

(1991) 03 MAD CK 0072

In the Madras High Court

Case No : Tax Case No's. 1116 and 1117 of 1981 (Revisions No's. 487 and 488 of 1981)

Hakkim M. Syed and another

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-03-1991

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 3

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 7A

Citation : (2001) 1 ALT(Cri) 128

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

Bench : Division Bench

Advocate : K. Mani, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—Since identical question of law and facts are involved in both these tax revision cases, they are being disposed of by this common judgment.

2. In T.C. (R) No. 1116 of 1981, the assessee is one Hakkim M. Syed and the assessment year is 1976-77. The assessing authority assessed a turnover of sales of country drugs unani (tibb) medicine of Rs. 27,328 at 8 per cent treating the sale to be covered by item 95 of the First Schedule to the Tamil Nadu General Sales Tax, 1959. The assessing authority also assessed the assessee in respect of purchase turnover u/s 7-A of the Act for jaggery and castor oil and gingelly oil for Rs. 1,000 and Rs. 1,500, respectively. The total and taxable turnover thus, proposed was Rs. 29,828. The objections of the assessee that unani drugs were prepared by him and they did not come under the definition of drugs and medicines and therefore could not be subjected to assessment under item 95 of the First Schedule to the Act failed before the assessing authority. Aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner maintained the liability of the assessee to tax u/s 7-A of the Act on the sums of Rs. 1,000 and Rs. 1,500 for jaggery and castor

oil, etc., but set aside the assessment on the turnover of Rs. 27,328 at 8 per cent. The assessment in respect of that amount was set aside by the appellate authority as according to the appellate authority, the assessee was not a licensee under the Drugs and Cosmetics Act, 1940 and therefore it was held that his preparations were not assessable, since they were not defined in the Schedule to the Act. It was therefore held that the preparations do not come under item 95 of the First Schedule, but that the preparations were liable to tax only at multi-point rate. Finding that the total turnover of the assessee being below Rs. 50,000 which was the minimum taxable turnover to attract the provisions of the Act, the order of the assessing authority with regard to the sale of the unani preparations was set aside. The assessee was not content. He filed appeal before the Tribunal wherein the challenge was to the assessment made u/s 7-A of the Act. The Revenue also filed an enhancement petition before the Tribunal. The Tribunal by a detailed order impugned herein dated January 7, 1981, set aside the order of the Appellate Assistant Commissioner and allowed the enhancement petition restoring the assessment at 8 per cent on the turnover of Rs. 27,328 as assessed by the assessing authority and also maintaining the assessment u/s 7-A of the Act.

3. In T.C. (R) No. 1117 of 1981 the sale turnover of the country drugs amounting to Rs. 15,019 was assessed under item 95 of the First Schedule at 8 per cent, besides assessment of the purchase turnover u/s 7-A of the Act in respect of jaggery and vegetable oil for Rs. 500 and Rs. 1,000, respectively by the assessing authority. The total taxable turnover assessed by the assessing authority was Rs. 16,519. An appeal was preferred by the assessee, and except for maintaining the assessment u/s 7-A, the appeal was allowed and the tax levied at 8 per cent on a turnover of Rs. 15,019 was set aside. The taxable turnover of the assessee was redetermined at Rs. 1,500. In the further appeal before the Tribunal, the order of the appellate authority was set aside and that of the assessing authority restored. Consequently, the taxable turnover was re-fixed at Rs. 16,519 which included the assessment u/s 7-A on the turnover of jaggery of Rs. 500 at 5 per cent and vegetable oil of Rs. 1,000 at 4 per cent.

4. According to the learned counsel for the petitioners, the unani medicines prepared by both the assessees would not come under item 95 of the First Schedule and that they would be governed by section 3(1) of the Act and liable for multi-point levy. With a view to appreciate the submission made by the learned counsel, it would be appropriate to extract item 95 of the First Schedule. It reads thus :

"Drugs, patent or proprietary medicines as defined in section 3 of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), or medicinal mixtures or compounds, the components of which have not already suffered tax, but excluding arishtams or asavas and including surgical dressing."

A bare reading of the item extracted above shows that it takes within its fold not only drugs, patent or proprietary medicines as defined in section 3 of the Drugs

and Cosmetics Act, 1940, but also medical mixtures or compounds, the components of which have not already suffered tax, but excluding arishtams or asavas and including surgical dressing. The Legislature, therefore, excluded from the concept of medicinal mixtures and compounds, arishtams or asavas and no other medicinal mixtures. The expression "medicinal mixtures or compounds" is wide enough to take within its fold medicines other than those covered by "drugs, patent or proprietary medicines". The opening words of item 95, viz., "drugs, patent or proprietary medicines as defined in section 3 of the Drugs and Cosmetics Act, 1940" do not control the succeeding expression "or medicinal mixtures or compounds"

Thus, construed it becomes obvious that the sale of the medicines prepared under the unani system of medicines would be covered by item 95 of the First Schedule to the Act. The appellate authority fell in absolute error when it held that since the assessee did not take out any licence under the Drugs and Cosmetics Act, 1940, the goods were not liable to be assessed to tax under item 95 of the First Schedule and the same could be taxed at multi-point rate only. There is no warrant for such an observation. The requirement to take out a licence under the Drugs and Cosmetics Act, 1940, is wholly irrelevant for the purpose of determining the liability to sales tax on the total taxable turnover of the assessee. Item 95 of the First Schedule is not restricted only to allopathic medicines, but would also cover country drugs, as manufactured by the assessee. In our considered opinion, therefore the assessing authority as well as the Tribunal was perfectly justified in holding that the country drugs manufactured and sold by the assessee were taxable at 8 per cent under item 95 of the First Schedule to the Act.

5. Thus, in view of the above discussion, both the tax revision petitions fail any they are dismissed; but in the circumstances, without any order as to costs.

6. Petitions dismissed.