(1995) 07 MAD CK 0041

In the Madras High Court

Case No : Tax Case Revision Petition No. 1413 of 1984

State of Tamil Nadu — APPELLANT

Vs

K.V. Perumal Chettiar — RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 7A

Citation : (1996) 54 ECC 86

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner. Purchase tax u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959, was imposed

on the assessee on the purchase turnover of Rs. 26,933 relating to the purchase of art silk yarn. According to the department, the assessee

purchased art silk yarn and consumed the same for weaving cloth. According to assessee, section 7-A of the Act is not attracted because the art

silk yarn purchased by the assessee was not consumed in the manufacture of silk cloth. The assessment year involved in this case is 1976-77.

During the relevant assessment year, the crucial word used in section 7-A is that the raw materials purchased should be ""consumed"" in

manufacturing the end-product. Though it was by later amendment the word used was introduced, but during the relevant assessment year the

crucial word in section 7-A is ""consumed"". Hence the point for consideration is whether the assessee has consumed the raw materials purchased,

viz., the art silk yarn in the manufacture of art silk cloth. The Kerala High Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue

(Taxes) v. Pio Food Packers 1978 41 STC 364 had an occasion to consider this aspect. According to the fact arising in the above cited case, the

assessee purchased pineapple and prepared pineapple slices by a process, which included packing in tin containers for being made available in the

market. The assessee purchased pineapple, washed it, removed the inedible portions, namely, the end, the crown, the skin and the core, sliced it,

filled the slices in cans with some sugar added as preservative, sealed under temperature and put into boiling water for sterilisation and thus

prepared pineapple slices. It prepared pineapple juice by crushing the pineapple and pressing it after removing the inedible portions. The juice thus

obtained was sweetened, filled in cans, sealed under temperature and put in boiling water for sterilisation. It prepared jam and squash with

pineapple by well-known processes. The question that arose for consideration was whether the pineapple slices fell within the ambit of section 5A

of the Kerala General Sales Tax Act, 1961, in particular section 5A(1)(a) corresponding to section 7-A(1)(a) of the Tamil Nadu General Sales

Tax Act, 1959. On these facts the Kerala High Court held as under :

2. ""Inasmuch as the goods purchased are not consumed in the process of manufacture of some other goods, section 5A(1)(a) will not be attracted.

The very use of the word ''consume'' contemplates that the goods purchased should have been devoured or exhausted in the process of

manufacture with the result, its identity must have been completely lost. So long as its identity remained, the goods purchased and used in the

manufacture of some other goods cannot be said to have been consumed in the process of manufacture of other goods.

3. If we consider the fact arising in this case according to the test laid down by the Kerala High Court in the decision cited supra, we have to hold

that the identity of the art silk thread was not got lost even after the cloth was woven with the said thread. It means the identity of the silk thread

would well remain as it is even after the cloth was manufactured out of the art silk yarn.

4. According to the facts arising in State of Tamil Nadu v. K. Narayanaswamy Chetty and Sons (T.C. No. 1183 of 1979), the assessees purchase

turmeric from agriculturists, convert it into powder and sell the same, and the point that arises for consideration in this tax revision case is whether

the purchase of turmeric from agriculturists will attract section 7-A of the Tamil

Nadu General Sales Tax Act, 1959. One of the conditions that

should be fulfilled for attracting section 7-A is that the goods purchased by the dealer should be consumed in the manufacture of other goods for

sale or otherwise. When the turmeric purchased by the assessees in the present case is converted into powder, it cannot be said that the turmeric

purchased by the assessees has been consumed in the manufacture of other goods for sale. The powder is only a changed form of the turmeric

purchased by the assessees. Consequently, section 7-A of the Act is not attracted.

5. According to the facts arising in State of Tamil Nadu v. Associated Sales of India (T.C. No. 1190 of 1979, judgment dated December 11,

1979 [Reported in The State of Tamil Nadu Vs. Associated Sales of India, the assessee purchased folded clips from unregistered persons and

those folded clips were used in the manufacture of office files. The question for consideration is whether the assessee was liable to pay tax on the

purchase turnover u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959. Because the assessee purchased folded clips from unregistered

persons, the purchase was not liable to tax. The only other point is whether the case can be brought under the scope of section 7-A of the Act.

One of the requirements of section 7-A is that the goods so purchased should be consumed in the manufacture of other goods for sale or

otherwise. No doubt, in this case, office files were manufactured by the dealer. But in that manufacture, the folded clips were not consumed, but

were merely used or utilised. The language used in the section is ""consumes such goods in the manufacture of other goods"" and not ""used such

goods in the manufacture of other goods"". Since the folded clips were not consumed in the manufacture of office files, the purchase turnover does

not attract tax u/s 7-A of the Act.

6. Thus considering the fact that the art silk yarn purchased by the assessee was not consumed in the manufacture of art silk cloth, by following the

principles adumbrated in the abovesaid decisions, cited supra, we hold that tax u/s 7-A of the Act is not exigible in the present case. Accordingly

the order passed by the Tribunal in holding that the purchase tax is not leviable u/s 7-A of the Act is in order. Accordingly, we are not inclined to

interfere with the same.

7. In the result, this tax case (revision) filed by the department is dismissed. No

cost.

8. Petition dismissed.

