

(1995) 12 MAD CK 0044
In the Madras High Court
Case No : T.C. No. 311 of 1987

Kusum Laminating and Packaging Industries

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 5

Citation : (1995) 12 MAD CK 0044

Hon'ble Judges : R. Jayasimha Babu, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The assessee is the appellant herein. The assessee is Kusum Laminating and Packaging Industries filed their return for the assessment year 1979-80. The assessee had sold packaging materials to dealers outside the State who are exporting their materials after packing with the goods supplied by the dealers. This was not eligible for exemption as per instructions in the interim orders of the Sales Tax Appellate Tribunal in Appeal Nos. 1196/78 and 1762/78 dated February 25, 1981, according to the assessing officer. Hence sales to exporter of Rs. 10,33,137 was assessed. The assessing officer also examined this point and found that it was not eligible for exemption as the goods supplied by the dealers were only packaging materials and were utilised for packing of certain other materials, which were intended for export. If the privity of contract with the buyer was for supply of packing materials exemption was allowable. Hence exemption was disallowed and the sales turnover was assessed at 10 per cent. On appeal, the Appellate Assistant Commissioner, held that section 5(3) of the Central Sales Tax Act will not be applicable to the facts of this case. However, the Appellate Assistant Commissioner held that the assessee is entitled to concessional rate of tax on a turnover of Rs. 3,11,800, since some of the export sales were through local dealers and delivered locally. On further appeal, the Appellate Tribunal, confirmed the order passed by the Appellate Assistant Commissioner.

2. Before this Court, learned counsel appearing for the assessee submitted as under :

The sales for export for Rs. 7,21,337 are duly covered with all formalities required under form H and forms H were also filed before the authorities below. Hence the rejection of the exemption is not in order. The assessee is not required to investigate as to the nature of the contract between the purchaser and the foreign dealer which is beyond the purview of the enquiry. The furnishing of form H to prove that the goods sold are for export is sufficient statutory compliance and hence rejection of the claim and levy of tax at 10 per cent thereon is beyond the purview of the provisions of the Act. The sales for export of Rs. 7,21,337 are covered with form H as prescribed under the Act and factually also the goods were exported as the contract between the parties were to export the packing materials also. Hence the adverse conclusion that packing materials were not exported as such is without any basis. According to the principles laid down in Board's clarification A1/67/55/76 dated December 6, 1976 and A3/45/79 dated June 27, 1979 that sales in packing materials for export would fall and cover the provisions of section 5(3) of the Central Sales Tax Act and as such are exempt from levy of tax. The contract with the foreign buyers was not only for the goods, but also for packing materials mentioned therein, viz., polythene and jute bags and therefore they would also qualify for exemption u/s 5(3) of the Central Sales Tax Act. This Court held in [1982] 51 STC 329 [Packwell Industries (P.) Ltd. v. State of Tamil Nadu] that the sale of polythene bags to the exporters who use them as containers for export of the goods to a foreign country is deemed to be an export sale within the meaning of section 5(3) of the Central Sales Tax Act. The penultimate sales took place after the agreement recorded under which the goods are to be exported. It is for the purpose of complying with such agreement, the barytes powder was packed in polythene gunny bags sold by the assessee to the exporter which the exporter was required to supply the foreign buyer under purchase agreement. The barytes powder is packed in polythene bags or jute bags. The assessee submits that the conditions required to be fulfilled for claiming exemption u/s 5(3) are satisfied in the case and the transactions are not exigible to tax.

3. On the other hand, learned Additional Government Pleader (Taxes) submitted as under :

In view of the decision of this Court rendered in [1982] 51 STC 329 [Packwell Industries (P.) Ltd. v. State of Tamil Nadu], the sale of packing material cannot be exempted u/s 5(3) of the Act. There is no contract for sale of barytes powder with polythene gunny bags. The sale agreement is only for the export of barytes powder. There is no identity of the goods which were purchased and exported. Filing of H form alone would not go to show that there is an agreement for export of polythene bags. It was therefore pleaded that the order passed by the authorities below in refusing to grant exemption u/s 5(3) of the Act with regard to the sale transaction of polythene bags is in order.

4. We have heard the rival submissions.

5. The point of consideration in this appeal is whether on the facts and in the circumstances of the case, the Sales Tax Appellate Tribunal was justified in law in levying tax on the sale turnover of polythene bags and jute bags amounting to Rs. 7,21,337 for the assessment year 1979-80, especially when such sales are exempt from the levy of tax u/s 5(3) of the Central Sales Tax Act.

6. In the assessment year 1979-80 the assessee sold packing material to dealers outside the State who are exporting their materials after packing with the goods supplied by the dealers. The assessee is the manufacturer and dealer in polythene bags and gunny bags which are packing materials. The purchasers of the polythene bags are exporting barytes powder also called barium sulphate. In the bill of lading the goods is described by the shippers as goods exported is barytes powder also called barium sulphate and the packing details are stated a bituminised polilined bags inside jute bags. According to the assessee the commodity barium sulphate cannot be exported without packing and since the packing material supplied by the assessee had been exported as evidenced by bill of lading the assessee is eligible for exemption u/s 5(3) of the Act. The form H was furnished before the assessing officer as required under the statute. Form H would go to show that goods with container were exported in accordance with the contract between the exporter and the foreign buyer. Form H was verified by the assessing officer. Form H filed by the assessee and what is stated in the bill of lading would go to show that there is an agreement between the exporter and the foreign buyer to export barium sulphate packed in polythene bags. It also stands to common sense that barium sulphate cannot be exported without a container. When the barium sulphate was exported with container to say that barium sulphate alone was exported and not the container appears to be beyond one's comprehension.

7. The Revenue relied on the decision of this Court in [1982] 51 STC 329 [Packwell Industries (P.) Ltd. v. State of Tamil Nadu] in order to deny the exemption claimed u/s 5(3) of the Act. According to the facts arising in that case, exemption was claimed on sale of corrugated boxes in which Indian frozen shrimps were exported and the finding in the abovesaid decision was that packing goods were not subject-matter of contract for export and the above finding was upheld by the High Court. On the contrary, in the present case, the very purchase order itself contemplates supply of barium sulphate, to be packed in a container of a particular specification which had been supplied by the assessee. Therefore, the abovesaid decision will not be applicable to the facts of the present case.

8. Learned counsel appearing for the assessee relied upon a decision of this Court rendered in Commissioner of Income Tax Vs. Poly-Ene General Industries, . According to the facts arising in that decision, the assessee sold the polythene bags manufactured by it to persons who filled these bags with tobacco and exported them to foreign countries. The claim of the assessee for necessary

rebate u/s 2(5)(a)(iii) of the Finance Acts, 1964 and 1965 was negated by the Income Tax Officer, but was upheld on appeal by the Tribunal in the view that polythene bags had been factually exported in the same form as it was manufactured and on that basis the assessee had also been granted import entitlements. On a reference, the High Court held that "this was a clear case where clause (iii) of section 2(5)(a) of the Finance Acts, 1964 and 1965 was satisfied and the assessee was rightly held to be eligible for the allowance."

9. Yet another decision relied upon by the assessee was in the case of State of Tamil Nadu Vs. Catherine Traders and another, According to the facts arising in that decision, polythene bags were sold by the assessee to exporters for packing banians. The banians (vests) which were exported packed in the said bags, were exempt from tax. On the question whether the sale of the bags to the export merchants was exempt, it was held that "the sale of polythene bags was also exempt u/s 5(3) of the Central Sales Tax Act". In the present case, there are facts on record to conclude that the polythene bags were also exported, according to the contract between the exporter and foreign buyers. The identity of the goods is established with regard to the polythene bags sold by the assessee and the polythene bags in which the barium sulphate was packed and exported by the exporter. Therefore, the assessee is entitled to the exemption u/s 5(3) of the Central Sales Tax Act, on the sale for export of Rs. 7,21,337 in the assessment year 1979-80. Accordingly, the Tribunal was not correct in holding that the assessee is not entitled to exemption u/s 5(3) of the Act with regard to the sale for export of Rs. 7,21,337.

10. In the result, the appeal is allowed with costs. Counsel fee Rs. 1,000.

11. Appeal allowed.