(1995) 01 MAD CK 0115

In the Madras High Court

Case No : Tax Case Appeal No. 402 of 1987

S. Viswanathan APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

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

Citation : (1995) 01 MAD CK 0115

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 a dealer in cable drums at Salem. On checking the accounts in the assessment year 1980-81, the assessing officer noticed that there was no evidence to prove that the wood purchased for Rs. 79,796 had already been taxed and such purchases were consumed in the manufacture of cable drums. Hence, he determined the taxable turnover at Rs. 79,796 and levied tax at 4 per cent. Aggrieved with the same, the assessee filed an appeal before the Appellate Assistant Commissioner (Commercial Taxes) disputing the assessment made u/s 7A of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") of the turnover of Rs. 79,796. The Appellate Assistant Commissioner (Commercial Taxes) was of the view that the wood, bolts and nuts had not lost their identity while they were used in the manufacture of cable drums. Accordingly, the Appellate Assistant Commissioner deleted the addition of Rs. 79,796. The order of the Appellate Assistant Commissioner was examined with the connected records by the Joint Commissioner. He considered that the orders of the assessing officer and the Appellate Assistant Commissioner (Commercial Taxes) were not correct. According to the Joint Commissioner, the purchase turnover of Rs. 79,755.50 is taxable at 5 per cent. single point instead of 4 per cent. adopted by the assessing officer. Aggrieved with that order, the assessee is in appeal before this Court.

2. Learned counsel appearing for the assessee submitted that the assessment cannot be made by the assessing officer on the purchase turnover of wood u/s 7A of the Act. Learned counsel also contended that the wood was not consumed in the manufacture of the cable drums. The planks from the wood are intact in the cable drums manufactured by the assessee/appellant and the physical existence was not lost and therefore, assessment u/s 7A on the purchase turnover of wood amounting to Rs. 79,756 is not sustainable.

3. On the other hand, the Government Advocate for Taxes submitted that u/s 7A assessment made by the assessing officer in this case is justified which may be sustained and confirmed. According to the learned Government Advocate, the wood was consumed and lost its identity in the manufacture of cable drums. Therefore, the purchase turnover of wood is liable to be taxed u/s 7A of the Act.

4. The assessee purchased wood for Rs. 79,756 during the year of assessment and from the wood purchased from non-dealers, the assessee had made out cable drums and in the process of making the cable drums, the identity of the wood was not lost. In order to attract the levy of tax u/s 7A the goods purchased should have been consumed or devoured or exhausted in the process of manufacturing with the result the identity of the goods has been completely lost and so long as the identity of the goods remain, the same, the goods purchased and used in the manufacture of some other goods would not be said to have been consumed in the process of manufacture of other goods.

5. According to the facts arising in the case of The State of Tamil Nadu Vs. Associated Sales of India, the assessee purchased folded clips from unregistered dealers and used in the manufacture of office files. While considering this aspect u/s 7A of the Act, this Court'' held that when folded clips were purchased from unregistered persons and used in the manufacture of office files, it could not be said that this folded clips were consumed in the manufacture of office files. Consequently the purchase turnover of the folded clips does not attract the tax u/s 7A of the Act.

6. In T.C. No. 300 of 1980 in the case of Stare of Tamil Nadu v. Vijayakumar Slate Works by an order dated March 13, 1980, this Court held that the purchase turnover of the wood was not liable for tax u/s 7A of the Act since the wood purchased was merely made into frames in which slates were inserted and the frames themselves, therefore, cannot be said to have been consumed in the manufacture of other goods. [See The State of Tamil Nadu Vs. Subbaraj and Co., Considering the facts arising in this case, in the light of the decisions cited supra, we hold that the Joint Commissioner was not correct in directing the assessing officer to make assessment u/s 7A of the Act on the purchase turnover of wood of Rs. 79,756. Therefore, we set aside the order passed by the Joint Commissioner and restore the order passed by the Appellate Assistant Commissioner (Commercial Taxes), on this aspect.

7. In the result, the appeal by the assessee is allowed. There will be no order as

to costs.

8. Appeal allowed.

