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In the Madras High Court

Case No : T.C. No. 578 of 1978 (Revision No. 182 of 1978)

Ravi Lubrication APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 7A

Citation : (1986) 61 STC 27

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : A.K. Gopinath, for C.S. Chandrasekara Sastry, C. Venkataraman and C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader I, for the Respondent

Judgement

Ramanujam, J.—In this tax revision case filed by the assessee, the view taken by the Tribunal that the used or drained oil as called by the

assessee or the waste oil as called by the revenue could be treated as a lubricating oil coming under entry No. 47. The assessees are dealers in

grease and for the purpose of manufacturing of grease they purchased the used lubricating oil and after refining them used it as a base for

manufacture of grease. For the assessment year 1975-76, they were assessed on a taxable turnover of Rs. 7,63,604 at 8 per cent in sales of

grease manufactured by them and also on a turnover of Rs. 1,32,916 taxed at 4 per cent u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959,

in respect of purchases of used oil, which has been used for the manufacture of grease by the assessee. The assessee claimed that the turnover of

Rs. 1,32,916 represents his purchase of the lubricating oil and the lubricating oil being falling under entry No. 47 of List I is taxable at single point and therefore the assessee is not liable to pay tax u/s 7-A of the Act. As the used oil purchased by them from hawkers is the same lubricating oil

that was sold by the oil companies to various concerns from whom after some use the hawkers purchase and therefore the purchase turnover of

the used oil from hawkers or from service stations or from factories is not exigible to tax. This contention having been rejected by the assessing

authority the matter was agitated before the Appellate Assistant Commissioner. That appeal having failed, the assessee went before the Tribunal.

2. The Tribunal found that the so called used or drained oil is nothing but waste oil, that the purchase of such a waste oil which cannot be used any

further as a lubricating oil will attract section 7-A of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the Act, and so long

as that oil has been utilised in the manufacture of grease by the assessee, the purchase turnover of the waste oil is liable to be charged u/s 7-A of

the Act. The said view of the Tribunal has been challenged in this revision.

3. According to the learned counsel for the assessees, the used oil or drained oil continues to have the same properties as the lubricating oil and

therefore the same has to be taken to continue to be the lubricating oil in which case, the lubricating oil being a taxable one at single point and that

point has already reached, the assessee is not liable to pay tax on his purchase even though the oil purchased has been used for the purpose of

manufacture of grease. Learned counsel for the assessee has taken pains to compare the chemical properties of he lubricating oil as also the

drained or used oil in support of his plea that the used oil consists of the same chemical properties as the lubricating oil itself and so long as it is not

ceased to be the lubricating oil, the purchases cannot be taxed u/s 7-A of the Act. Normally, the used or drained oil is not again used as a

lubricating oil for, the oil is drained only when it could no longer be used as a lubricating oil. According to the learned counsel for the petitioner, the

used oil or drained oil is a lubricating oil with some impurities and as soon as the impurities are removed by some process it again becomes a

lubricating oil and could be used as such. Even assuming that after some process the drained or used oil could again be used as a lubricating oil, the

question is, whether the oil purchased by the assessee for the manufacture of grease and used in the manufacture of grease was a lubricating oil. As

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already stated, the oil is drained or only it is used as a lubricating oil cannot be heard any further. Even if a urged by the learned counsel for the

assessee it contains most of the properties as found in the lubricating oil, the used oil or the drained oil even according to the learned counsel

cannot be straightaway be used as a lubricating oil without use of some process. Therefore, the drained oil or the used oil as purchased by the

petitioner cannot be used for lubricating purposes and therefore the oil is not a lubricating oil. The Tribunal has taken the view since entry No. 47

used the expression ""lubricating oil"" and not other oils, the oil containing impurities which has been purchased as the used or the drained oil cannot

be either used or sold as a lubricating oil. As already stated, entry No. 47 of List I refers to only lubricating oil and not any oil. Therefore, this entry

is with reference to the use to which the oil is put. If an oil is used or sold for lubricating purpose, then, it is a lubricating oil and that will clearly fall

under entry No. 47. But, where the oil even though containing some of the characteristics of lubricating oil that cannot be said to be lubricating oil

so long as that oil cannot be used or sold as a lubricating oil. Thus we are not inclined to agree with the learned counsel for the assessee that the

chemical properties and the oil should be taken as the criteria for deciding the question as to whether the particular oil comes within entry No. 47

or not. In our view, the correct approach should be to take the user as the basis and so long as the oil could not be used or sold as a lubricating oil

then that cannot be taken to fall under entry No. 47. Thus, the oil purchased by the assessee for the use in manufacture of grease is not a

lubricating oil but an oil generally and since all the oils have not been brought in under entry No. 47 it should be taken to to come under the multi-

point scheme. It is in this view the Tribunal has held that since the oil purchased by the petitioner comes within the multi-point scheme and as the

purchase having been effected from the hawkers, no tax has been paid at any prior stage on such oil, and therefore, section 7-A of the Act is

clearly applicable to the facts of this case.

4. The learned counsel for the assessees refers to the decision of the Allahabad High Court in Commissioner of Sales Tax v. Prag Ice and Oil Mills

[1975] 35 STC 520, wherein the groundnut oil mixed with certain acids and chemicals was taken to be still groundnut oil. We are of the view that

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the decision does not afford any help to the petitioners. There, the groundnut oil was refined in the process of manufacturing the vegetable ghee

from it and the residue which is no longer edible was utilised in the manufacture of soaps. The question is whether the residue oil is commercially a

different commodity other than the original groundnut oil. The court held that it continues to be the groundnut oil notwithstanding the impurities

found therein. There, according to the Supreme Court, even though it is a very bad groundnut oil still it is a groundnut oil. There, the expression

which came up for consideration is groundnut oil since the article found was groundnut oil with considerable impurities, it was taken that it

continues to be a groundnut oil. The word which comes up for consideration is a lubricating oil and an oil which cannot be used for lubrication

purposes can never be brought under that term even though the oil was originally a lubricating oil but at the time it was dealt with by the assessee it

is used as a lubricating oil. Since entry No. 47 refers to lubricating oil and not any oil, the petitioner cannot invoke entry No. 47, when the oil

purchased by him cannot at all be used as a lubricating oil. In this view of the matter, we are in entire agreement with the view taken by the Tribunal

in this case. The tax case is therefore dismissed. There will be no order as to costs.

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