
(1991) 03 MAD CK 0046

In the Madras High Court

Case No : T.C. No"s. 1104 and 1105 of 1991

State of Tamil Nadu

APPELLANT

Vs

A.S. Raj and Co.

RESPONDENT

Date of Decision : 14-03-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 7A, 7A(1)

Citation : (1991) 03 MAD CK 0046

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

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—These two cases raise a question relating to the liability of the assessee to pay tax u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the Act". That is the limited controversy projected before us.

2. For the assessment year 1975-76, the assessee reported a total and taxable turnover of Rs. 12,80,209. The assessing authority, however, found that the assessee was purchasing raw bones and after converting and crushing the same was selling them to the foreign buyers in the converted form. Being of the opinion, that purchase of the raw bones from the villagers, who were non-registered dealers, and the sale of the bone-meal to the foreign buyer after "consuming" the bones by the method of crushing and converting, attracted the levy of purchase tax u/s 7-A(1)(a) of the Act, the assessee was subjected to the levy of tax in respect of the purchases of the bones made from the unregistered dealers. Ultimately the total taxable turnover of the assessee was determined by the assessing officer at Rs. 18,09,478. The assessee preferred an appeal before the Appellate Assistant Commissioner. The appellate authority, after relying upon the law laid down in T.A. Nos. 1345 of 1978, 220 and 221 of 1978 and T.M.P. No. 301 of 1978, dated 19th September, 1978, in the case of Subbaraj & Co. v. State of Tamil Nadu, came to the conclusion that the sale of the bone-meal after

conversion of raw bones to crushed bones or powder, etc., did not amount to any process resulting in new commodity being manufactured with a distinct and separate identity than the bones. Consequently, it was held that the provisions of section 7-A(1)(a) of the Act were not attracted. The appellate authority, however, found that the case of the assessee would still be covered u/s 7-A of the Act since sale had been made by the assessee to the foreign buyers outside the State. The export sale of bone-meal was held liable to tax and tax was levied at 4 per cent u/s 7-A. It was found that the total purchase of raw bones from 15th July, 1975 to 31st March, 1976 worked out at Rs. 4,85,184 from non-dealers. It was also found that the assessee had effected inter-State and local sales to the extent of Rs. 16,82,713.11 while the exported bone-meal was to the extent of Rs. 50,90,191.59, i.e., about three times the local and inter-State sales. Relief was, therefore, granted to the assessee in respect of the local and inter-State sales, which had suffered taxation, and the same was accordingly exempted. Consequently, after taking the exemption into consideration, the liability to tax u/s 7-A was worked out at Rs. 3,63,888. The total taxable turnover of the assessee for the year 1975-76 was, accordingly, redetermined as Rs. 16,75,182 and found as assessable at 4 per cent. The assessee went up in further appeal before the Sales Tax Appellate Tribunal, while the Revenue also filed a petition for enhancement. The Tribunal, vide order dated 8th of December, 1980, partly allowed the appeal filed by the assessee while dismissing the enhancement petition filed by the Revenue.

3. The Tribunal considered the disputed addition to the turnover u/s 7-A of the Act and relying upon the decision of this Court reported in *Thangiah Nadar v. State of Tamil Nadu* [1980] 46 STC 67, wherein it had been held that where the goods were in the State either at the time when the contract was made or at any rate at the time when the appropriation was effected, i.e., at the time of the consignment to the foreign country, it would be deemed to be a local sale in view of the explanation. It was also held that the language of section 7-A(1)(a) and 7-A(1)(b) of the Act did not require that there must be a local taxable sale in order to get out of the liability imposed by section 7-A of the Act when the twin conditions envisaged in that section are satisfied. The Tribunal, therefore, held in the instant case that there was a sale only within the State and being a local sale, it would not attract the provisions of section 7-A of the Act. The Tribunal found that the fact that the transaction had occasioned the export was irrelevant in the context. Thus, holding that the assessee was not liable to tax on the purchase under consideration, u/s 7-A of the Act, the order of the Appellate Assistant Commissioner in so far as that item was concerned was set aside.

The judgment in *Thangiah Nadar v. State of Tamil Nadu* [1980] 46 STC 67 was rendered by this Court on 19th November, 1979. The precise controversy which was involved in that judgment revolved round the application of section 7-A(1)(b) of the Act. The learned Government Advocate (Taxes) submits that in the facts and circumstances of the present case the provision which would be applicable is not section 7-A(1)(b) but section 7-A(1)(c) of the Act inasmuch as

the sale has been made by the assessee to a place "outside the State" (a foreign buyer) and was not covered by the exception contained in clause (c) of section 7-A(1), relating to the sale or purchase in the course of inter-State trade or commerce. Learned Government Advocate submitted that the judgment rendered by this Court in *Ponnu Saw Mills v. State of Tamil Nadu* [1980] 45 STC 291 which was rendered on 22nd November, 1979, squarely governs the case and that the Tribunal fell in error in holding that section 7-A of the Act was not attracted.

4. Section 7-A(1)(b) and section 7-A(1)(c) deal with two distinct situations. Sub-clause (b) of section 7-A(1) would be attracted where the assessee disposes of the goods, covered by the section, in any manner "other than by sale" in the State while sub-clause (c) of section 7-A(1) contemplates despatch of the goods to a place outside the State except where the sale or purchase takes place in the course of inter-State trade or commerce. Export sale would, therefore, fall within sub-clause (c) of section 7-A(1).

5. In *Ponnu Saw Mills v. State of Tamil Nadu* [1980] 45 STC 291, the assessee purchased certain goods from agriculturists and exported the goods to foreign countries. It was held that the transaction fell within the scope of section 7-A of the Act and could, therefore, be brought to tax under the provision. The Division Bench opined that section 7-A(1)(c) of the Act contemplates despatch of goods to a place outside the State, i.e., outside the State of Tamil Nadu, and the only exception is that the sale should not take place in the course of inter-State trade or commerce. It was found in that case that sale or purchase taking place in the course of inter-State trade or commerce is a specific category excluded from purchase tax levy but that the sale by export could not be said to have been so excluded from the purview of section 7-A(1)(c) of the Act. That judgment, therefore, squarely and fairly applies to the facts and circumstances of the instant case. The judgment rendered in *Thangiah Nadar v. State of Tamil Nadu* [1980] 46 STC 67 which was relied upon by the Tribunal is clearly distinguishable and would not be attracted to the facts and circumstances of the case. In the instant case clause (c) of sub-section (1) of section 7-A of the Act would be attracted as it has been found that there was a despatch of the crushed bones to a place outside the State of Tamil Nadu and that the said despatch was not in the course of inter-State or commerce. Learned counsel for the assessee could not support the order of the Tribunal in the face of the judgment in *Ponnu Saw Mills v. State of Tamil Nadu* [1980] 45 STC 291. We, therefore, hold that the transaction in the instant case would fall within clause (c) of section 7-A(1) of the Act and the order of the Tribunal as well as the appellate authority holding otherwise, cannot be sustained. Those orders are consequently set aside. The order of the assessing authority is, therefore, restored. Both the tax cases are decided accordingly. No costs.

6. Petition allowed.