
(1976) 09 MAD CK 0005

In the Madras High Court

Case No : Tax Case No. 45 of 1972 (Revision No. 32 of 1972)

Sri Murugan and Co.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3

Citation : (1977) 39 STC 422

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : K.R. Thiagarajan, for the Appellant; K.S. Bakthavathsalam, the Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—This tax revision case preferred by the dealer lies within a very narrow compass. In the original assessment made in respect of

the turnover, the turnover relating to the following items of foodgrains were assessed at 1 per cent as provided for in the proviso to Section 3(1) of

the Tamil Nadu General Sales Tax Act, 1959 : Samai arisi, thinai arisi, irungu chola arisi, irungu chola kurunai and kudiraivali arisi. Subsequently,

the assessment was reopened and the turnover relating to these items were assessed at 2 per cent on the basis that these items do not fall within the

scope of the proviso to Section 3(1). The assessee's objections were overruled and the assessment at 2 per cent was confirmed by all the

authorities including the Tribunal. Hence the present tax revision case.

2. The proviso to Section 3(1), as it stood during the relevant period, namely, assessment year 1964-65, was as follows :

Provided that-

(i) in the case of foodgrains, namely, wheat, paddy (rice in husk), rice (husked paddy), cholam, cumbu, ragi, thinai, varagu, samai and kudirai-vali

and in the case of rice products (for example, rice flour and rice bran), wheat products (for example, wheat flour, sooji and wheat bran), milk,

fresh vegetables (other than those mentioned in the First Schedule), fresh fruits, betel and plantain leaves, flowers, eggs, meat and fish (other than

canned meat and fish), the rate shall be one per cent.

3. Admittedly, samai, thinai, cholam and kudiraivali are mentioned in the first proviso to Section 3(1). The only other question is whether the items

in the present case go out of the proviso, simply because they are called samai arisi, thinai arisi, irungu chola arisi, irungu chola kurunai and

kudiraivali arisi. The Appellate Assistant Commissioner took the view that what has been sought to be taxed is only the products of samai, thinai,

irungu, cholam, irungu kurunai and kudiraivali and the proviso to Section 3(1) specifically makes mention of rice products and also wheat products

and only the foodgrains, cholam, thinai, kurunai are mentioned and not their products. Therefore, he was of the opinion that dehusked grains can

only be considered as products of the specific grains and those products not having been referred to in the proviso to Section 3(1) of the Act will

not be eligible for the concessional rate of tax at 1 per cent. The Tribunal confirmed this conclusion. We are of the view that the said conclusion is

erroneous in law. The learned Additional Government Pleader brought to our notice the decision of the Supreme Court in *Ganesh Trading Co.,*

Karnal Vs. State of Haryana and Another, . In that judgment, the Supreme Court pointed out:

Now, the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity retained. It was true

that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity.

Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when

paddy is dehusked and rice produced, there has been a change in the identity of the goods.

4. However, the position is not the same with regard to cholam, thinai, samai and kudiraivali. In the ordinary parlance as is known to this State,

whenever thinai, chola, samai and kudiraivali are referred to, there is no distinction between the grains in husked condition and those in dehusked

condition. Commercially the commodity is the same, they are not two different commodities. In view of this, we are of the opinion that samai arisi,

thinai arisi, irungu chola arisi, irungu chola kurunai and kudiraivali arisi will come within the scope of the proviso to Section 3(1) of the Tamil Nadu

General Sales Tax Act, 1959 and, therefore, were eligible for the concessional rate of 1 per cent of the tax and, consequently, the reopening of the

assessment for the purpose of assessing the turnover referable to the same at 2 per cent was erroneous.

5. It was also pointed out by the Tribunal that the Government had exempted the sales of these items from tax for the period from 1st April, 1966,

to 31st March, 1970, but declined to grant such exemption for the year 1964-65. We are of the opinion that the grant of, or refusal to grant,

exemption from tax by the Government in respect of sales of these items has no bearing on the question whether these items fall or do not fall

within the scope of the proviso to Section 3(1) of the Act. Under these circumstances, the tax revision case is allowed and the revision made by

the assessing officer as confirmed by the appellate authorities is set aside. The petitioner is entitled to his costs. Counsel's fee Rs. 250.