(1991) 08 MAD CK 0029

In the Madras High Court

Case No : T.C. No. 966 of 1982 (Appeal No. 57 of 1982)

Ravi Petroleum Products — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Item 47

Citation : (1991) 08 MAD CK 0029

Hon'ble Judges : A.S. Anand, C.J;Kanakaraj, J

Bench : Division Bench

Advocate : Kirupanandan, for C. Venkatraam, D. Srinivasan and S.R. Kumaraswamy, for the Appellant; V.M.G. Varadarajan, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The controversy in this tax appeal filed by the assessee is limited only to the turnover of Rs. 1,95,497.75 relating to

the first sale of oil 666. The assessing authority taxed the turnover relating to oil 666 at 8 per cent single point treating the commodity to be

covered under item 47 of the First Schedule. On appeal, the Appellant Assistant Commissioner held oil 666 to be taxable at 4 per cent multi-point

and allowed the appeal. The Joint Commissioner proposed to revise the order of the Appellate Assistant Commissioner in exercise of the suo motu

power of revision. Consequently, a notice was issued to the assessee and after inviting its objection and hearing the parties, the Joint Commissioner

confirmed the proposal and setting aside the order of the Appellate Assistant Commissioner, restored that of the assessing authority. The assessee

is in appeal before us.

2. Learned counsel for the appellant submitted that in view of the clarification

which had been issued by the erstwhile Board of Revenue on March

6, 1972, relating to oil XB 999 and XB 700, the oil which is the subject-matter of dispute in the present case was also liable only to tax at multi-

point rate. This plea had been raised before the Joint Commissioner also. The Joint Commissioner found that the Board''s earlier clarification dated

March 6, 1972, is relating to different oils and had no relevance to the facts of the case on hand. The Joint Commissioner rightly opined that the

rate of tax applicable to each product has to be decided with reference to the facts of that product. The Joint Commissioner noticed that with

regard to the correct rate of tax so far as oil 666 is concerned, the Commissioner of Commercial Taxes had issued a clarification in his

administrative capacity that oil 666 processed and sold as lubricating oil was taxable at 8 per cent single point under item 47 of the First Schedule

to the Tamil Nadu General Sale Tax Act, 1959 during the relevant period. Even without that clarification we find that what was sold by the

appellant-assessee was only processed lubricating oil. Keeping in view the process of manufacture, its physical and chemical properties, its

application and use and the manner in which the oil is understood in common parlance and by the trade in general, the view of the Joint

Commissioner that oil 666 was nothing but lubricating oil and covered by entry 47 of the First Schedule to the Act is wholly justified. The

Appellate Assistant Commissioner clearly fell in error in treating oil 666 as taxable at 4 per cent multi-point without considering the physical and

chemical properties of the oil and also as to how it is understood in common parlance and by the trade in general. Entry 47 of the First Schedule at

the relevant time read ""lubricating oils and greases"" and from August 15, 1974, the rate of tax was 8 per cent at the point of first sale in the State.

Since oil 666 is a lubricating oil, it is covered by the entry at it existed at the relevant time and the Joint Commercial rightly found so. No error is

therefore found in the order of the Joint Commissioner which is based on proper appreciation of the materials on record and correct application of

the entry in the First Schedule. The tax appeal, therefore, fails and is dismissed. No costs.

3. Appeal dismissed.

