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**Court :** Gujarat

**Decided On :** Apr-03-1991

**Reported in :** [1991]82STC282(Guj)

**Judge :** G.T. Nanavati and; S.D. Shah, JJ.

**Acts :** Gujarat Sales Tax Act, 1969 - Sections 2(26), 62 and 69

**Appeal No. :** Sales Tax Reference No. 9 of 1982

**Appellant :** State of Gujarat

**Respondent :** Polythreads

**Advocate for Pet/Ap. :** Kamal M. Mehta, Adv.

**Judgement :**

**G.T. Nanavati, J.**

1. The following question has been referred to this Court by the Gujarat Sales Tax Tribunal under section 69 of the Gujarat Sales Tax Act, 1969, at the instance of the State of Gujarat.

'Whether, on the facts and in the circumstances of the case, the Gujarat Sales Tax Tribunal was justified in law in holding that the sales of the goods obtained by the opponent-concern from the waste material originally purchased by it, after

subjecting the same to the processes undertaken by it, constituted 'resales' of the original goods purchased, on the ground that no distinct commercial commodities were obtained from the original goods by subjecting them to the processes undertaken by the opponent-concern and, therefore, the opponent-concern was entitled to deduct the value of those sales from its turnover liable to tax ?'

2. The facts, as they appear from the judgment of the Tribunal, are that the assessee, who is a registered dealer under the Act, is engaged in the business of purchasing waste mixture of polyester and cotton fibres from textile mills and selling the same, after removing therefrom dust and other impurities after subjecting them to the process of carding and drafting.

3. On March 27, 1978, the assessee made an application under section 62 of the Act to the Deputy Commissioner for determination whether any tax is payable in respect of the sale of such goods and, if yes, at what rate. The Deputy Commissioner held that what the assessee had done to the purchased goods amounted to or resulted in a manufacture and, therefore, sales of these articles by it cannot be said to be 'resale' and were therefore, liable to payment of tax under entry 13 of Schedule III to the Act.

4. The assessee then preferred an appeal to the Tribunal. The Tribunal held that merely by cleaning, segregating, carding, drafting and winding, the waste mixture of polyester and cotton fibre, the assessee cannot be said to have manufactured the goods as contemplated by clause 2(16) of the Act and, therefore, sale of those goods by the assessee amounted to resale of the purchased goods. The Tribunal, therefore, allowed the appeal and held that the goods sold by the assessee were not covered by residuary entry 13 of Schedule III to the Act.

5. What is urged by the learned Assistant Government Pleaded is that the assessee, after purchasing the waste mixture of polyester and cotton fibre, subjected them to the process of cleaning, segregating, carding, drafting and winding around bobbins and, therefore, it can be said to have manufactured goods having a distinct identity and, therefore, sales thereof by the assessee cannot be regarded as 'resales', as defined by section 2(26) of the Act.

6. In order to appreciate this submission, it would be necessary to understand what exactly is purchased by the assessee and to which processes the said goods are subjected to by the assessee before selling them. The assessee is purchasing waste mixture of polyester and cotton fibres from textile mills. This waste mixture comes into existence during the process of converting such fibres into polyester-cum-cotton yarn, that is, during the process when fibre is spun into yarn. This waste material also contains dust and other impurities and it is mixture of not only polyester and cotton fibres but also a mixture of fibres of light orange and white-blue colours. After purchasing such mixture, the assessee cleans the same by removing dust and other impurities and then segregate light orange fibre from white-blue fibre. Up to this stage, the waste material is in the form of a lump. The assessee then subjects them to the process of carding. It consists of combing or brushing fibres until they become straight and are placed in parallel lines. It is during this process that the waste material in the lump form is straightened out and made ready for further treatment. It is then drafted, that is, it is pulled by a mechanical process so that it assumes the form of a sliver. Thereafter it is woven around bobbins. It is in this form that the assessee sells the goods purchased by it.

7. From the description of the process to which the purchased goods are subjected to, it can be said that the waste mixture of polyester and cotton fibres purchased in a lump form is turned into waste mixture of polyester and cotton fibres in the form of slivers. As a result of the process employed by the assessee, the fibres still retain the character of fibres and it is not in dispute that they are not turned into yarn by the assessee. The purchased goods are sold as fibres though they are sold after cleaning and segregating them colour-wise. Even when they are sold, they are sold as mixture of polyester and cotton fibres and the proportion of polyester and cotton remains more or less the same. Though it was urged by the learned Assistant Government Pleader that a new distinct commodity comes into existence as a result of the process employed by the assessee, he was not able to tell us by which different name the said goods are sold in the market. As regards their use also he was not able to point out any other use to which such goods are put to, except for the purpose of spinning yarn out of them. Though as a result of the process employed by the assessee, it is able to sell cleaned mixture of polyester and cotton fibres of different colours separately, and also at a higher

price, it cannot be said that the assessee is selling different goods having distinct identity and distinct use. For all these reasons, it will have to be held that though the assessee subjects the purchased goods to certain processes, those processes do not amount to or result in manufacture of a new commercial commodity and, therefore, the sale thereof would be covered by the definition of the word 'resale' as given in section 2(26)(ii) of the Act. The Tribunal was, therefore, right in taking that view.

8. Accordingly we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the department. There shall be no order as to costs in this reference.

9. Reference answered in the affirmative.

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