary implication, mean the consequent balance percentage having regard to the minimum percentage prescribed for the mixed material. 'Partly' would, therefore, mean the balance part, as the case may be, and not any other part. We are fortified in this view, which we have taken, on a comparative reading of items 19 and 22 of the First Schedule to the Central Excises and Salt Act, 1944. The learned Advocate for the assessee

urged that so far as the item of cotton fabrics is concerned, there is no legislative intent manifested expressly or by necessary implication, which would warrant the interpretation canvassed on behalf of the revenue. He invited our attention in support of his submission to entry 21 relating to woollen fabrics. According to the learned Advocate for the assessee, if the intent of the legislature had been to prescribe a minimum percentage of basic material so far as the item of cotton fabrics was concerned, it would have expressed itself as it has done in respect of woollen fabrics under item 21. The legislature has defined 'woollen fabrics' to mean all varieties of fabrics manufactured wholly or which contain 40 per cent or more by weight of wool. We do not think that this contention is well-founded as the same result, namely, prescription for the use of minimum percentage of the basic material, could be achieved by necessary implication also. The very fact that the legislature has excluded those fabrics from the item of cotton fabrics, if they contain 40 per cent or more by weight of wool or 40 per cent or more by weight of silk or 60 per cent or more by weight of rayon or artificial silk, would necessarily achieve the same purpose which has been manifestly expressed in item 21 relating to woollen fabrics. The corresponding reverse provision to sub-items (ii) and (iii) of item 19 are provided in sub-item (ii) of item 20 and sub-item (iii) of item 20 respectively. The cumulative reading of these entries, as stated above, clearly supports the view which we have taken as stated above.

11. Our attention was also invited to the subsequent legislation on the same topic by the learned Advocate for the assessee in support of his contention that the legislature has now expressed its intention by adopting the test of predominance of basic material or the prescription of a minimum percentage of the basic material in the relevant entry of cotton fabrics as amended by the Finance Act of 1977. The present item 19, after its amendment by the Finance Act of 1977, defines 'cotton fabrics' to mean all varieties of fabrics manufactured either wholly or partly from cotton and includes if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both. In our view, the legislature has clearly brought out the intent which we have read by necessary implication in entry 19, as it stood at all the relevant times of this reference. The learned Advocate for the assessee, therefore, attempted to persuade us that we should

not read anything than what is prescribed in sub-items (i) to (iii) of item 19 or sub-items (i) to (iv) of item 22. The minimum prescription of percentage for other kinds of materials which can be mixed is only for the limited purpose of excluding fabrics having such minimum percentage from the basic material of cotton fabrics. He urged that the balance percentage may as well be comprised of more than one material other than cotton, namely, silk, rayon or artificial silk. According to him, such hybrid fabrics may contain wool and silk and artificial silk rayon below the prescribed percentage so as not to exclude them from the basic items of cotton fabrics. In other words, a fabric may fall within item 19 even if it may contain other materials along with cotton provided they may be below the prescribed percentage. We do not think that this contention of the learned Advocate for the assessee is well-founded for the obvious reason that we have to read each of the exclusion clauses only in relation to that material which is mixed and if the intention of the legislature had been to refer to more materials than one, which might have gone along with the basic material, it would have clearly said so, as it has done in sub-item (ii) of item 20, where it has been stated that the fabric will not be included in silk fabric if it contains cotton or artificial silk or both and less than 40 per cent by way of silk. In that view of the matter, therefore, we are of the opinion that the Tribunal has committed an error of law in construing the word 'partly' de hors the exclusion clauses and not ascribed the correct meaning which it should bear in the context of the set up of the different sub-items of exclusion clauses of items 19 and 22. The reports of the Silk and Art-silk Manufacturers Research Association (shortly known as Sasmira) giving break up the sub-break up of the components of the two saris clearly bring out that, so far as the first sari was concerned, it only contains 37 per cent viscose rayon, which would, therefore, not entitle it to be within entry 40 of Schedule I to the Gujarat Sales Tax Act, 1969, read with item 22 of the First Schedule to the Central Excises and Salt Act, 1944, and similarly the second sari, which contained only 17.80 per cent of cotton, would not be entitled to be within entry 37 of Schedule I to the Gujarat Sales Tax Act, 1969, read with entry 19 of the First Schedule to the Central Excises and Salt Act, 1944.

12. The learned Advocate for the assessee had drawn our attention to the second report of the aforesaid institute where sub-break up of these two saris was made

for purposes of satisfying the authorities that so far as the first sari was concerned it contained 28 per cent of silk, 48 per cent of viscose yarn and 24 per cent of metallic of the total weight of the sari and the second sari contained 23.20 per cent of silk, 17.80 per cent cotton and about 18 per cent viscose yarn and 41 per cent metallic. It was, therefore, urged that so far as the first sari was concerned, it contained as much as 48 per cent, that is, about 1/2 of its content of rayon fabrics and, so far as the second sari was concerned, it contained as much as 17.80 per cent of cotton. Even assuming that this sub-break up can be looked into for purposes of finding out whether the articles in question fell within the relevant entries, even then, we do not think that they will satisfy the test which we have indicated above for purposes of claiming exemption under the relevant entries, inasmuch as in the first sari the mixed material is silk, the basic material of viscose rayon should be 60 per cent as prescribed under item 22(ii), and the second sari had admittedly less than 40 per cent of basic material of cotton prescribed under item 19.

13. The result, therefore, is that we accept this reference of the revenue and answer the question referred to us in the negative, that is, in favour of the revenue and against the assessee. The assessee shall pay costs of this reference to the Commissioner of Sales Tax, Gujarat.

14. Reference answered in the negative.