

Supreme Court of India

Nylon Net Manufacturing Company vs Addl. Sales Tax Officer And Ors. on 29 July, 1997

Equivalent citations: JT 1998 (7) SC 231, 1997 (2) KLT 520 SC, (1998) 9 SCC 98

Author: S Bharucha

Bench: S Bharucha, V Khare

JUDGMENT S.P. Bharucha, J.

1. Special leave in SLP (C) No. 1832 of 1991 granted.

2. The order under appeal was made by a Division Bench of the High Court of Kerala. The question for consideration was whether nylon fishing nets were, for the purposes of sales tax under the provisions of the Kerala General Sales Tax Act, 1963, properly classifiable under Entry 7 of Schedule III, as contended by the assessee, or under Entry 100 of Schedule I, as contended by the Sales Tax authorities.

3. Entry 7 of Schedule III reads thus:

7. Cotton fabrics, woollen fabrics and rayon or artificial silk fabrics as defined in Items Nos. 19, 21 and 22 respectively of the First Schedule to the Central Excises & Salt Act, 1944."

Entry 100 of Schedule I reads thus:

"100. Bonded fibre fabrics other than those made of coir."

4. The High Court took the view that nylon fishing nets fell under both the aforesaid entries, but that Entry 100 of Schedule I being of a specific nature, they were taxable thereunder. The High Court noted the averments in the writ petition and that they had not been controverted by the Sales Tax authorities. It noted that it had been averred:

"Bonded fibre is totally different. ... It will be seen therefore that bonding is holding together of fibres by adhesive substance. There is no element of bonding involved in the making of fish net yarns or in the weaving thereof in the fish nets."

The High Court also noted that a government order issued under the provisions of Section 59-A of the Act had noted that nylon nets were manufactured out of the nylon twines by the process of weaving, and that twine was the product obtained by twisting two or more nylon fibres. The High Court referred to literature that stated that the term "bonding" was applied to the process of lamination by an adhesive. It, however, rejected the contention on behalf of the assessee that there being no bonded fibre in a nylon fishing net, it could not be a bonded fibre fabric within the meaning of Entry 100 of Schedule I. The High Court said that Entry 100 of Schedule I applied to "bonded fibre fabrics other than those made of coir"; coir yam fabrics would not satisfy the bonding process if that process was given the restrictive and narrow meaning referred to in the literature relied upon by the assessee. If not expressly, at least by clear implication, there was a demonstration of the legislative will that a bonding process with adhesion or fusion of other substances was not

indispensable for the process of bonding as visualised in Entry 100 of Schedule I. That which had been bound together was the meaning attributed by the legislature to the word "bonded" in the context of Entry 100 of Schedule I.

5. We are of the opinion that the High Court was in error. Bonding has a clear technical significance, which the High Court noted. The assessee averred in its writ petition that the process of bonding was not carried out in making nylon fishing nets. There was no affidavit to counter the averment. The High Court ought to have proceeded on this basis and not on some assumption about coir fabrics to come to the conclusion that Entry 100 of Schedule I should be so read as not to give the word "bonded" its ordinary technical meaning but the meaning "bound together". The conclusion, therefore, that nylon fishing nets fell within Entry 100 of Schedule I cannot be upheld.

6. This brings us to Entry 7 of Schedule III which applies, inter alia, to "rayon or artificial silk fabrics". The High Court relied upon the Division Bench judgment of the Madras High Court in *Kishinchand Chellaram v. Jt. CTO*, (1968)21 STC 367 (Mad) to come to the conclusion that nylon fishing nets were classifiable as rayon or artificial silk fabrics. The Madras High Court considered literature about artificial silk, now known as rayon. It found that nylon fabrics were covered by the descriptive rayon or artificial silk fabrics. Having regard to the fact that the Sales Tax authorities had placed no material before the High Court to indicate any possible alternative classification, the High Court cannot be faulted for relying upon the Madras High Court judgment to come to the conclusion that nylon fishing nets fell within the ambit of Entry 7 of Schedule III.

7. The appeals are allowed. The judgment and order under appeal is set aside insofar as it classifies nylon fishing nets for the purposes of sales tax under the Kerala General Sales Tax Act, 1963, under Entry 100 of Schedule I thereto. Its finding that nylon fishing nets fall under Entry 7 of Schedule III is upheld and nylon fishing nets shall be classified ihereunder.

8. No order as to costs.