

(1995) 09 MAD CK 0030

In the Madras High Court

Case No : Tax Case (Appeal) No. 478 of 1986 (Appeal No. 14 of 1986)

Shree Trading Corporation

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-09-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(1), 3(2), 34

Citation : (2003) 133 STC 529

Hon'ble Judges : Venkatachalam, J; Abdul Hadi, J

Bench : Division Bench

Advocate : N. Inbarajan, for C. Natarajan, for the Appellant; Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

Abdul Hadi, J.—A short question is involved in this tax case appeal by the assessee against the suo motu revisional order of the Joint

Commissioner u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 holding that the assessee's turnover to the extent of Rs. 3,96,630.83

relating to "nylon zip" would have to be taxed only under entry 145 of the First Schedule read with Section 3(2) of the Act and not under multi-

point levy pursuant Section 3(1) of the Act. The said entry in relation to the assessment year in question, namely, 1980-81 run as follows :

Plastic articles at the point of first sale in the State--8 per cent".

Though the said turnover was originally assessed to tax at multi-point, the assessing authority by revised assessment brought it under the abovesaid

entry 145. However, on appeal, the first appellate authority, gave relief to the assessee by holding that it would come under only multi-point levy.

But subsequently by the impugned order, the Joint Commissioner set aside the

first appellate authority's order and restored the abovesaid revised assessment by the assessing authority.

2. Learned counsel for the assessee-appellant drew our attention to the decision Importex International (P) Ltd. Vs. State of Kerala and Another,

where it has been observed that though nylon and plastic articles are having the same source materials, the articles of nylon are understood in the

popular sense differently from the articles of plastic. The relevant observation at page 356 is as follows :

Though a scientific analysis of plastics and nylon reveals that both have a petro-chemical base, in commercial field nylon belongs to the textile

group and is different from plastic goods "Nylon twine", though a polymer, will not fit in with the common understanding of the term plastic goods.

3. This decision in Importex International (P) Ltd. Vs. State of Kerala and Another, has also been applied by this Court in the decision Beardsell

Ltd. v. State of Tamil Nadu reported in 1993 89 STC 137. In 1993 89 STC 137 (Beardsell Ltd. v. State of Tamil Nadu) no doubt the question

was relating to nylon twine and nylon yarn and they were held to be separate and distinct commercial commodities each one being separately and

popularly understood commercially by those who deal in these commodities. In the said case, after observing that the character of nylon twine and

nylon yarn is distinct and separate even if the source material is the same, this Court referred to Importex International (P) Ltd. Vs. State of Kerala

and Another, thus :

In Importex International (P) Ltd. v. Union of India 1991 81 STC 351, the Kerala High Court had to deal with an identical question. In that case

the petitioners were dealers in nylon fishnets. In that case, subsidiary question arose relating to the classification of nylon twine. The stand of the

Government was that nylon twine was not nylon yarn within the meaning of entries 42 and 156 of the Kerala Act. For the purpose of proper

appreciation of this decision we are extracting the said entries 42 and 156 of the Kerala Act :

"42. Artificial silk yarn, synthetic polyester fibre, polyester fibre yarn and staple fibre yarn

156. Plastics and articles made of plastics including plastic pipes."

The Kerala High Court then proceeded to extract the stand of the Government, that nylon fishnet twine would not come within the ambit of either

of the above entries, but should be taxed as general goods. The Kerala High Court put their seal of approval on the said stand of the Government.

4. The above proposition that nylon article is different from plastic article, adopting the common parlance theory could not be disputed by the

learned counsel for the Revenue also. In fact she fairly pointed out our own earlier judgment dated July 10, 1995 Reported as State of Tamil Nadu

v. P. Singaraveloo in 1996 100 STC 540 Mad in T.C. No. 69 of 1989 dealing with the question relating to glass bottles and glass wares. There

also we reiterated the same principles as laid down in 1991 81 STC 351 Mad. [Importex International (P) Ltd. v. State of Kerala]

5. Therefore, it is clear that the Joint Commissioner has erred in holding that nylon zip and nylon zip fastener sold by the assessee is mainly a

plastic article"" (though there may be other minor ingredients therein like cloth and metal). No doubt, learned counsel for the assessee also relied on

The English Electric Co. of India Ltd. Vs. The Superintendent, Central Excise and Others, where under the excise law it has been held that though

fuselinks may consist of porcelain-ware also, it cannot be taken as porcelain-ware. Likewise he also relied on the decision Geep Flashlight

Industries Ltd. v. Union of India reported in 1985 22 ELT 3 SC where it has been held, under the excise law, that torchlight though made up of

plastic material also cannot be treated as ""plastic material"". With reference to these decisions, we may state that there may not be any necessity for

the application of these decisions in the present case since we have already held that nylon article is different from plastic article as per the common

parlance theory itself.

6. Accordingly, the order of the Joint Commissioner is set aside and the appeal is allowed. No costs.