(1995) 03 MAD CK 0043

In the Madras High Court

Case No : Tax Case Revision Petition No''s. 1158 and 1159 of 1984

State of Tamil Nadu APPELLANT

Vs

Lilaram Shewaram (India) (P) Ltd. RESPONDENT

Date of Decision : 14-03-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (1997) 1 CTC 234

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—In both these revision petitions, relating to the assessment year 1980-81, the department is the petitioner. In both the

revision petitions the department contended that the Tribunal was not correct in granting exemption on the sales turnover of Rs. 2,80,500 treating

dry green garlic as vegetable. The Tribunal following the decision in State of Orissa v. Bhagawandas Ashok Kumar 1982 51 STC 74 Ori held that

the assessee had dealt in green garlic, that even if it is dried, so long as it is not dehydrated, the garlic would be vegetable within the Notification

No. 1764/Revenue dated April 5, 1960 and it is not liable to tax. Accordingly, the Tribunal had set aside the assessment on the sales turnover of

garlic of Rs. 2,80,500. We have also heard learned counsel for the assessee in support of the order passed by the Tribunal. A similar issue came

up for consideration before this Court in T.C. No. 331 of 1987 in the case of State of Tamil Nadu v. D. J. Kaliaperumal Naidu and Company,

wherein by an order dated November 22, 1994 this Court held that the sales turnover of garlic is entitled to exemption as vegetable u/s 17 of the

Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as ""the TNGST

Act""). Since the order passed by the Tribunal on this aspect is in

accordance with the earlier decision of this Court, we consider that there is no infirmity in the order passed by the Tribunal. Accordingly, we are

not inclined to interfere with the same.

2. The second point in the petitions filed by the department is relating to taxing the turnover on sales of salt petre. The assessing officer held that the

salt petre is a chemical and accordingly, levied tax at 8 per cent of single point. On appeal, the Appellate Assistant Commissioner, following the

decision in Commissioner of Sales Tax Vs. Krishna Chemicals, held that the salt petre cannot be treated as chemical and therefore assessed it at 4

per cent multi-point. On appeal, the Tribunal agreed with the order passed by the Appellate Assistant Commissioner. This order was passed by

the Tribunal in an enhancement petition filed by the department.

3. Before this Court, learned Additional Government Pleader (Taxes), submitted that salt petre is a chemical taxable at 8 per cent under item 138

of the First Schedule to the TNGST Act, 1959. On the other hand, learned counsel for the assessee, while supporting the order passed by the

Tribunal, contended that salt petre is not a chemical, and it is used as an intermediary in the process of manufacturing an end-product. According

to the condensed Chemical Dictionary, 10th Edition, potassium nitrate means,

Potassium nitrate :

Properties : Transparent, colourless or white crystalline powder or crystals; slightly hydroscopic; pungent, saline taste. Sp. Gr. 2.1062; m.p. 337

C; b.p., decomposes at about 400 C; soluble in water and glycerol; slightly soluble in alcohol. Low toxicity.

Grades : Commercial; C.P.; F.C.C.

Containers : Bottles, bags, barrels, drums.

Hazards : Dangerous fire and explosion risk when shocked or heated, or in contact with organic materials; strong oxidizing agent.

Uses : Pyrotechnics; explosives; matches; specially fertilizer; reagent; to modify burning properties of tobacco; glass manufacture; tempering steel;

curing foods; oxidizer in solid rocket propellants. Shipping regulations : (Rail, Air) Oxidizer label.

Potassium nitrite :

Properties : White or slightly yellowish prisms or sticks; deliquescent. Sp. gr. 1.915; b.p., explodes at 1000 F (537 C) m.p. 440 C (dec. starts at

350 C). Soluble in water; insoluble in alcohol.

Grades : C.P.; technical; reagent; F.C.C.

Hazards : Fire and explosion risk when shocked or heated, or in contact with organic materials; strong oxidizing agent.

Uses : Analysis (testing for amino acids, cobalt, iodine, urea); food additive (curing agent).

Shipping regulations : (Rail, Air) Oxidizer label.

Therefore, salt petre is a chemical as stated under item 138 of the First Schedule to the TNGST Act, and therefore, taxable at 8 per cent.

Accordingly, the order passed by the Tribunal on this aspect is set aside and the order passed by the assessing officer stands restored.

4. In the order the Tribunal followed the decision of the Allahabad High Court in the case of Commissioner of Sales Tax, U.P., Lucknow v.

Krishna Chemicals 1979 43 STC 216 wherein while considering the word ""chemicals"" as used in Notification No. ST-8301-1/X - 1008-64 dated

1st April, 1966, issued under the U.P. Sales Tax Act, 1948, held as under :

So understood salt petre or kalmi sora, which is normally not used in any manufacturing or processing activity but is used as food article cannot be

put in the category of chemicals. In fact, in the case of Industrial Gases Ltd. Vs. Commissioner, Sales Tax, , the Bench while giving example of

such commodities, which in the scientific sense would be chemicals but should not be treated as such, has mentioned salt petre as one of the

commodities which would not answer the description of chemical as used in the notification.

Hence, the said decision would render no assistance to the assessee to contend the salt petre is not a chemical under item 138 of the First

Schedule to the TNGST Act.

5. Another decision relied on by the Tribunal was in State of Gujarat v. Shah Bhagwanji Manekchand 982 50 STC 147, wherein the Gujarat High

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. Lime is a chemical and the three varieties of lime, namely, merta, sojat and gotan are intermediary chemicals used as agents for the purpose of producing the finished products

such as mortar and whitewash which are utilised in the building construction activity. Therefore they would squarely fall within the description of the

term ""chemicals"" occurring in entry 9 of Schedule II, Part A, to the Act, and not under the general residuary entry 13 of Schedule III to the Act.

In the abovesaid decision it was further held : "".....Since we find that dye is an intermediate chemical product, which determines the nature of the

wider word ''chemicals'', we are of the opinion that the word ''chemicals'' should take its meaning from the category of chemicals which a dye

represents.

Therefore, this decision was rendered while considering the word ""chemicals"" in accordance with the entry 9 of Schedule II, Part A to the Gujarat

Sales Tax Act, 1969. Therefore, this decision also would not render any assistance to the assessee to contend that salt petre would not fall under

entry 138 of the First Schedule to the TNGST Act.

6. In Hardcastle, Waud & Co. Ltd. v. State of Tamil Nadu 1993 89 STC 352 Mad while considering the word ""chemical"" this Court held that,

whether a commodity can be described as a ""chemical"", for the purpose of a similar entry, must be determined not by the use for which a particular

purchaser buys it but with reference to the general properties which make it saleable to the entire range of prospective buyers. Thus, on a plain

reading of entry 138 of the First Schedule to the TNGST Act, in the light of various decisions cited supra, we hold that the Tribunal was not

correct in coming to the conclusion that salt petre is not a chemical. Therefore, the order passed by the Tribunal on this aspect is set aside and the

order passed by the assessing officer stands restored. Accordingly, T.C. (R) Nos. 1158 of 1984 and T.C. No. 1159 of 1984 are allowed in part.

7. Petition partly allowed.