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(1994) 12 MAD CK 0049

In the Madras High Court

Case No : Tax Case No. 763 of 1983 (Revision No. 263 of 1983)

State of Tamil Nadu APPELLANT

Vs

Asmaco RESPONDENT

Date of Decision : 13-12-1994

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3(2)

Citation : (1994) 12 MAD CK 0049

Hon'ble Judges : Raju, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner herein. The assessee sold PVC sheets and submitted their return disclosing with sale turnover of Rs. 1,83,252. The assessing officer levied tax at 8 per cent on the sale turnover of PVC sheets on the ground that PVC sheets fall under entry 145 of the First Schedule to the Act. On appeal, the Appellate Assistant Commissioner confirmed the order passed by the assessing officer. Aggrieved the assessee filed the second appeal before the Appellate Tribunal. The Appellate Tribunal held that the PVC sheets are not coming under the purview of entry No. 145 of the First Schedule to the Act. Accordingly, the Tribunal held that the sale turnover of PVC sheets is liable to tax at 4 per cent multi-point. It is against this order of the Tribunal the department is in revision before this Court.

2. The learned Additional Government Pleader (Taxes) submitted that the PVC sheets are same as plastic articles as enumerated under entry 145 of the First Schedule to the Act. Hence it was submitted that the Appellate Tribunal was not correct in holding that PVC sheets are different from plastic articles and levied the tax at 4 per cent multi-point. We have also heard the learned counsel appearing for the assessee, who supported the order passed by the Tribunal.

3. It remains to be seen that the assessee sold PVC sheets during the assessment year 1980-81 and furnished the sale turnover of Rs. 1,83,252. The assessing officer and the Appellate Assistant Commissioner were of the view that

PVC sheets are plastic articles and therefore, liable to be taxed at 8 per cent single point since according to them, PVC sheets come under plastic articles as enumerated under entry 145 of the First Schedule to the Act.

4. The point for consideration is :

Whether the PVC sheets fall under entry 145 of the First Schedule to attract 8 per cent tax ?

5. A plain reading of entry 145 of the First Schedule to the Act shows that originally the entry 145 includes only plastic articles. From June 3, 1981, plastic articles excluding PVC conduit pipes and fittings were stated to be taxed at 8 per cent single point treating them as plastic articles. Therefore, entry No. 145 from June 3, 1981, clearly excluded PVC conduit pipes and fittings, but there was no mention about the PVC sheets. The intention of the Legislature can be seen and gathered from the later introduction of the meaning attributed to plastic articles as mentioned in entry 145 of the First Schedule from June 3, 1981. Therefore, the PVC sheets were omitted to be included in entry 145 of the First Schedule. Unless a particular item is included in the First Schedule, the said item cannot be taxed as per section 3(2) of the Tamil Nadu General Sales Tax Act, 1959. While considering this aspect, this Court in Madras Aluminium Co. Ltd. Vs. The State of Tamil Nadu, held that section 3(2) proceeds on the footing that "goods" must be "mentioned" in the First Schedule in order to be brought within the single point levy.

6. In Commissioner of Sales Tax Vs. Mohd. Ayub and Sons, it was held that glasswares are different from glass sheets. Thus, considering the facts arising in this case in the light of the judicial pronouncement cited supra, we hold that the Tribunal was correct in coming to the conclusion that the sale turnover of PVC sheets is liable for tax at 4 per cent multi-point instead of 8 per cent single point. Accordingly, there is no infirmity in the order passed by the Tribunal in holding that the PVC sheets cannot be brought under entry 145 of the First Schedule to the Act. In that view of the matter, the revision filed by the department is dismissed. There will be no order as to costs.

7. Petition dismissed.

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