(1981) 09 MAD CK 0041

In the Madras High Court

Case No : Tax Case No. 933 of 1977 (Revision No. 220 of 1977)

Pondicherry Fertiliser Co. APPELLANT

Vs

Union Territory of Pondicherry RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:

Citation : (1982) 51 STC 37

Hon'ble Judges : Sethuraman, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Radhakrishnan, for the Appellant; S. Govindaswamy, Government Pleader for Pondicherry, for the Respondent

Judgement

Sethuraman, J.—This is a revision petition to revise the order of the Sales Tax Appellate Tribunal, Pondicherry. It relates to the assessment

year 1974-75. The assessee is a dealer in fertilisers. According to the assessee, the commodity which he was dealing with was a mixture of

chemical fertilisers known as sagar manure or sagar complex, which would fall under item 22 of the First Schedule to the Pondicherry General

Sales Tax Act, taxable at the rate of 1 per cent single point. The assessing authority as well as the as the appellate authority have held that it should

not be considered to be a chemical fertiliser within the meaning of the said expression as defined under item 22 of the First Schedule, and

therefore, taxed it at 2 1/2 per cent. The Tribunal, in disposing of the appeal on 5th March, 1977, held that since sagar manure does not fall under

any of the commodities listed under item 22 of the First Schedule to the Pondicherry General Sales Tax Act, it was not liable to taxation at the

concessional rate. The assessee having failed, brought the matter on revision to this Court.

2. By a subsequent notification dated 7th November, 1977, item 22 has been expanded, so as to contain 25 sub-items and the amendment is

deemed to have come into force on the 1st April, 1996. After serialising the chemical fertilisers under item (1) to (23), the 24th item is :

Any mixture of two or more of the articles mentioned in items (1) to (23) above with or without the addition of other articles.

3.The only question is, whether, in the present case, sagar manure or sagar complex is a mixture of two or more of the articles mentioned in the

notification with or without the addition of other articles.

4. There are a specific finding by the Tribunal that there are at least two items of item 22 of the First Schedule which have gone into Sagar manure

or Sagar complex. This is on the basis of an analysis made of the said Sagar manure. A mixture of two of the items, viz., sub-items (11) and (12)

with or without the addition of some other article, would fall within the scope of item 22, so as to be eligible for the concessional rate of tax. The

learned Government Pleader contended that the proportion of sub-items (11) and (12) to the other items is very small. But, the notification does

not call for any specific proportion or particular percentage of the listed chemicals so as to fall within sub-item (24) in item 22 of the First-

Schedule. So long as there is some percentage of the articles of chemical fertilisers listed in the notification, which have been mixed with or without

the addition of other articles it would fall within sub-item (24). As the nature of the notification is somewhat different from what has been

considered in relation to the Tamil Nadu General Sales Tax assessments, we do not think it necessary to go into those cases. The assessee will be

eligible for the benefit of the concessional rate of tax with reference to the turnover of Rs. 4,69,520, i.e., the rate of tax to be adopted is 1 per cent

instead of 2 1/2 per cent. The revision is allowed and the assessee will be entitled to his costs. Counsel''s fee Rs. 250.

5. Petition allowed.