(1991) 08 MAD CK 0089

In the Madras High Court

Case No : Tax Case (Revision) No. 653 of 1982

State of Tamil Nadu APPELLANT

Vs

P. Ramasamy RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Entry 21

Citation : (1991) 08 MAD CK 0089

Hon'ble Judges : A.S. Anand, C.J;Kanakaraj, J

Bench : Division Bench

Advocate : D. Srinivasan, Additional Government Pleader Taxes, for the Appellant;

Judgement

Dr. A.S. Anand, C.J.—The controversy in this tax revision filed at the instance of the Revenue is limited and lies in a narrow compass. The question is whether ammonium nitrate falls under entry 21 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, hereinafter called "the Act", taxable at 3 1/2 per cent as held by the Tamil Nadu Sales Tax Appellate Tribunal or under entry 138 to the First Schedule taxable at 8 per cent as contended by the Revenue. The assessment year in question is 1978-79.

2. The assessing officer as well as the Appellate Assistant Commissioner took the view that the turnover of Rs. 71,542 which represents first sales of "ammonium nitrate" was taxable at 8 per cent under entry 138 of the First Schedule to the Tamil Nadu General Sales Tax Act. The plea of the assessee, however, was that it was liable to be taxed at 3 1/2 per cent under entry 21 of the First Schedule. The Tribunal accepted the plea of the assessee.

3. We find that the original entry 21 of the First Schedule was "chemical fertilisers, that is to say : (1) .... (2) .... ammonium nitrate ...." Thus, "ammonium nitrate", was an item enumerated at item No. 2 in the entry of "chemical fertilisers". Entry 21 was, however, amended with effect from August 6, 1970 and apart from deleting the expression "chemical fertilisers, that is to

say" even item No. 2 in the entry namely, "ammonium nitrate" was also deleted and certain other entries were added. Entry 21 was further amended with effect from February 2, 1977 and in the amended entry also "chemical fertilisers, that is to say" stood deleted. "Ammonium nitrate" was also not included in the enumerated items in the entry. Thus, it is obvious that the Tribunal was in error in holding that ammonium nitrate was covered by entry 21, item No. 6 at the relevant time. Item 6 is "calcium ammonium nitrate" which is admittedly different from "ammonium nitrate". We find that in the original entry 21 whereas "ammonium nitrate" figured at item No. 2, "calcium ammonium nitrate" was separately classified at item No. 6. Thus, "ammonium nitrate" and "calcium ammonium nitrate" were classified as two different commodities in entry 21 as it originally existed. Since, entry 21 at the relevant time pertaining to the assessment year did not include, as any of the items, "ammonium nitrate", it could not be held to be taxable under that entry at 3 1/2 per cent. The Tribunal failed to see the distinction between "ammonium nitrate" and "calcium ammonium nitrate".

4. Entry 138 of the First Schedule as it existed at the relevant time and before its omission by Act 46 of 1982, with effect from July 1, 1982, read "dyes and chemicals other than those specifically mentioned in this Schedule". This entry takes within its fold both "dyes" and "chemicals" other than those specifically mentioned in the Schedule. "Ammonium nitrate" by its very composition is only a chemical. It is also not specifically mentioned in the Schedule since it was expressly deleted from entry 21 by the amendment made in 1970. "Ammonium nitrate" would, therefore, be covered by entry 138 of the First Schedule and would be liable to tax at 8 per cent. The assessing authority as well as the appellate authority was thus justified in holding that "ammonium nitrate" was taxable at 8 per cent under entry 138 of the First Schedule to the Act.

5. In view of the above discussion, our answer to the question is that "ammonium nitrate" fell under entry 138 of the First Schedule at the relevant time and it did not fall under entry 21 of the First Schedule.

6. The order of the Tribunal is consequently set aside and that of the assessing authority and the appellate authority in that behalf, is restored.

7. Since, there is no appearance on behalf of the respondent, we make no order as to costs.

8. Petition allowed.

