
(1980) 09 MAD CK 0049

In the Madras High Court

Case No : Tax (Revision) Case No's. 337, 477 and 555 of 1979

The State of Tamil Nadu

APPELLANT

Vs

Subbaraj and Co.

RESPONDENT

Date of Decision : 23-09-1980

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(1), 7(1), 7A

Citation : (1981) 47 STC 30

Hon'ble Judges : M.M. Ismail, C.J; M.A. Sathar Sayeed, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; C. Natarajan, for the Respondent

Judgement

Ismail, C.J.—All these three cases raise the question relating to liability to tax u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959. In these cases, the dealer buys raw bones. The raw bones are converted into crushed bones. The process is done through breaking the bones in a disintegrator. In the process of breaking the bones into pieces of 3/8" and 5/8" bones, bone grist, bone-meal, fluff horns and hoof are obtained. Roughly 50 per cent of raw bone is obtained as crushed bone; 15 per cent of raw bone is obtained as bone grist; about 15 per cent is obtained as bone-meal; about 10 per cent is obtained as fluff; about 5 per cent is obtained as horn hoof. The rest becomes waste. The dealers in T.C. No. 337 of 1979 exported crushed bone, but all the three dealers sold bone-meal, bone grist, fluff and horn hoof locally. As far as export is concerned, the Tribunal has remitted the matter back to the assessing officer in order to decide the question whether those sales fall within the scope of section 7-A(1)(b) or 7-A(1)(c) of the Tamil Nadu General Sales Tax Act, 1959, and whether the purchase tax is payable with reference thereto. With regard to the others, namely, bone-meal, bone grist, fluff and horn hoof, etc., the Tribunal has held that section 7-A(1)(a) will not be attracted. It is the correctness of this finding of the Tribunal with reference to section 7-A(1)(a) that is challenged in the present tax revision cases.

2. Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the Act, reads as follows :

"Levy of purchase tax. - (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

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

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 fifty thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), the provisions of section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods [the sale of which is liable to tax under sub-section (1) of section 3] and whose total turnover for a year is not less than fifty thousand rupees but not more than one lakh of rupees; and such a dealer may, at his option, instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of section 7.

(3) Every dealer liable to pay purchase tax under sub-section (1), shall for the purposes of this Act, be deemed to be a registered dealer."

3. Consequently, for the purpose of section 7-A(1)(a) to apply, the goods purchased should have been consumed in the manufacture of other goods for sale or otherwise.

4. In State of Tamil Nadu represented by the Additional Deputy Commissioner of Commercial Taxes, Madras Division, Madras v. Associated Sales of India, Madras-1 ([1980]46 S.T.C.401.) (T.C. No. 1190 of 1979), the scope of this provision came to be considered by this Court. By the judgment dated 11th December, 1979, this Court held as follows :

"The assessee in this case purchased folded clips from unregistered persons and those folded clips were used in the manufactured of office files. The question for consideration is whether the assessee was liable to pay tax on the purchase

turnover u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959. Because the assessee purchased folded clips from unregistered persons, the purchase was not liable to tax. The only other point is whether the case can be brought under the scope of section 7-A of the Act. One of the requirements of section 7-A is that the goods so purchased should be consumed in the manufacture of other goods for sale or otherwise. No doubt in this case office files were manufactured by the dealer. But in that manufacture, the folded clips were not consumed, but were merely used or utilised. The language used in the section is "consumes such goods in the manufacture of other goods" and not "uses such goods in the manufacture of other goods". Consequently, we agree with the conclusion of the Tribunal and hold that since the folded clips were not consumed in the manufacture of office files, the purchase turnover does not attract tax u/s 7-A of the Act."

5. The section came up for consideration again before this Court in T.C. No. 1183 of 1979 (State of Tamil Nadu represented by the Deputy Commissioner (C.T.), Salem v. K. Narayanaswamy Chetty and Sons). By judgment dated 11th December, 1979, this Court held as follows :

"In this case, the assessee's purchase turmeric from agriculturists, convert it into powder and sell the same, and the point that arises for consideration in this tax revision case is whether the purchase of turmeric from agriculturists will attract tax u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959. One of the conditions that should be fulfilled for attracting section 7-A is that the goods purchased by the dealer should be consumed in the manufacture of other goods for sale or otherwise. When the turmeric purchased by the assessee in the present case is converted into powder, it cannot be said that the turmeric purchased by the assessee has been consumed in the manufacture of other goods for sale. The powder is only a changed form of the turmeric purchased by the assessee. Consequently, section 7-A of the Act is not attracted and therefore the conclusion of the Tribunal does not call for interference."

6. The matter again came up for consideration by this Court in T.C. No. 300 of 1980 (State of Tamil Nadu represented by the Deputy Commissioner (C.T.), Coimbatore Division, Coimbatore-18 v. Vijayakumar Slate Works). By order dated 13th March, 1980, the court held as follows :

"This is a petition to revise the order of the Sales Tax Appellate Tribunal, Additional Bench, Coimbatore, holding that the purchase turnover of the wood was not liable to purchase tax u/s 7-A since the wood purchased was merely made into frames in which slates were inserted and the frames themselves therefore cannot be said to have been consumed in the manufacture of other goods. We are of the opinion that this conclusion is correct having regard to the use of the word "consumed" occurring in section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act, 1959."

7. The question came up for consideration with reference to the corresponding

provision in the Kerala General Sales Tax Act, namely, section 5A of that Act, before the Kerala High Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Pio Food Packers, . In that case, the assessee purchased pineapple and prepared pineapple slices by a process which included packing in tin containers for being made available in the market. The assessee purchased pineapple, washed it, removed the inedible portions, namely, the end, the crown, the skin and the core, sliced it, filled the slices in cans with some sugar added as preservative, sealed under temperature and put into boiling water for sterilisation and thus prepared pineapple slices. It prepared pineapple juice by crushing the pineapple and pressing it after removing the inedible portions. The juice thus obtained was sweetened, filled in cans, sealed under temperature and put in boiling water for sterilisation. It prepared jam and squash with pineapple by well-known processes. The question that arose for consideration was whether the pineapple slices fell within the ambit of section 5A of the Kerala General Sales Tax Act, 1963, in particular section 5A(1)(a) corresponding to section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act, 1959. The learned Judges of the Kerala High Court, after referring to the provisions contained in section 5A(1)(a), said as follows :

"The relevant clause in the section which was application is section 5A(1)(a) and the conditions to be established before liability can be attracted are : (1) that the goods purchased have been consumed; (2) that such consumption was in the process of manufacture; and (3) that the manufacture was of other goods for sale. It is necessary to concentrate on the expressions underlined, namely, "consumption", "manufacture" and "other goods". The last of these is to be noticed only to emphasise that the resultant product must be distinct and different from the goods consumed in the process of manufacture."

8. The learned Judges elaborately considered the scope of the expressions "consume" and "manufacture" with reference to the decided cases and ultimately took the view :

"On the facts of this case, we are of the opinion that sliced pineapple, despite the rejection of the inedible portions, the core, the crown and the end of the fruit, and despite the process involved in packing it in tin containers for being made available in the market, remains the same as pineapple, there is no "consumption" of the commodity; nor any process of "manufacture" of "other goods"."

9. This decision of the Kerala High Court was affirmed by the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, . Their Lordships of the Supreme Court observed :

"Section 5A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. There are several criteria

for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more process through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."

10. After referring to the decisions relied on, the court stated as follows :

"The comment applied fully in the case before us. Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to process its original identity, notwithstanding the removal of inedible protions, the slicing and thereafter canning it on adding sugar to preserve it

In the result, we hold that when pineapple fruit is process into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture. The case does not fall within section 5A(1)(a) of the Kerala General Sales Tax Act. The High Court is right in the view taken by it."

11. As pointed out by the Kerala High Court in its judgment, the most significant word occurring in section 7-A(1)(a) of the Act is the word "consumes". Inasmuch as the goods purchased are not consumed in the process of manufacture of some other goods, section 7-A(1)(a) will not be attracted. The very use of the word "consume" contemplates that the goods purchased should have been devoured or exhausted in the process of manufacture with the result, its identity must have been completely lost. So long as its identity remained, the goods purchased and used in the manufacture of some other goods cannot be said to have been consumed in the process of manufacture of other goods. It is against this background, we have to consider the question raised in this case.

12. We have already referred to what the dealers purchased in these cases and the processes they adopt for bringing into existence the end-product. From what we have stated it is clear that the raw bones purchased by the dealers in these cases cannot be said to have been consumed in the process of bringing into existence the crushed bone, bone grist, bone-meal, fluff or horn hoof, apart from

the distinctive meaning that will have to be attributed to the word "manufacture". Consequently, with regard to these purchases of the raw bones and the end-products which were sold locally, we are clearly of the opinion that the Tribunal was right in holding section 7-A(1)(a) is not attracted, as there has been no consumption of the goods purchased in the manufacture of other goods.

13. The result is the Tribunal is right in its conclusion in this behalf and therefore all the three tax revision cases are dismissed. There will be no order as to costs.

14. Petitions dismissed.