Supreme Court of India
The Assistant Commissioner ... vs M/S P.Kesavan & Co on 14 November, 1995
Equivalent citations: 1995 SCC, Supl. (4) 709 1995 SCALE (6)473
Author: B S.P.
Bench: Bharucha S.P. (J)

PETITIONER:
THE ASSISTANT COMMISSIONER OFSALES TAX, KERALA.

Vs.

RESPONDENT:
M/S P.KESAVAN & CO.

DATE OF JUDGMENT14/11/1995

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
FAIZAN UDDIN (J)
MAJMUDAR S.B. (J)

CITATION:
1995 SCC Supl. (4) 709 1995 SCALE (6)473

ACT:

HEADNOTE:

JUDGMENT:

O R D E R The appeals, by certificate, arise upon the common judgment of a Division Bench of the Kerala High Court whereby writ petitions filed by the respondents were allowed.

The respondents were sellers of Caristrap Rayon Cord Strapping. According to them, the said strapping was exempted from taxation under the Kerala General Sales Tax Act, 1963. They felied in this behalf upon Entry-7 of Schedule-III to the said Act. Schedule-III sets out the goods which are exempted from sales tax under Section-9 of the said Act. Entry-7 thereof reads thus:

> "Cotton fabrics, woolen fabrics and rayon or artificial silk fabrics as respectively of the First Schedule to the Central Excise and Salt Act, 1944."

Item No.22 of the First Schedule to the Central Excise and Salt Act, 1944, so far as it is relevant, read as follows:

> Rayon or Artificial Silk Fabrics - "Rayon or artificial silk fabrics include all variteties of fabrics manufactured either wholly or partly from rayon or artificial silk."

The said strapping, according to the writ petitions, is a fabric made purely from rayon yarns. The rayon yarns are used with bonding agents in fabricating the said strapping. The percentage of the bonding agent used for fabricating the said strapping is negligible. Sample of the said strapping with its literature was annexed to the writ petitions. Upon this basis it was contended that the refusal by the assessing authority of exemption under Entry-7 of Schedule- III of the said Act was erroneous. The appellants filed an affidavit to counter the averments in the writ petitions. They submitted that the writ petitions were not maintainable in that the writ petitioners had not chosen to agitate the issue before the appropriate sales tax authorities in appeal and revision. The counter also submitted that the said strapping was a different and distinct commercial commodity and it was so understood in the commercial world and by persons using the same. The writ petitions were rejected by the learned single judge, who found that the requirements of Entry-7 of Schedule-III to the Act were not satisfied. The Division Bench allowed the appeals filed against his decision, observing that all articles produced and manufactured by the use of rayon would be rayon fabrics. Before the learned single judge and the Division Bench the appellants, that is to say, the sales tax authorities, strenuously contended that technical matters were involved and that the appropriate authorities to go into and appreciate such technical matters were the authorities provided for in the said Act. Both the learned single judge and the Division Bench negatived this contention.

These appeals had come up earlier for hearing and the bench of two learned judges came to the conclusion that they should be heard by a bench of three judges in view of the fact that new techniques had been evolved for making fabric out of yarn and it might be inadvisable to confine the weaving process to the warp and woof method.

What has to be seen, having regard to Entry-7 of Schedule-III of the said Act read with Item No.22 of the First Schedule of the Central Excise and Salt Act, 1944, is whether the said strapping is a fabric, manufactured, either wholly or partly, from rayon. As aforestated, the only material placed by the respondents before the court was the bare statement that the said strapping was made purely from rayon yarns and the percentage of bonding agent used in fabricating the said strapping was negligible. The brochure which was annexed to the writ petition is before us. It describes the various uses to which the said strapping can be put; it does not describe the process of manufacture or fabrication of the said strapping, the inputs therein and the percentage of the bonding agent used. The principal question is whether the said strapping is a fabric made from rayon yarn and no material was placed before the court in the writ petition to show that it was. In view thereof, we think that the writ petitions ought not to have been entertained and the respondents ought to have been drected to agitate their grievances before the authorities under the Act. These authorities would have been in a better position to seek and appreciate the necessary evidence and determine whether or not the said strapping was something that fell within the scope of Entry-7 of Schedule-III to the Act.

Where technical matters are involved, and particularly when processes of manufacture have become increasingly complicated, it is appropriate that the authorities best competent to deal with such

matters should be allowed to do so. The learned single judge was swayed by the fact that some time had already elapsed since the writ petition was admitted. Far less time had elapsed then than has elapsed now. The Division Bench cited judgments in support of the view that it was not necessary to refer the respondents to the authorities under the Act. It does not appear to have appreciated that regard must be had to the facts of each case. Where sufficient evidence is placed before the writ court for an unambiguous conclusion upon technical matters to be reached, those authorities might be apposite, but we must stress that where intricate technical processes are involved, it is proper that the writ court should direct writ petitioners to agitate their grievances before statutory authorities who are more competent to assess the merits thereof.

We are satisfied that the decision of the Division Bench was given upon inadequate material. This decision must be set aside and the respondents relegated to such remedy as they may have under the provisions of the said Act.

The appeals are allowed. The judgment and order under appeal is set aside. The respondents shall be at literty to adopt appropriate proceedings under the Kerala General Sales Tax Act, 1963, to claim exemption for the said strapping for the years 1970-71 and 1971-72. If the appropriate proceedings are adopted by 1st January, 1996, the same shall be decided without taking the aspect of limitation into account. There shall be no order as to costs.