(1991) 07 MAD CK 0090

In the Madras High Court

Case No : T.C. No''s. 452 and 666 of 1982, 538 and 539 of 1985 (Revision No''s. 119 and 200 of 1982 and 194 and 195 of 1985)

Hardcastle, Waud and Co. Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3(1)

Citation : (1991) 07 MAD CK 0090

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

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—In these four tax revision cases filed by two different assessees relating to the assessment years 1978 - 79 and 1979 - 80 which have been consolidated and disposed of by common order by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Madras, the only issue which now survives for our consideration is whether "heat treatment salts" would fall under entry 138 of the First Schedule and are to be taxed at 8 per cent or would be covered by section 3(1) of the Tamil Nadu General Sales Tax Act, 1959, at 4 per cent multi-point. It would be advantageous at this stage to notice entry 138 of Schedule I, as it existed at the relevant time. It read thus :

"Dyes and chemicals other then those specifically mentioned in this Schedule - At the point of first sale in the State - 8 per cent."

2. The assessing authority noticed the nature of the "heat treatment salt" and found that it is a poisonous liquid containing "cyanide" and is used for dipping the melted iron etc. The Tribunal considered some of the literature relating to the use heat treatment salt, also referred to as "hawco" liquid carburising, and found that it is a process of carburising steel in a molten liquid bath. Salts are per - mixed salt containing patented catalytic agent to speed up the penetration of

carbon without altering the chemical reaction. The salt also assists in removing certain impurities from the bath which tend to inhibit the absorption of carbon by the steel. On the basis of the literature and the properties of "heat treatment salt" which is intended to produce a chemical effect on metal, the Tribunal held that the salt could only be classified under entry 138 of the First Schedule to be taxed at 8 per cent.

3. A Full Bench of the Allahabad High Court in Commissioner, Sales Tax v. Prayag Chemical Works [1970] 25 STC 85, opined that whether a commodity can be described as a "chemical", for the purpose of a similar entry, must be determined not by the use for which a particular buys it but with reference to the general properties which make it saleable to the entire range of prospective buyers. We are agreement with the view of the Allahabad High Court.

4. We find that the heat treatment salt in the ordinary popular or commercial sense is only a "chemical", since it is used to produce a chemical effect on metal. It contains cyanide in a liquid form and the product, therefore, must be classified only as a "chemical". The commodity is considered by the trade in common trade parlance also as falling within the description of "chemical". The observation of the assessing authority and the Tribunal, based on the literature on the subject, to the effect that the heat treatment salt is only an intermediary produce which is used for carburising the finished metal articles also go to establish that the salt would only qualify as a "chemical".

5. Thus considered we hold that the "heat treatment salt" is a chemical and would fall under entry 138 of Schedule I to the Tamil Nadu General Sale Tax Act, exigible to the tax at 8 per cent. The order of the Tribunal does not call for any interference. The revisions consequently fail and are dismissed. But we make no order as to costs.

6. Petitions dismissed.

