Delhi Cloth & General Mills Co. Ltd. & Ors vs R. R. Gupta, Commercial Tax Officer, ... on 3 May, 1976

Equivalent citations: 1977 AIR 2086, 1976 SCR 497, AIR 1977 SUPREME COURT 2086, (1976) 3 S C C 443, 1977 TAX. L. R. 2306, 38 STC 113, 1976 U J (SC) 648, 1976 2 SCC 443, 1976 SCC (TAX) 332, 1976 UPTC 576

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
DELHI CLOTH & GENERAL MILLS CO. LTD. & ORS.

Vs.

RESPONDENT:
R. R. GUPTA, COMMERCIAL TAX OFFICER, JAIPUR & ANR.

DATE OF JUDGMENT03/05/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1977 AIR 2086 1976 SCR 497
1976 SCC (3) 443
CITATOR INFO :
RF 1980 SC1552 (3)

ACT:
Rajasthan Sales Tax Act, 1954 -Statutory remedies provided under the Act not exhausted-No error apparent on the face of the record-If petition under Art. 226 lay.
Constitution of India, 1950-Art. 32-Absence of jurisdiction to assess not shown-If remedy lies under Art. 32.

HEADNOTE:
Rayon tyre cord fabric which is a textile consisting of rayon threads in the warp and cotton threads in the weft is manufactured on weaving looms in the same manner as any

other ordinary textile. The tyre manufacturers to whom the product is supplied. impregnate the fabric with rubber and weave it into fabric. Under Entry 18 of Schedule of the Rajasthan Sales Tax Act, 1954, rayon fabrics were exempt from sales tax. When the Commercial Tax officer rejected the petitioners' objections to sales tax being levied on rayon tyre cord fabric, the e petitioners filed a petition under Article 32 of the Constitution alleging breach of Fundamental Rights.

In respect of certain earlier assessment years, however, the view of the Commercial Tax officer was that the goods were not the end product. when, the matter was taken to the High Court, it held that, until the statutory remedies had been exhausted, no case for interference under Art. 226 arose. It did not find any error apparent on the face of the record. Hence, the appeals by special leave. E

In the write petition as well as in the appeals it was contented that the goods constituted the end-product which the petitioners sell in the market and, therefore, were exempt from sales tax.

Dismissing the petition and appeals.

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HELD: (1)(a) It is difficult to find fault with the view of the, High Court there was no error apparent on the face of the record and that the taxing authorities should be left tb determine whether the tyre cord fabric is more correctly capable of being described as a fabric or as merely cord passing of as a textile fabric. This is really a technical question. In any case. it is a question on which two views may be possible. [503C]

(b) The fact that the tyre cord fabric manufactured by the petitioners is woven by its purchases into a fabric in the same way as is being done by the petitioners means that the tyre cord fabric serves also as raw material for another fabric which ultimately emerges by subjecting the goods to a process of impregnating it with rubber. The essential question to determine is the stage at which the goods under consideration became textile fabrics if they do become that at all. [502C; 503A]

(2) This Court cannot interfere under Art. 32 with the decision of the Commercial Tax Officer, because no Fundamental Right is shown to be affected by the mere determination of the question. There was no absence of jurisdiction of the taxing authorities who had the power to decide the question either rightly or wrongly. [503E]

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ARGUMENTS

For the petitioners

Respondent No. 1 did not produce or get any evidence from the commercial community dealing with rayon tyre yarn and cord and rayon tyre fabric for the purpose of controverting the conclusive evidence produced by the

petitioners to the effect that in the commercial community dealing with the said goods these goods were different both from the point of view of manufacture and also from the point of view of ultimate end-product and are considered to be different by the commercial community, which heats rayon tyre cord fabric as fabric. There was no evidence on the contrary to come to the conclusion that the rayon tyre fabric was not fabric. The High Court wrongly relied on 25 STC 407 which had no application in the present case, ignoring the decision in 22 STC 470 and 28 STC 431. It was therefore not a case of disputed question of fact, but a case of admitted fact by the commercial community against which there was no evidence before the respondent.

The alternative remedy of appeal is not at all efficacious in the facts and circumstances of the present case inasmuch as the Commissioner and the State Government having already made up their mind to levy tax, no relief could be expected by the appellants from him and the High Court should have interfered under arts. 226 and 227. Further ill this case there was no question of disputed facts. The sample was admitted. There was uncontradicted evidence that the product of the petitioners is known as rayon cord fabric by the commercial community and by common parlance. The case is a misdirection of law on the part of the assessing authority.

For the respondents

There was no error of law apparent on the face of the record as contended by the petitioners. The High, Court rightly rejected the writ petitions on the ground that there were disputed facts and there are alternative remedies and full and adequate machinery under the Act itself.

The assessee mills, when paying excise duty, paid it only as on yarn under entry 18 of the First Schedule to the Central Excise and Salt Act. The mills did not pay additional duty under the Additional Duties of Excise (Goods of Special Importance) Act 1956 on the ground that the material was not fabric. When it suited the mills the material wag said to be yarn and in case of sales tax it contended that it was fabric. This fact itself was a strong indication that this was a disputed question of fact.

JUDGMENT:

ORlGINAL JURISDICTION/ClVlL APPELLATE JURISDICTION:

Writ Petition No. 49 of 1973.

Under Article 32 of the Constitution and Civil Appeals Nos. 43 and 44 of 1973 Appeals by Special Leave from the Judgment and order dated the 27th October 1972 of the Rajasthan High Court in D. B. Civil Writ Petition Nos. 398/72 and 1 885/71

respectively.

A. K. Sen, B. Sen and H. K. Puri for the Appellants. S. T. Desai, S. M. lain and S. K. Jain for the Respondents.

The Judgment of the Court was delivered by BEG. J.-We have before us a petition under Article 32 of the Constitution and two appeals by Special leave from the judgment of the High Court of Rajasthan between the same parties. The three cases before us raise the same question of law. It is: Do the goods called "Rayon tyre Cord Fabric"

sold by the Delhi Cloth & General Mills Co. Ltd. to manufacturers of tyres, who use it for the purpose of impregnating it with rubber, fall under entry 18 of the Schedule of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as 'the Act') ?

The schedule mentioned above gives a list of goods on the sale or purchase of which no tax is payable under the Act. "The relevant entry 18, which was omitted in 1973, reads as follows:

"18. All cotton fabrics, rayon or artificial silk fabrics, woollen fabrics, sugar and tobacco, as defined in the Additional Duties cf Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957)".

Section 2(C) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, lays down:

"2 (C) the words and expressions 'sugar', 'tobacco', 'cotton fabrics', 'silk fabrics', 'woollen fabrics' and rayon or artificial silk fabrics shall have the meanings respectively assigned to them in Items Nos. 1, 4, 19, 20, 21 and 22 of the First Schedule to the Central Excise and Salt Act, 1944".

The Writ Petition of the Delhi Cloth and General Mills Co. Ltd. states that "rayon tyre cord fabric" is "manufactured out of rayon yarn and cord". It goes on to explain that this fabric is "a textile consisting of rayon threads in the warp and cotton threads in the weft and is manufactured on weaving looms in the same manner as in other ordinary textile". It is also stated there:

"The fabric consists of more than 60% by weight of rayon and is unprocessed. The weft threads are not used merely for tying the warp threads together for the purpose of convenient transport or storage but form an integral part of the whole fabric".

The petitioners state that the manufacturers of tyres to whom the fabric is supplied "impregnate the fabric with rubber and weave it into a fabric in the same way as is being done by the first petitioner". Thus, the petitioners allege that they manufacture "a textile" and also that it serves as part of raw material for what ultimately also goes into the manufacture of a fabric.

After indicating the manner in which and the substance out of which "rayon tyre cord fabric" is made and its composition, the petition sets out item 22 of the first schedule of the Central Excises and Salt Act, 1941, as the applicable entry covering the goods manufactured by the petitioner. This item reads as follows:

> "Rayon or artificial silk fabrics 'means all varieties of fabrics manufactured either wholly or partly from rayon or artificial silk and includes embroidery in the piece, in strips or in the motifs and fabrics impregnated or derivatives or of other artificial plastic materials, but does not included any such fabrics:-
>
> (i) If it contains 40% or more by weight of wool.
>
> (ii) lf it contains 40% or more by weight of silk.
>
> (iii)If it contains cotton and less than 60% by weight of rayon or artificial silk; or
>
> (iv) If it contains no cotton and less than 40% by weight of wool and less than 40% by weight of rayon or artificial silk".

The petitioners assert that, from years 1966 to 1969, the respondent Commercial Tax officer was not subjecting the goods of this description to sales tax and accepted the case of the petitioners that they were exempt from taxation. The reasoning of the Commercial Tax Officer, in exempting these goods, is also mentioned. It is then stated that, as some questions were put in the Rajasthan State Legislative Assembly, on or about 20th April, 1971, asking for the reason why this particular type of goods of the petitioners were exempted from Sales tax, the Commissioner of Commercial Tax issued a letter to the Commercial Tax Officer to levy Sales tax on the "rayon cord fabric" manufactured by the petitioner. Thereafter, notices under the proviso to S. 12(1) of the Act were issued for the years 1965 to 1969 with a view to reopening the assessments on the ground that the sales of these goods had wrongly escaped assessment. but these were dropped due to some preliminary objections. Fresh notices were then issued and proceedings for subsequent assessment years were also taken. By orders passed on various dates, the Commercial Tax officer rejected the petitioners' objections to Sales tax on "rayon tyre cord fabric". The petitioners have, however, come up to this Court directly against the order and provisional assessment dated 21 st November, 1 972. It also appears from the writ petition that proceedings fol the assessment year 1972-73 arc still pending before the Commercial Tax officer. Civil Appeals Nos. 43 of 1973 and 44 of 1973 by special leave are directed against a common judgment of a Division Bench of the High Court of Rajasthan, given on 27.10.1972, dismissal, the appellants' Writ Petitions against the assessment order dated 26th March, 1971, for the years 1968-69 and 1969-70 made by the Commercial Tax officer..

The view of the Commercial Tax Officer, questioned by the petitioners, was that the goods now sought to be taxed are not the "end product". The High Court did not go into the merits of the case. It accepted the preliminary objection of the State of Rajasthan that the petitioner should first resort to alternative remedies provided Under the Act so that the appellate authority under Section 13 of the Act may go into the whole evidence and decide disputed questions of fact. There is also provision

for revision by the Board of Revenue under Section 14 when moved by the assessing authority. The High Court did not find any error "apparent upon the face of the record" The taxing authorities have the. jurisdiction to decide the question before them either rightly or wrongly. In any case, its view was that, until the statutory remedies had not been exhausted, leaving some "error apparent on the face of the record" still to be rectified by the High Court, a case for interference under Article 226 of the Constitution will not arise.

It is urged on behalf of the Delhi Cloth Mills that no disputed question of fact arises. It is submitted that, on admitted facts, it could be decided whether the "tyre cord fabric" is an exempted "fabric" or not. We think that this view over-looks several matters, indicated below, including the admission on behalf of the Delhi Cloth Mills that, in the case before us, the "tyre cord fabric" manufactured by it is woven by its purchasers "into a fabric in the same way as is being done by the first petitioner". This certainly means that the tyre cord fabric serves as raw material for another fabric which ultimately emerges by subjecting the goods manufactured by Delhi Cloth Mills to a process of impregnating with rubber.

A sample of the tyre cord fabric was actually produced before us. It is said that the "fabric" is manufactured in the same way as cloth is woven on looms. It consists of cords which could be said to constitute warps, running length-wise, and wefts, running breadth wise. But, the spaces left between them are so wide, presumably for purposes of impregnation with rubber, that it may not pass for an ordinary "fabric'. Like one of those mentioned in entry 19 of the first schedule to the Central Excises and Salt Act, 1944, such as "tussors", "corduroy", "gaberdine", "denim`'. Indeed, if the "lyre cord fabric" is so well established a category of rayon "fabric", it could have found mention specifically in item 22 in the same way as the numerous varieties of cotton fabrics are mentioned in item

19. In answer to this argument, it could be urged that, for some reason, entry No. 22 does not enumerate rayon and silk fabrics in the same fashion as the cotton fabrics are specified by name in item 19.

It is certainly a question which appertains to the knowledge of technical aspects of textile weaving and production to determine at what stage threads or cords forming warps and wefts really amount to a "fabric". It is true that the term fabric has a wide meaning. Its first meaning given in the Oxford English Dictionary is: "A product of skilled workmanship". The first example of such a product is: "An edifice, a building". The fourth example of the first meaning is: I "a manufactured material; now only a 'textile fabric', a woven stuff".

We think that we are necessarily concerned here only with "textiles" as fabrics. This is clear from entries 19 to 22(D) of the first Schedule of the Central Excises and Salt Act, 1944. Entry 22AA is "textile fabrics not elsewhere specified". This residuary entry and the descriptions in preceding entries seem to us to make it abundantly clear that we are dealing here only with "textile fabrics". The case of the Delhi Cloth Mills also is that the product is a.

> "textile". There fore, the essential question to determine is the stage at which the goods under consideration become a 'textile fabric". The meaning of the term

> "textile", given in the Oxford Dictionary, is: "A woven fabric; any kind of cloth". It must acquire a body and a texture. Presumably it is not just the skeleton of a textile. Apparently, it is more than that. But, against pushing this point of view too far it may be urged that in the technical and commercial parlance we are dealing with a "fabric".

It is, therefore, difficult to find fault with the view of the High Court that there is no error apparent on the face of the record and that the taxing authorities should be left to determine whether the "tyre cord fabric" is more correctly capable of being described as a fabric or as merely cord pretending to pass off as ar textile fabric This is really a technical question. In any case, it is a question on which two views seem possible on apparent facts. And, neither of the two views can be rejected outright as untenable. It requires careful consideration of the technical processes of manufacturing, of the composition of the "tyre cord fabric', and an evaluation of opinion of experts on the subject, to be able to decide the question satisfactorily rt may also require some examination of commercial usage and terminology or the language of the market in goods of this type. We, therefore, think that the High Court was right in not interfering with the decisions of the taxing authorities at this stage.

We also think that for the same reason we could not interfere under Article 32 with the decision of the Commercial Tax officer. Indeed, no fundamental right is shown to be affected by a mere determination of the question indicated above. There is no absence of jurisdiction of the taxing authorities who had the power to decide the question either rightly or wrongly.

It has been urged, on behalf of the Delhi Cloth Mills that the High Court should have interfered as the question whether the tyre cord fabric is the end product or not in the final manufacture of another fabric was quite irrelevant. It was submitted that, so far as the Delhi Cloth Mills is concerned, the goods under consideration constitute the "end product" which they sell in the market. The example given was that of cloth which is the "end product" for the mills which manufacture cloth, but, it becomes the raw material for tailors and for those who make ready-made clothes to sell them. This argument overlooks that it is not so much the point of manufacture at which the Mills sell their own product which determines the nature of goods which are entitled to exemption, but it is the stage reached by this product, in the process of manufacture of fabrication of a "textile", which should decide the question. As we have already indicated, the context in which the entry occurs shows that it is meant for "textile" fabrics and not for any kind of fabric. Therefore even if the tyre cord fabric may be the end product for the Delhi Cloth Mills, the crucial question is: Does this product constitute a fabric which is a textile? A textile fabric does not cover everything which could be made into a fabric. Mere cord does not become a textile fabric just because it requires some skill to make it. The rather wide dictionary meanings of the term "fabric" do not appear to us to give the exact meaning of the term "fabric" as used in the relevant entries entitled to exemption. In the entries, it evidently means a fabric which is also a textile. The question, therefore, to be determined by the Tax authorities themselves is whether the product for which the Delhi Cloth Mill claims exemption Is a textile fabric and not any other kind of fabric.

Having indicated the nature of the enquiry which must by undertaken by the taxing authorities, we find that there is no sufficient reason for overriding and discarding the High Court's view that, on what appeared to the High Court to be a question Of fact, it should not decide whether the product

under consideration constitutes a fabric entitled to exemption.

There was no appeal by the State of Rajasthan. It does not, therefore, seem propel. for us to finally decide, on merits, the question argued before us in the appeals by the Delhi Cloth Mills which are before us unless we could have decided the matter in favour of the appellant. We could have only done that if we were of opinion that the taxing authorities had committed error apparent on the face of the record. But, as already indicated above, we are not of this opinion.

For all the reasons given above, we think that the Writ Petition as well as the appeals by special leave are liable to be dismissed, and, we hereby dismiss them with one set of costs.

P. B. R. Appeal dismissed.