
(1972) 08 MAD CK 0040

In the Madras High Court

Case No : T.C. No. 121 of 1967 (Revision No. 70)

Imperial Fertiliser and Company

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 02-08-1972

Acts Referred:

Citation : (1972) 31 STC 390

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K.N. Balasubramanian, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The question that comes up for consideration in this case is as to whether the assessee, who is a dealer in chemical fertilisers, can be taxed on his sales of the said fertilisers. The assessee purchases different items of chemical manures and then mixes them with some organic manure as chemical fertilisers. It is not in dispute that the mixture sold by the assessee will come under item 21 of Schedule I. But the assessee has taken up the stand that as the various items of chemical manures purchased and used by him for the production of the mixture sold by him have earlier suffered tax, his sales should not be treated as first sales in chemical fertilisers and that as such his sales should not be subjected to single point tax. This contention of the assessee was negated by the Appellate Assistant Commissioner and the Tribunal. His sales turnover of the mixture for the assessment year 1964-65 came to Rs. 3,04,761.54.

2. Before us, the learned counsel for the assessee contends that a perusal of item 21 of Schedule I of the Madras General Sales Tax Act, 1959, shows that the object of the Legislature is to treat the mixture of one or more of the various chemical manures referred to therein as a chemical fertiliser and to treat the sale of such a mixture as second or subsequent sales in chemical fertilisers if the components have been subjected to tax earlier. According to the learned counsel,

if item 21 merely referred to the words "chemical fertilisers", it could be said that the benefit of exemption from levy of sales tax on second sales cannot be availed of, unless the same goods are sold again, but the detailed reference to various categories of chemical manure shows that if the assessee had showed that those items had suffered tax at earlier stages, the sales of mixture of one or more of those items have to be exempted from tax as being second or subsequent sales.

3. We are not in a position to accept the contention that a detailed reference to various items of chemical manure in item 21 leads to the inference that if the tax had been paid on those items earlier, a mixture of any one or more of those items should be treated as either a second or a subsequent sale. We are inclined to agree with the decision of the Tribunal in this case. The Tribunal had stated that a sale of a product can be said to be a second sale only if the same goods had been the subject-matter of a sale at an anterior stage. In this case if the assessee has purchased the various items of chemical manure referred in item 21 and brings about a new product by mixing one or more of the said articles with one or more of any organic manure, that product cannot be said to be the same chemical manure or fertiliser which he had purchased and which had already been subjected to tax. The produce got by the petitioner by mixing one or more of chemical manure with one or more of the organic manure will have different properties of its own and it cannot be said it retains the same characteristics or properties of any one of the chemical manures or organic manures which went to make up the resultant mixture. For getting an exemption on the ground that the sale of an article is a second or subsequent sale, it must be established that there has been a sale of the same goods at an anterior point of time. If there is no identity between the product purchased with the product sold, it is not possible to treat the sales of the products manufactured and sold by the petitioner as second sales.

4. The learned counsel for the assessee then draws our attention to the Madras amending Act (Act 26 of 1970), which substantially altered entry 21 of Schedule I. What the learned counsel states is that though the amendment came into force in August, 1970, it is only declaratory or clarificatory in nature, that even before the amendment, the legal position was the same and that the intention of the Legislature should be deemed to be taken to benefit the persons like the assessee who mixes the various kinds of chemical manures which had already suffered tax and sells the resultant mixture as another form of chemical fertiliser. But we are not in a position to accept the contention of the learned counsel that the amending Act is clarificatory or declaratory in nature. The statement of objects and reasons given in the relevant Bill shows that the Government decided that the fertiliser mixtures should be subjected to single point tax at the rate of 31/2 per cent. at the point of first sale in the State on the turnover relating to components thereof which have not already suffered tax under the said Act. This shows that the Government took a decision for the first time that the fertiliser mixtures should be subjected to single point tax on the first sale only on the turnover relating to components if it had not already suffered tax

under the said Act. Therefore, it cannot be said that even before the amending Act, the Legislature had intended to give such benefit as the one contemplated by the amending provision, even earlier. The result is, we agree with the view taken by the Tribunal. The tax case is dismissed with costs. Counsel's fee Rs. 150.