(1991) 09 MAD CK 0077

In the Madras High Court

Case No : T.C. (Revision) No. 1199 of 1982 (Revision No. 398 of 1982)

C. Rathinam APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17, 17(1)

Citation : (1991) 09 MAD CK 0077

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

Bench : Division Bench

Advocate : Smt. Chitra Venkataraman, for the Appellant; D. Srinivasan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The point at issue and involved in this tax (revision) case filed by the assessee, against the order of the Tamil Nadu Sales Tax Appellate Tribunal, Coimbatore, dated 26th July, 1982 is, whether the sale of mixture of articles which are exempt is exigible to tax ?

2. According to Mrs. Chitra Venkataraman, learned counsel for the petitioner, since the various articles, the mixture whereof only is sold by the assessee under the brand name of "J.K. Feed" are exempt from levy of sales tax, the mixture cannot be subjected to sales tax, particularly when the said mixture does not bring into existence a commodity which is commercially different as not to fall within the purview of the exemption notification.

3. The assessee, is a registered dealer, who during the assessment year 1979-80 purchased rice bran, wheat bran, toor dust, uriod dust, green gram dust, cholam, ragi and avarai dust and salt and after powdering them and mixing them together sold the mixture under the brand name "J.K. Feeds". The assessee did not file the return, as according to the assessee, the sale of the mixture of the exempted articles would also stand exempt. The sales tax authorities, however, found that the assessee was not eligible for exemption and consequently the sales by the assessee were taxed and even penalty was levied u/s 12(5)(ii) of

the Tamil Nadu General Sales Tax Act, 1959, for belated submission of the return. The plea of the assessee that the sale of the items mixed by the assessee did not involve manufacturing activity or bring into existence any new product, and therefore, the mixture was not exigible to tax, was not accepted. The assessee went up in appeal before the Appellate Assistant Commissioner, who dismissed the same on the ground that since the assessee mixed the items which were exempt, but sold a compounded mixture, the benefit of exemption could not be extended. The second appeal before the Sales Tax Appellate Tribunal also met with the same fate. Hence the revision.

4. Facts are not in dispute. Notification dated 4th of March, 1974, is the basic notification. It reads thus :

"In exercise of the powers conferred by sub-section (1) of section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable by any dealer under the said Act on the sale of -

(1) bangles (other than those made wholly or partly of any metal),

(2) cattle feed, and

(3) firewood."

5. This notification was subjected to an amendment on 23rd March, 1974 and the amended notification reads as under :

"In item (2) in the said notification, for the expression ''cattle feed, and'' the following shall be substituted, namely :-

''cattle feed, namely, rice bran or wheat bran, or husk and dust of pulses and grams, but excluding -

(i) brokens of pulses and grams;

(ii) oil-cakes, and

(iii) cotton seeds, and''."

It appears that a further amendment was made to this notification on 11th December, 1974. According to that notification :

"In the said notification, for the words ''Cattle feed, namely, rice bran or wheat bran or husk and dust of pulses and grams'', the words ''Cattle feed, namely, hay or straw or rice bran or wheat bran or husk and dust of pulses and grams'' shall be substituted."

6. On 12th of April, 1979, there has been a further amendment and the amendment notification runs as follows :

"In exercise of the powers conferred by sub-sections (1) and (3) of section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), the

Governor of Tamil Nadu hereby makes the following amendment to the Revenue Department Notification No. II(1)/Rev/386(g)/74 dated the 4th March, 1974, published in Part II - Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated the 4th March, 1974, as subsequently amended :

AMENDMENT. - In the said notification, for item (2), the following item shall be substituted, namely :-

''(2) hay or straw, green grass, rice bran, wheat bran and husk and dust of pulses and grams''."

Sale of common salt stands also exempted, whether used for domestic or industrial purposes.

7. The assessee has been selling the mixture under the brand name of "J.K. Feeds" comprising of the following ingredients : "rice bran, wheat bran, dust of pulses and gram, cholam, ragi and salt". Vide Notification dated 29th March, 1966, with effect from 1st April, 1966 cholam and ragi were also exempted from payment of sales tax in addition to various other items. Thus, all the ingredients which went into the mixture stood exempted from time to time by one or the other notification. The assessee merely mixed all those ingredients for the facility of consumers. In our opinion, the said mixture of ingredients did not bring into existence any new commodity which could result in the levy of sales tax on the mixture. Looking into the process involved in the preparation of the mixture, namely, powdering and mixing, it cannot be said that the said mixing of the ingredients gave rise to the emergence of a commercially new commodity which had totally lost its identity. The statutory authorities denied the benefit of the exemption to the assessee on the ground that apart from the exempted items, the mixture included also cholam, ragi and uriod dust. The authorities appear to have been labouring under an impression that cholam, ragi and uriod dust were not exempted. That is not factually correct. We have already referred to the exemption notification whereunder cholam, ragi and uriod dust which is only the dust of pulses, stand exempted. Therefore, the sale of the compounded mixture comprised only of ingredients, which were exempted from levy of sales tax and we do not see any justification for the levy of sales tax on that mixture.

8. In Sree Ramakrishna Cattle-feed Manufacturers v. Commercial Tax Officer [1990] 76 STC it has been held that the mere admixture of the commodity which stood exempted by an admixture of molasses or salt or both with them, would not exclude the resultant commodity from the exemption expressed in the amendment Notification dated 12th April, 1979. That judgment fully supports the view that we have taken.

9. Again in State of Tamil Nadu v. S. V. S. Natarajan and Sons [Tax Case (Revision) Nos. 153 and 154 of 1991 decided on 3rd April 1991 [Reported in [1992] 84 STC 581 it was observed by the Bench that the mere mixing of ingredients for the facility of consumers by the assessee where the ingredients had earlier suffered sales tax, cannot be said to give rise to the emergence of a

new commodity, rendering it exigible to levy of sales tax.

10. In the facts and circumstances of this case, we are, therefore, satisfied that the mixture sold by the assessee of the ingredients which were exempted from sales tax, was not exigible to sales tax and consequently we allow this revision petition and set aside the orders of the Tribunal and the subordinate authorities. There shall, however, be no order as to costs.

11. Petition allowed.