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(1990) 10 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 159 of 1980 (Revision No. 31 of 1980)

State of Tamil Nadu APPELLANT

Vs

O.P. Aliyar RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4, 5, 7A

Citation : (1990) 10 MAD CK 0001

Hon'ble Judges : Mishra, J;Govindasamy, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader Taxes, for the Appellant; C. Venkataraman, for the Respondent

Judgement

Mishra, J.—This case has to be disposed of with a mere reiteration of the order of the Sales Tax Appellate Tribunal (Main Bench), Madras

- 1.

2. A question arose whether the blue metal jelly obtained by conversion of the bigger stone boulders into smaller stones of varying sizes would be

subjected to purchase tax u/s 7A of the Tamil Nadu General Sales Tax Act or not. The assessee-respondent was subjected to such a tax, on a

reading in section 7A of the Act that the process under which the bigger stone boulders were converted into smaller stones of varying sizes and

blue metal jelly thus obtained was manufacture using stones for the creation and preparation of blue metal jelly. Recounting of the entire ordeal of

the assessee of going through every stage of the legal proceeding until the appeal before the Tribunal is not necessary. The Tribunal, however, had

in a short, but effective, order held that the process of converting the bigger stone boulders into smaller stones of varying sizes is not a manufacture through which blue metal jelly is obtained. The Tribunal has referred to a decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue

(Taxes) Vs. Pio Food Packers, and other authorities on the subject. Corpus Juris Secundum, volume 55, at page 685, explained the term

manufacture"" thus :

In determining whether an activity is or is not a manufacture, or whether a process or operation is or is not manufacturing, one of the important

factors is the extent of the change that has been effected in the original material, since, while every change in an article is the result of treatment,

labour and manipulation, every change is not manufacture; something more is necessary, and the application of labour must be carried out to such

an extent that the article suffers a species of transformation and a new and different article emerges. This characteristic has been the subject of

considerable discussion and the courts have experienced some difficulty in determining what constitutes a new and different article.

Ismail, C.J. and M. A. Sathar Sayeed, J.

3. Were faced with a similar contention in The State of Tamil Nadu Vs. Subbaraj and Co., where the assessee bought raw bones and converted

them into crushed bones by a process of braking the bones in a disintegrator into pieces of 3/8"" and 5/8"" bones, and obtained in that process bone

grist, bone-meal, fluff horns and hoof, which were sold locally. The Tribunal in that case held that the case did not attract section 7-A(1)(a) of the

Act. This Court affirmed the Tribunal''s view saying that with regard to the purchase of the raw bones and the end-products which were sold

locally, the Tribunal was right in holding that section 7-A(1)(a) of the Act was not attracted, as there had been no consumption of the goods

purchased in the manufacture of other goods.

Section 7-A(1)(a) of the Act uses the words :

7-A(1). Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or

purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be, and either,

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

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shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3, 4 or 5, as the case may be, whatever be the

quantum of such turnover in a year :

Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods the sale of which is liable to tax under sub-

section (1) of section 3 shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than one lakh rupees.

It is not the case of the State that there was any sale of the blue metal jelly to any person beyond the State or any despatch outside the State. We

are of the opinion that the Tribunal has correctly understood the law and rightly held that all the ingredients of section 7-A are not satisfied in the

case of blue metal jelly obtained in the process of crushing of stone boulders and conversion into smaller stones of varying sizes. There is no merit

in this tax case. It is accordingly dismissed. There will be no order as to costs.

4. Petition dismissed.

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