

(1973) 09 MAD CK 0014

In the Madras High Court

Case No : Tax Case No. 18 of 1973 Revision No. 6 of 1973

The State of Tamil Nadu

APPELLANT

Vs

Rallis India Ltd.

RESPONDENT

Date of Decision : 18-09-1973

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 5(v)

Citation : (1974) 34 STC 532

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; G. Natarajan, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The disputed turnover in this case is Rs. 1,00,29,369, representing sales of manure mixtures effected by the assessee. The

assessee claimed that the sales are second sales of chemical fertilisers and as such exempted from tax. The assessing authority treated the disputed

turnover as first sale of "chemical fertilizers" taxable at single point under item 21 of the First Schedule. That view has also been upheld by the

Appellate Assistant Commissioner. When the matter came before the Tribunal, it took the view that though the manure mixtures in question will fall

within item 21 of the First Schedule, the sales by the assessee of the manure mixtures are second sales of chemical fertilisers and hence could not

be taxed. Aggrieved against the decision of the Tribunal the revenue is before us.

2. It is contended by the learned Government Pleader that the view taken by the Tribunal that the manure mixture having as its components any

one or more of sub-items (1) to (15), which are chemical fertilisers, is also a

chemical fertiliser which has already suffered tax is erroneous, that the manure mixture sold by the assessee is different from each of the items of chemical fertilisers referred to in sub-items (1) to (15), that the manure mixture should be taken to be chemical fertilisers having different characteristics and chemical properties and that, therefore, the assessee's sale cannot be said to be a second sale in chemical fertilisers. Reliance is placed by the revenue on a judgment of this court in *Imperial Fertiliser and Company v. State of Madras* [1973] 31 S.T.C. 390. In that case the assessee purchased various items of chemical fertilisers referred to in item 21 of the First Schedule and brought about a new product by mixing one or more of the said articles with one or more of the organic manure and sold the mixed product. The question arose whether the product sold by the assessee will fall within item 21. It was contended that the manure mixture sold by the assessee should be taken to be the same chemical fertilisers which he had purchased and which had already been subjected to tax and that, therefore, his sale will be a second sale in chemical fertilisers. It was held in that case that the manure mixture sold by the assessee had different characteristics and properties of its own and that it did not retain, the same characteristics or properties of any one of the chemical manure or organic manure which formed its components, and that for getting an exemption on the ground that the sale of an article is a second or a subsequent sale it must be established that there has been a sale of the same goods at an anterior point of time and unless there is identity between the items of chemical fertilisers purchased and the manure mixture sold it is not possible to treat the sales of the manure mixtures as second sales. Though that decision was rendered in respect of a manure mixture having as its components both organic and inorganic substances, the principle of that decision has to be applied to the facts of this case. The ratio of that decision is that if the mixture sold had different chemical properties and treated as a different commodity in commerce, its sale cannot be taken to be a second sale of chemical fertilisers, merely because the components have suffered tax at an earlier stage as chemical fertilisers.

3. Learned counsel for the assessee, however, points out that the said decision should be confined to the facts of that case where there was a mixture of organic and chemical manures, and that it cannot be extended to

cover a case of sale of a mixture whose components are only chemical manures. It is stated that the manure mixture of one or more of the articles mentioned in sub-items (1) to (15) in item 21 and one or more of the organic manures have specifically been defined as chemical fertilisers and, therefore, it was held in that decision that a mixture of organic and chemical manure was a different chemical fertiliser liable to be taxed under item 21. The learned counsel also contends that in this case the manure mixture sold by the assessee has as its components only sub-items (1) to (15) and no other organic manure has been mixed and, therefore, the said mixture cannot be brought within item 21, We are not in a position to agree with the learned counsel that the manure mixture sold by the assessee

in this case is not a chemical fertiliser. Item 21 is in the following terms:

Chemical fertilisers, that is to say, (1) ammonium sulphate, (2) ammonium nitrate, (3) urea, (4) ammonium chloride, (5) sodium nitrate, (6) calcium ammonium nitrate, (7) superphosphate single, (8) superphosphate triple, (9) kotka phosphate, (10) di-calcium phosphate, (11) potassium chloride (muriate of potash), (12) sulphate of potash, (13) mono ammonium phosphate, (14) di-ammonium phosphate, (15) bone-meal, (16) any mixture of one or more of the articles mentioned in items (1) to (15) and one or more of the organic manures.

4. The expression "chemical fertilizers" occurring in the opening part of that item is wide in its scope so as to attract any chemical fertilisers and the words following it "that is to say" cannot be understood as words of limitation. In this view the manure mixture sold by the assessee has to be taken

to be a chemical fertiliser. Besides, the manure mixture prepared from one or other of the articles mentioned in items (1) to (15) is treated as a

chemical fertiliser in commercial circles and the mere fact that the mixture does not fall within the named Articles (1) to (15), it cannot cease to be a

chemical fertiliser. The learned counsel for the assessee placed reliance on the unreported decision of this court in Mysore Fertiliser Company v.

State of Madras (T. C. No. 132 of 1964). But we are of the view that that decision will not be of any help to the assesses in this case. The

question that was decided in that case was as to whether the entry "chemical fertilizer" in Section 5(v), item 2, of the Madras General Sales Tax

Act, 1939, comprehended within its scope organic manure as well, and the court

held that the expression ""chemical fertilizers"" can refer only to inorganic substances and cannot include any item of organic manure and that, therefore, a mixture of chemical fertilisers as well as organic manure cannot be treated as a chemical fertiliser. In this case we are not concerned with such a situation and the only point at issue in this case is whether the manure mixture composed of various items of chemical fertilisers will be a chemical fertiliser coming within item 21. We are clearly of the view that the mixture of any one of the sub-items referred to in item 21 will be a chemical fertiliser and as such brought within entry 21.

5. The learned counsel then points out that the manure mixture sold by the assessee has the same properties as its components and that, therefore, it cannot be treated as a different article. As already stated, each of the component article and the manure mixture have different chemical properties of their own and their use also is different. It is not therefore possible to treat the manure mixture as the same article as the components themselves. It is then pointed out that the manure mixture has not been prepared as a result of any manufacturing process and, therefore, it should be taken to have the same properties as its components. The question here is not whether the process adopted by the assessee is one of manufacture or not. Whether the process adopted is manufacture or otherwise, if the resultant product obtained by mixing the various articles of chemical fertilisers referred to in item 21 is sold as a different commercial product and for a different user, it has to be treated as a different article from the component. In our view, the view taken by the Tribunal in relation to the disputed turnover cannot be upheld. The tax case is, therefore, allowed and the Tribunal's order is partly set aside. The revenue will have its costs. Counsel's fee Rs. 150.