A

COMMISSIONER OF SALES TAX, U.P.

v.

M/S. SARIN TEXTILES MILLS

B

April 21, 1975

[R. S. SARKARIA AND A. C. GUPTA, JJ.]

U.P. Sales Tax Act, 1948, *ss.* 3 *and* 3*A*—*'Woollen Carpet Yarn' if unspun fibre used in weaving.*

C The respondent is a manufacturer of and dealer in 'Woollen Carpet Yarn', popularly known as *kati*. For the assessment years 1959-60 and 1961-62 he was taxed by the Sales Tax officer at 6 pies per rupee and 3 pies per rupee, respectively, under two notifications applicable to the two assessment years respectively, issued under the U.P. Sales Tax Act, 1948. On appeal, the Assistant Commissioner held that *kati* was an unclassified item taxable at 2 pies per rupee under s. 3 of the Act, and the order was confirmed on revision and by the High Court on reference.

D

The two Notifications provided (1) that turnover of 'Yarn of all kinds including unspun fibre used in weaving' is liable to tax at 6 pies per rupee, and (2) turnover of yarn of all kinds including unspun fibre used in weaving, is liable to tax at 3 pies per rupee. There was another notification which provided that turnover of "Woollen goods excluding carpet but including knitting wool" is liable to tax at one anna per rupee.

E The authorities under the Act found that *kati* are short cut pieces of unspun fibre about 2 inches in length ; that the pieces have very little tensile strength and are not used, and are not capable of being used, for weaving, knitting or rope-making ; that the only use to which *kati* is put is by attaching each piece by hand around two warp threads ; that it is not a component of the basic fabric of the carpet ; that it is not an integral constituent of the warp and weft of the carpet which consists of a different spun fibre of great tensile strength ; and F that the process of looping or knotting *kati* is different and distinct from the process of lengthwise and cross-wise combining of warp and weft components which makes the woven basic structure of the carpet.

Dismissing the appeal to this Court.

HELD : (1) *Kati* is not 'yarn' because one of the characteristics of yarn is that it should be spun thread, whereas kati is unspun fibre. [231-H]

G (2) *It is not unspun fibre used in weaving* within the meaning of the first two notifications because, on the facts found, it is not used in weaving.

[233-C-D]

(3) It is not 'woollen goods' within the meaning of the 3rd notification, because. [233-C-D]

H (a) *Katri* is only raw material from which 'woollen goods' are prepared : and [233-E]

(b) Yarn used in weaving the warp and weft of carpets, or woollen fibre used in weaving is, under the notifications, taxable at a par lower rate than 'woollen goods'; and it could never have been intended that a mere component or raw material, used by a manual process, not being a process of weaving in the manufacture of 'woollen goods' should be taxed at a higher rate treating *kati* as finished 'woollen goods'. [233-E.F.]

(4) Therefore, it is an unclassified item and the turn-over is liable to tax only at 2 pies per rupee. A

CIVIL APPELIATE JURISDICTION : Civil Appeal Nos. 1934-35 of 1970 and 1172-73 of 1974.

Appeal by Special Leave from the Judgment and Order dated the 30-4-1970 for the Allahabad High Court in S. T. R. No. 191 of 1969. B

O. P. Rana for the appellant.

S. C. Manchanda and *P. C. Kapoor* for the respondent. C

The Judgment of the Court was delivered by

SARKARIA, J.—These appeals by special leave are directed against the judgment of the High Court of Allahabad answering in favour of the assessee the following question referred to it under s. 11 of the U.P. Sales Tax Act, 1948 (for short called the Act): D

> "Whether the articles "carpet woollen Yarn" is covered by the term 'yarn' mentioned in item No. 4 of notification No. ST-907/X, dated 31-3-1956 and item No. 33 of notification No. S.T. 1365/X dated 1-4-1960 taxable at 6 pies and 3 pies per cent respectively or a kind of woollen goods as mentioned at item No. 46 taxable at one anna per rupee according to notification No. ST-905/X dated 31-3-56 or whether it is an unclassified item taxable at 2%". E F

M/s. Sarin Textile Mills, Agra is a manufacturer of and dealer in "woollen carpet yarn", popularly known as "*kati*". The relevant assessment years are 1959-1960 and 1961-62. The only dispute is whether such *kati* should be taxed as "yarn" at 3% or as "woollen goods" at one anna per rupee, under the relevant notification issued under s. 3-A or as an unclassified item at 2% under s. 3 of the Act. G

The Sales-tax Officer by his order dated 6-10-1965 regarded it as a 'kind of yarn' covered by Entry No. 4, Notification no. ST-907/X dated 31-3-1956, and so taxed it at six pies per rupee for 1959-60 and at 3 per cent for the year 1961-62 in view of subsequent notification ST-1365/X dated 1-4-1960. H

On appeal by the assessee, the Assistant Commissioner (Judicial) reversed that interpretation and held that woollen carpet *kati* was an 'unclassified item' taxable at the rate of 2 per cent.

A The Commissioner of Sales-Tax moved the Revisional Authority under s. 10 of the Act against the order of the Assistant Commissioner (Judicial). The Judge (Revisions) agreed with the interpretation adopted by the Assistant Commissioner (Judicial) and dismissed the revision application.

B On application filed by Commissioner under s. 11(3) of the Act, the Judge (Revisions), referred the aforesaid question to the High Court.

The High Court also held that the woollen carpet *kati* is not 'yarn' since it is unspun fibre not used in weaving, and, as such, it is not taxable as a 'kind of yarn' under the aforesaid notification. C It further rejected the alternative contention of the Revenue that woollen carpet *kati* is taxable under the notification No. ST-905/X as "woollen goods". In the result, the High Court answered the questions against the Revenue. Hence these appeals.

Mr. Rana learned Counsel for the appellant contends that the term "yarn" used in the aforesaid notification should be interpreted D in the sense in which it is understood by persons engaged in the trade. Stress has been placed on the fact that in English, even the assessee has been describing the article in question as "woollen carper *yran*". Such *kati*, it is pointed out is used in the manufacture of carpets by a process of 'knotting', which in ordinary parlance is described as 'weaving'. According to Mr. Rana, the distinction E drawn by the High Court, between 'weaving' and 'knotting' being too fine and artificial, is not justified. It is maintained that the Sales-tax Officer had rightly held that all twisted wool fibres are 'yarn'. Since this woollen *kati* is such a fibre, it is yarn and taxable as such under the aforesaid notifications. In the alternative, Counsel submits that this article falls within the purview of "woollen goods" F and in taxable as such under notification No. ST-905/X of 1956.

As against this, Mr. Manchanda, learned Counsel for the assessee contends that in the past for about 8 years, the Revenue had been understanding and treating for the purpose of taxation, "woollen carpet *kati*" as an article different from "yarn" and "woollen goods" within the contemplation of the aforesaid notifications. It is stressed that for the first time it was on 23-9-1963 that the Sales-tax Officer G departed from this time-honoured interpretation and held "woollen carpet *kati*" to be "yarn" within the said notifications. It is submitted that the High Court's opinion, that woollen carpet *kati* is neither "yarn" nor "woollen goods", proceeds on facts found by the Assessing Authority on the basis of evidence adduced regarding the nature and use of this article. On those facts, it is maintained, no other reasonable interpretation than the one accepted by the H High Court is possible.

The notifications concerned issued under s. 3-A of the Act, are these:

"(i) Notification No. ST 907/X dated 31st March, 1956.

It declares that the turnover of certain commodities men-

tioned therein should be taxed at a single point, at the point of sale by the manufacturer or the importer, at the rate of six pies per rupee. The relevant entry of this notification is no. 4, which reads:

> "Yarn of all kinds, including unspun fibre *used in weaving,* other than handspun yarn but excluding cotton yarn in cops and cones". (emphasis added)

(ii) Notification No. ST. 1365/X-990 1956 dated April 1, 1960.

It is also a notification under section 3-A of the Act and the relevant entry is at item No. 33 which reads :

> "Yarn of all kinds including unspun fibre *used in weaving* other than handspun yarn but excluding cotton yarn." (emphasis added)

(iii) Notification No. No. ST-905/X dated 31st March, 1956.

The relevant entry is at item No. 46 which reads .

> "Woollen goods excluding carpet but including knitting wool."

The rate of tax prescribed is one anna per rupee.

The first point to be considered is, whether "woollen carpet *kati*" is "yarn" within the meaning of Notification (i) and (ii) catalogued above.

"Yarn" has not been defined either in the Act and the Rules, or in the Notifications. We have therefore to construe this term in its ordinary grammatical sense. According to "Oxford Dictionary" "yarn" means:

> "Any spun thread specially of kinds prepared for weaving, knitting or rope-making".

Webster's New World Dictionary also, gives its meaning thus:

> "Any fibre, as wool, silk, flax, cotton, nylon etc. spun into strands for weaving, knitting or making thread".

Thus, a fibre in order to answer the description of "yarn" in the ordinary commercial sense, must have two characteristics. Firstly, it should be a *spun* strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making.

Now, it is an undisputed fact, in the instant case, that "woollen carpet *kati*" is *unspun* fibre. It lacks the first characteristic of "yarn". It is therefore possible to say that, by itself, the expression "yarn of all kinds" in the notifications, quoted above, would not cover unspun fibres. But the succeeding phrase "including unspun fibre

A used in weaving" qualifies the preceding expression "yarn" of all kinds". This phrase, which, in one sense, extends the connotation of "yarn" by including in it *unspun* fibre, pinpoints and highlights, on the other hand, the usability of such unspun fibre in weaving as a determinative circumstance.

B The question thus narrows down into the issue : Is woollen carpet *kati*—which is admittedly unspun fibre—"used in weaving" within the contemplation of these notifications ? Again, "weaving" has not been defined in these notifications or the other statutory provisions. We have therefore to fall back upon its ordinary dictionary meaning. In that sense, 'weaving' implies the process of forming thread into fabric C by interlacing. "The most important method by which wool products are produced is weaving, the *interlacing* at right angles of two or more systems of threads. Variations are almost limitless but all are derived from three basic weaves, plain, satin and twill. Hundreds of yarns, wound on large spool or beam form the warp. Each yarn is drawn through the eye of a heddle or wire mounted on a harness frame. The alternate raising and lowering of the frames, each with its D hundreds of heddles controlling the warp yarns, forms the shed, the space through which the weft or filling yarn is carried by the shuttle, a long satreamlined box holding a bobbin of yarn in its hollowed centre. Each trip of the shuttle is called a pick. After each pick the harness frames shift position in accordance with the predetermined pattern, producing a new shed or different combination of raised and E lowered warp yarns. The filling yarn are beaten down with a weaver's read to make a tighter weave". (Encyclopaedia Brittanica Vol. 23, p. 342, 1971 Edn.)

Thus "weaving" is the process of combining warp and weft components (respectively lengthwise and cross-wise) to make a woven F structure. The threads that lie lengthwise are called the warp. The other threads which are combined with the warp and lie widthwise, are called the "weft", also known as "woof". An individual thread from the warp of indefinite length, is called an end; each individual length of weft from one edge to the other is called a pick. Consecutive picks are usually consecutive lengths of one piece of weft yarn that is repeatedly folded back on itself. In all methods of weaving before a G length of weft is inserted in the warp, the warp is separated, over a short length extending from the cloth already formed, into two sheds. The process is called shedding. The sequence of primary operations in one weaving cycle is thus shedding, picking and beating in. (Encyclopaedia Brittanica Vol. 23, p. 342).

Weaving is differentiated from both warp and weft, knitting from H braiding, and from net making, in that these processes all make use of only one set of elements. In addition there are geometrical differences". (Encyclopaedia *ibid*).

The ground having been cleared, it is to be seen whether the process by which woollen carpet *Kati* is used in preparation of carpets, can properly be called "weaving".

Now, the facts found on the basis of evidence adduced by the Additional Appellate Commissioner and the Judge (Revisions) Sales Tax are that such woollen *kati* are short cut pieces of unspun fibre (each of which according to the aforesaid Encyclopaedia is about 2 inches in length). It has very little tensile strength and is not used—as it is not capable of being used—for weaving, knitting or rope-making. The only use to which the *kati* or pile is put is by attaching each piece by hand around two warp threads. The *kati* is not a component of the basic fabric of the carpet. It is not an integral constituent of the warp and weft of the carpet which consists of a different spun fibre of great tensile strength i.e. of yarn. The process of looping or knotting these pile tufts is different and distinct from the process of lengthwise and crosswise combining of warp and weft components, which makes the woven basic structure of the carpet.

In view of these primary facts found by the taxing authorities, the conclusion is inescapable, that woollen carpet *kati* is neither "yarn", nor "unspun fibre used in weaving" within the contemplation of the aforesaid notifications issued under s. 3-A.

This takes us to the second question as to whether such *kati* would fall within the ambit of "woollen goods" under entry 46 of Notification (iii) set out above.

Here also, we find ourselves in agreement with the Division Bench of the High Court that woollen carpet *kati* is only raw material from which "woollen goods" are prepared. In this connection it is to be noted that yarn used in weaving the warp and weft of carpets, or woollen fibre used in weaving has been made taxable at a far lower rate than "woollen goods" under the Notifications. It could never be the intention that a mere component or raw material used in the manufacture of woollen goods by a manual, process, not being a process of weaving, should be taxed at a far higher rate, by treating the same as a finished "woollen goods".

For the foregoing reasons, we are of the opinion that "woollen carpet *kati*" is neither "yarn" nor "woollen goods" falling under the aforesaid notifications issued under s. 3-A. It is an unclassified item and its turnover is liable to tax at the rate of 2% under s. 3 of the Act. Accordingly we affirm the answer given by the High Court to the question referred and dismiss these appeals with one set of costs.

V.P.S. *Appeals dismissed.*