
(2008) 11 MAD CK 0217
In the Madras High Court
Case No : T.C. (R) No. 859 of 2006

Gearcase India

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 3(1), 3(2), 3(2C), 4

Citation : (2010) 28 VST 468

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : V. Vivek, for the Appellant; Haja Najirudeen, Special Government Pleader, for the Respondent

Judgement

Prabha Sridevan, J.—The assessee is a manufacturer of cycle parts. They have effected local purchase of kerosene, which they claimed, they had used for the manufacture of their goods. The Revenue levied tax u/s 7A on the assessee.

2. Aggrieved by the same, the assessee filed an appeal before the Tribunal. The Tribunal held that kerosene was used in the manufacture of end-products and it was not used for the manufacture of end-products and dismissed the appeal.

3. The question of law that is raised is whether fuel that used for the manufacture of parts is liable to tax u/s 7A, as it stood prior to 1997. The learned Counsel for the assessee Mr. Vivek, drew our attention to Section 7A of the Tamil Nadu General Sales Tax Act, 1959 as it stood before November 6, 1997 and after.

4. The learned Counsel submitted that before November 6, 1997, the fuel which is used "for the manufacture of" finished goods cannot be taxed u/s 7A of the Act and for this purpose, the learned Counsel relied on Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, and Coastal Chemicals Ltd. etc. Vs. Commercial Tax Officer, A.P. and Others etc., .

5. The learned Special Government Pleader on the other hand submitted that the Tribunal had rightly assessed the tax and the order does not call for any interference.

6. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , the assessee was a manufacturer of tiles, terra-cotta, wares and ceramics, and he used cashew shells as fuel for the manufacture of goods. The Tribunal held that consumption of cashew shells cannot be treated as consumed "in the manufacture of goods" but only "for the manufacture of goods" and therefore, the items were not taxable u/s 5A of the relevant Act. The conclusion of the Tribunal was confirmed by the High Court and also by the Supreme Court. The honourable Supreme Court held thus (at page 322 of 69 STC):

... The Tribunal, however, held that the cashew shells had been used only as fuel in the kiln for the manufacture of tiles and other goods and, hence, Clause (a) of Section 5A(1) of the Act, was not satisfied, there being no consumption of the cashew shells in the manufacture of other goods or otherwise. The Tribunal was of the opinion that these were used for the manufacture. The Tribunal also held that there was no disposal of the lime shells or the consumed stores which were used up for the maintenance of the factory and kiln and that there was also no consumption of those goods in the manufacture of other goods for sale or otherwise. In this view of the matter the Tribunal held that these items were not taxable u/s 5A of the Act.

7. In Coastal Chemicals Ltd. etc. Vs. Commercial Tax Officer, A.P. and Others etc., , the Supreme Court referred to Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , cited above, where it was held that cashew shells used as fuel did not get consumed in the manufacture of other goods and that "consumption must be in the manufacture as raw material".

Before November 6, 1997, Section 7A of the TNGST Act read thus:

7A. Levy of purchase tax.-(1) Subject to the provisions of Sub-section (1) of Section 3, every dealer who in 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 this Act) in circumstances in which no tax is payable u/s 3 or 4, as the case may be, (not being a circumstance in which goods liable to tax under Sub-section (2), (2C) or (2C) of Section 3 or Section 4, were purchased at a point other than the taxable point specified in the First the Fifth, the Eleventh or the Second Schedule) (respectively) and either,;

(a) consumes or uses such goods in the manufacture of other goods for sale or otherwise.

9. After November 6, 1997, as amended by Act 60 of 1997, Section 7A(a) reads as:

consumes or uses such goods in or for the manufacture of other goods for sale or otherwise.

10. Therefore, fuel, which is used by the manufacturer of goods, is not taxable if it is used for the manufacture and not "in the manufacture". The assessment year in the present case is 1993-94. Kerosene which was used for the manufacture of cycle parts cannot be taxed since at that time, the words, "for the manufacture" were not included in Section 7A. In fact, it is seen that with regard to the same assessee for the assessment year 1995-96, the case of the assessee has been accepted on the facts that the kerosene is used "for the manufacture" of the end-products and not "in the manufacture" of the finished goods and the case was decided in favour of the assessee. Therefore, on the facts, it was clear that kerosene, which is the fuel in question, was used only for the manufacture of the other goods. In view of this, the question is answered in favour of the assessee and the tax case is allowed. No costs.