(1992) 09 MAD CK 0039

In the Madras High Court

Case No : Tax Case No. 355 of 1983 (Revision No. 126 of 1983)

State of Tamil Nadu APPELLANT

Vs

Hajee P. Syed Mohammed (Decd.) and others RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Citation : (1992) 09 MAD CK 0039

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Raju, J.—The State has filed the tax case challenging the order of the Tribunal in so far as the Tribunal held that ""hessian lined paper

manufactured and sold by respondent-assessee does not come within the description of the entry 117 of the First Schedule to the Tamil Nadu

General Sales Tax Act, 1959.

2. The respondents-assessees are dealers in waterproof paper, wax paper, kraft paper and other general shop books, at Virudhunagar. For the

assessment year 1978-79, as against the total and taxable turnover returned by them in their returns, the assessing officer, after verification of their

accounts and after giving due and sufficient opportunity, determined the total and taxable turnover at Rs. 79,85,071 and Rs. 68,24,577,

respectively. The turnover of Rs. 1,08,549 related to the first sales of hessian rolls with further addition for certain defects, the same was subjected

to levy at 8 per cent treating the sales as representing the turnover relating to paper within the meaning of entry 117 of the First Schedule to the

Act.

3. The respondents-assessees filed an appeal before the Appellate Assistant Commissioner challenging several items of turnover including the one

relating to the first sales of hessian rolls. The said appellate authority rejected the claim of the assessees and held that item 117 of the First

Schedule would take within its fold all kinds of paper and paper boards and consequently the hessian paper rolls are liable to levy at 8 per cent.

Not satisfied the respondent-assessees pursued the matter before the Tribunal.

4. Before the Tribunal, the assessees contended that they have purchased paper, jute and tax and manufactured hessian paper rolls and sold them

and the constituents of the commodity are (a) paper 18.18 per cent by weight, (b) bitumen 18.18 per cent by weight and (c) hessian 63.64 per

cent by weight and that the major part of the commodity by weight and by volume being only hessian and the paper portion being only 18.18 per

cent, the goods sold by them as hessian paper rolls would not come within the meaning of entry 117 to the First Schedule to the Act. The assessee

also appears to have contended that merely because they were used for packing purposes, they cannot be classified under entry 117. The

Tribunal, while adverting to the entry 117, felt that the commodity in question does not come under any one of the articles found illustrated in entry

117 and that therefore cannot be subjected to single point levy at 8 per cent under the said entry and therefore, the turnover to the tune of Rs.

1,06,421 is liable to tax at the general multi-point rate. Hence the revision by the Revenue before this Court.

5. Mrs. Chitra Venkataraman, learned Additional Government Pleader (Taxes) contended that the Tribunal failed to properly consider the scope

and purport of the entry 117 of the First Schedule to the Act and that the hessian paper rolls, manufactured and sold by the assessees, which is

being used for packing or wrapping matches, would squarely fall within the scope of the entry 117 in question. Reliance was placed on the decision

reported in Viny Pap Sales Depot Vs. The State of Tamil Nadu, to contend that the paper of the kind manufactured and sold by the assessee fell

squarely within entry 117(iii) of the First Schedule to the Act.

6. Per contra, Mr. Inbarajan, learned counsel for the assessee, contended that merely because the hessian rolls are being used by manufacturers of

matches to wrap the matches or to pack them, the same cannot make their product wrapping paper, since, according to the learned counsel, their

product cannot at all be said to be basically paper.

7. The learned counsel for the assessee further contended that the Revenue is at wrong in attempting to invoke the common parlance theory to

adjudge the nature of the goods in the present case and that the constituents of the commodity cannot be completely lost sight of in determining the

nature and character of the goods that falls for our consideration in the present revision. Consequently, according to the learned counsel for the

assessee, no exception could be taken to the conclusion of the Tribunal and that the same does not call for our interference.

8. We have carefully considered the submissions of the learned counsel appearing on either side. Before adverting to a consideration of the scope

of the entry as well as the nature of the commodity that falls for our consideration, entry 117 of the First Schedule to the Act may be usefully set

out hereunder :

Entry from July 1, 1978 (vide note 3) :

Paper, all sorts (including paste-board, At the point

mill-board, straw board and card board), - of first sale

in the State.

(i) Cigarette tissue;

(ii) blotting, toilet, target tissue other than

cigarette tissue, teleprinter, typewriting,

manifold, bank, bond, art paper, chrome paper,

tubsized paper, cheque paper, stamp paper,

cartridge paper, parchment and coated board

(including art board, chrome board and board

for playing cards);

(iii) printing and writing paper, packing and

wrapping paper, straw board and pulp board,

including grey board, corrugated board, duplex

and triplex boards, other sorts;

(iv) all other kinds of paper and paper board not

otherwise specified, including carbon paper

and stencil paper but excluding cinematographic

and photographic paper.

Provided that, if any paper has suffered tax under any one of the sub-items mentioned above, it shall not be again subject to tax under the same or

any other sub-item aforesaid.

9. So far as the product or the commodity, manufactured and sold by the assessee under the name of hessian paper rolls, is concerned, the claim

of the assessee is that the commodity consists of (a) paper 18.18 per cent, (b) bitumen 18.18 per cent and (c) hessian 63.64 per cent. There is no

dispute that the hessian paper rolls, manufactured and sold by the petitioner, are mainly used for wrapping or packing matches by the

manufacturers of matches. The main and only submission for the assessee is based on the emphasis made with reference to the constituents of the

commodity as referred to supra to contend that the product should be called hessian paper and not paper as known to the commercial world.

10. The decision reported in Viny Pap Sales Depot v. State of Tamil Nadu [1977] 40 STC 317 is that of a Division Bench of this Court

whereunder the scope of entry 117 was considered with reference to P.V.C. coated papers. From the reported decision, it is seen the basic

material for the said class of paper is the paper over which a coat of P.V.C. is given which is used in book-binding, manufacturing to suitcases, and

albums, etc. The Division Bench, while repelling the stand taken by the assessee therein that paper as used in entry 117 will cover only such papers

as are used for writing, printing or wrapping, held that the entry was designed to cover the paper of all sorts with language of widest amplitude and

consequently the P.V.C. coated paper, which was the subject-matter of consideration in that case, would fall within the entry 117 of the First

Schedule to the Act. In Collector of Central Excise v. Krishna Carbon Paper Co. : 1988(37)ELT480(SC) , the apex Court had an occasion to

consider the scope and amplitude of tariff item 17 as it stood in 1975 of the First Schedule to the Central Excises and Salt Act, 1944. From the

reported decision, it is seen that the description of tariff item No. 17 is almost identical and similar to entry 117 as it stood at the material point of time and is relevant for our consideration. There is also no dispute about the similarity in the entries by the counsel appearing on either side while

considering the said tariff item and while considering the said tariff item, the apex Court held that carbon paper though subjected to various

treatment, such as coating, would squarely fall within the description of paper as prescribed in tariff item No. 17. Their Lordships of the apex

Court, while adverting to the principles that should normally weigh with courts concerned with interpretation of entries in fiscal enactments

cautioned against relying too much upon the dictionary meaning and emphasised that the correct guide is the contextual and the trade meaning and

that alone would be the decisive test. While commending the construction in the popular sense, namely, that which such people conversant with the

subject-matter with which the statute dealt with would attribute to it, the words ""all kinds of papers including papers subject to coating,

impregnating, etc."", was considered to be sufficiently wide enough to bring carbon paper within the scope of tariff item 17.

11. In Commissioner of Sales Tax v. Macneill & Barry Ltd. [1986] 61 STC 76, the apex Court had an occasion to consider the issue as to

whether ferro paper or ammonia paper would fall within the entry ""paper other than hand-made paper"" as described in Notification No.

ST.3124/X-1012(4)-1965, dated July 1, 1966, issued u/s 3-A of the U.P. Sales Tax Act, 1948. After considering the earlier judgments of the

apex Court as well as some of the High Courts, the learned Judges held that having regard to the limited scope of the language and description of

the entry in the notification referred to above, the ammonia paper and ferro paper cannot fall within the description ""paper other than hand-made

paper"".

12. In Kumaran Paper Products v. State of Tamil Nadu [1991] 81 STC 420, a Division Bench of this Court, to which one of us (Abdul Hadi, J.)

was a party, had an occasion to consider the issue as to whether bituminised or wax coated waterproof paper would fall within the entry 117 and

whether by mere joining together of two sheets of paper with bitumen or wax, the identity of paper is retained or lost. The Division Bench held that

bituminised or wax coated waterproof paper would also fall within the scope of entry 117 of the First Schedule to the Act. The learned Judges have considered the earlier decisions, laying down the principles and guidelines which, normally, should be adhered to in considering the scope or

construing an entry in a fiscal law and held that the basic constituents, namely, the paper, did not cease to be such notwithstanding the fact that it

has been bituminised or wax coated to convert it as a waterproof paper. On that view, the claim of the assessee therein for exemption on the

ground that the second sales was liable to exemption, was sustained. The very issue relating to the interpretation of entry 117 of the First Schedule

to the Act came up for consideration in yet another decision before a Division Bench of this Court reported in Rani Waste Papers v. State of Tamil

Nadu [1993] 91 STC 192 supra; (1992) 1 MTCR 274. That was a case wherein the commodity concerned was what was known as waste

paper and boards, sold as waste boards by the dealer concerned. After adverting to the earlier judgments reported in Viny Pap Sales Depot Vs.

The State of Tamil Nadu, and in Commissioner of Sales Tax, U.P. Vs. Macneill and Barry Ltd., Kanpur, , the learned Judges held that the Entry in

question has been couched in the most comprehensive language and in widest possible terms with a view to bring in every kind of paper not merely

those that have been actually enumerated in the entry.

13. While considering in the light of the principles laid down in the above referred decisions of this Court as well as the apex Court, the issue

before us, we are of the view that the stand taken for the Revenue to apply the trade meaning or the popular sense in which those concerned and

conversant with the subject-matter ascribes to the commodity in question, could not be said to be unjustified. A description of paper as contained

in entry 117 of the First Schedule to the Act, is not only all comprehensive, but includes paper of all sorts and all kinds of paper even other than

those illustrated or enumerated in the entry. If reference is made to specific inclusion within the meaning of the entry of categories of goods such as

paste-board, mill-board, straw board, card board, pulp board including grey board, corrugated board, duplex and triplex boards and board for

playing cards it would only go to show that each and every kind of product connected with or having as one of its constituent, or component

paper, is made to encompass under the said entry. So far as the paper in question is concerned, having regard to its admitted user as well as the purpose such as wrapping paper, the claim of the Revenue that it falls under entry 117(iii), merits acceptance. The plea for the assessee that though

the hessian paper rolls manufactured and sold by the assessees are used for the purpose of wrapping matches or packing matches, it ceases to be

a paper by virtue of the manufacturing process to which the original paper was subjected to by treating the same with bitumen and hessian, does

not merit acceptance. In our view, not only the hessian paper roll, manufactured and produced, continues to retain the identity of paper and has not

lost its identity as paper but squarely comes within the illustrated or enumerated item itself, as contended for the Revenue. The Tribunal, in our

view, wholly misdirected itself in considering the scope of the entry as well as the nature and character of the product under consideration. The

principles adopted by the Tribunal to treat the product as one other than paper within the meaning of entry 117 of the First Schedule to the Act

merely on the basis of the added use of bitumen and hessian, is wholly erroneous in law and opposed to the ratio of decisions of this Court as well

as the apex Court, to which reference has already been made by us.

14. For all the reasons stated above, we are of the view that hessian paper rolls, manufactured and sold by the respondents-assessees would

squarely fall within the description of paper as found described in entry 117 of the First Schedule to the Act and consequently the order of the

Tribunal, in so far as it related to the levy of tax at 8 per cent in respect of the turnover in question relating to the sales turnover of hessian paper

rolls, shall stand set aside. The revision shall, to that extent, stand allowed. In the circumstances of the case, there will be no order as to costs.

15. Petition allowed.

