(1979) 11 MAD CK 0022

In the Madras High Court

Case No : T.C. No. 941 of 1979 (Revision No. 300 of 1979)

A.H.K. and Company APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 14-11-1979

Acts Referred:

Citation : (1980) 46 STC 117

Hon'ble Judges : M.M. Ismail, C.J;Ratnam, J

Bench : Division Bench

Advocate : R. Gangadharan, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Ismail, C.J.—This is a petition to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore,

dated 20th December, 1978, made in T. A. No. 84 of 1978. The question considered by the Tribunal was a very short one. The petitioner herein

entered into an agreement with Gwalior Rayons Silk Manufacturing Company Limited for selling certain quantities of approved firewood as per the

specifications agreed to between the parties. The specifications agreed to between the parties have been extracted in the order of the Appellate

Assistant Commissioner. The petitioner claimed that what was sold to Gwalior Rayons Silk Manufacturing Company Limited was only firewood

and, therefore, was exempt from sales tax and that the fact the buyer utilised the same as raw material for the manufacture of rayon will not in any

way alter the character of the goods sold by him. Having regard to the facts of this case, we are unable to accept this contention. Even though the

agreement entered into between the parties describes the goods as ""approved firewood"", still the specifications for the supply of the goods clearly

indicate that neither party intended that the goods should be sold or bought only as firewood. In view of this, we are not able to accept the

contention of the learned counsel for the petitioner. However, the learned counsel for the petitioner relied on a decision of this Court in Standard

Fire Works Industries v. State of Tamil Nadu [1977] 40 S.T.C. 403. That case dealt with an entirely different set of facts. In that case, ""hand

grenades"" and ""bicat strips"" were sold by the petitioner therein to the Government of India, Civil Armaments Division, to be used in the training of

army personnel. The question that came to be considered was whether those ""hand grenades"" and ""bicat strips"" came within the definition of the

term ""all arms including rifles, revolvers, pistols and ammunition for the same"". While holding that the expression ""all arms"" found in the entry was

capable of taking in the ""hand grenades"" and ""bicat strips"" sold by the petitioner therein to the Government of India, Civil Armaments Division, to

be used in the training of army personnel, this Court pointed out :

When an article is referred to in a statute by its generally known name and not with reference to its use, then the question whether a particular

article falls within the said description given in the statute has to be decided without reference to the actual use to which the assessee puts it and

even if the use is to enter into the calculation at all, it must be that use to which it is normally put and not the special use to which the particular

assessee puts it. Certainly, ''hand grenades'' and ''bicat strips'' can be used as weapons of offence or defence.

2. We are of the opinion that, the abovesaid observation will have no application to the facts of this case, having regard to the fact that the parties

entered into a contract giving minute details as to the specifications of the articles to be supplied by the petitioner to Gwalior Rayons Silk

Manufacturing Company Limited, and if the articles were to satisfy those specifications, certainly that could not be called firewood at all. Hence,

the revision fails and is dismissed.

