THE COMMISSIONER, COMMERCIAL TAX, U.P., LUCKNOW

v.

S/S RUJHAN STUDIO

(Civil Appeal No 793 of 2021)

MARCH 02, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND M. R. SHAH, JJ.]

Uttar Pradesh Value Added Tax Act, 2008: Schedule I Entry 21 – Classification of unstitched suits – Assessee respondent engaged in selling dress material/unstitched suits for women – It purchases textile material in bulk which is cut to the length of a salwar kameez suit for women – The work of sewing, design and embroidery is carried out on the neck portion of the kameez or kurta and the dupatta is subjected to 'peco' work and then it is sold as an unstitched suit – As a result of the work which is carried out by the respondent in the factory, the material ceases to be textile within the meaning of Entry 21 and assumes the character of an article which has a distinct meaning and description – The product can certainly not be called 'a textile made up' under Entry 16 of Schedule II as it is used in conjunction with the expression "bedsheets and pillow covers" – The expression "other textile made ups" must be read ejusdem generis *with the articles which precede it and should hence comprehend goods of the same class and description – Hence, the product would not fall within the purview of Entry 16 of Schedule II – The product would fall for classification under Serial 1 of Schedule V which is a residuary entry which covers all goods except those which are mentioned and described in Schedules I, II, III and IV.*

Disposing of the appeals, the Court

HELD : 1. The definition of the expression "manufacture" is in broad and comprehensive terms. The definition, *inter alia*, includes altering, ornamenting, finishing or otherwise processing, treating or adapting any goods. The respondent purchases textile material in bulk which is then cut to the length of a salwar kameez suit for women. The work of sewing, design and embroidery is

carried out on the neck portion of the kameez or kurta. No stitching is done on the salwar. The dupatta is subjected to 'peco' work. Entry 21 deals with silk fabric, handloom cloth of all kinds and textiles of several varieties manufactured on power loom excluding items which are described in the Second Schedule. This includes cotton fabric of all varieties, rayon or artificial silk fabric, woolen fabric made of a mixture of two or more of the listed fabrics and canvass cloth. It is evident from the work which is carried on by the respondent in its factory that the textile material which is purchased in bulk is cut to the size of a salwar kameez. The court must have regard to the common parlance meaning and understanding of the expression 'textile'. Evidently, the respondent cuts the textile material which is then subjected to the work of embroidery on the neck portion. The textile material which is cut may not assume the character of a final article of apparel which can be worn by the consumer because the final work of stitching is not carried out by the respondent. This is done to ensure that the ultimate consumer may get the salwar kameez stitched to their specifications and dimensions. What is sold is an unstitched 'suit' and not textile fabric. The important point to note is that as a result of the work which is carried out by the respondent in the factory, the material ceases to be textile within the meaning of Entry 21 and assumes the character of an article which has a distinct meaning and description. [Paras 11, 12][517-G-H; 518-A-F]

2. Entry 16 of Schedule II refers to bedsheets (other than unstitched bedsheets), pillow covers and "other textile made ups". The appellant submits that the expression "other textile made ups" is not a stand-alone entry, but occurs in the same entry together with bedsheets (other than unstitched bedsheets) and pillow covers. Hence, the expression "other textile made ups" should be read in conjunction with the other goods which are specified in Entry 16. A textile made up is an article which is manufactured or stitched from any type of cloth. In the instant case, going by the case of the respondent, the product is unstitched because the ultimate work of stitching the salwar kameez is yet to be performed and is not carried out by the

respondent. In the circumstances, the product can certainly not be called as a textile made up. Secondly, the entry "other textile made ups" is not a residuary entry for Schedule II, but is used in conjunction with the expression "bedsheets and pillow covers". The expression "other textile made ups" must be read ejusdem generis with the articles which precede it and should hence comprehend goods of the same class and description. The general entry "other textile made ups" must receive a meaning and connotation bearing in mind the preceding items of Entry 16. Hence, it is not possible to accept the view that the product falls within the purview of Entry 16 of Schedule II. The product would fall for classification under Serial 1 of Schedule V which is a residuary entry which covers all goods except those which are mentioned and described in Schedules I, II, III and IV. [Paras 13, 14 and 15][518-H; 519-A-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 793 of 2021.

From the Judgment and Order dated 11.09.2019 of the High Court of Judicature at Allahabad in Sales/Trade Tax Revision Defective No. 95 of 2019.

With

Civil Appeal Nos. 794, 795 of 2021

R.K. Raizada, Sr. Adv., Bhakti Vardhan Singh, Ms. Nidhi, Ms. Manvi Dixit Sharma, Advs for the appellant.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

Civil Appeal No 793 of 2021 [Arising out of SLP(C) No 3885 of 2021]

1. Delay condoned.

2. Leave granted.

3. By a judgment and order dated 11 September 2019, a Single Judge of the High Court of Judicature at Allahabad dismissed a Sales/ Trade Tax Revision[1] instituted by the Commissioner of Commercial Taxes.

[1] Sales/Trade Tax Revision Defective No 95/2019

A 4. The respondent is a dealer registered under the provisions of the Uttar Pradesh Value Added Tax Act 2008 ("**UP VAT Act 2008**"). The respondent carries on the business of purchasing textiles and selling dress material for women. A survey was conducted at the establishment of the respondent on 9 March 2010 by the Special Investigation Branch. During the course of the survey, the statement of a partner of the B respondent was recorded in which the nature of the business was described in the following terms:

> "The business of manufacture and unstitched suit, salwar, kameeze, dupatta etc. is carried out. The work of design/embroidery is carried out on kameeze, Kurta and Dupatta. The sewing process C is carried out in the neck portion of the kameeze/kurta. No stitching is done on Salwar. "PECO" is done on the borders of Dupatta. The entire activity is got completed with the help of machine/ manual labour. The process of "Tanka" as carried out on Kurta/ Kameeze is commonly known as "Rough Stitching" i.e., "Kachchi D Silai"."

5. During the course of the assessment, a similar statement on oath was made by the representatives of the dealer before the Assessing Authority, which was recorded by the Tax Assessment Officer in the following terms:

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> "...Shri Bhushan Kumar Malhotra, authorised the representative, appeared on behalf of the trader and stated on oath that the business is of unstitched dress material. The cloth is purchased in bulk. Thereafter, by cutting it as per the length of the suit of the ladies and cutting as per the size of the neck of the shirt, the cutting of F different sizes of neck is done and thereafter, the embroidery of the same is done. The head scarves/chunni, which is made of the thin cloth, the edges of the same are picoed. All the head scarves are not picoed. No work is done on the lower garment (salwar). The pieces of the same are cut and by matching with the shirt and headscarf, the set of the same is made out. We do only the cutting G and embroidery work in the factory. This is the 1st year of the business and even now the business is continuing. From the business year 2008 – 09 till now, the nature has remained the same.
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> The cloth, threads, stars, beads are used as the material..."

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6. The dealer was assessed to a tax of Rs 99,42,870 for assessment year 2009-2010, by treating the product as an unclassified item under Schedule V of the UP VAT Act 2008, under which the rate of tax is 12.5%. The respondent filed an appeal[2] before the Additional Commissioner, Gr.-2, (Appeal) IV, Ghaziabad. By an order dated 13 February 2013 the first appellate authority partly allowed the appeal and classified the goods as "textile made ups" which are subject to a duty of 4% under Serial Number 16 of Schedule IIA. The order passed by the appellate authority was assailed by the appellant and by the respondent before the Commercial Tax Tribunal ("**Tribunal**"). By an order dated 27 April 2019, the Tribunal allowed the appeal filed by the respondent and rejected the appeal of the Revenue. The product sold by the respondent was classified as a 'textile' within the meaning of Entry 21 of Schedule I and was, therefore, held to be exempt from tax. The appellant unsuccessfully challenged the decision in a revision before the High Court which has been dismissed *in limine* by the impugned judgment and order dated 11 September 2019.

7. Notice was issued in the Special Leave Petition filed by the appellant on 28 August 2020. The Office Report indicates that the respondent has been served. No appearance has been entered on behalf of the respondent.

8. In order to facilitate the disposal of the appeal, it would be necessary to advert to the relevant entries in the Schedules to the UP VAT Act 2008 which have a bearing on the controversy. Schedule I provides a list of exempt goods. Serial No 21 of Schedule I is extracted below, both in its English and Hindi descriptions:

Sr. No.	Name and description of goods
21	Silk Fabrics; Handloom cloth of all kinds; handloom shawls & lois whether plain, printed, dyed or embroidered; Dhoties and Saris; textiles of following varieties manufactured on power- loom excluding the items described in schedule-II:- (a) cotton fabrics of all varieties; (b) rayon or artificial silk fabrics, including staple fibre fabrics of all varieties; (c) woolen fabrics of all varieties;

[2] Appeal No 83/2013

	(d) fabrics made of a mixture of any two or more of the above fibres, viz. cotton, rayon, artificial silk, staple fibre or wool, or of a mixture of any one or more of the said fibres with pure silk fibre;(e) canvas cloth.
	The Hindi Text of the said entry is also reproduced hereunder: सिल्क फ़ैब्रिक, समस्त प्रकार का हैंडलूम कपड़ा, शाल एवं लोई, चाहे सादी, छपी हुई, रंगी हुई अथवा कढ़ी हो; धोती और साड़ी, पावरलूम पर निर्मित निम्न प्रकार के कपड़े जिसके अंतर्गत अनुसूची दो में वर्णित वस्तुए नहीं हैं – 1) सभी प्रकार का सूती कपड़ा; 2) रेयन या कृत्रिम रेशम का कपड़ा जिसके अंतर्गत सभी क़िस्म का स्टेपिल फ़ाइबर फ़ाब्रिक्स भी है; 3) सभी क़िस्म का ऊनी कपड़ा; 4) उपर्युक्त फ़ाइबर्स अर्थात ती, रेयन, कृत्रिम रेशम, स्टेपिल फ़ाइबर या ऊन के किसी भी दो या अधिक के मिश्रण या शुद्ध सिल्क के साथ उपर्युक्त फ़ाइबर्स के किसी एक या एक से अधिक के मिश्रण से बना कपड़ा; 5) कैनवास का कपड़ा

Schedule II provides a list of goods which are taxed at 4%, of which Entry 16 is in the following terms:

Sr. No.	Name and description of goods
	List of goods taxed at 4%
16	Bed sheets (other than unstitched bed sheets), pillow cover & other textile made ups.
	The Hindi Text of the said entry is also reproduced hereunder: बेडशीट(अनस्टिचड बेड शीट को छोड़कर), तकिया का गिलाफ एवं कपड़े की बनी अन्य वस्तुयें

Finally, it is necessary to advert to Schedule V which furnishes a list of goods which are taxed at 12.5%. The residuary entry in that regard is as follows:

SCHEDULE - V	
List of goods taxed at 12.5%	
Sr. No.	Name and description of goods
1	All goods except goods mentioned or described in Schedule-I, Schedule-II, Schedule-III and Schedule-IV of this Ordinance.

9. The issue which falls for consideration in the present appeal is whether the commodity which is described as an "embroidered ladies suit", which the respondent claims to be unstitched, would fall within the description of a 'textile' under Entry 21 of Schedule I (as the respondent asserts). The other competing entries are Entry 16 of Schedule II which is "other textile made ups" and the residuary entry in Schedule V.

10. We would first deal with the question as to whether the product falls within the description of Entry 21 of Schedule I. Before dealing with the nature of the product, it would be material to advert to the definition of the expression "manufacture" in Section 2(t) which reads as follows:

> "2(t) "manufacture" means producing, making, mining, collecting, extracting, mixing, blending, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed;"

11. The definition of the expression "manufacture" is in broad and comprehensive terms. The definition, *inter alia*, includes altering, ornamenting, finishing or otherwise processing, treating or adapting any goods. The respondent purchases textile material in bulk which is then cut to the length of a salwar kameez suit for women. The work of sewing,

A design and embroidery is carried out on the neck portion of the kameez or kurta. No stitching is done on the salwar. The dupatta is subjected to 'peco' work.

12. The respondent contended before the Tax Assessment Officer that it carries on the work of cutting and embroidery in its factory. On
B the basis of the description which was indicated by the respondent, it is difficult to accede to the view of the Tribunal that the product will fall within the description contained in the list of exempt goods in Schedule I, more particularly, Entry 21. Entry 21 deals with silk fabric, handloom cloth of all kinds and textiles of several varieties manufactured on power loom excluding items which are described in the Second Schedule. This
C includes cotton fabric of all varieties, rayon or artificial silk fabric, woolen fabric made of a mixture of two or more of the listed fabrics and canvass cloth. It is evident from the work which is carried on by the respondent in its factory that the textile material which is purchased in bulk is cut to the size of a salwar kameez. The court must have regard to the common
D parlance meaning and understanding of the expression 'textile'. Evidently, the respondent cuts the textile material which is then subjected to the work of embroidery on the neck portion. The textile material which is cut may not assume the character of a final article of apparel which can be worn by the consumer because the final work of stitching is not carried out by the respondent. This is done to ensure that the ultimate
E consumer may get the salwar kameez stitched to their specifications and dimensions. What is sold is an unstitched 'suit' and not textile fabric. The important point to note is that as a result of the work which is carried out by the respondent in the factory, the material ceases to be textile within the meaning of Entry 21 and assumes the character of an
F article which has a distinct meaning and description.

13. This leaves the Court with the issue as to whether the view of the Assessing Authority was correct or whether the order of the first appellate authority should be maintained. The Assessing Authority taxed the product under the residuary entry in Schedule V and subjected it to
G at the rate of duty of 12.5%. The First Appellate Authority on the other hand took the view that the product should be classified under Entry 16 of Schedule II and would be subject to the rate of 4%. The residuary entry would be attracted if no other specific entry applies. The appellant had also challenged the order of the first appellate authority before the Commercial Tax Tribunal. Entry 16 of Schedule II refers to bedsheets
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(other than unstitched bedsheets), pillow covers and "other textile made ups". This description in the English version is also in accordance with the text in Hindi.

14. Mr R K Raizada, learned senior counsel appearing on behalf of the appellant submits that the expression "other textile made ups" is not a stand-alone entry, but occurs in the same entry together with bedsheets (other than unstitched bedsheets) and pillow covers. Hence, the learned counsel submitted that the expression "other textile made ups" should be read in conjunction with the other goods which are specified in Entry 16. There is merit in the submission which has been urged, for two reasons. Firstly, the expression in Entry 16 of Schedule II is "other textile made ups". A textile made up is an article which is manufactured or stitched from any type of cloth. In the present case, going by the case of the respondent, the product is unstitched because the ultimate work of stitching the salwar kameez is yet to be performed and is not carried out by the respondent. In the circumstances, the product can certainly not be called as a textile made up. Secondly, the entry "other textile made ups" is not a residuary entry for Schedule II, but is used in conjunction with the expression "bedsheets and pillow covers". The expression "other textile made ups" must be read ejusdem generis with the articles which precede it and should hence comprehend goods of the same class and description. The general entry "other textile made ups" must receive a meaning and connotation bearing in mind the preceding items of Entry 16. Hence, it is not possible to accept the view of the first appellate authority that the product falls within the purview of Entry 16 of Schedule II.

15. In view of the above discussion, the product would fall for classification under Serial 1 of Schedule V which is a residuary entry which covers all goods except those which are mentioned and described in Schedules I, II, III and IV.

16. The High Court declined to exercise its jurisdiction in the revision which was filed by the Department. The High Court was of the view that the factual findings of the Tribunal did not warrant interference. The High Court has manifestly erred in ignoring the plain meaning of the entries in the Schedules to the UP Vat Act 2008 which have been discussed earlier in the course of this judgment.

17. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Single Judge of the Allahabad High

A Court dated 11 September 2019. For the reasons which we have indicated, we are also of the view that the judgment of the Tribunal as well as of the first appellate authority would have to be set aside. The order of the Assessing Authority would stand restored.

18. The appeal shall stand disposed of in the above terms. There B shall be no order as to costs.

19. Pending applications, if any, stand disposed of.

Civil Appeal No 794 of 2021 [Arising out of SLP(C) No 3886 of 2021] &

C **Civil Appeal No 795 of 2021 [Arising out of SLP(C) No 3887 of 2021]**

1. Leave granted.

2. These appeals arise from a judgment and order of the Allahabad High Court dated 11 September 2019 in a batch of three Sales/Trade tax D revisions. The High Court has disposed of the revisions by a common judgment and order. For the reasons which are indicated above while allowing the appeal filed by the Department against the judgment of the High Court, the present appeals shall stand disposed of in terms of the judgment in Civil Appeal No 793 of 2021.

E 3. Pending applications, if any, stand disposed of.

Devika Gujral Appeals disposed of.