

(1984) 01 MAD CK 0041

In the Madras High Court

Case No : Tax Case No's. 12 to 15 of 1984

State of Tamil Nadu

APPELLANT

Vs

Indian Eyelets Industries

RESPONDENT

Date of Decision : 25-01-1984

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 69

Citation : (1984) 55 STC 354

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant;

Judgement

Ramanujam, J.—The question that arises in these tax cases is which an adhesive sold by the assessee under the name Fiksol falls under the

entry under 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, covering "dyes and chemicals" taxable at 8 per cent as

contended by the revenue or at 4 per cent multi-point as contended by the assessee. In this case the assessee has sold the commodity called

Fiksol-S. 69 and it claimed that this is chargeable only at multi-point. But the assessing authority, proceeding on the basis of a clarification issued

by the Commissioner of Commercial Taxes in his letter L. Dis. A-2/3220/80 dated 12th March, 1981, clarifying that synthetic adhesives, i.e.,

synthetic rubber solutions such as synotex are liable to tax at 8 per cent at the point of first sale under item 138 of the First Schedule with effect

from 25th July, 1977, held that Fiksol-S. 69 being also a rubber based synthetic adhesive attracts liability to tax at 8 per cent under item 138 of the

First Schedule and rejected the contention of the assessee that Fiksol-S. 69 is

liable to tax at 4 per cent multi-point.

2. The assessee, aggrieved by the order of the assessing authority, went before the appellate authority. The appellate authority took the view that

since the ingredients which went to make Fiksol-S. 69 are all chemicals, it should be taken to fall within the expression ""dyes and chemicals"" under

item 138 of the First Schedule. The appellate authority relied on its own earlier decision in another case that vulcanising solution will come within

the purview of ""dyes and chemicals"" under item 138 of the First Schedule.

3. The assessee thereafter went before the Tribunal. The Tribunal held that the Appellate Assistant Commissioner is not right in deciding the nature

of the article with reference to its constituents and the nature of the goods has to be considered with reference to the use to which it is put. The

Tribunal found that the use to which the commodity Fiksol-S. 69 is put is only for binding purposes and its user for binding purposes does not

result in any chemical process or chemical change. In that view the Tribunal held that the commodity Fiksol-S. 69 will not fall within item 138 of the

First Schedule and as there is no other item covering that commodity it should be treated as a commodity subject to multi-point tax. This decision

of the Tribunal has been challenged by the revenue before us.

4. On a due consideration of the matter, we are inclined to agree with the Tribunal. It is seen from the relevant literature that Fiksol-S. 69 is an all

purpose adhesive used for binding various surfaces such as leather, rubber, wood, plastic, glass, ceramic, felt, canvas, stone, sunmica, metal,

linoleum, etc. Though the adhesive has been made of certain ingredients which are in the form of chemicals, the commodity called Fiksol-S. 69

cannot be treated to be a chemical by itself since the use of this adhesive for binding purposes cannot be said to produce any chemical effect or

result in any chemical change. Therefore the article cannot be said to fall within the expression ""dyes and chemicals"" occurring in item 138 of the

First Schedule. We find that the same view has been taken by the Allahabad High Court in Commissioner of Sales Tax v. Agrawal Agencies

[1980] 45 STC 455. It was held in that case that since there was no chemical change by the use of the adhesive, the adhesives in that case could

not be treated as chemicals. In State of Gujarat v. Shah Bhagwanji Manekchand [1982] 50 STC 147 the Gujarat High Court has also taken the

same view. In that case the court held that for an article to be qualified as "chemicals" within the meaning of entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969, it must be an intermediary chemical product which can be utilised as such for producing other finished products and that the word "chemicals" should normally be understood as a chemical which could be used as an intermediary chemical product and not as an end-product". We find that the expression "dyes and chemicals" used in item 138 of the First Schedule is practically identical to the language considered by the Gujarat High Court. Here the commodity which is sold as an adhesive is not an intermediary product producing a chemical effect, but is an end-product which is to be used only as an adhesive and the use of which does not produce any chemical effect or bring about any chemical change. We have, therefore, to hold that the Tribunal has come to the right conclusion in these cases. The tax cases are therefore dismissed.