(30) Question No. 2, referred to this Court for opinion at the instance of the Revenue, is therefore, returned unanswered with a direction to the Tribunal to verify whether the generator of the assessee was run on wind energy. If that was so, depreciation at 30% would be admissible ; otherwise not.

(31) The two reference petitioners stand disposed of.

S.C.K.

Before Jawahar Lal Gupta and N.C. Khichi, JJ.

STATE OF PUNJAB AND OTHERS,—*Appellants*

versus

M/S PUNJAB FIBRES LTD. AND OTHERS,—*Respondents*

L.P.A. No. 1179 of 1992

31st August, 1998

Punjab General Sales Tax Act, 1948—S. 21(1)—Industries (Development and Regulation) Act, 1951—S.2, Schedule I, Entry 23—Notification, dated 23rd November, 1979—Tax rebate granted on purchase of cotton by textile Mills established on or after 1st December, 1979—"Textile mills" not defined—Assessee manufacturing yarn and fibre—'Textile' whether includes only woven fabric or also spinning yarn—Interpretation—Held, 'textile' includes yarn/fibre—As to admissibility of benefit of notification to only such mills as are established on or after 1st December, 1979 on facts found that production started after 1st December, 1979—Neither incorporation of Company nor registration under Sales Tax Act would constitute establishment of a mill—The Commissioner was not justified in suo motu reopening the order of the Assessing Authority u/s 21(1)—Assessee held entitled to the concession and State appeal dismissed.

Held, that normally the expression 'textile' implies "a fabric made by weaving". However, even 'material' or fibre which is suitable for weaving is also included in the expression 'textile'. Thus, it cannot be said that the first respondent is not running a textile mill merely because it is not producing a woven fabric. Indisputably, the respondent is spinning the yarn. It is producing fibre which is "a material suitable for weaving". Thus, it cannot be said that the respondent has not established a textile mill.

(Para 11)

Further held, that the basic objective of the notification dated 23rd November, 1979 was to ensure a proper return to the farmer. The purpose appears to be to encourage the establishment of units which may utilise the cotton grown in the State. This purpose is amply achieved by the production of yarn as well as fabric. It cannot be said that the yarn produced by the respondent does not serve the purpose for which the notification has been issued.

(Para 13)

Further held, that it is reasonable to infer that 'textile' includes cotton yarn. We do not think that it would be appropriate to give an unduly restricted meaning to the expression 'textile' as used in the notification. It is, accordingly, held that 'textile' includes 'Yarn'/'Fibre'.

(Paras 15 and 17)

Further held, that the incorporation of a Company or the registration as a dealer do not mean that a textile mill has been established. A mill in the very nature of things denotes "a building containing machinery used in some kind of manufacture.......". Neither the incorporation of a company nor the registration as a dealer can constitute the construction of a building with installation of machinery for the manufacture of a product. It is the admitted case that the machinery was installed and the electric connection was granted to the respondent after 1st December, 1979. It was only thereafter that the respondent was in a position to manufacture and that a mill can be said to have been established. Still further, it is the undisputed position that the respondent had started production before 31st December, 1981. Thus, the first part of the contention that the concessional rate of purchase tax was not admissible to the respondent as the mill had been established before 1st December, 1979, cannot be sustained.

(Para 20)

Charu Tuli, DAG, Punjab, *for the Appellants.*

J.K. Sibal, Sr. Advocate with Kumar Sethi, Advocate, *for the Respondents.*

JUDGMENT

JAWAHAR LAL GUPTA, J.

(1) The claim made by respondents Nos. 1 and 2 that they were "entitled to the concessional rate of purchase tax" in accordance with

the notification dated 23rd November, 1979, having been accepted by the learned Single Judge, the State of Punjab and its officers have filed these three Letters Patent Appeals. A few facts may be briefly noticed.

(2) The first respondent was registered as a company on 16th February, 1979. It entered into an agreement with the Punjab State Industries Development Corporation for setting up a textile unit for the manufacture of yarn. On 26th September, 1979, the company was registered as a dealer under the Punjab General Sales Tax Act, 1948. It was granted a licence under the Central Excise Rules, 1944 "to manufacture cotton yarn—all sorts" on 12th May, 1981. The company was "registered under Section 2(1) of the Factories Act, 1948" on 25th May, 1981. In the meantime, the respondent had applied for a power connection on 22nd December, 1979. It was sanctioned by the Punjab State Electricity Board on 24th July, 1980. The tariff bill was raised on 11th September, 1980. Permission for installation of a Diesel Generator was given *vide*,—letter dated 17th March, 1981. However, the actual power connection was granted by the Board on 18th July, 1981.

(3) The respondent bought the "first lot of cotton as raw material in March 1981." The trial run of the factory was conducted in April 1981. The production commenced on 12th May, 1981. The yarn manufactured at the factory had left the premises on 8th June, 1981.

(4) The respondent was assessed for the payment of sales tax. The assessment for the year 1981-82 was made by the assessing authority,—*vide* order dated 18th February, 1983. An additional demand of Rs. 99,089 was created. However, on 11th March, 1983, the order was rectified. After appeal etc., the assessment was finalised by the assessing authority,—*vide* order dated 3rd February, 1986. The "total tax assessed including interest and penalty" was Rs. 2,80,738.90. The respondent-company had deposited Rs. 2,91,281.37. An amount of Rs. 10,542 was ordered to be refunded. Thereafter, the assessment for the year 1982-83 was finalised,—*vide* order dated 19th March, 1986. A copy of the assessment order is at Annexure P.8 with L.P.A. No. 1179 of 1992.

(5) The Joint Excise and Taxation Commissioner, Punjab invoked his *suo motu* powers under Section 21(1) of the Act and initiated proceedings to examine the legality and propriety of the order dated 19th March, 1986 passed by the Assistant Excise and Taxation Commissioner, Ropar for the assessment year 1982-83. *Vide* order dated 22nd August, 1989, it was held that the mill "was established prior to 1st December, 1979.......only those mills which are covered under the

proviso of the notification i.e. which are established on or after 1st December, 1979 are entitled for concessional rate of tax". It was further held that "by transferring the yarn outside the State, the respondent-dealer had not complied with the restrictions imposed under the said notification". Thus, the order passed by the assessing authority on 19th March, 1986 for the assessment year 1982-83 was set aside. It was directed that a fresh assessment by levying tax @ 4% on the cotton purchased by the mill shall be made. The respondent filed a revision petition which was dismissed by the Sales Tax Tribunal,—*vide* its order dated 30th April, 1990. Copies of the two orders are appended as Annexures P.9 and P.12 with the writ petition. Thereafter, a fresh order was passed on 27th November, 1989. It was held that the respondent was liable to pay tax including interest to the tune of Rs. 6,37,439. Aggrieved by this order, the respondent had filed Civil Writ Petition No. 10147 of 1990. The petition having been allowed, the State has filed the present Letters Patent Appeal. Similar orders had also been passed in respect of the years 1981-82 and 1983-84. These three appeals relate to the orders of assessment passed in respect of these years.

(6) The basic controversy in these cases revolves around the notification dated 23rd November, 1979. A copy of this notification has been produced as Annexure P.7 on the record. This notification reads as under :—

"The 23rd November, 1979. No. S.O.82/PA.46/48/S.5/Amd./79. In exercise of the powers conferred by sub-section (1) of Section 5 of the Punjab General Sales Tax Act, 1948 (Punjab Act No. 46 of 1948) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following further amendment in the Punjab Government Excise and Taxation Department Notification No. S.O. 26/P.A./46/S.5/72 dated the 10th August, 1972 namely :—

AMENDMENT

In the said notification after the proviso to item 4, the following further provisio shall be added namely :—

"Provided further that the rate of purchase tax on cotton shall be two paise in a rupee on the purchases made by the textile mills established on or after the first December, 1979 for a period of five years to be reckoned from the aforesaid date subject to the following conditions :—

(i) that these mills shall start production by 31st December, 1981; and

(ii) that these mills shall not despatch yarn in the course of inter-state transaction on consignment basis or through ex-state commission agents'."

(7) Mrs. Tuli, learned counsel for the appellants has contended that the respondent is not a textile mill. It has only a licence to manufacture cotton yarn. Being a spinning mill, the respondent is not entitled to the tax rebate as admissible under the notification dated 23rd November, 1979. Learned counsel has further contended that the respondent had made consignment sales. Having done that, it had become ineligible to claim the tax rebate.

(8) The claim made on behalf of the appellants was controverted by the learned counsel for the respondent. It was contended that the respondent is a textile mill. The authorities have not rejected the respondent's claim on the ground that it is not a textile mill. Still further, it was pointed out that in respect of the sales made by the respondent, the authorities had imposed the tax at the prescribed rate.

(9) The two questions that arise for consideration are :—

(i) Is the respondent a textile mill ?

(ii) Is the respondent entitled to the concession in the matter of levy of purchase tax under the notification dated 23rd November, 1979 ?

Reg. : (i)

(10) The expression 'textile' has not been defined under the Punjab General Sales Tax Act, 1948. However, it finds mention in Schedule B. Entry 30 provides that "all varieties of cotton, woollen or silken textiles..........." are tax free. Still further, even the notification does not define a "textile mill". In this situation, it is inevitable to refer to the dictionary. According to the New Lexicon Webster Dictionary, 'textile' *inter alia* means— "woven; suitable for weaving; pertaining to weaving; a woven fabric; a fibre suitable for weaving." In Corpus Juris Secundum, 'textile' has been described as under :—

"As a noun, a fabric which is or may be woven; a fabric made by weaving; a woven fabric, or a material suitable for weaving; textile material.

As an adjective, of or pertaining to weaving or woven fabrics; such as may be woven; manufactured by weaving; as, wool is a textile fabric; cloth is a textile fabric."

(11) From the above, it appears that normally, the expression 'textile' implies "a fabric made by weaving". However, even 'material' or fibre which is suitable for weaving is also included in the expression 'textile'. Thus, it cannot be said that the first respondent is not running a textile mill merely because it is not producing a woven fabric. Indisputably, the respondent is spinning the yarn. It is producing fibre which is "a material suitable for weaving". Thus, it cannot be said that the respondent has not established a textile mill.

(12) It also deserves mention that initially, the present appellants had accepted the claim of the respondent-company with regard to the admissibility of the concessional rate of tax. Thereafter, even when *suo motu* action under Section 21(1) of the Act was initiated, it was not held that the respondent-assessee had not established a textile mill. When the respondent had filed a revision before the Sales Tax Tribunal, an argument was raised that the "assessee firm is not a textile mill". However, no finding adverse to the assessee was recorded. The orders passed by the authorities under the Act have to be justified on the grounds stated therein. In the absence of a positive finding that the respondent has not established a textile mill, the claim made on behalf of the appellants cannot be sustained.

(13) It also deserves mention that on a perusal of the notification dated 23rd November, 1979, it appears that its basic objective, was to ensure a proper return to the farmer. The purpose appears to be to encourage the establishment of units which may utilise the cotton grown in the State. This purpose is amply achieved by the production of yarn as well as fabric. It cannot be said that the yarn produced by the respondent does not serve the purpose for which the notification has been issued.

(14) Mr. Sibal also referred to the provisions of the Industries (Development and Regulation) Act, 1951. Section 2 declares that it is expedient in public interest that the Union should take under its control the industries specified in Schedule I. In the said Schedule, Entry 23 relates to 'textiles'. It reads as under :—

"23. TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROGRESSED)

(1) made wholly or in part of cotton, including cotton yarn, hosiery and rope;

(2) made wholly or in part of jute, including jute twine and rope;

(3) made wholly or in part of wool, including wool tops, woolen yarn, hosiery, carpets and druggets;

(4) made wholly or in part of silk, including silk yarn and hosiery.

(5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

(15) From the above, it seems reasonable to infer that 'textile' includes cotton yarn.

(16) It also deserves notice that in exercise of powers conferred by Section 3 of 'Essential Supplies (Temporary Powers) Act, 1946, 'the Central Government had issued the 'Cotton Textile (Control) Order, 1948'. It was contended by the counsel for the appellants with certain amount of plausibility that for the purposes of granting permission to "acquire or install any spindle to be worked by power", the Textile Commissioner has to keep in view "the requirements of yarn in India". Still further, in Clause 20, it was provided that the Textile Commissioner may from time to time issue directions "to any manufacturer......regarding—the classes or specifications of cloth or yarn which each manufacturer......shall manufacture". Learned counsel further pointed out that this order was replaced by the Textile (Control) Order, 1986. Still, the provisions were almost identical. On an examination of these provisions, it appears that the manufacture of yarn has been regulated by the provisions of the 'Cotton textiles orders' from time to time.

(17) Besides the above, it may also be mentioned that while construing expressions used in a taxing statute, the meaning given to the particular item in the trade or business is relevant. In the present case, the assessing authority as well as the appellate authority have not construed the provisions of the notification so as to exclude spinning from the purview of the notification dated 23rd November, 1979. In such a situation. We do not think that it would be appropriate to give an unduly restricted meaning to the expression 'textile' as used in the notification. It is, accordingly, held that 'textile' includes 'yarn'/fibre.

(18) Thus, the first question is answered against the appellants and in favour of the assessee.

Reg. : (ii)

(19) It was contended on behalf of the appellants that the respondent is not entitled to the concession admissible under the

notification as it had not been established on or after December, 1979. It was further contended that the mill was not entitled to the conessional rate of purchase tax as it had despatched yarn in the course of *inter-state* transaction on consignment basis. Is it so?

(20) The sequence of events has been noticed above. It is undoubtedly correct that the first respondent was registered as a Company on 16th February, 1979. It was registered as a dealer under the Punjab General Sales Tax Act on 26th September, 1979. However, the incorporation of a company or the registration as a dealer do not mean that a textile mill has been established. A mill in the very nature of things denotes "a building containing machinery used in some kind of manufacture......." Neither the incorporation of a company nor the registration as a dealer can constitute the construction of a building with installation of machinery for the manufacture of a product. It is the admitted case that the machinery was installed and the electric connection was granted to the respondent after 1st December, 1979. It was only thereafter that the respondent was in a position to manufacture and that a mill can be said to have been established. Still further, it is the undisputed position that the respondent had started production before 31st December, 1981. Thus, the first part of the contention that the concessional rate of purchase tax was not admissible to the respondent as the mill had been established before 1st December, 1979, cannot be sustained.

(21) It was then contended that the respondent had become disentitled to the concession under the notification as it had despatched yarn in the course of *inter-state* transaction on consignment basis.

(22) The claim made on behalf of the appellants was controverted by the counsel for the respondents. It was contended that no record had been produced in this behalf and that in the absence of a specific plea, the concession cannot be denied.

(23) Irrespective of this controversy, we find that the assessing authority,—*vide* its order dated 19th March, 1986 had taken the view that the assessee was liable to be taxed @ 4% on the purchase of cotton which was "used in the manufacturing of yarn sold on consignment basis/Ex-State Agents etc." The tax had accordingly been levied. This was a possible view. The notification being under a taxing statute had to be construed strictly. The view taken by the assessing authority being a possible one, there was no impropriety or illegality so as to entitle the authority to reopen the matter. In any event, the plea taken by the assessee having been established by the learned Single Judge, we are reluctant to interfere in the matter at the stage of the Letters Patent Appeal.

(24) Thus, even the second question is answered against the appellants.

(25) In view of the above, all the three appeals are dismissed. No costs.

R.N.R.

Before Jawahar Lal Gupta, J.

GURPAL SINGH AND ANOTHER,—*Appellants*

versus

JAGAN NATH AND OTHERS,—*Respondents*

F.A.O. No. 1730 of 1995

25th January, 1999

Motor Vehicles Act, 1988—Bus over-loaded—Passenger pushed out of the bus by the conductor—Negligence of the owner—Liability of the Insurance Company.

Held, that merely because the bus was over-loaded, the Tribunal was not entitled to absolve the Insurance Company of its liability. It is only when the owner or his representative is negligent that the third party's right to claim compensation arises. Once the negligence is established, the Insurer's liability follows. In the present case, it is clear that the passenger had died as the conductor had pushed him out of the bus. There was an act of negligence on the part of the employee of the owner. For this, the owner was liable to pay the compensation. Since the owner was duly insured, the insurer cannot be absolved of its liability merely because a few extra passengers were alleged to have boarded the bus.

(Para 8)

P.S. Dhaliwal, Advocate, *for the Appellants*

H.S. Giani, Advocate, *for respondent No. 9*

JUDGMENT

Jawahar Lal Gupta, J (O)

(1) On 1st August, 1989, Dharam Pal along with his wife Smt. Krishna Devi boarded bus No. PUC-4717. He was to travel from village