(1995) 03 MAD CK 0095

In the Madras High Court

Case No : Tax Case No. 1152 of 1984 (Revision No. 135 of 1984)

State of Tamil Nadu — APPELLANT

Vs

Konkon Chemicals (P) Ltd. — RESPONDENT

Date of Decision : 14-03-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Item 138(I)

Citation : (1995) 03 MAD CK 0095

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

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

Judgement

Thanikkachalam, J.—The State is the petitioner. The assessee disputed the rate of tax on the sale of formaldehyde to the tune of Rs. 18,296.25 sustained by the Appellate Assistant Commissioner on appeal at 10 per cent. The Tribunal, following an earlier decision of its own held that formaldehyde is a chemical falling under item 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 and so it is not a liquefied or solidified gas to fall under item 106 of the First Schedule. Hence the Tribunal held that the assessment at the enhanced rate of tax at 10 per cent is not correct and held that it is taxable at 8 per cent. Aggrieved, the department is in revision before us contending that the Tribunal ought to have held that the commodity is gas in a liquefied form which would fall under item 106 of the First Schedule to the Act and taxable at 10 per cent. According to Mrs. Chitra Venkataraman, learned Additional Government Pleader, the Tribunal has erred in holding that it is an item falling under item 138 of the First Schedule to the Act. Learned Additional Government Pleader further submitted that the Tribunal failed to appreciate the reasons given by the Sales Tax Appellate Tribunal in T.A. No. 796/80 dated December 12, 1980, in holding that the commodity is taxable under entry 106 of the First Schedule to the Act. On the other hand, learned counsel for the assessee while supporting the order passed by the Tribunal contending that formaldehyde is a chemical falling under item 138 of the First Schedule to the Act.

2. We have heard the rival submissions. The meaning of the word "formaldehyde" as stated in the Condensed Chemical Dictionary - 10th Edition is as under :

"Formaldehyde (oxymethylene; formic aldehyde; methanal) HCHO 25th highest - volume chemical produced in U.S. (1979). A readily polymerizable gas. It is commercially offered as a 37 to 50 per cent aqueous solution, which may contain up to 15 per cent methanol to inhibit polymerization. These commercial grades are called formalin. It is one of the few organic compounds known to exist in outer space, properties (gas) : Strong, pungent odor; vapor or density 1.08; b.P. - 19 Degree C : f.p. - 118 Degree C; auto ignition point 806 Degree F (430 Degree C); soluble in water and alcohol. (Aqueous 37 per cent solution with 15 per cent methanol) : b.P. 96 Degree C; flash point 122 Degree F (50 Degree C); (methanol-free) : b.P. 101 Degree C; flash point 185 Degree F (85 Degree C) Sp.gr. 1.08.

Derivation : Oxidation of synthetic methanol or low-boiling petroleum gases such as propane and butane. Silver, copper, or an iron-molybdenum oxide are the mist common catalysts.

Grades : Aqueous solutions : 37 per cent, 44 per cent, 50 per cent inhibited (with varying percentages of methanol) or stabilised or unstabilised (methanol-free); also available solution in n-butanol, methanol, or urea; U.S.P. (37 per cent acqueous solution containing methanol).

See also paraformaldehyde, the polymerized, solid form.

Containers : Drums, bottles, carboys, tank cars, tank trucks.

Hazard (gas) : Toxic by inhalation; strong irritant. Moderate fire risk. Tolerance, 2 ppm in air. Explosive limits in air 7 to 73 per cent.

(Solution) : Avoid breathing vapour and skin contact.

Uses : Urea and melamine resins; polyacetal resins; phenolic resins; ethylene glycol; pentaerythritol; hexamenthylenetetramine; fertilizer; dyes, medicine (disinfectant, germicide); embalming fluids; preservative; hardening agent; reducing agent, as in recovery of gold and silver; corrosion inhibitor in oil well; durable-press treatment of textile fabrics; industrial sterilant; treatment of grain smut."

3. So also the work "paraformaldehyde" has been explained in the abovesaid dictionary at page 775 as under :

"Paraformaldehyde (para form) HO (CH2 O)n H. A polymer of formaldehyde in which n equals 8 to 100. Not to be confused with the trimer, symtroixane (q.v.) properties : White solid with slight odor of formaldehyde; insoluble in alcohol and ether. Soluble in strong alkali solution. The higher polymers are insoluble in water. Melting range 120-170 Degree C; flash point 160 Degree F (71 Degree C) (closed cup). Combustible. Auto ignition temp. 572 Degree F (300 Degree C).

Derivation : By evaporating an aqueous solution of formaldehyde.

Form : Flaks; powder.

Grades : Bages; carlots.

Hazard : Moderately toxic by ingestion.

Uses : Fungicides, bactericides, and disinfectants; adhesives; hardener and waterproofing agent for gelatin; contraceptive creams."

4. A plain reading of the abovesaid dictionary would go to show that formaldehyde is neither a liquefied nor solidified gas so as to consider the same to fall under item 106 of the First Schedule to the Act. Therefore, we uphold the order passed by the Tribunal in holding the formaldehyde would fall under item 138 of the First Schedule to the Act. Accordingly we consider that there is no infirmity in the order passed by the Tribunal. In that view of the matter the tax case revision filed by the State stands dismissed. No costs.

5. Petition dismissed.

