(1991) 08 MAD CK 0094

In the Madras High Court

Case No : Tax Case No. 735 of 1982 (Appeal No. 47 of 1982)

Decan Limeshell and Co. — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 07-08-1991

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

Citation : (1991) 08 MAD CK 0094

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

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; D. Srinivasan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This appeal has been filed by the assessee against the order made by the Joint Commissioner in exercise of the suo motu powers of revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter called "the Act".

2. The taxable turnover of the appellant-assessee was fixed at Rs. 2,64,270. The assessee filed an appeal, inter alia, disputing the purchase turnover u/s 7-A of the Act on Rs. 23,447. The said turnover represented the purchase of lime shell which was processed into lime powder. The Appellate Assistant Commissioner held that there was no consumption of lime shell in the manufacture of other goods to warrant the levy of purchase tax u/s 7-A of the Act. The Joint Commissioner proposed to revise the order of the Appellate Assistant Commissioner. A notice was accordingly issued to the assessee giving details of the proposal and after inviting objections and considering the same and hearing the parties, the Joint Commissioner revised the order of the Appellate Assistant Commissioner confirming his proposal and set aside the order of the Appellate Assistant Commissioner.

3. The dispute before us also is limited only to the purchase turnover u/s 7-A of the Act relating to lime shell. It is found from the record that lime shell which is

purchased by the assessee is burnt along with coal. Later on, after the lime shell and the coal have burnt together, coal dust is removed. The resultant product is then converted into lime powder. We are not able to agree with the learned counsel for the appellant that the lime shell and the lime powder which his produced through the aforesaid process are the same commodities. Lime shell and lime powder are undoubtedly distinct in identity from each other. Keeping in view the series of changes which take place when lime shell is burnt along with coal and coal dust is removed and the resultant product is crushed to be made into powder, the lime shell can no longer be regarded as the original commodity when lime powder is produced. Lime powder is a new and distinct commercial article for the manufacture of which lime shell has been consumed. The very use of the word "consume" contemplates the complete exhaustion of the purchased goods in the process of manufacture of another goods losing its identity completely. The identity of lime shell is completely lost when it is burnt along with coal and after removing the coal dust, the product is crushed into powder. The goods, thus, consumed in the manufacture of other goods would normally fall within the ambit of section 7-A of the Act. The Joint Commissioner, therefore, rightly held that the lime shell purchased by the assessee from non-dealers which had not suffered tax as contemplated by section 7-A of the Act, had been consumed for the manufacture of lime powder and, therefore, the purchase turnover of Rs. 23,447 was required to be brought to assessment u/s 7-A. The Appellate Assistant Commissioner had clearly fallen in error as he appears to have ignored the basic requirements of section 7-A of the Act. The order of the Joint Commissioner is, in our opinion, sound and, therefore, does not call for any interference. Consequently the appeal fails and is dismissed. There shall be no order as to costs.

4. Appeal dismissed.