(1991) 02 MAD CK 0049

In the Madras High Court

Case No : Tax Case (Revision) No''s. 677 and 678 of 1981

State of Tamil Nadu APPELLANT

Vs

Catherene Traders and another RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 5(3)
Tamil Nadu General Sales Tax Act, 1959 — Section 9

Citation : (1991) 81 STC 228

Hon'ble Judges : Mishra, J;M.S. Janarthanam, J

Bench : Division Bench

Advocate : Haja Nazruddin, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Mishra, J.—Two different assessees had been subjected to assessment and tax on the packing materials used for export of banians. They,

however, succeeded before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in getting an order that the sales of

polythene bags to the export merchants by them for the purpose of packing banians for export to foreign countries were not liable to tax. The State

has preferred these petitions against the said order of the Tribunal.

2. It is not in dispute that polythene bags were sold by the respondents/ assessees to the export merchants for packing of banians. It is also not in

dispute that the polythene bags were utilised for packing of the banians, which were exported to foreign countries. The case of the petitioner herein

is that the records produced in support of their claim by the assessees/ respondents reveal that goods were exported by the exporters, but there

was no mention in the bill of lading about the use of polythene bags for packing the materials. It is thus a case in which exemption could be granted

in respect of sales of the commodity exported and not in respect of any other commodity sold to the merchants who exported their goods.

Reliance has been placed upon the proviso to section 9(b) of the Tamil Nadu General Sales Tax Act, 1959, read with section 5(3) of the Central

Sales Tax Act, 1956, to contend that the limitation on the exemption must be understood to apply to such goods only which are exported and not

to any other goods. Section 9 of the Tamil Nadu General Sales Tax Act states :

Where in the case of any goods tax is leviable at one point in a series of sales or purchases, such series shall -

(a) ....

(b) ....

Provided that in the case of goods exported out of the State to any place outside the territory of India, where the sale or purchase effected

immediately before the export of such goods is under sub-section (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), a

sale or purchase in the course of export, the series of sales or purchases of such goods shall be deemed to conclude at the stage of the sale or

purchase immediately preceding such sale or purchase in the course of export.

3. Section 5 of the Central Sales Tax Act, however, states :

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale

or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs

frontiers of India.

(2) ....

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the

export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place

after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

4. The Tribunal has found that the polythene bags sold to the export merchants were part and parcel of the commodity exported. It is not in

dispute however that banians which were exported were/are exempted from tax. The question herein is whether the packing material, which was

utilised by the merchants for packing the banians also was a sale or purchase of goods as envisaged in sub-section (3) of section 5 of the Central

Sales Tax Act or not.

5. Certain provisions of the Finance Act, 1964, which have since been interpreted by a Bench of this Court in the case of Commissioner of Income

Tax Vs. Poly-Ene General Industries, may at this stage be referred to. Section 2(5)(a) of the Finance Act reads :

In respect of any assessment for the assessment year commencing on the 1st day of April, 1964 -

(i) an assessee being an Indian company or any other company which has made the prescribed arrangements for the declaration and payment of

dividends within India or an assessee (other than a company) whose total income included any profits and gains derived from the export of any

goods or merchandise out of India, shall be entitled to a deduction, from the amount of Income Tax and super-tax with which he is chargeable

....

....

(iii) where an assessee of the type referred to in sub-clause (i) engaged in the manufacture of any articles in an industry specified in the said First

Schedule has sold after the 28th day of February, 1963, such articles to any other person in India who himself has exported them out of India and

evidence is produced before the Income Tax Officer of such articles having been so exported, the assessee shall be entitled to a deduction from

the amount of Income Tax and super-tax with which he is chargeable for the assessment year of an amount equal to the Income Tax and super-tax

calculated respectively at the average rate of Income Tax and the average rate of super-tax on a sum equal to two per cent of the sale proceeds

receivable by him in respect of such articles from the exporter.

Reading the said provision, a Bench of this Court in the case of Commissioner of Income Tax Vs. Poly-Ene General Industries, , has said :

In the present case, the contention of the Revenue is that clause (iii) of section 2(5)(a), with which alone we are concerned, requires two

conditions to be satisfied, namely, that the assessee engaged in the manufacture of specified articles should have sold the said articles to any other

person in India and that such person should have himself exported them out of India. It is pointed out that the export must be of the identical goods

and where the export is not of the said goods as such the benefit of clause (iii) of section 2(5)(a) is not applicable. The point sought to be made is

that this clause would have application only to those cases where the export of the relevant articles is made in the same form and as such to foreign

countries. We consider that the assessee in this case would be eligible for the relevant claim even on the basis of the above contention because the

polythene liners as they are called have actually been exported out of India. They are not mixed with any other product so as to lose their identity.

It is not necessary that they should be separately sold by the exporter. Therefore, the conditions prescribed by clause (iii) of section 2(5)(a) would

appear to have been satisfied in this case. That this is the basis on which the Government of India itself have acted is clear from the fact that the

Government have granted import entitlements to the assessee because of the export of the polythene bags by the purchasers. The relevant details

of the import entitlements have been set out in paragraph 3 of the Tribunal''s order. Therefore, on the facts, we are satisfied that this is a case

where clause (iii) of section 2(5)(a) is satisfied and that the assessee was rightly held to be eligible for the allowance.

6. On reading sun-section (3) of section 5 of the Central Act, thus it can be safely said that if it is found that the last sale of goods was a sale or

purchase in the course of the export of the goods within the territory of India then the sale by the assessees preceding the sale by the export

merchants will be fully covered by sub-section (3) of section 5. It is not a case in which there was any further sale than the sale by the assessees to

the export merchants and the sale by the export merchants. True, polythene bags were separately sold, but banians were sold in the polythene

bags and the transfer of title in the bags along with the transfer of title in the banians is not in dispute. The Tribunal has also said :

It is common knowledge that the banians cannot be exported without being packed and the packing materials are part and parcel of the

commodity exported and the value of the packing materials is included in the sales turnover of the exporter.

The rule indicated in the judgment of this Court in the case of Commissioner of Income Tax Vs. Poly-Ene General Industries, , in our view, is fully

attracted to the facts of this case. The Tribunal has committed no error of law in holding that the polythene bags were also sold in the course of

export by the purchasers from the assessees. There is no merit in these petitions. The petitions are accordingly dismissed. No costs.

7. Petitions dismissed.

