

(1975) 04 MAD CK 0036

In the Madras High Court

Case No : Tax Cases No"s. 120, 381, 382 and 454 of 1970 and Revision No"s. 92, 248, 249 and 310 of 1970

State of Tamil Nadu

APPELLANT

Vs

Calcutta Chemical Co. Ltd.

RESPONDENT

Date of Decision : 10-04-1975

Acts Referred:

General Clauses Act, 1897 — Section 8
Tamil Nadu General Sales Tax Act, 1959 — Section 12, 16, 8

Citation : (1976) 37 STC 443

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K. Venkataswami, Additional Government Pleader No. I, for the Appellant; C. Venkataraman, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—Tax Cases (Revisions) Nos. 120 and 381 of 1970 arise out of orders made u/s 16 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act) and Tax Cases (Revisions) Nos. 382 and 454 of 1970 arise out of orders made u/s 12 of the Act. The assessment years in question are 1962-63, 1963-64, 1964-65 and 1966-67. The respondent in these petitions is the Calcutta Chemical Company Limited, which is a public limited company with its head office and factory in Calcutta and branch office in Arcot Road, Kodambakkam, Madras. They are manufacturers of eau-de-cologne, lavender water and tincture preparations. The disputed turnover related to the sales of these items. They claimed exemption on the ground that they are goods falling under item 3 of Schedule III, which are exempted by Section 8 of the Act. The assessing officer rejected this claim on two grounds. Firstly, the excise duty on these goods was levied only on alcoholic contents alone and not on the entire quantity of such goods. Secondly, the excise duty was not paid by the assesseees in the State of Tamil Nadu either under the Madras Prohibition Act, 1937, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, and that

the assessees only claimed that they have paid the excise duty in Calcutta.

2. On an appeal, the Appellate Assistant Commissioner held that the duty was paid not on the alcoholic contents alone, but on the entire quantity of the goods and, therefore, the first ground of the assessing officer was not available; but on the ground that the payment of excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, at Calcutta, could not be equated to a payment of duty under the Madras Prohibition Act in Madras, and that, therefore, the claim of exemption was rightly rejected. On a further appeal, the Tribunal took the view that in view of Section 8 of the General Clauses Act, 1897, the payment of excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, shall be deemed payment under the Madras Prohibition Act, 1937, and, as such, the assessees were entitled to the exemption claimed. It is against this order of the Tribunal that the State has preferred these four tax revision cases.

3. Section 8 read with item 3 of Schedule III to the Act only exempts those goods on which duty is levied or leviable under the Madras Prohibition Act, 1937, and the entire quantity of such goods are exempted from the levy of sales tax. Therefore, the duty shall have been paid in Madras under the Madras Prohibition Act, 1937, in order to get the exemption.

4. We have already held in *Orient Pharma Private Ltd. v. Government of Tamil Nadu* [1976] 37 S.T.C. 437 [Tax Cases (Revisions) Nos. 65, 68, 69 and 71 of 1973] that the payment of duty by a manufacturer under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, will not exempt the goods from the levy under the Tamil Nadu General Sales Tax Act, 1959. That question even could not be argued in the case as the excise duty was neither paid under the Madras Prohibition Act, 1937, nor under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in this State. The respondents only claim that they had paid the duty in the State of West Bengal. That will not, in any case, entitle the petitioners to a claim for exemption u/s 8.

5. It was then contended by the learned Counsel for the respondents that u/s 18-A of the Madras Prohibition Act, 1937, a countervailing duty is leviable in respect of the turnover in question, though in fact, it was not levied on them and that, therefore, they will be entitled to the exemption.

6. All that Section 18-A authorises is that the countervailing duty of such amount as the State Government may by notification specify from time to time, shall be levied on all liquors imported, exported or transported. If really, there was a notification by the Government of Tamil Nadu levying countervailing duty on all liquors imported, exported or transported, the learned Counsel might have been well-founded in his contention, as factual non-levy would be irrelevant if legally it could have been levied. But, the learned Counsel is not able to state that there was any notification imposing the countervailing duty on such goods. So long as there is no notification u/s 18-A, there could not have been a legal levy and,

therefore, the assesseees could not claim any exemption.

7. For the foregoing reasons, the order of the Tribunal is liable to be set aside and it is accordingly set aside. The tax revision cases are allowed with costs. Counsel's fee Rs. 150 in each.