

(1990) 07 MAD CK 0121

In the Madras High Court

Case No : T.C. No's. 284 to 287 of 1987 (Revision No's. 132 to 135 of 1987)

State of Tamil Nadu

APPELLANT

Vs

C. Kanchanamala

RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

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

Citation : (1990) 07 MAD CK 0121

Hon'ble Judges : Venkataswami, J; Abdul Hadi, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader, for the Appellant;

Judgement

1. In all these three tax cases, the assessee is one and the same. The question of law that arises for consideration is also one and the same. Hence these tax cases are disposed of by this common order.

2. The common question is, whether the splints obtained by the assessee from the timber (purchased by her) by slicing the same and selling them subsequently as splints to various match manufactures, should be subjected to tax u/s 7-A(1) (a) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act").

3. The finding of the Tribunal is as follows :

"..... It is found that the appellant had effected purchase of timber, sliced the same into splints and sold the splints to various dealers among the match manufacturers. Hence, we are of the view that provisions of section 7-A cannot be applied to the purchase turnover of timber and accordingly we set aside the assessment of the purchaser turnover"

It may be mentioned that the splints sold to various match manufactures have been subject to tax and that is not disputed before us. The contention of the Revenue seems to be that the purchase of timber for obtaining splints should be

subjected to purchase tax as timber loses its character when it is sliced and splints are obtained. In other words, the contention of the learned Additional Government Pleader is that timber is consumed in the manufacture of splints. In support of this contention, the learned Additional Government Pleader placed heavy reliance on a Division Bench judgment of this Court in *Hindustan Timber Depot v. State of Tamil Nadu* reported [1984] 56 STC 69.

4. As the respondent/assessee was not represented by counsel, at the instance of the court, Mr. Inbarajan, advocate acted as *amicus curiae*. Mr. Inbarajan submitted that though the Tribunal has not given any reason for its conclusion, the same can be supported by one decision of the Supreme Court and two decisions of this Court and, therefore, the conclusion reached by the Tribunal is unassailable.

5. In *Deputy Commissioner of Sales Tax (Law) v. Pio Food Packers* reported in [1980] 46 STC 63 the Supreme Court held as follows :

] "When pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture and the case does not fall within section 5-A(1) (a) of the Kerala General Sales Tax Act, 1963."

The Supreme Court, in the same decision, has further held as follows :

"Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it."

The test laid down by the Supreme Court in that case appears to be that when there is no essential difference in identity between the original commodity and the processed article, it is not possible to say that one commodity has been consumed in the manufacture of another.

6. In *The State of Tamil Nadu Vs. Subbaraj and Co., Ismail, C.J.*, as he then was, speaking for the Bench, while considering the scope of section 7-A(1)(a) held as follows :

"Held, that with regard to the purchases of raw bones and the end-products which were sold locally, the Tribunal was right in holding that section 7-A(1)(a) was not attracted, as there had been no consumption of the goods purchased in the manufacture of other goods."

7. In *The State of Tamil Nadu Vs. K.M. Natarajan, Justice*, as he then was, while considering the scope of the same section, has taken the following view :

"Where there is no essential difference in identity between the original commodity and the processed article, it is not possible to say that one commodity has been consumed in the manufacture of another and although it has undergone a degree of processing, the commodity must be regarded as still

retaining its original identity.

The transformation of white ash into sacred ash does not result in a new commercial produce and there is no manufacturing process involved as contemplated u/s 7-A(1)(a) of the Tamil Nadu General Sales Tax Act, 1959, warranting the levy of purchase tax."

8. From a perusal of the ratios laid down in all these cases, there is no difficulty in upholding the view taken by the Tribunal as the splints obtained by slicing the timber definitely retain the identity of timber and, therefore, it cannot be said that the timber has been consumed in the manufacture of splints.

9. Now, coming to the decision on which reliance was placed by the learned Additional Government Pleader, it is seen that no facts, it is entirely a different one. In that case, the assessee purchased timber in logs, cut the same into slices and planks and thereafter manufactured packing cases. In those circumstances, this Court held that a packing case in any sense of the term, cannot be called timber. For, it not only become a different commercial product, but its uses were also different. It was held further in that case, "once timber was used in the manufacture of packing cases, the identity of the timber as such was lost as it stood converted by the process of manufacture into packing cases." But, on the facts, in our case, in the light of the ratio laid down by the Supreme Court and other two Division Bench judgments of this Court, we have no doubt that the Tribunal was right in holding that the purchase turnover of timber is not exigible to tax u/s 7-A(1)(a) of the Act.

10. In the result, the tax (revision) cases are dismissed. There will be no order as to costs.

11. We place on record our appreciation for the ready help rendered by Mr. Inbarajan, advocate, acting as amicus curiae.

12. Petitions dismissed.