(1991) 02 MAD CK 0016

In the Madras High Court

Case No : T.C. No. 709 of 1981 (Revision No. 358 of 1981)

State of Tamil Nadu APPELLANT

Vs

Anikal Corporation RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Item 138

Citation : (1991) 02 MAD CK 0016

Hon'ble Judges : P.S. Mishra, J;M.S. Janarthanam, J

Bench : Division Bench

Advocate : Haja Nazirudeen, for the Appellant; C. Natarajan, for the Respondent

Judgement

P.S. Mishra, J.—This application has raised an interesting yet a very limited question whether the alkyl benzene sulphonate is a chemical or a

detergent thus taxable under item 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, as it existed until repealed at the point

of first sale in the State or under item 37 at the point of first sale in the State. The Sales Tax Appellate Tribunal (Main Bench) has held that since

alkyl benzene sulphonate, the commodity concerned has got detergent properties, it has to be taxed as a detergent. The Tribunal has for coming to

the said opinion referred to quite a few authorities who say that alkyl benzene sulphonate is a detergent. It will be convenient if the discussion about

it is extracted from the judgment of the Tribunal. The Tribunal has said :

According to the paper book the disputed commodity ''alkyl benzene sulphonate'' is having outstanding properties as detergent. The reference

about the product ''alkyl benzene sulphonate'' in the following books are mentioned :

1. Synthetic detergents : By A. Davidson and B.M. Milwidsky, 6th Edition, page No. 13 under alkyl benzene sulphonate.

2. Anionic surfactant : Volume 7, Part I by Warner M. Linsield, page No. 13.

Secondly the extract from a letter (page 5 of the paper book giving expert opinion) shows that the said commodity is a detergent. The extract

reads :

''As per many detergent books alkyl benzene sulphonate is a detergent. Definition of ""detergent"" as per dictionary made by Francis M. Turner is as

follows :

A substance or mixture that has cleansing action due to combination of properties including lower right of surface tension, wetting action,

emulsifying and dispersing action and foam formation. Ordinary soap is the best known example. However, the word ''detergent'' is now coming to

mean the synthetic variety, in distinction to soap, which is derived from natural fats or oils.

Alkyl benzene sulphonate properties are as mentioned above. We can clean wool or metal with best efficiency. It can show wetting test with

standard test method, which also proves it reduces the surface tension. When you clean the surface which has oily surface it will be removed by

emulsifying action. This product is water soluble in all proportions and at that time if you shake the diluted product, you will get good foam. When

any product shows all the above properties definitely the product is a detergent. You can always blend two or more detergents to get different

detergents. You can also add other chemicals to improve different properties like when you take superphosphate it helps to make water salt, or to

adjust PH, you can add soda ash or any other alkali. But if you remove alkyl benzene sulphonate from these you cannot get wetting action,

emulsification, dispersion as well as foaming. That shows alkyl benzene sulphonate is the detergent.

* * *

Certificate dated April 8, 1980 of Atsuan Chemical Corporation with annexures shows that alkyl benzene sulphonate contains in Sl. No. 1 of the

classification list is dutied under Sl. No. 15AA of the Central Excise Tariff as organic surface active agent.""''

2. Besides the department itself has taxed this commodity at the rate mentioned

in item 37 of the First Schedule all along. No material has been brought in by the department to show that their earlier view was incorrect.

3. We, however, find ourselves in disagreement with the opinion of the Tribunal not because the Tribunal has made any error in noticing the properties of alkyl benzene sulphonate but because it has ignored the very substance and purpose of the law under which detergent is taxed as specified item 37 of the First Schedule to the Act and dyes and chemicals other than those specifically mentioned in the Schedule are taxed as provided in item 138 thereof. Courts have repeatedly held for the purposes of taxing statute of this kind that goods referred to should be understood in the same way and sense as are understood in the common parlance. Item 37 which originally mentioned only soaps, after amendment, includes, besides soap, soap flakes, soap powders, detergent powders and liquids, with effect from July 25, 1977. The detergent powders and liquids are clearly, understood in this context, materials which are used in lieu of soaps and are marketed in the name of detergent powders and detergent liquids. No doubt, as found by the Tribunal, alkyl benzene sulphonate has got properties of detergent, but, such properties can be found in many other commodities, yet they cannot be so-called such commodities are understood by their common name and a differently (sic). All chemicals have their properties. The students of chemistry read and understand the properties of such chemicals and analyse but, only by dint of such properties all chemicals cannot be allowed to be marketed as goods which are sold for a specific purpose. The Tribunal evidently has fallen in error. It is conceded before us that if not a detergent alkyl benzene sulphonate is a chemical. That being the position, we have no hesitation in holding that the order of the Tribunal cannot be sustained. The same is accordingly set aside. The tax case is allowed. The order of the Appellate Assistant Commissioner in this behalf is restored. No costs.

4. Petition allowed.

