

(1984) 01 MAD CK 0018

In the Madras High Court

Case No : Tax Case (Revision) No. 223 of 1978

Associated Pharmaceutical Industries Private Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 7A, 7A(1)

Citation : (1986) 63 STC 316

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : A. Moiz, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—In this tax revision case filed by the assessee the ambit and scope of section 7-A(1)(a) and (b) of the Tamil Nadu General

Sales Tax Act comes up for consideration.

2. The assessee is pharmaceutical company manufacturing drugs and syrups. During the assessment year 1975-76 the assessing authority found

that the assessee had purchased empty bottles and dealwood cases to the extent of Rs. 30,578.99 during the period from 15th July, 1975, to 31st

March, 1976. This turnover was brought to charge u/s 7-A of the Act along with the admitted taxable turnover. Aggrieved by the order of the

assessing authority including the sum of Rs. 30,578.99 being the purchase value of empty bottles and dealwood cases, the assessee filed an appeal

before the Appellate Assistant Commissioner. That appeal having been dismissed, the assessee took the matter in appeal before the Tribunal. The

Tribunal had sustained the levy of tax on the said sum of Rs. 30,578.99 on the ground that the purchases of empty bottles will come u/s 7-A(1)(a)

of the Act and the purchase of dealwood boxes will fall u/s 7-A(1)(b) of the Act. Therefore the assessment made on the said turnover u/s 7-A by

the assessing authority was justified. Before us, the assessee challenges the view taken by the Tribunal.

3. According to the assessee, the Tribunal is in error in treating the user of the empty bottles purchased for packing medicines as amounting to

consumption so as to come within the provision of section 7-A(1)(a). He also contends that the Tribunal is in error in treating the purchase of

dealwood cases which are used for packing the bottles and despatching them to the purchasers will amount to disposal of the goods in any manner

otherwise than by way of sale coming within the provision is section 7-A(1)(b). According to the learned counsel for the assessee the user of the

bottles as container for the medicine manufactured by the assessee can never be treated as consumption as the bottles are used as containers only

after the manufacturer of the drugs or syrups and that such user cannot amount to consumption of the bottles in the manufacturer of goods as

contemplated in section 7-A(1)(a) of the Act and so far as the dealwood boxes are concerned, that the goods manufactured by the assessee are

despatched to the purchasers after packing in dealwood boxes and therefore, the dealwood boxes should be taken to have been sold along with

the manufactured goods and therefore, it should be taken to be a sale and not a disposal of goods otherwise than by way of sale and therefore, the

purchases of dealwood boxes will not fall within section 7-A(1)(b) of the Act as has been held by the Tribunal. A perusal of the order of the

Tribunal shows that the Tribunal was of the view that the process of manufacture is complete only when the drugs are bottled in a particular size of

bottles and therefore, the bottles which are used as containers for filling up drugs or syrups should be treated to have been used up in the process

of manufacture, though physically they may not lose their shape and get destroyed during the process of manufacture. But we are of the view that

the Tribunal is not right in saying that the process of manufacture is complete only when the drugs or syrups are bottled in particular size of bottles.

It may be that without bottling drugs and syrups manufactured cannot conveniently be sold. But that is not a reason for holding that the process of

manufacture of drugs and syrups is not complete unless they are bottled or put in suitable containers. We cannot therefore agreed with the Tribunal

that the process of manufacture is complete only when the drugs or syrups are bottled in particular size of bottles and therefore, the bottles should be treated to have been used up in the process of manufacture. The expression ""consumed"" has come up for judicial consideration in many decided cases particularly, in a recent judgment of the Supreme Court in State of Karnataka Vs. B. Raghurama Shetty and Others, and also in a decision of this Court in State of Tamil Nadu v. Subbaraj and Co. [1981] 47 STC 30. Dealing with the question whether it could be said, when the paddy is converted into rice by milling, that the paddy has been consumed in the process of manufacture of rice. The Supreme Court in the course of its judgment expressed the view that the consumption in the true economic sense does not mean only use of goods in the production of consumers' goods or final utilisation of consumers' goods by consumers and that a manufacturer also consumes commodities which are ordinarily called raw materials when he produces semi-finished goods which have to undergo further processes of production before they can be transformed into consumers' goods. Even if consumption is taken to mean any use of goods in the production of the consumers, we do not see how the container which is used for packing the materials produced could be taken as goods consumed in the production of manufacture of an article. In that case the Supreme Court had to consider the expression ""consumed"" occurring in section 6(1) of the Karnataka Sales Tax Act, 1957, similar to section 7-A of the Tamil Nadu General Sales Tax Act. It may be however wide the expression ""consumed"" is understood, it will not take in the use of an article for transportation after manufacture as in this case. In the said case, the Supreme Court has referred to its observation in Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others, which is as follows :

The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities". Consumption consists in the act of taking such advantage of the commodities and services

produced as constitutes the "utilisation" thereof. For each commodity, there is ordinarily what is generally considered to be the final act of

consumption. For some commodities, there may be even more than one kind of final consumption. Thus grapes may be "finally consumed" by

eating them as fruits; they may also be consumed by drinking the wine prepared from "grapes". Again the final act of consumption may in some

cases be spread over a considerable period of time. Books, articles of furniture and paintings may be mentioned as examples. It may even happen

in such cases that after one consumer has performed part of the final act of consumption, another portion of the final act of consumption may be

performed by his heir or successor-in-interest, a transferee, or even one who has obtained possession by wrongful means. But the fact that there is

for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at

which this final act of consumption takes place the commodity may pass through different stages of production and for such different stages, there

would exist one or more intermediate acts of consumption.

In the above passage the expression ""consumption"" has been understood to have various shades of meaning and it cannot be restricted to a

particular act of using up or consumption. Even applying the wide tests of the above decision in *Anwarkhan Mahboob Co. Vs. The State of*

Bombay (Now Maharashtra) and Others, we are not in a position to hold in this case that the user of the bottles which had been produced by the

assessee for filling up the medicine or syrup manufactured by them can be taken to be consumption of the bottles in the manufacture of drugs and

syrup. Admittedly, the bottles have not lost its identity and it continues to be a bottle even after it is used for packing the drugs or syrup. Even after

the bottles have been filled up by the drugs or syrup, they continued to be the same properties. The fact that the drug or the syrup is filled in bottled

does not mean that the bottles were used in manufacture of syrup or drugs.

4. In *State of Tamil Nadu v. Subbaraj and Co.* [1981] 47 STC 30, a Division Bench of this Court had to consider the scope of the expression

consumed"" occurring in section 7-A(1)(a) and the court observed that the very use of the word ""consumed"" in section 7-A(1)(a) of the Tamil

Nadu General Sales Tax Act, 1959, contemplates that the goods purchased

should have been devoured or exhausted in the process of manufacture with the result that the identity of the goods has been completely lost and that so long as the identity of the goods remained, the goods purchased and used in the manufacture of some other goods cannot be said to have been consumed in the process of manufacture of other goods.

In that case, the assessee bought raw bones and converted them into crushed bones by a process of breaking the bones in a disintegrator into pieces of 3/8" and 5/8" bones and that in the process of breaking the bones into pieces the assessee obtained bone grist, bone-meal, fluff horns and hoof which were sold locally. The question arose whether the purchase of raw bones and the end-products will attract tax u/s 7-A(1)(a) of the Act and the court held that the said provision was not attracted, as there had been no consumption of the goods purchased in the manufacture of other goods. In that case reference has been made to the decision of the Supreme Court in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, . In that case the Supreme Court while dealing with the scope and ambit of section 5A(1)(a) of the Kerala General Sales Tax Act which corresponds to section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act had to consider the expression "consumed" occurring in section 5A(1)(a) of the Kerala Act. The Supreme Court observed that there are several criteria for determining whether a commodity is consumed in the manufacture of another commodity and that the generally prevalent test is whether the article produced is regarded in the trade by those who deal in it, as distinct in identity from the commodity involved in its manufacture. The Supreme Court proceeded to observe further as follows :

Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no

essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity. The decision of the Supreme Court in that case which has been followed by this Court in *State of Tamil Nadu v. Subbaraj and Co.* [1981] 47 STC 30 squarely applies to the facts of this case. Here, the identity between the original commodity and the end-product is intact even after the bottles are filled up with drug or the syrup manufactured by the assessee and even after the consumption of the drug or the syrup the bottles continue to have their own identity. "On the facts of this case, the bottles can never be said to have been used or consumed in the manufacture of medicines, drugs or syrups, as the bottles do not play any part in the manufacturing process either as raw material or otherwise." We have to, therefore, disagree with the Tribunal and hold that in this case the bottles purchased by the assessee cannot be said to have been consumed in the manufacture of drugs or syrups. Therefore, the purchase turnover of empty bottles cannot be brought to charge u/s 7-A(1)(a) of the Tamil Nadu Act.

5. Coming to the purchase turnover of dealwood boxes, it is seen that the Tribunal has taken the view that though the dealwood boxes had not been sold for a separate price, they have been treated as packing materials by the assessee for despatch of medicines or syrup manufactured by them and, therefore, they should be taken to have been disposed of in dealwood boxes in a manner other than by way of sale in the State. Therefore, the purchase turnover has come within the scope of section 7-A(1)(b) of the Tamil Nadu Act. Here again we are not in a position to agree with the view taken by the Tribunal. The assessee has purchased the dealwood boxes and used the same for the purpose of packing the bottles containing drugs and syrups, which have been sold by the assessee, though the dealwood boxes are not the subject-matter of a separate bargain they should be taken to have been sold along with the drugs and syrups manufactured by the assessee. The assessee-company, a dealer, would have taken into consideration while fixing the price for the drugs or syrups sold the value of dealwood boxes which are used as packing

materials. Therefore, the packing materials, the dealwood boxes, which have been used should be deemed to have been taken to be as packing materials along with the articles sold. Therefore, the dealwood boxes purchased by the assessee should be taken to have been sold as part of the sale of manufactured articles. It cannot be said that the assessee agreed to part with the property in the packing material when the property in the packing material has passed from the assessee to the purchaser along with the drug or syrup sold by them in a packed condition. Therefore, it should be taken to be a sale of packing materials and not a disposal other than by way of sale as has been held by the Tribunal. The decision of the Kerala High Court in *Moncompu Egg Store v. State of Kerala* [1981] 48 STC 518 supports the view we have taken in relation to the dealwood boxes. In that case, the assessee was a dealer in eggs which were sold by it in inter-State commerce. To send the eggs properly packed packing materials were purchased by the assessee from parties outside the State and admittedly no tax was paid on the sales of packing materials effected to the assessee. The eggs sold by the assessee were exempt from tax under the Central Sales Tax Act, 1956. The bills showed packing charges separately. The question arose whether the purchase of packing materials should be brought to charge u/s 5A of the Kerala General Sales Tax Act, 1963, which corresponds to section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act. The court held that the fact that the bills showed packing charges also indicated the intention of the parties that the goods should be despatched properly packed. In such a case even though the agreement did not particularly spell out the transfer of property in the packing materials, the property passed along with the goods sold and therefore there was a sale of packing materials attracting the exception in section 5A(1)(c) of the Kerala Act and the assessee would not be liable to pay tax on the packing materials used for despatch of eggs in inter-State trade or commerce, and therefore, the purchase value of the packing materials should not be brought u/s 5A of the Kerala Act. Though that case dealt with the scope of section 5A(1)(c) of the Kerala Act which corresponded to section 7-A(1)(c) of the Tamil Nadu Act, the reasoning given in that case squarely applies to this case. Apart from saying that the charge of packing materials made in the bills indicated the intention of the parties that the goods should be despatched properly packed it did not

spell out the transfer of property therein. The learned Judge in that decision has further observed that packing material by themselves may not be of value to the purchaser and so long as parties do not contemplate return of the packing materials it is implied in the terms of sale that the purchaser of the eggs obtains the property in packing material and it is by reason of the performance of the contract by the assessee in selling the eggs to the purchaser that the property in the goods in the form in which it reaches the purchaser passes to him. In this case also, as already stated there is no separate bargain for payment of the packing materials. There is also no agreement between the parties providing for the return of the packing materials. Therefore, it should be taken that along with the articles sold that property in the packing materials has also passed from the assessee to the buyer. Therefore, there is a sale of packing materials involved in the sale of the drugs and syrups sold by the assessee. Though there is no separate sales of packing materials as such we can infer a sale of packing materials as the property in the goods passes along with the articles agreed to be sold. In this case, therefore, when we infer a sale of packing materials it is not possible to say that there is a disposal of the goods of the packing materials in any manner other than by way of sale in the State. Therefore, the purchase of packing materials such as dealwood boxes will not fall u/s 7-A(1)(b) of the Tamil Nadu Act as has been held by the Tribunal. Thus, in respect of the turnover relating to empty bottles as well as dealwood boxes we have to hold that section 7-A(1) of the Tamil Nadu General Sales Tax Act cannot be applied.

6. The result is the order of the Tribunal is set aside and the assessment of the turnover of Rs. 30,578.99 is set aside. There will be no order as to costs.

7. Petition allowed.