(1991) 04 MAD CK 0077

In the Madras High Court

Case No : Tax Case (Appeal) No. 1616 of 1981

A.V. Ponniah and Sons APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 34, 4, 5, 7A

Citation : (1991) 82 STC 390

Hon'ble Judges : A.S. Anand, C.J;Doraiswamy Raju, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This is an assessee''s appeal against the order passed by the Joint Commissioner of Commercial Taxes in a suo motu revision of the order of the Appellate Assistant Commissioner, Tiruchirappalli.

2. The controversy in this appeal relates to the purchases of dried plantain barks for Rs. 46,341 by the dealer from non-assessees in circumstances in which no tax was payable u/s 3, 4 or 5 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter referred to as "the Act") and which material was utilised by the dealer for packing snuff. The assessing authority considered the turnover of Rs. 46,341 as liable to purchase tax u/s 7-A of the Act. The dealer preferred an appeal against the order of assessment before the Appellate Assistant Commissioner. On the question of the assessment u/s 7-A on the purchase turnover of dried plantain bark, the Appellate Assistant Commissioner set aside the assessment. In exercise of the power u/s 34 of the Act, the Joint Commissioner, after issuing notice to the dealer, suo motu revised the order of the Appellate Assistant Commissioner, and setting aside the order of the Appellate Assistant Commissioner after hearing the parties, restored that of the assessing authority. Hence this appeal.

3. Was the packing material disposed of by the assessee otherwise than by way

of sale in the State is the only forensic issue requiring our consideration.

4. Section 7-A(1)(b) of the Act provides that every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, the sale or purchase of which is liable to tax under the Act on such circumstances in which no tax is payable u/s 3, 4 or 5 as the case may be, and disposes of such goods in any manner other than by way of sale in the State, shall pay tax on the turnover relating to the purchase at the rate mentioned in section 3, 4 or 5 as the case may be, whatever be the quantum of such turnover in a year. The case of the assessee before the appellate authority and Joint Commissioner was that the assessee purchased the dried plantain barks from agriculturists and packed snuff in the dried plantain bark and sold the same, and since the packing material was a necessity for effecting the sale of snuff, the value of the packing material was also reckoned with while fixing the sale price of the snuff sold. Admittedly it is nobody''s case that the packing material in the instant case was sold separately. According to the assessee, keeping in view the nature of the transaction, the price of the packing material was also included in the price of the snuff and therefore the packing material could be deemed to have been sold along with the snuff, and if that be so, it would be obvious that the packing material was sold along with the snuff and not "disposed of other than by way of sale". The Joint Commissioner as well as the assessing authority did not find on facts that the assessee had not included the price of the packing material in the price of the snuff sold by the assessee. Merely because there was no agreement for the return of the packing material, it would not give rise to the inference that the packing material had been disposed of other than by way of sale. Unless it was found on facts that the cost of the packing material had not been included in the sale price of the snuff, the provisions of section 7-A(1)(b) of the Act would not be attracted. Whether the packing material has been sold along with the product or separately or disposed of other than by way of sale are all questions of fact which have to be determined having regard to the nature and ingredients of the product sold. It is therefore manifest that the question as to whether the packing material has been sold and the sale price included while reckoning the price of the commodity or merely transferred without consideration depends upon the nature of the transaction and not necessarily only upon the contract between the parties. The fact that the packing material is of insignificant value in relation to the value of the contents which is essential for effecting the sale of the commodity concerned would also go to show that the stand of the assessee that while reckoning the price of snuff, it had taken into account and included in the price the expenses involved in packing the snuff, is both sound and logical. Keeping in view the nature of the transaction in the instant case, that is the sale of snuff which necessarily had to be sold in a packed form as is adverted to by the assessee and the inclusion of the price of the packing material in the price of the snuff sold, in the absence of any evidence to the contrary, the case of the assessee has to be accepted. When we accept it, it becomes abundantly clear and perfectly plain that section 7-A(1)(b) of the Act would have

no application to the transaction in question. The answer to the question posed by us in the earlier part of this judgment would, therefore, have to be in the negative. The Joint Commissioner fell in error in setting aside the order of the Appellate Assistant Commissioner and restoring that of the assessing authority.

5. This tax appeal succeeds and is allowed. The order of the Joint Commissioner is set aside and that of the Appellate Assistant Commissioner is restored. No costs.

6. Appeal allowed.