

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 48 of 2013 (O&M)
Date of decision: September 07, 2016

Jasch Plastics India Ltd.

.. Appellant

v.

The State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Puneet Agrawal Advocate for the appellant.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos. 76 of 2012, 48, 50, 51, 53 and 54 of 2013, involving identical issue.
2. The facts have been taken from VATAP No. 48 of 2013.
3. The assessee is in appeal against the order dated 3.1.2013 passed by Full Bench of Haryana Tax Tribunal (for short, 'the Tribunal') in Sales Tax Appeal Nos. 70 and 107 of 2012-13.
4. The appeal was admitted for determination of the following substantial questions of law:

“(i) Whether punctuation mark strategically placed by the Legislature in Entry 54 of Schedule B to the Haryana Value Added Tax Act, 2003, can be ignored by the Tribunal is justified in holding that entry 54 is a one continuous entry and that the condition of levy of

Additional Duty of excise is applicable even to the first part of entry 54 ?

- (ii) Whether a ground which was not taken before for want of cause of action can be raised when such cause of action arises and therefore whether the Tribunal is justified in concluding that entry 54 is one continuous entry merely because the said issue was never raised by anyone earlier?
- (iii) Whether an assessee can claim exemption under another entry (entry 51) when exemption of VAT is denied under one entry of Schedule B to the Haryana VAT Act, 2003, especially when the assessee's product clearly and undisputedly falls within the ambit of this another Entry as well ?
- (iv) Whether exempting Entry 54 of the Schedule B can be interpreted like taxing provision i.e. what is not covered therein is taxable ?
- (v) Whether exempting entries of Schedule B of the Haryana VAT Act, 2003 are dependent on each other, when no such qualification, express or implied, has been provided by the legislature ?”

5. The appellant in the present case is a private limited company. It is claimed that it is engaged in the business of manufacture of leather cloth/coated fabric/textile fabric, also known as rexine cloth. The appellant sought clarification from the Financial Commissioner and Principal Secretary to the Government of Haryana, Department of Excise and

Taxation under Section 56(3) of the Haryana Value Added Tax Act, 2003 (for short, 'the Act'), on the issue as to whether the product being manufactured by the appellant is covered under Entry 51 of Schedule B of the Act. The Financial Commissioner, vide memo dated 28.6.2012, opined that the product being manufactured by the appellant falls in Entry 54 and not in Entry 51 of Schedule 'B' of the Act, hence, liable for taxation. The appellant preferred appeal before the Tribunal. The matter was considered by the Full Bench, consisting of Chairman and four Members, as required under Section 54 of the Act and by majority of 3:2, rejected the appeal filed by the appellant. It is how the matter is before this court.

Arguments of the appellant

6. Learned counsel for the appellant submitted that the issue sought to be raised by the appellant has not been properly considered either by the Financial Commissioner or the Tribunal. In fact, the minority view expressed by the Tribunal had rightly appreciated the issue. While deciding the issue raised by the appellant, the Financial Commissioner had wrongly referred to the earlier clarification dated 17.11.2011 given in the case of M/s H.R. Polycoats Pvt. Ltd., Bahadurgarh, where the issue raised was only regarding the rate of tax and not as to whether PVC leather cloth/coated fabric/textile fabric, generally known as PVC leather cloth or rexine cloth falls in Entry 54 of Schedule 'B' of the Act, hence, exempted from taxation. The Tribunal, in its majority view, had opined that rexine cloth being manufactured by the appellant is an aberration of textile and is a product distinct in terms of its uses, hence, cannot be termed as textile falling in Entry 51 of Schedule 'B' of the Act.

7. It was further submitted that another issue, which has not been properly appreciated by the Tribunal, was that there is no bar in claiming benefit under different entries, if the product manufactured by an assessee is covered under two entries. Even if, as the Tribunal opined, the product of the appellant falls in Entry 54 of Schedule 'B' of the Act, but still the same is in two parts. The condition of leviability of additional excise duty in lieu of sales tax is not applicable on the product being manufactured by the appellant. The observation by the Tribunal that clarification was earlier sought by M/s H.R. Polycoats Pvt. Ltd. and that order was upheld by the Tribunal earlier, hence, the issue could not be raised again is totally wrong for the reason that first of all, there is no estoppel against the appellant to raise a legal issue, which may not have been raised by the party earlier seeking clarification. Secondly, the issue regarding exemption from payment of tax, item being in one of the entries of Schedule 'B', was not raised by that assessee. The only issue on which clarification was sought, was the rate of tax. The minority view of the Tribunal had rightly opined that the item being manufactured by the appellant falls in Entry 51 of Schedule 'B' of the Act and not in its exception clause, hence, entitled to exemption from payment of tax.

8. First raising an argument on the issue whether the goods manufactured by the appellant is a textile, the court was apprised of the process of manufacturing. It was submitted that cotton textile is either coated with PVC/PU or it is laminated with that. In the process of coating on the cotton textile, solution of PVC powder and plasticizer is prepared. It is then pasted on the cotton textile and after passing the same through heated chamber, the final product is ready. The object is only to give it more

strength and life, make it esthetically good and easy for cleaning. In the process of heating, another process is also followed, in which a film of the required thickness of the aforesaid solution is prepared on a paper and then the same is placed on the textile. It is a continuous process. Final product is ready after it is passed through heated chamber. Different processes are followed as per the requirement, as in the first process some of the properties of PVC/PU when poured on the cotton textile in liquid position, are transferred to the textile, hence, makes it harder, whereas in the second process, the final product remains soft. In the process of lamination, a ready film of PVC/PU is pasted on the cotton textile and passed through a heated chamber. The final product is sold in rolls running into different length and width, as per requirement of the customers.

9. As to whether the product being manufactured by the appellant, namely, leather cloth is a textile or not, hence, falling in Entry 51 of Schedule 'B' of the Act, learned counsel for the appellant referred to dictionary meaning of term "leather cloth", as given in Dictionary of Textiles by Louis Harmuth, fashion editor of "Women's Wear", 1915 Fairchild Publishing Company, New York. "Leather Cloth" has been defined to mean "1. a heavy woollen fabric made in England; 2. stout, coarse cotton fabric, covered with a varnish layer, grained and finished to resemble leather." With coating, the textile does not change its character, rather, it remains a textile. The coating merely gives it more strength or makes it water proof. Even if it may become a different marketable commodity. Entry 51 in Schedule 'B' of the Act covers all varieties of cotton, woollen or silken textiles, the same being in wider term will include the product manufactured by the appellant. He further referred to the material from Handbook of

Technical Textiles, which mentions the technical textiles and the process of manufacturing thereof. The definition of “textile” as given in Encyclopedia Britannica Article was referred to, which mentions various finishing processes of textile, but still retaining the same in the category of textile.

10. A scheme prepared by the Government of India, namely, “Benefits available under Technology Upgradation Fund Scheme” was referred to, where it is provided that manufacturing chain in textile industry starts right from ginning of cotton till the clothing stage. The appellant, being eligible, got benefit under the scheme. The definition of “cotton fabric”, as provided under Section 14 (ii-a) of the Central Sales Tax Act, 1956 was referred to, which provides that cotton fabric is what is covered under different entries of Central Excise Tariff Act, 1985, as mentioned in the Section. Heading 59.03 has been mentioned. Undisputedly, the product being manufactured by the appellant is covered under that entry. Section 14(vii) of the Central Sales Tax Act, 1956 was also referred to which contains the product as mentioned in heading 59.03 of the Central Excise Tariff Act, 1985 in the category of man-made fabric.

11. It was further submitted that the aforesaid definition as provided for in the Customs Act, 1962 and Central Excise Tariff Act, 1985 were referred to by Hon'ble the Supreme Court in M/s Porritts & Spencer (Asia) Ltd. v. State of Haryana, 1978 (42) STC 433, wherein dryer felt was opined to be textile.

12. The judgment of Allahabad High Court in Commissioner, Sales Tax, U. P. , Lucknow v. Laxmi Leather Cloth Industries Pvt. Ltd., 2008 (11) VST 79 was referred to, where the issue under consideration was as to whether “leather cloth” being textile is exempted from taxation. It was

opined therein that leather cloth is merely a cotton coated fabric and in the trade circle, it is known as textile. Another judgment of Allahabad High Court in Commissioner of Sales Tax v. Ashok Elastic Works, (1971) 28 STC 743 (All) was referred to, where the issue was as to whether “Dori fita” is textile or not. The answer was in favour of the assessee. The judgment of Hon'ble the Supreme Court in Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and others, (1980) 6 ELT 383 (SC) was cited where rayon tyre cord fabric was held to be textile. The judgment of Hon'ble the Supreme Court in Filterco and another v. Commissioner of Sales Tax, Madhya Pradesh and another, 1986(24) ELT 180 was relied upon, where compressed woollen felt, being manufactured by the assessee, was held to be cloth, hence, textile.

13. As regards the contention that the product being manufactured by the appellant falls in Entry 54 of Schedule 'B' of the Act, but still exempted from taxation, learned counsel for the appellant submitted that Entry 54 of Schedule 'B' of the Act is in two parts. First part mentions leather cloth and inferior or imitation leather cloth ordinarily used in book binding, whereas the second part mentions rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book binding cotton fabrics. The condition that additional excise duty in lieu of sales tax is leviable is applicable only on the products mentioned in second part. The type of goods mentioned in two parts are altogether different. The same are separated by “colon”, hence have to be given meaning accordingly.

14. The definition of “colon” as contained in Collins *English Gem Dictionary* was referred to. It means break in sentence. In Oxford Language

Reference, “colon” was referred to state that it can be used to separate two sharply contrasting and parallel statements. In 1911 Classic Encyclopedia, “colon” has been defined to mean a short clause longer than the “comma”, hence a mark (:) in punctuation, used to show a break in construction greater than that marked by semicolon (;) and less than that marked by a full stop. The judgment of Hon'ble the Supreme Court in Dr. M. K. Salpekar v. Sunil Kumar Shamsunder Chaudhari and others, AIR 1988 SC 1841 was referred to in support of the argument that “colon” puts a break in sentence. Reliance was also placed upon judgment of Madhya Pradesh High Court in Telecom District Engineer and another v. Pramesh Agrawal and another, 1997(1) MPLJ 173 and a Full Bench judgment of this Court in Rajinder Singh etc. v. Kultar Singh and others, AIR 1980 P&H 1 on the same issue. If both the parts of Entry 54 of the Act are read together and the condition regarding leviability of additional duty of excise in lieu of sales tax is held to be applicable on both of them, that means the “colon” provided in the entry is otiose. It is settled that every word and punctuation mark in a statute has to be given its true meaning. There are no surplusages in an Act. The reason assigned by the Tribunal that the matter was never argued in this manner will not estop the appellant to raise a legal issue. Mere understanding of a provision or a clause in a particular manner will not debar an assessee to raise the legal issue. There is no estoppel against a statute. In support of this argument, reliance was placed upon the judgment of Delhi High Court in Vishal Surgical Equipment Co. v. The Drug Controller General of India and another, 184(2011) DLT 343.

15. Another contention of learned counsel for the appellant is that if a product falls in two or three different entries, the entry giving maximum

benefit to an assessee can be invoked by him. In case, an assessee does not get benefit under a specific entry, on account of non-fulfilment of conditions laid down therein, if the benefit is admissible in general entry, the same can be claimed. In support of the plea reliance was placed upon judgments of Hon'ble the Supreme Court in Collector of Central Excise, Baroda v. Indian Petro Chemicals, 1997(92) ELT 13 (SC); H.C.L. Limited v. Collector of Customs, New Delhi, 2001(130) ELT 405 (SC); and Share Medical Care v. Union of India, 2007 (209) ELT 321 (SC).

16. It was further submitted that if the product of the appellant does not fall in Entry 54 of Schedule 'B' of the Act, Entry 51 of the Act is in two parts and the product being textile, the appellant would get benefit of exemption. Entry 51 of Schedule 'B' of the Act is in two parts was opined by Full Bench of the Tribunal in Sidhart Overseas, Panipat v. State of Haryana, (2010) 35 PHT 512.

17. The judgment in Excise and Taxation Commissioner, Haryana v. Orient Electrical Insulation Private Ltd., (2006) 145 STC 471 relied upon by the Tribunal to opine against the appellant is distinguishable on facts as the product being dealt with therein was sleeveings. Here it is leather cloth, which is technical textile. He further submitted that classification and exemption are two different concepts. Classification comes at the first stage to find out as to whether a particular good falls in which entry. Then the issue regarding exemption comes in to find out whether the conditions laid down for exemption of a particular good from taxation are complied with or not.

Arguments of the State

18. On the other hand, learned counsel for the State submitted that the product being manufactured by the appellant is leather cloth/PVC cloth. Different products have been mentioned in different Entries from Sr. No. 51 to 54 of the Act in Schedule 'B' of the Act. If a product falls specifically in one entry only that entry, will have to be seen for the purpose of grant of exemption and none else. The product being manufactured by the appellant falls in Entry 54 of Schedule 'B' of the Act. Once the product of the appellant falls in Entry 54 of Schedule 'B' of the Act, it cannot claim that same falls in Entry 51 of Schedule 'B' of the Act as well. Earlier the benefit of exemption under Entry 54 of Schedule 'B' of the Act was available as the condition of levy of additional excise duty in lieu of sales tax was being fulfilled. Now with the abolition of that duty, the tax has become payable. It was so opined by the Financial Commissioner in the opinion earlier given in the case of M/s H. R. Polycoats Pvt. Ltd.'s case (supra). The additional duty was abolished w.e.f. 8.4.2011. The dispute regarding taxation started thereafter. In support of the plea, reliance was placed upon State of Maharashtra v. M/s Bradma of India Ltd., (2005) 2 SCC 669; Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited, (2009) 12 SCC 419; and Commercial Taxes Officer v. Jalani Enterprises, (2011) 4 SCC 386.

19. As far as the judgment of Hon'ble the Supreme Court in Porritts & Spencer (Asia) Ltd.'s case (supra) is concerned, it was submitted that “dryer felts” dealt with therein was not one of the items provided for in the Schedule at that time, hence, interpretation thereof was required. Here the product being manufactured by the appellant is specifically mentioned in

Entry 54 of Schedule 'B' of the Act. The judgment of this court in Orient Electrical Insulation Private Ltd.'s case (supra) was relied upon by the Tribunal. In that judgment, even the judgment of Hon'ble the Supreme Court in Porritts & Spencer (Asia) Ltd.'s case (supra) was considered. If the interpretation, as is sought to be given by the appellant, is accepted, that would defeat the legislative intent.

20. It was further submitted that the condition of levy of additional excise duty in lieu of sales tax is applicable on all the goods mentioned in Entry 54 of Schedule 'B' of the Act and is not limited to the second part thereof. It is evident from the different language used in Entries 51 and 54 of Schedule 'B' the Act. The interpretation of an entry will not depend on use of a punctuation mark which, in the present case is “colon”, as the real intent has to be seen. In support of the argument, reliance was placed upon Shamrao V. Parulekar and others v. District Magistrate, Thana, Bombay and others, AIR 1952 SC 324; Saraswathi Chemicals, Vijayawada v. State of A.P., 2001(6) Andh LD 301 and Hotel Asoka v. Commercial Tax Officer, 2007(4) KLT 718. Further, it was submitted that real test for determination of character of any good for the purpose of taxation is common parlance test, namely, how the people in trade and market understand the same and not with its technical meaning, but the appellant has sought to argue with reference to technical meaning of the term “textile”, whereas in market, the product being manufactured by the appellant, is not known as textile, rather, leather cloth/PVC cloth.

21. Heard learned counsel for the parties and perused the paper book.

Discussions

22. In the present bunch of appeals, the matter has come to this court against the order passed by the Full Bench of the Tribunal, where by majority opinion, the clarification as rendered by the Financial Commissioner on an application filed by the appellant was upheld. The clarification regarding taxation was sought by the appellant by filing application under Section 56 (3) of the Act on the following issue:

“Whether the product being manufactured by the applicant which is technically known as “Coated Fabric” and in common parlance known as “Rexin” falling under Central Excise Tariff Heading 5903 is covered under entry 51 of Schedule B appended to the Haryana Value Added Tax Act, 2003.”

23. In our opinion, the issues, which arise for consideration by this court are:

- (1) Whether the product being manufactured by the applicant which is technically known as “Coated Fabric” and in common parlance known as leather cloth/“Rexin” falling under Central Excise Tariff Heading 5903 is covered under Entry 51 of Schedule B appended to the Haryana Value added Tax Act, 2003 ?
- (2) If the goods manufactured by the appellant fall in Entry 54 of Schedule 'B' of the Act, whether condition of leviability of additional excise duty in lieu of sales tax is applicable thereon ?
- (3) If a particular goods fall in two different entries, whether

it is open for the dealer to invoke any of the entries,
which is more beneficial ?

25. The appellant in the present case is registered with Central Excise Department. The product manufactured is described in heading 5903 of the Central Excise Tariff Act, 1985 for the purpose of levy of excise duty.

26. Entries 18 to 21 of Schedule B of the Act as existing after the amendment, as substituted vide notification dated 17.4.2003 and Entries 51 to 54 of Schedule B of the Act, as existing after the amendment, as substituted vide notification dated 30.6.2005, are reproduced hereunder:

“Entries 18 to 21 as substituted vide notification dated 17.4.2003

Sr. No.	Description of goods	Exceptions and conditions
1	2	3
xx	xx	xx
18.	All varieties of cotton, woolen or silken textile including rayon, artificial silk or nylon but not including such carpets, druggets, woolen durrees, cotton floor, durrees, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales tax is not levied.	
19.	All varieties of textiles covered by item 18 on which knitting and embroidery work has been done.	On which additional Excise Duty in lieu of sales tax is levied.
20.	Such varieties of canvas cloth tarpaulines and similar other products manufactured with cloth as base as per manufactured in textile mills, powerloom factories and processing factories but not including transmission belts.	On which additional Excise Duty in lieu of sales tax is levied
21.	Leather cloth and inferior or imitation leather cloth ordinarily used in book binding; rubber	On which additional Excise duty in lieu of sales tax is levied.

used tissue or synthetic water
tissue or synthetic water-proof
fabrics whether single textured
or double textured and book-binding
cotton fabrics.

xx

xx

xx

“Entries 51 to 54 as substituted vide notification dated 30.6.2005

Sr. No.	Description of goods
1	2
xx	xx
51.	All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional Excise Duty in lieu of sales tax is not levied.
52.	All varieties of textiles covered by item 51 on which knitting and embroidery work has been done provided additional Excise Duty in lieu of sales tax is levied on them.
53.	Such varieties of canvas cloth tarpaulines and similar other products manufactured with cloth as base as are manufactured in textile mills, powerloom factories and processing factories (but not including transmission belts) provided additional Excise Duty in lieu of sales tax is levied on them.
54.	Leather cloth and inferior or imitation leather cloth ordinarily used in book binding: rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book-binding cotton fabrics provided additional Excise Duty in lieu of sales tax is levied on them.
xx	xx
xx	xx”

Question No. 1

27. Entry 51 of Schedule 'B' of the Act is in two parts with the condition of additional excise duty being applicable only for second part and not for the first part was held by the Full Bench of the Tribunal in Sidhart Overseas's case (supra), which was accepted by the State. This fact is not even disputed by learned counsel for the State before this court. The Full Bench of the Tribunal in the aforesaid order opined as under:

“38.....Therefore, we set aside the impugned order and on true and correct construction of the entry hold that -

(i) All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon are part of the entry, so exempted goods; but

(ii) such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which Additional Excise Duty in lieu of Sales Tax is not levied are not part of the entry, so are not exempted goods i.e. these are taxable goods.”

28. In the case in hand, the appellant had sought clarification by filing application under Section 56(3) of the Act to the Financial Commissioner. The Financial Commissioner opined that PVC coated fabric commonly known as leather cloth/ rexin is covered under Entry 54 of Schedule 'B' of the Act. The relevant parts thereof are extracted below:

“On a plain reading of the above entries it is clear that the product in question i.e. PVC coated fabric or rexin does not fall in Entry 52 or 53. Further Entry 54 includes leather cloth, synthetic water proof fabrics whether single textured or double textured and book binding cotton fabrics. Under this entry these products are tax exempted provided AED in lieu of sales tax is levied on them. That means if no AED is levied then these products are taxable under the Act. So far as the status of AED is concerned the same has undergone change after the passing of the Finance Act, 2011 as the Government of India has omitted the entries relating to textile falling in the First

Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and thus there remains no AED in lieu of Sales Tax on Textile resulting into an understanding that the Textile falling under Entry 54 of Schedule B is taxable under the Act. Thus presently the items falling under Entry 54 are taxable under the Act. On a similar issue while issuing clarification to M/s H. R. Polycot Private Limited, Bahadurgarh, it is clearly opined that PVC coated fabric or commonly also known as rexin cloth falling under Central Excise Tariff Heading 5903 is covered under Entry 54 of the Schedule B of the Act and thus liable to tax. The PVC coated fabric stated to be manufactured and sold by the applicant under central excise tariff heading 5903 is nothing but the same as clarified in the above clarification falling under Entry 54 of Schedule B of the Act.

So far as the contention of the applicant that his product falls in Entry 51 relating to all varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon that carries no weight as and when the product of the applicant specially falls in Entry 54 so the support of a general entry cannot be taken by him. The decision of the Hon'ble Apex Court taken support of by the applicant does not help him in his case as there is specific and clear Entry 54 covering the product manufactured by the applicant and hence the applicant's contention that the product falls in Entry 51 is not correct and devoid of any merit.

In the light of the above, it is clarified that PVC coated fabric commonly known as rexin is taxable under the Haryana Value Added Tax Act, 2003 being covered Entry No. 54 of Schedule B and the same being declared goods falling under clause (vii) of Section 14 of the Central Sales Tax Act, 1957 is liable to tax accordingly.”

29. A bare perusal of the aforesaid opinion shows that the claim of the appellant that the product manufactured by it falls in Entry 51 of Schedule 'B' the Act was rejected on the ground that it specifically falls in Entry 54 of Schedule 'B' of the Act, hence, there being specific entry, the general entry cannot be invoked. The view of the Financial Commissioner was endorsed by majority opinion of the Tribunal. The dissenting view was recorded by two out of five members of the Tribunal. The opinion expressed by them was that PU/PVC coated fabric manufactured by the appellant is exempt being part of Entry 51 of Schedule 'B' of the Act. Entry 51 of Schedule 'B' the Act is an independent entry and not dependent on Entry 54 of Schedule 'B' of the Act or any other entry in the Schedule.

30. In M/s Porritts & Spencer (Asia) Ltd.'s case (supra), the issue under consideration before Hon'ble the Supreme Court was whether “dryer felts” manufactured by the assessee therein was within the category of “all varieties of cotton, woollen or silken textiles” as specified in Item 30 of Schedule 'B' of the Punjab General Sales Tax Act, 1948. Schedule B in the aforesaid Act specified the goods, which were exempted from taxation. The opinion expressed by Hon'ble the Supreme Court was that “dryer felts” are textile, as is commonly known. Relevant part therefrom is extracted below:

“... There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls; it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in its character as a textile. A textile may have diverse uses and it is not the use which determines its character as textile.

..... It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard 'dryer felts' as 'textiles'. But it must be remembered that the concept of 'textiles' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as 'textiles'.... The character of a fabric or material as textile does not depend upon the use to which it may be put.

The uses of textiles in a fast developing economy are manifold and it is quite common now to find 'textiles' being used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find in chapter 59 occurring in section XI of the First Schedule that there is a reference to “textile fabrics” and textile articles, “of a kind commonly used in machinery or plant” and clause (4) of that chapter provides that this expression shall be taken to apply, inter alia, to “woven textile felts....” of a kind commonly used in paper-making or other machinery....”. This reference in a statute which is intended to apply to imports made by the trading community clearly shows that 'dryer felts' which are 'woven textile felts.... of a kind commonly used in paper-making machinery' are regarded in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that 'dryer felts' are 'textiles' within the meaning of that expression in item 30 of Schedule 'B'.”

31. The issue was later on considered by Hon'ble the Supreme Court in Delhi Cloth and General Mills Co. Ltd.'s case (supra), where the issue under consideration was whether 'rayon tyre cord fabric' was rayon fabric covered by Item 18 of the Schedule providing for exempted goods under Rajasthan Sales Tax Act, 1954. The opinion was in favour of the assessee.

32. A similar issue came up for consideration before Allahabad High Court in Laxmi Leather Cloth Industries Pvt. Ltd.'s case (supra), where the issue was as to whether leather cloth is textile or not, hence, exempted

from payment of tax. Allahabad High Court in the aforesaid judgment, besides relying upon the judgments of Hon'ble the Supreme Court in M/s Porritts & Spencer (Asia) Ltd.'s case (supra) and Delhi Cloth and General Mills Co. Ltd.'s case (supra) referred to earlier judgment of Allahabad High Court in Commissioner, Sales Tax v. Arora Material Store, (1982) 51 STC 235, where a cotton fabric base impregnated with preparations of cellulose derivatives or other artificial plastic materials, was held to be cotton fabric and Omvik Electronics Pvt. Ltd. v. Commissioner of Sales Tax, (1980) UPTC 912, where fused collars and shoulder straps were held to be cotton fabric, opined that leather cloth is a cotton coated fabric. It is one of the varieties of cotton fabric, hence, falls under 'textile'.

33. The judgment of this court in Orient Electrical Insulation Private Ltd.'s case (supra) is distinguishable for the reason that the issue under consideration in that judgment was whether sleeveings, which were in circular form, manufactured by the assessee therein, which is a kind of insulation material to be used in electric motors was textile or not. While noticing the process of manufacture and other judgments of Madras and Gujarat High Courts dealing with the same product, this court opined that sleeveings manufactured by the assessee therein cannot be termed to be textile.

34. The process for manufacture of coated fabric by the appellant is noticed in the order of the Tribunal in the following terms:

- “(i) PVC resin paste is prepared which is coated on a paper which is called 'release paper'.
- (ii) A cotton fabric is pasted on the release paper.
- (iii) This is passed through a heated oven and the resin paste

due to the process of heating is coated on the textile fabric.

- (iv) The release paper is removed and the final product so manufactured is called 'PVC Coated Fabric'."

35. If considered in the light of the aforesaid judgments of Hon'ble the Supreme Court and Allahabad High Court, as referred to above, it can be opined that the product being manufactured by the appellant, namely, coated fabric also known as leather cloth/rexin falls in the term 'textile'.

Question No. (2)

36. It is the admitted case of the parties that the goods manufactured by the appellant fall in Entry 54 of Schedule 'B' of the Act. The issue is as to whether the condition regarding leviability of additional excise duty in lieu of sales tax is applicable. To address the issue, we need to analyse the entry first. The same has been reproduced in paragraph No.26 above.

37. The contention raised by learned counsel for the appellant was that the Entry is in two parts divided by a 'colon'. The condition regarding levy of additional excise duty in lieu of sales tax is applicable for the goods mentioned in second part. The effect of colon, the punctuation mark used in the Entry is to be examined. The stand of the department was that the goods manufactured by the appellant being leather cloth fall in Entry 54 of Schedule 'B' of the Act and the condition regarding levy of additional excise duty in lieu of sales tax was applicable. As the levy of additional excise duty in lieu of sales tax on leather was abolished vide Finance Act, 2011 and the appellant, not fulfilling that condition, will not be entitled to

claim that the goods are tax free.

38. However, the issue is required to be examined from a different angle, especially considering the manner the goods had been mentioned in Schedule 'B', as notified on 17.4.2003, and as substituted vide notification dated 30.6.2005. A perusal of Entries 18 to 21 in notification dated 17.4.2003, which are similar with reference to the goods mentioned in Entries 51 to 54 of the Act, as substituted in Schedule B, vide notification dated 30.6.2005, shows that these had been mentioned in different manner. In the notification dated 17.4.2003, there were three columns, namely, Sr. No., description of goods and third being “exceptions and conditions”, whereas in the notification dated 30.6.2005, substituting Schedule B, there are only two columns, namely, Sr. No. and description of goods. The exceptions and conditions, which were separately mentioned in the notification dated 17.4.2003 were part of the description of goods itself. Entry 18 of the Act in the notification dated 17.4.2003 is identical to Entry 51 of Schedule 'B' of the Act in notification dated 30.6.2005. No special exceptions and conditions were mentioned in that entry, whatever was required was mentioned in the column of description of goods itself. If we see Entry 21 of Schedule 'B' of the Act in the notification dated 17.4.2003, while mentioning all the goods in the column of description of goods, in the column of exceptions and conditions, it was mentioned that “on which additional excise duty in lieu of sales tax is levied”. This would necessarily mean that condition of levy of additional excise duty in lieu of sales tax was applicable on all the goods mentioned in the column of description of goods under Entry 21 in notification dated 17.4.2003.

39. Schedule 'B' was substituted vide notification dated 30.6.2005. The Entries, which were at Sr. Nos. 18 to 21 of Schedule 'B' of the Act, were given new Sr. Nos. 51 to 54 of Schedule 'B' of the Act. There was no change in the manner Entry 18 was incorporated vide notification dated 30.6.2005. There was a change in the manner the exceptions and conditions were provided against the goods mentioned in Entries 52 and 53 of Schedule 'B' of the Act in the notification dated 30.6.2005, comparable to Entries 19 to 21 in the notification dated 17.4.2003. The language as used in Entries 52 and 53 of Schedule 'B' of the Act does not make any change in intent, however, Entry 54 of Schedule 'B' of the Act needs to be analysed with reference to the words used therein and the punctuation mark.

40. Much stress was laid at the time of arguments by learned counsel for the appellant on the punctuation mark colon used in Entry 54 of Schedule 'B' of the Act. Colon has been defined as “break in sentence” [Collins Gem Dictionary]; “it can be used to separate two sharply contrasting and parallel statements” [Oxford Language Reference]; “the character (:), used to separate parts of a sentence that are complete in themselves and nearly independent, often taking the place of a conjunction” [Webster International Dictionary Vol. I]; “the punctuation mark (:), used to indicate a distinct clause of a sentence” [The Chambers Dictionary 12th Edition]. He also referred to Full Bench judgment of this Court in Rajinder Singh's case (supra), wherein while considering Entry 3 of List II of the Constitution of India, this Court opined as under:

“List II-State List

3. Administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Court; officers

and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

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I am afraid, I find myself unable to agree with this contention of the learned counsel. After the words 'Administration of Justice' in entry 3, there is a semi-colon and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. If the punctuation of semi-colon is taken to be inappropriate, then the entry may read 'Administration of Justice constitution and organisation of all Courts, except the Supreme Court and the High Court". Apparently, this would appear not only to be an absurd reading but also would make the language both faulty and ungrammatical. Hence, I find no escape from the conclusion that 'Administration of Justice' occurring in entry 3 is a distinct topic."

41. The aforesaid judgment was referred with approval by a Constitution Bench of Hon'ble the Supreme Court in Jamshed N. Guzdar v. State of Maharashtra and others, (2005) 2 SCC 591. An earlier judgment of Hon'ble the Supreme Court in Aswini Kumar Ghose v. Arbinda Bose, AIR 1952 SC 369 was also referred to, wherein it was opined that when a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation.

42. In Telecom District Engineer and another's case (supra), the effect of semi-colon, a punctuation mark, was under consideration. The

provision reads as under:

“(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished.”

43. It was opined that use of punctuation mark semi-colon in the later part of the provision has the effect of making disjunctive with the earlier part, hence, the condition as laid down was applicable only for the later part and not the earlier part. Relevant paragraph thereof is extracted below:

“In view of the fact that in between the 1st part i.e. “to restrain any auction intended to be made or,” and the 2nd part i.e. “to restrain the effect of any auction made by the Government;” there is comma, after the word or, but subsequent to the second part i.e. restrain the effect of any auction made by the Government, there is a semi-colon, the effect of which is disjunctive to the third part. Thus, the requirement of furnishing of adequate security relates to the third part. In view of this, the argument of the learned counsel for the appellant is sans substance and is rejected.”

44. Once a punctuation mark has a specific meaning, it has to be given effect to. It cannot be treated as otiose. Meaning thereby, there is a break in sentence at that stage. It is also evident from a plain reading of the entry itself, which uses the word 'and' in between “leather cloth” & “inferior or imitation leather cloth ordinarily used in book binding”. Thereafter, punctuation mark “colon” has been used, which is followed by other types

of goods mentioned therein by using the word 'or' therein and finally using the word 'and' with a condition that additional excise duty in lieu of sales tax is levied on them. In case, there is a break in sentence, then certainly the condition of levy of additional excise duty in lieu of sales tax will not be applicable to the goods mentioned in the first part thereof. The entry can be read as “leather cloth and inferior or imitation leather cloth ordinarily used in book binding” and “rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book-binding cotton fabrics provided additional Excise Duty in lieu of sales tax is levied on them”. The manner in which the entry was there before substitution w.e.f. 30.6.2005 is also supportive of this view, as in the entry as existed earlier, all the goods had been mentioned in a different column, whereas the condition of levy of additional excise duty was mentioned in different column. In that situation, even a break in the sentence may not be important as all the goods mentioned in the entry were required to comply with exceptions and conditions as provided. The observation made by the Tribunal in the order that the matter was never argued in that line is merely to be discarded for the reason that there is no estoppel against the statute. The manufacturers of these products were satisfied as they were being granted exemption from payment of tax. The issue arose only after the additional excise duty in lieu of sales tax was abolished.

45. As leather cloth, which is manufactured by the appellant, is specifically mentioned in Entry 54 of the Act and that no condition of levy of additional excise duty in lieu of sales tax is applicable thereon, in our opinion, the appellant will be entitled to benefits arising therefrom.

46. In view of answer to first two questions, as referred to in paragraph No. 24, we do not deem it appropriate to consider the issue regarding choice of an assessee to opt for any of the entry in which the goods may fall, which may be more beneficial to the assessee, as in that event, even the principle that special will exclude general may have also to be considered.

47. In view of our aforesaid discussion, questions No. (1) and (2) are answered in favour of the assessee. Question No. (3) is not required to be dealt with, in view of answer to questions No. (1) and (2).

48. The appeals are disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

September 07, 2016
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Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No