

(1977) 01 MAD CK 0010

In the Madras High Court

Case No : Tax Case No. 165 of 1973 (Revision No. 142 of 1973)

Deputy Commissioner (C. T.), Coimbatore Division

APPELLANT

Vs

P. Subramania Chettiar

RESPONDENT

Date of Decision : 19-01-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Citation : (1977) 40 STC 439

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; A. Abdul Hadi, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—This is a petition preferred by the State against the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore,

dated 1st August, 1972. The controversy lies within a narrow compass. The goods dealt with by the respondent were nitro phosphate

manufactured by the Fertiliser Corporation of India Ltd. It contained 16 per cent nitrate and 18 per cent phosphate. The controversy was, whether

nitro phosphate was liable to single point tax, falling under entry 21 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, herein

referred to as the Act or not. The said entry at the relevant time was as follows :

21. Chemical fertilisers, that is to say,—(1) ammonium sulphate, (2) ammonium nitrate, (3) urea, (4) ammonium chloride, (5) sodium nitrate, (6)

calcium ammonium nitrate, (7) super-phosphate single, (8) super-phosphate triple, (9) kotka phosphate, (10) di-calcium phosphate, (11)

potassium chloride (muriate of potash), (12) sulphate of potash, (13) mono-

ammonium phosphate, (14) diammonium phosphate, (15) bone-meal, (16) any mixture of one or more of the articles mentioned in items (1) to (15) and one or more of the organic manures.

2. The Tribunal held :

The phrase "that is to say" following chemical fertilizers amply supports the view taken by us that the succeeding items enumerated therein are only illustrative and not exhaustive.

3. In this view only, namely, that though nitro phosphate is not one of the items enumerated in entry 21, still it is a chemical fertiliser, the Tribunal

held that it was liable only to single point tax. It is the correctness of this conclusion that is challenged before us by the State.

4. The learned counsel for the respondent sought to support the order of the Tribunal on the basis of a judgment of this court in State of Tamil

Nadu v. Rallis India Ltd. [1974] 34 S.T.C. 532. In that case, a Bench of this Court was dealing with an identical entry and stated :

The expression "chemical fertilisers" occurring in the opening part of that item is wide in its scope so as to attract any chemical fertilisers and the

words following it "that is to say" cannot be understood as words of limitation.

5. However, if the Bench of this Court in that case intended to lay down a principle that the expression ""that is to say"" following the expression

chemical fertilisers"" showed that the various items enumerated in the entry were merely by way of illustration and did not exhaust the items which

would be covered by the expression ""chemical fertilisers"", we are of the opinion that such a view cannot be good law because of the subsequent

judgment of the Supreme Court in State of Tamil Nadu v. Pyare Lai Malhotra [1976] 37 S.T.C. 319. In that case, the Supreme Court had

occasion to consider the scope of entry No. (iv) in Section 14 of the Central Sales Tax Act, 1956, to the following effect:

(iv) iron and steel, that is to say,-

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill;

(c) steel scrap, steel ingots, steel billets, steel bars and rods;

6. Dealing with such an entry, the Supreme Court held that having regard to the

context and the purpose of the legislation, the expression should not be taken to be merely amplificatory or illustrative, but should be taken to actually and precisely define the scope of the expression preceding it.

The Supreme Court observed t

But, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression

was apparently meant to exhaustively enumerate the kinds of goods on a given list. The purpose of an enumeration in a statute dealing with sales

tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a

series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it.

7. In view of this statement of law made by the Supreme Court, it must be held that the various items enumerated in entry 21 are exhaustive and

that anything which does not fall within the scope of any one of the items enumerated in entry 21 cannot be characterised as chemical fertiliser for

the purpose of single point taxation under the Act. It is the admitted case that nitro phosphate is not one of the items enumerated in entry 21. The

result of that will be, entry 21 itself cannot be invoked in support of the respondent in the present case and, therefore, the order of the Tribunal is

clearly erroneous in law.

8. Hence, we allow the tax revision petition and set aside the order of the Sales Tax Appellate Tribunal dated 1st August, 1972 and restore that of

the Appellate Assistant Commissioner, as far as the turnover relating to the sale of nitro phosphate is concerned. There will be no order as to

costs.