

(2017) 05 MAD CK 0036
In the Madras High Court
Case No : 293, 300 & 188 of 2011

State of Tamil Nadu

APPELLANT

Vs

Tvl.Lanka Traders Bone Mills

RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

Central Sales Tax Act, 1956, Section 5(3),
Section 7(A)(i)(c) - When is a sale or purchase of goods said to
take place in the course of import or export - Registration of dealers

Citation : (2017) 05 MAD CK 0036

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Judgement

1. Heard Mr.Raja Karthikeyan, learned Additional Government Pleader appearing for the appellant and Mr.S.Karunakar, learned counsel appearing for the respondent.
2. All these appeals have been filed by the Revenue, challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench) Madurai, dated 29.12.2003, 29.12.2003 and 09.06.2004, made in M.T.A.Nos.800/2002, 805/2002 and 730 /2003, respectively.
3. The question, which arose for consideration before the Tribunal in all these three cases, is as to whether the purchase of horn meal and hoof meal and consequential export thereof is exempted from levy of tax in terms of Section 5(3) of the Central Sales Tax, 1956 (for brevity, "the Act"). In the case of the respondent, the respective Assessing Officer assessed them to tax under section 7(A) (i)(c) at 8%. On appeal, it was contented that the transaction is wholly exempted, as it is an export transaction. On facts, the respondent dealer stated before the Appellate Assistant Commissioner that what they purchased were exported out of India and in support of their claim, they have produced bills of lading and other connected documents. The Purchases were effected for export

and that the goods were purchased by them in pursuance of a Pre-existing agreement of export to foreign countries and they were actually exported outside the Indian Territory not being in dispute, they claimed exemption under Section 5(3) of the Act.

4. Further, they placed reliance on the decision of this Court in the case of Tvl.P.P.M.Thangaiya Nadar Vs. The State of Tamil Nadu, reported in 1980, 46 STC 67 and the decision of the Tribunal in the case of Arasan Fertilizers Private limited Vs. The State of Tamil Nadu in MTA No.132 of 1996 dated 28.07.1998, wherein the Tribunal held that the horn meal is an organic manure, by referring to the notification dated 26.03.1985, as well as the other materials, which were placed before the Tribunal to show that the said product is an organic manure. The dealer also placed reliance upon another decision in the case of Tvl.Arasan Fertilizers (P) Ltd., Vs. The Deputy Commercial Tax Officer Ettayapuram in A.P.No. 121 of 1997 dated 30.08.1999. The Revenue contented that the horn meal cannot be branded as "manure", as it has been used other than manure. Therefore, it was contented that most accepted and most prevalent test, which is commonly known as "Common Parlance Test" has to be applied and if the same is done, it will not qualify for being termed as "organic manure" to get the benefit of exemption from the sales tax. Further, it was submitted that the use of horn meal is not solely as a manure, but, it is widely used in button making and as contents of fire extinguisher.

5. The Appellate Assistant Commissioner, after taking note of the fact that the purchase effected by the respondent dealer was in the course of export and following the earlier decision of the Tribunal, allowed the appeals filed by the assessee. This order was put to challenge by the Revenue before the Special Appellate Tribunal and the contentions, which were advanced before the Appellate Assistant Commissioner, were reiterated before the Tribunal.

6. The Tribunal, after considering the factual aspects, held that the respondent dealers are exporters, doing business in bone meal and horn meal and the purchases effected by them from unregistered dealers, being in the course of export, were entitled for exemption. The Tribunal further referred to its own decision in MTA.No.132 of 1996, dated 28.07.1988.

7. The said order passed by the Tribunal is put to challenge before this Court by raising contention that the respondent dealer manufactured horn meal and hoof meal powder from and out of the bones purchased from unregistered dealers in steam process by adding chemicals and the commodity, viz., horn meal is not a manure and therefore, grant of exemption is not correct.

8. Firstly, we may note that the above contention raised by the revenue is a question of fact and not a question of law. Nevertheless, we have considered the entire matter and took note of the most important fact that the Appellate Assistant Commissioner as well as the Special Appellate Tribunal accepted the fact that the purchases effected by the respondent dealer were for export sale.

The question would be whether the transaction will not become an export sale, if there has been an intermediary process, as stated by the Revenue by adding chemicals to the said product and whether this would change the nature of transaction. The answer to the said question should be in negative, in the light of the decision of the Hon''ble Supreme Court in the case of Ferro Alloys Corporation Limited Vs. Union of India, reported in 1999 2 SCC 198. After analyzing Section 5(3) of the Act, the Hon''ble Supreme Court pointed out that (1) the sale occasions the export, (2) the sale is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India; and (3) the last sale of goods preceding the sale occasioning the export of the goods is deemed to be in the course of such export, if it has taken place after and for the purpose of complying with the agreement or order relating to such export.

9. In the preceding paragraphs, we have noted the factual position, which has not been denied by the Revenue that the respondent dealer is an exporter of the said product. Furthermore, the specific case of the respondent is that the purchases were effected by them to honour the pre-existing agreement for the export of the product. Thus, all the three parameters pointed out by the Hon''ble Supreme Court stand fulfilled in the instant case. Hence, the Appellate Assistant commissioner and the Tribunal were fully justified in holding that the respondent dealer is entitled for the benefit of exemption under Section 5(3) of the Act, apart from the fact that the Tribunal, on facts, in earlier case, has held that the bone meal and horn meal are Organic manures.

10. Thus, we find that the order passed by the Tribunal is valid in the facts and circumstances of the case and no question of law arises for consideration in these Tax Revision Cases and accordingly these revisions are dismissed. No costs.