
(1990) 11 MAD CK 0068
In the Madras High Court
Case No : T.C. No. 1239 of 1980

Kumaran Paper Products

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Tamil Nadu General Sales Tax Act, 1959 — Section 3(2), 34

Citation : (1991) 81 STC 420

Hon'ble Judges : Venkataswami, J; Abdul Hadi, J

Bench : Division Bench

Advocate : P. Sathasivam, for the Appellant; R. Karuppan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Abdul Hadi, J.—This tax appeal case is by the assessee against the order dated May 5, 1980, of the Board of Revenue in its B.P. Rt. No. 1574/80. The said order revised the order of the Appellate Assistant Commissioner and restored the assessment made by the assessing authority for the assessment year 1976-77 levying single point tax at the rate of 8 per cent for a turnover of Rs. 56,339.48 relating to the sale of bituminised or wax coated waterproof paper, as per section 3(2) read with item 117 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act").

2. The assessee parched paper from the Seshasayee Paper and Boards Limited, paying sales tax as per the same entry 117 and converted the said paper into waterproof paper by coating bitumen or was between two sheets of paper and sold it. The assessee's contention is that the sale of the abovesaid bituminised or wax coated paper was only a second sale of paper and could not be taxed once again. But the Board of Revenue held as follows :

"Inasmuch as the product purchased by the assessee had undergone a change and is known and understood as a different product in trade circles, it cannot be claimed that the sale by the assessee was a second sale of the same product

purchased from Seshasayee Paper Products. The Board's clarification relied on by the assessee will not estop the Board from proceeding u/s 34 of the Act, if the Board, found that the order of the Appellate Assistant Commissioner requires revision."

The above referred to clarification was earlier given by the Board itself in L. Dis. A2/1869/78 dated July 31, 1979, in response to the letter written by the assessee himself. In the said clarification, the Board observed "if the paper out of which the bituminised waterproof paper is manufactured has already suffered tax under the Tamil Nadu General Sales Tax Act, 1959, then the bituminised waterproof paper is exempt; otherwise it will be liable to tax at 8 per cent single point under entry 117 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959."

3. The learned counsel for the appellant relied on the abovesaid clarification given and contended that the Board was estopped from making the assessment contrary to its own earlier clarification given. Secondly, the learned counsel also relied on the decision in Kwaliti Coated Products v. Government of India [1980] TLNJ 393 and contended that the identity of the goods remained the same despite the abovesaid coating of bitumen or wax, and that hence the sales in question were second sales exempt from tax.

4. So far as the second of his abovesaid two submissions, we find that the above referred to [1980] TLNJ 393 (Kwaliti Coated Products v. Government of India), is a decision relating to levy of excise duty and that the question there was whether there was "manufacture" within the meaning of excise law, when paper was converted into such bituminised waterproof paper. It was no doubt held there, that there was no manufacture involved in the said process relying on the following passage in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, :

"The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character of use. The duty is levied on goods"

This Court in the above referred to [1980] TLNJ 393 (Kwaliti Coated Products v. Government of India) concludes by saying that even if the above test is applied it cannot be said that there is manufacture of a new kind of paper with bitumen so as to attract the levy of excise duty as provided for under entry 17(2) of the First Schedule to the Central Excise and Salt Act, 1944. The Supreme Court also observed in State of Tamil Nadu v. Pyare Lal Malhotra [1976] 37 STC 319 , as follows :

"It is true that the question whether goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax, the taxable event is the

sale and not the manufacture of goods, Never-theless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial commodity, has taken place. The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they ceased to be goods of one taxable description and become those of a commercially different category and description."

In the above case, the Supreme Court also observed at page 325 as follows :

"As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which those commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

5. No doubt in *State of Tamil Nadu v. East India Rubber Works* [1974] 33 STC 399 this Court has held that waterproof cloth, such as rexine, P.V.C. cloth, rubberised or synthetic waterproof fabrics, etc., made with cloth as base, are not textiles falling with item 4 of Schedule III of the Tamil Nadu General Sales Tax Act, 1959, inasmuch as the processed articles have different properties and characteristics and are intended for different use, and in commercial circles they are treated as entirely different from cloth or textile. In the same line this Court also held in *Deputy Commissioner of Commercial Taxes v. Mohammed Ibrahim Marakayar Sons* [1980] 46 STC 22 that galvanised plain sheets would not fall within the category of "iron and steel" under entry 4 of the Second Schedule to the Act. There also it is observed that galvanised plain sheets were previously known as zinc sheets, that merely because a different expression has come to be used, it does not mean that they retain the character of "iron and steel" plates and that they are actually materials different from steel plates and their use is also different and commercially they are different goods. But, this view in the abovesaid [1980] 46 STC 22 (Mad.) (*Deputy Commissioner of Commercial Taxes v. Mohammed Ibrahim Marakayar Sons*) is not approved by the Supreme Court in *Gujarat Steel Tubes Ltd. v. State of Kerala* [1989] 74 STC 176 wherein the Supreme Court has held that galvanised iron pipes and tubes are "steel tubes" within the meaning of item (xi) specified in section 14(iv) of the Central Sales Tax Act, 1956 and that they are, therefore, "declared goods" and are not liable to additional sales tax and surcharge under the Kerala General Sales Tax Act, 1963. There, the Supreme Court has observed as follows :

"The purpose of galvanising a steel pipe is merely to make it weather-proof. It remains a steel tube. By being put through the process of galvanising it is made

rust-proof. The limited purpose of galvanisation does not bring a new commodity into existence. Neither its structure nor function is altered. As a commercial item it is not different from a steel tube."

In deciding the said case, dealing with the abovesaid Deputy Commissioner of Commercial Taxes Vs. P.C. Mohammed Ibrahim Marakayar Sons, the Supreme Court also observed as follows :

"We are unable to agree with the view taken by the Madras High Court in Deputy Commissioner of Commercial Taxes v. P. C. Mohammed Ibrahim Marakayar Sons [1980] 46 STC 22. The limited purpose of galvanisation does not, it seems to us, bring a new commodity into existence."

Therefore, applying the principles laid down in the above referred to Supreme Court decisions, we find that since the process involved in making bituminised or wax coated waterproof paper consists mainly of joining together two sheets of paper with bitumen or wax, the identity of the paper is still retained and the sale of the bituminised or wax coated waterproof paper would only be a second sale and hence exempt from tax.

6. In view of the abovesaid view taken by us on the merits of the case, regarding the first submission of the learned counsel for the appellant, we need not go into the other question whether the above referred to clarification given by the Board of Revenue would or would not bind it.

7. Therefore, this appeal is allowed and the order of the Board of Revenue is set aside. In the circumstances of the case, there will be no order as to costs.

8. Appeal allowed.