(1991) 08 MAD CK 0090

In the Madras High Court

Case No : Tax Case No. 1013 of 1982 (Revision No. 305 of 1982)

State of Tamil Nadu — APPELLANT

Vs

Annai Industries — RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4, 5, 7A

Citation : (1991) 08 MAD CK 0090

Hon'ble Judges : A.S. Anand, C.J;Kanakaraj, J

Bench : Division Bench

Advocate : D. Srinivasan, Additional Government Pleader Taxes, for the Appellant; V. Srikanth, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The assessing authority rejected the accounts of the respondent-assessee for various reasons stated in the assessment order. Some of the basic reasons for rejecting the accounts was that the assessee-respondent was alleged to have manufactured polythene lumps out of waste polythene bags and papers but had not maintained production-cum-stock register. The assessing authority also found that the gross profit shown by the assessee was too low. However, the assessing authority opined that the assessee-respondent had used waste plastic bags and papers purchased from hawkers without bills and it consumed the same in the manufacture of polythene lumps and therefore, the purchases were liable to tax u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959, at 4 per cent. The assessee went up in appeal before the Appellate Assistant Commissioner. The grievance projected before the Appellate Assistant Commissioner is related to the tax liability u/s 7-A of the Act as also to the addition of 5 per cent made to the taxable turnover for the defects noticed by the assessing authority. The Appellate Assistant Commissioner confirmed the assessment u/s 7-A on the turnover of Rs. 31,054 but reduced the addition for the defects and held that an addition of 2 per cent as against 5 per cent to the taxable turnover for the defects found by the assessing authority would suffice. Second appeal was preferred before the Tamil Nadu Sales Tax Appellate Tribunal

(Second Additional Bench), Madras. By an order dated April 2, 1982, the Tribunal upheld the contention of the assessee that assessment u/s 7-A of the Act was not justified. It was held that there was no manufacture of a commercially different product by the melting of the waste polythene bags and papers. After recording this finding, the Tribunal also found that the rejection of the accounts of the assessee for not maintaining the production-cum-stock register and showing a low profit was not justified. It was held that since the assessee-respondent was not manufacturing any new product, the necessity to maintain manufacturing accounts did not arise. Consequently the addition of 2 per cent for the defects noticed to the taxable turnover was also set aside. The Revenue is in revision.

2. There is no dispute before us that the assessee purchased waste polythene bags and papers from hawkers in circumstances in which no tax was payable u/s 3, 4 or 5 on the sale of those polythene bags and papers to the assessee. The question, however, arises whether the purchase turnover of waste polythene bags and papers would attract section 7-A of the Act.

3. The assessee-respondent, as is borne out from the record, purchased waste polythene bags and papers. The same were melted into polythene lump and sold to the users of the material. By melting the waste polythene bags and papers, in our opinion, no commercially different commodity came into existence. Where there is no essential difference in identity between the original and the processed product, it is not possible to say that the original product had been consumed in the manufacture of the processed product. The finding of the Tribunal that by melting waste polythene bags and papers no new product had emerged to attract the provisions of section 7-A of the Act is, therefore, fully justified. Since, we are upholding the finding of the Tribunal in that behalf, the next finding of the Tribunal in deleting the addition of 2 per cent for the defects noticed to the taxable turnover cannot also be found fault with. Consequently, we are not satisfied that this is a fit case in which any interference is called for at our hands in exercise of the revisional jurisdiction.

4. The tax revision case, therefore, fails and is dismissed. There shall, however, be no order as to costs.

5. Petition dismissed.