(1983) 07 MAD CK 0030

In the Madras High Court

Case No : Tax Case No''s. 1296 of 1977 and 1235 and 1236 of 1980 (Revision No. 300 of 1977)

Okay Rubber Corporation APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 2, 3

Citation : (1984) 55 STC 247

Hon'ble Judges : G. Ramanujam, J;Fakkir Mohammed, J

Bench : Division Bench

Advocate : C. Natarajan and K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant;

Judgement

Fakkir Mohammed, J.—These tax cases on revision have arisen out of the orders of the Additional Sales Tax Appellate Tribunal, Madurai,

in M.T.A. No. 442 of 1976, 736 of 1979 and 737 of 1979. The common question involved in all the three cases is,

Whether RMA rubber can be treated as raw rubber, viz., latex, as defined in item No. 74 of the First Schedule to the Tamil Nadu General Sales

Tax Act, exigible to 5 per cent sales tax ?

2. For the assessment years 1974-75, 1975-76 and 1976-77, the petitioners were assessed to sales tax on the respective turnovers of Rs.

4,21,020, Rs. 2,86,242 and Rs. 1,69,632 at 5 per cent treating the sale of RMA rubber sheet as raw rubber, viz., latex, as per item No. 74 of the

First Schedule to the Tamil Nadu General Sales Tax Act and were imposed penalties of Rs. 21,051 for 1974-75, Rs. 21,468 for 1975-76 and

Rs. 12,763 for 1976-77 respectively on the ground that the assessee did not disclose the abovesaid turnovers.

3. The Deputy Commercial Tax Officer, Nagercoil (Rural Circle) while verifying the records of the Forest Department of Nagercoil and Keeriparai

found that the assessees had purchased 40,000 kgs. of raw rubber, viz., latex, in the auction held on 2nd August, 1974, for Rs. 4,21,020 for

1974-75, Rs. 2,86,242 for 1975-76 and Rs. 1,69,632 for 1976-77. The Deputy Commercial Tax Officer assessed the petitioners on the

abovesaid purchase turnovers and levied the sales tax at 5 per cent and also a penalty. Aggrieved against the assessment, the assessees went on

appeal before the Appellate Assistant Commissioner, Tirunelveli, without success. Thereafter the assessee filed M.T.A. No. 442 of 1976 and 736

and 737 of 1979 before the Sales Tax Appellate Tribunal (Additional Bench) Madurai.

4. In M.T.A. No. 442 of 1976 the Sales Tax Appellate Tribunal (Additional Bench), Madurai, passed an order dated 30th July, 1977, dismissing

the appeal and holding that the goods purchased by the assessee, viz., RMA rubber sheets fall under entry No. 74 of the First Schedule and are

exigible to 5 per cent sales tax at the purchase point and thus sustained the order of assessment and the consequential levy of penalty u/s 12(3) of

the Tamil Nadu General Sales Tax Act. So far as the other two appeals, viz., M.T.A. Nos. 736 and 737 of 1979 are concerned, they were

disposed of by a different bench of the Sales Tax Appellate Tribunal (Additional Branch), Madurai, under a common order dated 16th May, 1980

allowing the appeals on the finding that RMA rubber sheets do not fall within the category of raw rubber, viz., latex under entry 74 and hence set

aside the assessments and levy of penalty.

5. Aggrieved against the order passed in M.T.A. No. 442 of 1976 the assessee has filed T.C. No. 1296 of 1977 and aggrieved against the orders

passed in M.T.A. Nos. 736 and 737 of 1979 the revenue has come forward with T.C. Nos. 1235 and 1236 of 1980.

6. The view taken by the revenue is that RMA rubber sheet is nothing but raw rubber and only by adopting a minimum process, the raw rubber,

viz., latex, is made into RMA rubber sheets for easy marketing and preservation. On the other hand, the contention of the assess is that RMA

rubber sheet is commercially a different commodity from latex and hence it is not exigible to sales tax in the category of raw rubber (latex). On the

side of the assessee, several documents have been submitted in support of the contention that RMA rubber sheet is not raw rubber, viz., latex and

that the material that is contemplated under item No. 74 of the First Schedule to the Tamil Nadu General Sales Tax Act is only latex and not RMA

rubber sheet.

7. Latex is commonly known as rubber milk in its natural condition as derived from the rubber trees in liquid form. Item No. 74 of the First

Schedule to the Tamil Nadu General Sales Tax Act is as follows :

Raw, rubber, viz., latex

8. In order to prove that by including the item, raw rubber, viz., latex, the intendment was to include only latex and not RMA rubber sheet, the

learned counsel for the assessees referred us to the amendments introduced by Act 37 of 1974, Act 16 of 1973 and Act 23 of 1982. Item 74

inserted by Act 16 of 1973 with effect from 10th May, 1973, and substituted by Act 37 of 1974 with effect from 19th June, 1974, reads thus :

Raw rubber, viz., ''latex''"", and the rate of tax and point of levy had been given as 2 per cent at the point of first sale in the State.

9. Section 2 of the Tamil Nadu General Sales Tax (Third Amendment) Act (37 of 1974), as published under Statutes, Rules and Notifications in

Sales Tax Cases (Volume 34) at page 85 reads thus :

In the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, in item 74, in column (2), for the word ''Rubber'' the words ''Raw Rubber,

namely, latex'' shall be substituted.

Thus from the general term, ''rubber'', the material that was sought to be assessed to sales tax at the first purchaser point has been restricted to

Raw rubber, viz., latex"", as the word rubber is wide enough to include any material of rubber. All categories of rubber were assessed to sales tax

prior to 19th June, 1974. The period of assessment covered by these three cases on hand will be governed by the substituted item 74 of Act 37 of

1974, namely, ""Raw rubber, viz., latex"", since the next amendment with reference to item No. 74 of the First Schedule was introduced by Act 23

of 1982 with effect from 11th November, 1981. By section 4(g) of Act 23 of 1982, the item No. 74 of the First Schedule of Act 37 of 1974, as amended and substituted, is as follows :

74. (a) Natural rubber latex

(b) All varieties and grades of raw rubber (if they had not suffered tax under this Act).

10. Clause (g) of section 4 of Act 23 of 1982 shall be deemed to have come into force on 11th November, 1981, as per section 1(2)(iii) of the

Tamil Nadu General Sales Tax (Third Amendment) Act (23 of 1982), as seen from pages 47 and 48 in volume 50 of the Sales Tax Cases. Thus

with effect from 11th November, 1981, the State has proposed to levy purchase tax on natural rubber latex at 5 per cent under the amended item

No. 74(a) and all other varieties and grades of raw rubber, which had not suffered tax at 5 per cent at the point of last purchase under the

amended item No. 74(b). From the above amendments, substitutions and exclusions, we are led to infer that before 7th September, 1974, the

State had intended to levy sales tax on the goods rubber, that with effect from 7th September, 1974, and up to 11th November, 1981, the State

had intended to levy sales tax on raw rubber, viz., latex, and that on and from 11th November, 1981, the State had intended to levy sales tax not

only on natural rubber latex but also on all varieties and grades of raw rubber.

11. Now, it must be seen whether RMA grade rubber sheet comes within the category of raw rubber, viz., latex. Of course, RMA rubber sheets

will come within the category of amended item 74(b), viz., all varieties and grades of raw rubber, which had not suffered tax under item No. 74(a)

namely, natural rubber latex. But it cannot come within the category of either the natural rubber latex or raw rubber latex. It is common knowledge

that raw rubber, viz., latex and natural rubber latex are in milky liquid form or in pasty form, whether the preservatives and additives are mixed with

the same or not. Anyhow, raw rubber, viz., latex and natural rubber latex can be transported, if only they are packed in tin or glass containers and

they cannot be carried or transported without such packing. Whereas RMA rubber sheets can be folded, carried and transported without

containers by bundling them up or by wrapping them in wooden or cardboard cases.

12. In order to support the contention that raw rubber, viz., latex and natural rubber latex are commercially treated as different goods from RMA

rubber sheets, the assessee has produced the typed set of various invoices, correspondence and I.S.I. booklets before us. The RMA rubber sheet

also was shown to us. The above documents have shown that the latex rubber, which is either raw or natural rubber, is packed only in drums or tin

containers and sold in litre quantity basis, whereas RMA rubber sheets and other grades of rubber sheets are sold only in kilogram weighment

basis.

13. At page 118 of the typed set the extract of pages 44 to 57 from Rubber Growers'' Companion, published by the Rubber Board, India, 1974,

dealing with processing of the crop from rubber plantations for marketing has been given. It is mentioned therein that the crop from the rubber tree

is latex, a milky liquid, is harvested by the process of tapping, that generally the latex that flows out from the rubber trees on tapping is channelled

into coconut shell cups attached to them, which in turn is collected (the latex) in clean buckets 2 to 3 hours after tapping, that the latex and the

different kinds of scrap are highly susceptible to degradation due to contamination on keeping and therefore, it is essential to process them into a

form that will allow easy storage and marketing without degradation. Then the booklet deals with important forms in which the crop from rubber

plantations can be marketed. They are (1) preserved latex and latex concentrates (2) dry ribbed sheet rubber (3) dry crepe rubbers and (4) dry

solid block rubbers. After mentioning the above items, it is stated that the crop collected in the form of liquid latex can be processed into any of the

above forms. But the crop collected in the form of tree lace, shell scrap and earth scrap can be processed only into crepe or solid block rubbers.

14. After narrating the above items, the processing and preservation of latex or latex concentrates has been given as follows :-

Latex is a white or slightly yellowish opaque liquid with a specific gravity which varies between 0.974 and 0.986. It is a week lyophilic colloidal

system of spherical or pear shaped rubber globules suspended in an aqueous serum .... Fresh latex as it comes out from the tree is slightly

alkaline or neutral but since it is an excellent medium for the growth of bacteria like milk, it becomes acidic rapidly due to bacterial action and gets

coagulated or clotted on keeping. Therefore, fresh latex cannot be kept for long without pre-coagulation.

At page 120 of the typed set, the methods of anti-coagulation and preservation are given. From pages 90 to 117 of the typed set, the type

descriptions and packing specifications for natural rubber adopted by the Rubber Manufacturers Association, New York, and endorsed by the

Rubber Trade Association of New York are extracted in details.

In section 2 at page 93 of the typed set, the following descriptions are given :-

Wet, bleached and virgin rubber and rubber that is not completely dry at the time of buyers'' inspection is not acceptable for any of the RMA

official types (except slightly undercured rubber as specified under 5 ribbed smoked sheet description. Skin latex coagula shall not be used in

whole or in part for producing any of the RMA types. Copper or manganese content in any RMA, type and grade of rubber shall not exceed the

following maximum tolerances : Copper 8 parts and Manganese 10 parts per million.

Section 3 at page 94 of the typed set deals with ribbed smoked sheets and it is stated as follows :

Nothing but ribbed smoked sheets of rubber can be used in making these grades; cuttings, block or frothy sheets, or other scrap, air-dried sheets

or smooth sheets not permissible.

Thus RMA smoked rubber sheets are obtained by processing the natural latex rubber. Therefore, RMA rubber sheets cannot be treated in the

category of raw or natural latex.

15. In dealing with the mode of packing of the ribbed smoke sheets, in Part II of the Type Descriptions and Packing Specifications at page 105 of

the typed set, it is mentioned in clause (a) as ""All ribbed smoked sheets shall be packed in rubber covered bales"" and under clause (d) that for

smoked sheets the outside of the bales shall be lightly dusted with talc before applying the wrapper sheets to prevent sticking, which cannot be

adopted on the raw or natural latex which is milky liquid.

16. In the extract from Rubber Growers'' Companion, as seen at page 122 of the typed set, the process for preserving the field latex has been

given. It is stated that the preserved field latex can be marketed as latex upto 35 per cent dry rubber content, that the processing of field latex

consists essentially of adding the preservative to the latex, bulking, settling and blending into consignments of suitable size for despatch and that after settling and removal of the sediments in the bulking tank, it is gently mixed and after testing the preservative content, the latex is packed,

preserved and marketed in two concentrates, that is, latex between 36 and 50 per cent d.r.c. and latex between 51 and 60 per cent d.r.c. At page

124 of the typed set relating to the processing of latex into latex concentrates by centrifugation is described. The marketable forms of latex and

latex concentrates are mentioned after processing and testing in the laboratory under the prescriptions framed by the Indian Standard Institution in

their documents, I.S. 3708/Parts I and II. At the end of page 125 of the typed set, the processing of latex into dry ribbed sheet rubbers is given.

Thus, it will be seen from the above booklet that the preserved latex after testing is marketed as such whereas RMA rubber sheets are marketed

after further processing of the processed latex.

17. The learned counsel for the assessees has also furnished the typed set of the documents, viz., contracts, and other documents which were said

to have been filed before the Sales Tax Appellate Tribunal. At page 8 of the typed set, the quotation given to the assessee by one Ishwardas Sons

relating to various items of RMA rubber grade sheets as well as latex is furnished. In dealing with latex, it is described as 60 per cent centrifuged

and its rate is given as Rs. 6.05 per litre, whereas the rate for rubber sheets is given in bulk. At page 9, the confirmation letter of the Plantation

Corporation of Kerala Limited dated 15th December, 1977, is extracted. In it the quotation given for latex 60 per cent for 10 drums at Rs. 6.05

per litre f.o.b. Cochin has been confirmed. At page 10 the invoice of the Travancore Rubber & Tea Co. Ltd. has been extracted under which 30

drums containing 6185.05 litres have been sold at Rs. 6.85 per litre. At page 13, the invoice of the Plantation Corporation of Kerala Ltd., dated

16th October, 1975, has been extracted under which RMA No. 1/2600 Kgs., RMA No. 2/1150 Kgs., and sheet cutting No. 2/1000 Kgs., have

been sold at the per quintal rate of Rs. 790, 787 and 754 respectively.

18. At page 17, the Rubber Sale Notice of the Tamil Nadu Forest Department, Government Rubber Plantations, Nagercoil, dated 23rd February,

1977, has been extracted. Condition No. 2 therein says that the bid shall be for each lot of 100 Kgs., that all grades will be baled naked and that

additional covering with hessian will be extra at Rs. 4.50 per quintal. So far as the wet latex is concerned, it is stated that the bid shall be per

kilogram and the purchaser will have to pay 50 paise per Kg. towards the cost of the container. Thus, the Government rubber Plantation itself has

treated grade rubber sheets as different from wet latex while selling the same in auction. If the State Government itself has treated latex as a

different commodity from the graded sheet for the purpose of sale, the same treatment has to be adopted with reference to the purchase made by

the assessee from the same rubber plantation and hence the two commodities cannot be treated as identical goods. In several other

correspondence and invoices also, RMA graded rubber goods (sic). With reference to natural rubber it is packed in drums and the rate is on

weighment or on quantitative measurement basis. At page 34 of the typed set relating to documents, we find the letter of the new Ambadi Estates

Private Limited, Kulasekaram in Kanyakumari District. In the said letter an order has been passed for 320 drums of rubber latex 60 per cent

D.R.C. with a schedule of supply. At page 39, we find the letter of the Rubber Research Institute of India in which it is stated that the natural

rubber sheets are graded by visual comparison methods as per the norms prescribed by the Rubber Manufacturers'' Association, Newyork, which

has the abbreviated name RMA, and that latex is definitely different from RMA rubber sheet.

19. Thus, it has been established on the side of the assessee that RMA rubber sheets, which can be packed in bales with hessian wrapper is sold

by itself as a processed rubber goods whereas raw rubber, viz., latex, which can also be called as natural latex rubber and which is the crop

extracted from the rubber trees, is commercially a different commodity. The Additional Sales Tax Appellate Tribunal, which has disposed of

M.T.A. Nos. 736 and 737 of 1979, after discussing the provisions of the Tamil Nadu General Sales Tax Act as duly amended, and after hearing

the contentions raised on the side of the assessee, has taken the correct decision with which we are entirely in agreement. On the side of the

Revenue, no material has been placed before the lower authorities or before us for treating RMA graded rubber sheets as raw rubber, viz., latex,

whereas the history of the amended item 74 of the First Schedule to the Tamil Nadu General Sales Tax Act explicitly reveals the consciousness of the State in treating the various items of rubber and hence we are inclined to hold that the State had consciously excluded RMA graded rubber

sheets from being levied with sales tax during 19th June, 1974, and 11th November, 1981.

20. In the above view of the matter, we hold that under item 74 of the First Schedule to the Tamil Nadu General Sales Tax Act, as it stood during

the assessment years, the purchase turnover of RMA graded rubber sheets of the assessee are not liable to sales tax levy and hence the

assessment made on the purchase turnover of the assessees and the eventual levy of penalty by the Sales Tax Appellate Tribunal (Additional

Bench) in M.T.A. No. 442 of 1976 deserves to be set aside.

21. In the result, therefore, T.C. Nos. 1235 and 1236 of 1980 are dismissed with costs (one set), Counsel''s fee Rs. 250/- and T.C. No. 1296 of

1977 is allowed with costs. The order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, passed in M.T.A. No. 442 of 1976 is set

aside. The revenue shall pay the cost of Rs. 250 to the assessee.

