
(2008) 10 MAD CK 0084
In the Madras High Court
Case No : Tax Case (R) No. 1219 of 2008

Sreenivas and Co.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 2, 3, 5
Constitution of India, 1950 — Article 286(3)

Citation : (2009) 19 VST 39

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : V. Sundareswaran, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The assessee purchases raw skins to fulfil export orders for finished leathers. They claimed that their turnover is eligible for exemption in view of the decision T. Azeezur Rahman and Company Vs. State of Tamil Nadu, . The assessing officer held that they had not filed correlating statement to prove that the raw skins were purchased in the course of export and therefore, disallowed the claim for exemption. Against that, an appeal was filed by the assessee. Referring to the correlation statement filed in respect of the purchase of raw skin against the export orders and following T. Azeezur Rahman and Company Vs. State of Tamil Nadu, the appellate authority held that the purchases of raw skin within the State against purchase orders for export are not liable to tax accepting the assessee's case that the purchase of raw skin was effected for fulfilment of export orders of finished leathers. The Revenue challenged this before the Sales Tax Tribunal and the Tribunal following K.A.K. Anwar & Co. v. State of Tamil Nadu [1998] 108 STC 258 wherein the Supreme Court had categorically held that, "dressed hides and skins are goods different from raw hides and skins", held that the claim of exemption u/s 5(3) of the Central Sales Tax Act is not in order and allowed the appeal. Against this the

appellant herein filed the revision before the Tamil Nadu Taxation Special Tribunal and the matter had been admitted and notice had been issued on December 6, 2001. Consequent to the abolition of the Tribunal, these matters are entertained as a revision by us.

2. Even at the outset, the learned Special Government Pleader submitted that Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, covers this issue. But elaborate arguments were advanced by the learned Counsel of the appellant that Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, can be distinguished. So we are dealing with the same.

3. Mr. V. Sundareswaran, learned Counsel for the appellant, submitted that Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, would not apply to the present case since in this case the learned Counsel for the petitioner relies on Section 5(1) of the Central Sales Tax Act, 1956, since the assessee purchases only raw hides and exports the goods and not on Section 5(3) of the Central Sales Tax Act, 1956 and the Department cannot disallow the exemption when there are specific circulars to the effect that raw hides and skins and dressed hides and skins are one and the same and referred to circular D. Dis/Acts Cell III/ 129820/98 dated July 18, 1994 and K. Dis. Acts. Cell V/102966/91 dated June 19, 1992. The learned Counsel also submitted that Section 14(iii) of the Central Sales Tax Act deals with declared goods and 14(iii) makes it clear that hides and skins whether they were raw or dressed are one and the same. The learned Counsel also referred to serial No. 7 in the Second Schedule in the TNGST Act which would show that dressed hides and skins are subject to tax only if they were not subject to tax as raw hides and skins. The learned Counsel relied on various judgments which would be dealt with in detail later.

4. Mr. Haja Nazirudeen, learned Special Government Pleader, in addition to Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, would submit that the entry in Section 14(iii) is for the limited purpose of enumerating such of those goods which are declared goods and the inclusion of several goods in one entry would not mean that they are not different taxable goods, especially when the Supreme Court has held that they are different. The learned Special Government Pleader also submitted that the above circulars would at best bind the Revenue, and the categorical pronouncement of the Supreme Court cannot be ignored.

5. The relevant sections and circulars are extracted hereunder:

The Central Sales Tax Act, 1956:

5. When is a sale or purchase of goods said to take place in the course of import or export.-(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the Territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents

of title to the goods after the goods have crossed the Customs Frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the Territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs Frontiers of India.

(3) Notwithstanding anything contained in Sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the Territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

14. Certain goods to be of special importance in inter-State trade or commerce.- It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

(i) ...

(ii) ...

(iii) hides and skins, whether in a raw or dressed state;

(iv) ...

The Tamil Nadu General Sales Tax Act, 1959:

9. Stage of levy of taxes in respect of imported and exported goods.-Where in the case of any goods tax is leviable at one point in a series of sales or purchases, such series shall-

(a) in the case of goods imported into the State either from outside the Territory of India or from any other State in India, be deemed to commence at the stage of the sale or purchase effected immediately after the import of such goods ;

(b) in the case of goods exported out of the State to any place outside the Territory of India or to any other State in India, be deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods:

Provided that in the case of goods exported out of the State to any place outside the Territory of India, where the sale or purchase effected immediately before the export of such goods is under Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), a sale or purchase in the course of export, the series of sales or purchases of such goods shall be deemed to conclude at the stage of the sale or purchase immediately preceding such sale or purchase in the course of export.

Serial No. 7 in the Second Schedule of the Tamil Nadu General Sales Tax Act, 1959 reads thus:

-----	7. (a)
Raw hides and skins At the point of Four per cent by Act 34 of last purchase in 1991 from September 5, the State 1991	
-----	(b)
Dressed hides and At the point of One per cent by Act 30 of skins (which were not first sale in the 1992 from March 7, 1992 subjected to tax under State this Act as raw hides and skins)	
-----	Two per
cent with effect from July 17, 1996 by Act No. 37 of 1996	
-----	Four per
cent with effect from August 18, 2001 by Act No. 23 of 2001	

7. The relevant circulars are extracted:

1993 Circulars and clarifications

Sl. No. Gist of clarification on rate of tax (Tamil Nadu)

36. K. Dis. Acts. Cell V/102966/91 dated June 19, 1992.

1. Exemption on raw hides and skins can be claimed u/s 5(1) of the Central Sales Tax Act, 1956, if the resultant tanned hides and skins are exported out of India.

2. The inter-State sales of tanned hides and skins would attract liability to tax under Central Sales Tax Act, 1956, if the corresponding raw hides and skins had not suffered tax under the TNGST Act, 1959.

Office of the Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Madras-5.

D. Dis/Acts Cell III/129820/94 Dated 18-07-1994 Circular

Sub : TNGST & CST Acts-Export of finished leather-Exemption on the purchase of raw hides and skin against specific orders for export-Legal opinion-Regarding

Ref: AGP (Taxes) Madras, opinion No. 92/94 dated June 29, 1994

The Additional Government Pleader (Taxes), Madras, in her opinion cited above opined that the judgment in the case of Brown Leather Company v. State of Tamil Nadu reported in [1993] 91 STC 1 (Mad) in paras 24, 26 and 30 which clearly give the answer that raw and dressed hides and skins are different for the purpose of levy under the State law. While for taxation under the Central Sales Tax Act, if the local purchases of raw hides and skins are converted into finished leather and then exported against the specific order for export, such raw hides and skins and dressed hides and skins are to be treated as one and the same commodity as per Mahi Traders judgment rendered in the Supreme Court of India reported in [1989] 73 STC 228.

Sd./P. PONNUSWAMY, Joint Commissioner (RP) (FAC)

Now we will deal with the judgments.

(i) *T. Azeezur Rahman and Company Vs. State of Tamil Nadu*, is the judgment on which the assessee rested his case from the beginning. Here the Division Bench held that the purchase of raw hides and skins pursuant to export orders under which the dressed hides and skins were exported after tanning was exempted in terms of Section 5(3) of the Central Sales Tax Act. Therefore, the question was decided only in terms of Section 5(3). The Division Bench also held that for determining the claim u/s 5(3) of the Act, the fact that the raw hides and skins and dressed hides and skins are commercially treated as distinct commodities or that entry 7 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, deals with them as two different and distinct commodities becomes wholly irrelevant. The Division Bench held : (at page 366 of STC)

... Having regard to the wording of Section 14(iii) of the Central Act, raw hides and skins and dressed hides and skins are to be treated as one and the same ...

(ii) In *Brown Leather Company v. State of Tamil Nadu* [1993] 91 STC 1 (Mad) , the assessee contended that when the Parliament in furtherance of the constitutional mandate, while declaring certain goods as of special importance in inter-State trade and commerce adopted a specific and particular form or method of description of hides and skins so as to constitute it as one goods, it is not open to the State Legislature to adopt a different description by bifurcating the item of goods into more than one for purposes of levy under the State Act and thereby rob the object or the benefit arising out of the declaration by the Parliament ; and that, the powers of the State Legislature to levy sales tax even on the intra-State sales is subject to the two-fold restrictions imposed in Section 15 of the Central Act, viz., that the rate shall not exceed the one stipulated therein and such tax shall not be levied at more than one stage, and consequently, the impugned provisions violate the said mandate contained in the Constitution of India and the Central Act, and therefore, are liable to be struck down as ultra vires, unconstitutional and violative of Sections 14 and 15 of the Central Act. The court, in fact referred to *T. Azeezur Rahman and Company Vs. State of Tamil Nadu*, and held that it had no relevance to the case on hand. The Division Bench held as follows : (at page 20 of 91 STC)

The question, therefore, that requires to be considered is as to whether in the context and setting of Section 14(iii) and Section 15 of the Central Act, the State Legislature is entitled to treat them as different objects of levy of sales tax and whether such levy is violative of Article 286(3) of the Constitution and Sections 14 and 15 of the Central Act.... The fact that certain articles are mentioned under the same heading in a statute or in the Constitution, does not mean that they all constitute one commodity and the inclusion of several articles under the same heading may be for reasons other than that the articles constitute one and the same thing. Therefore, inasmuch as dressed hides and skins are commercially different from raw hides and skins, the mere fact that they are grouped together in one and the same item u/s 14(iii) cannot make or render them to be the same

commodity for all purposes and under all circumstances.

(iii) In *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, the validity of the Madras General Sales Tax (Special Provisions) Act (II of 1963) came up for consideration and the question was whether Section 2(i) discriminates against hides and skins imported from other States. There, while explaining Section 5 of the Tamil Nadu General Sales Tax Act, which reads thus: (at page 729 of STC)

Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees ...

(vi) the sale of hides and skins, whether tanned or untanned shall be liable to tax u/s 3, Sub-section (i) only at such single point in the series of sales by successive dealers as may be prescribed" The Constitution Bench held as follows:

The series of sales referred to in this provision, to our mind, meant the series of sales of each kind of hides and skins, namely, the series of sales of raw hides and skins and the series of sales of dressed hides and skins and do not mean a single series of sales which includes successive sales in the first instance of raw hides and skins and after tanning successive sales of tanned hides and skins.

(iv) In *State of Tamil Nadu v. Mahi Traders* [1989] 73 STC 228 the Supreme Court held that, "Section 14(iii) of the Central Sales Tax Act which reads as, "hides and skins, whether in a raw or dressed state", is comprehensive enough to include the products emerging from hides and skins until the process of dressing or finishing is done." But in that case the goods in question were split leathers and coloured leathers and the Supreme Court affirmed the view of the High Court that these goods continue to be hides and skins eligible for special treatment under the CST Act.

(v) In *K.A.K. Anwar & Co. v. State of Tamil Nadu* [1998] 108 STC 258 (SC) the appellants, who purchased raw hides and skins, after dressing them, sold them in the course of inter-State trade. The three-Judge Bench held that the raw hides and skins and dressed hides and skins are different taxable commodities. In this, they have applied *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, and referred to *State of Tamil Nadu Vs. Mahi Traders and Others*, . (It is interesting to note that in some copies of *K.A.K. Anwar & Co. v. State of Tamil Nadu* [1998] 108 STC 258 (SC), *State of Tamil Nadu Vs. Mahi Traders and Others*, is shown as "overruled" and in other copies the words used are "considered"). However, *Brown Leather Company v. State of Tamil Nadu* [1993] 91 STC 1 (Mad) was affirmed. In this case the controversy arose because item 7 of the Second Schedule underwent two changes and therefore, there were three distinct periods. The period before March 23, 1987 ; the period between March 23, 1991 and September 4, 1991 ; and the period after September 4, 1991, when the original entry got restored. For a period that is from March 23, 1987 to September 4, 1991 the entry read merely as:

7 (a) Raw hides and skins

7(b) Dressed hides and skins

and the words within the brackets "(which were not subjected to tax under this Act as raw hides and skins)" were deleted for this period. The Supreme Court held that even though Mahi Trader's case [1989] 73 STC 228 seems to support the contentions urged on behalf of the appellants, the question that whether dressed hides and skins and raw hides and skins are different commodities and whether Section 14(iii) refers to a single commodity "appear to have been decided by a Constitution Bench of this Court in A. Hajee Abdul Shukoor and Co. v. State of Madras [1964] 15 STC 719". Therefore, it is clear that the decision in Mahi Traders [1989] 73 STC 228 is impliedly overruled and the Supreme Court held that it clearly follows that the Constitution Bench had in no uncertain terms come to the conclusion that raw hides and skins and dressed hides and skins were not one and the same commodity and the submissions that because Section 14(iii) of the Central Sales Tax Act includes it in the same sub-heading cannot mean that they should be treated as one. The relevant paragraph is extracted hereunder : (at page 268 of 108 STC)

... While Section 14 enumerates the items which are regarded as being goods of special importance in inter-State trade or commerce, it is Section 15 which imposes the restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Section 14, in other words, is not a taxing provision but it merely classifies different commodities of the same species under one entry. Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Section 14 cannot mean that they are regarded as one and the same item.... Notwithstanding the fact that the raw hides and skins had been held by this Court in A. Hajee Abdul Shukoor and Company Vs. State of Madras, as being distinct from dressed hides and skins the Legislature did not think it appropriate to insert a clause similar to Section 15(d) which may have had the effect of regarding raw hides and skins and dressed hides and skins as being treated as a single commodity for the purposes of levy of tax.

The words hides and skins, whether in a raw or dressed state" in Section 14(iii) of the Central Sales Tax Act clearly seem to indicate that the Legislature recognised that raw hides and skins was an item different from dressed hides and skins ... In the present case dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Section 14(iii) deals with two different types of goods which unlike the case of pulses referred to in Section 15(d), is not regarded by the Act as one and the same commodity.

Therefore, what we understand from the above is that the two goods, viz., raw hides and skins and dressed hides and skins are different taxable commodities. The appellant's submission that his case has to be dealt with u/s 5(1) since the purchaser also is the exporter must be rejected. Rightly all along their case was that they are entitled to exemption u/s 5(3) and they can only claim u/s 5(3),

since they purchase raw hides and skins and then sell it against export orders after it becomes dressed leather. Therefore, really there can be no controversy after this categoric pronouncement. All the objections raised by the appellant are dealt with namely, that they are the same goods, that hides and skins in a raw and dressed are included in one entry, that Article 286(3) is violated. In fact, it is this decision that the Tribunal had relied on to reject the appellant's case.

(vi) Park Leather Industry (P.) Ltd. v. State of U.P. [2001] 122 STC 82, is another case on which the appellant relies on. The question there was whether the term "hides and skins" would include tanned leather and the Supreme Court after a detailed discussion of the etymological meaning and also the glossary published by the Indian Standards Institution that "tanned leather" still remains "hides and skins". But there they were dealing with Section 2(a) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964. There the Supreme Court also referred to A. Hajee Abdul Shakoor and Company Vs. State of Madras, and K.A.K. Anwar & Co. v. State of Tamil Nadu [1998] 108 STC 258 and held that those decisions would not apply to the case arising out of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, since the relevant Rules had dealt with them differently. Therefore, on a consideration of the provisions and definitions of the U.P. Act, this decision was given.

(vii) The Supreme Court in the above case had referred to Mahi Trader's case [1989] 73 STC 228 which as we have seen already is overruled in K.A.K. Anwar's case [1998] 108 STC 258 (SC). In fact reference was made to K.A.K. Anwar's case [1998] 108 STC 258. But the Supreme Court here had referred to the Tamil Nadu Act and held that the Act itself makes a distinction between raw hides and skins and dressed hides and skins, whereas as per Section 2(a) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 which is the Act that had to be considered in Park Leather case [2001] 122 STC 82 (SC) the definition of "agricultural products" includes items of animal husbandry and the words "animal husbandry" as per the said Act included hides and skins. Therefore, it is on a construction of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, that this decision was rendered and it can have no application to matters to which Tamil Nadu General Sales Tax Act applies, whereas in the Tamil Nadu Act, the two are dealt with differently. The Park Leather case [2001] 122 STC 82 (SC) can have no application and we are bound to follow K.A.K. Anwar's case [1998] 108 STC 258 (SC) which has been subsequently relied on and affirmed in Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, .

(viii) In Srinivas Leather Private Limited v. State of Tamil Nadu [2000] 119 STC 369, the same question has been answered against the assessee by the then Tamil Nadu Taxation Special Tribunal.

(ix) Johnson Lifts Ltd. (Now Johnson Lifts Pvt. Ltd.) Vs. Deputy Commissioner (CT), was referred to to support the Revenue's case that when there is a latest judgment of a Supreme Court on the issue then that would apply.

(x) Finally, we come to Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, which is a very short order. It reads as follows : (at page 2 of 129 STC)

In the instant case, the appellant purchases raw hides and skins which are then processed and the tanned or dressed hides and skins are then exported. The appellant contends that it is entitled to the benefit of Section 5(3) of the Central Act. This Court in TVL K.A.K. Anwar and Co. Vs. State of T.N., has categorically held that dressed hides and skins are different goods from raw hides and skins. Section 5(3) would be applicable where the goods which are sold or purchased have not undergone any transformation. In the instant case what is purchased by the appellant are raw hides and skins and it is not the same goods which are exported. Those raw hides and skins are then processed and it is the dressed hides and skins which are exported. Therefore, Section 5(3) will have no application. The appeals are dismissed.

9. In fact, even in T. Azeezur Rahman and Company Vs. State of Tamil Nadu, which the appellant relied on, the assessee invoked Section 5(3). The case of the appellant is that he purchased raw hides and skins and the same goods are exported as dressed hides and skins and it is thus he claims exemption. The Supreme Court has held that they are not the same goods, but different goods.

10. In Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, the appellant was a dealer identical to the appellant herein. He too purchased raw hides and exported them as dressed hides and the Supreme Court reiterating the legal position of K. A. K. Anwar's case [1998] 108 STC 258 dismissed the appellant's case holding in favour of the Revenue that the two are different commodities.

11. We have considered all these decisions. On facts, it is clear that the appellant herein is identical to the appellant in Shafeeq Shameel and Company Vs. Asst. Commissioner, Commercial Taxes and Others, . He purchases raw hides and skins, dresses them and exports them. It is in respect of such an assessee, the Supreme Court held that he is not entitled to exemption following the earlier K. A. K. Anwar's case [1998] 108 STC 258.

12. Therefore, the law is that "raw hides and skins" and "dressed hides and skins" are different taxable commodities, notwithstanding the fact that they figure in Section 14(iii) under one entry as "hides and skins whether in a raw or dressed state". The mere fact that they figure in one entry cannot be taken advantage of by the assessee as seen from the decided cases above.

13. With regard to the effect of the circular the following judgments were relied on:

(i) In Commissioner of Customs v. Indian Oil Corporation Ltd. [2006] 144 STC 146, the Supreme Court held that it was not open to the Revenue to advance an argument or file an appeal contrary to the circulars and that as long as a circular

remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(ii) In *Collector of Central Excise, Vadodra v. Dhiren Chemical Industries* [2002] 126 STC 122, the Supreme Court after placing its interpretation on a particular phrase in the circular and clarified that, "regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."

(iii) In *Collector of Central Excise, Patna v. Usha Martin Industries* [1998] 111 STC 254, the Supreme Court held that circulars are binding on the Department and that it is not open to the Department to turn contrary to the instructions of the circular.

(iv) In *State of Kerala v. Kurian Abraham Pvt. Ltd.* [2008] 13 VST 1, the Supreme Court held that as long as a circular continues to remain in force it is not open to the officers to say that the circular is not binding on them.

14. In all these decisions, the Supreme Court held that the circulars are binding on the Revenue but they do not bind the court or the assessee. Consistently, from 1998, the position is hides and skins, raw and dressed are two different commodities and in fact, both the circulars are prior to K.A.K. Anwar's case [1998] 108 STC 258 (SC) and the circular dated 1994 was given in the context of Mahi Traders [1989] 73 STC 228 which is now impliedly overruled by K.A.K. Anwar's case [1998] 108 STC 258 (SC). In these circumstances, no reliance can be placed on the circulars. However, the 1999 letter which has been extracted above, shows that the Deputy Commissioners have been requested to instruct the assessing officer not to take coercive action on the demands already raised in cases of purchase of raw hides and skins against specific orders of export until final orders are received from Government for waiver to the period up to November 30, 1997. The present case is one which arose before November 30, 1997 and if the assessing officers have been instructed to comply with these instructions and they have been doing so, they may consider extending the same indulgence to the appellant herein, if they so apply.

15. For the above reasons, the tax (appeal) is dismissed.