

(2002) 12 MAD CK 0108

In the Madras High Court

Case No : Tax Case (Revision Petition) No. 111 of 1998

Union of India (UOI)

APPELLANT

Vs

Chemfab Alkalies Limited

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Pondicherry General Sales Tax Act, 1967 — Section 19, 42

Citation : (2003) 129 STC 427

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Murugesan, Govt. Pleader, for the Appellant; K.J. Chandran, for the Respondent

Judgement

K. Raviraja Pandian, J.—The above tax case revision is filed u/s 42 of the Pondicherry General Sales Tax Act, 1967, (hereinafter referred to as "the PGST Act".) by the revenue i.e., the Union of India represented by the Deputy Commissioner of Commercial taxes, Government of Union Territory of Pondicherry against the order of the Sales-tax Appellate Tribunal, Pondicherry dated 5.11.1992 made in Tax Appeal No. 1 of 1992 on the following questions of law

1. Whether the respondent, who is manufacturing liquid Chlorine in another factory taken on lease is entitled to the benefit of exemption permissible as per the Government's notification in G.O.Ms. No. 15/74/Fin.(CT) dated 25th June, 1974 of the Finance Department, Pondicherry? and

2. Whether the respondent, which is manufacturing "Brine" (using "salt" and other chemicals) a new product having a distinct name, character and use is entitled to claim the benefit of tax exemption provided to "salt" in entry No. 10 of Schedule III of the PGST Act, 1967?"

2. The respondent is an assessee in the books of commercial Tax Officer (IAC), Pondicherry and was an industrial undertaking manufacturing Caustic Soda,

Chlorine gas, Hydro Chloric acid (100 percent) and Calcium Hydro chlorite under licence issued by the Government of India, New Delhi. The Industry has commenced production in their factory at Kalapet with effect from 2.7.1985. For the assessment year 1988-89, the respondent have reported the total and taxable turnover of Rs.95,70,369-85ps and Rs.71,118-76ps claiming exemption on a turnover of Rs.94,99,251-09ps in their return filed. The respondent claimed exemption of sales turnover of liquid chlorine in a sum of Rs.1,20,029/-. This exemption has been claimed under the notification in G.O.Ms. No. 15 dated 25.6.1974 issued by the Government of Pondicherry in exercise of the power u/s 19 of the PGST Act, 1967. According to the assessee, the said notification exempts the tax payable under the said Act on the sales turnover of goods manufactured by the small scale industries, which went into production on or after 6th November, 1969 and all Industries other than small scale industries which went into production on or after 1st April, 1971 as certified by the Director of Industries, Pondicherry located in the Union territory and registered with the Government of Pondicherry. The said exemption in respect of the goods manufactured in the said industries shall be effective and valid for a period of five years from the date of commencement of production. The exemption so claimed by the assessee has been negatived by the Assessing Officer on the ground that the liquid chlorine was manufactured by the assessee in a plant taken on lease from 16th April, 1987 from M/s. Lichlor. Hence, the liquid chlorine manufactured by the assessee, respondent from a manufacturing unit owned by other person is not entitled to the benefit under the notification.

3. In respect of the sales turnover of "Brine" in a sum of Rs.3,88,863-89ps, a raw material for manufacture of caustic soda, the assessee claimed exemption under entry 10 of the third schedule. The third schedule to the Pondicherry General Sales Tax Act enumerated goods, which are exempted from tax. Entry No. 10 of the third schedule provides for sale of "salt". Hence, the Assessing Officer rejected the claim of exemption on the sales turnover of "Brine" on the ground that "salt" and "Brine" are commercially different commodities. The specific gravity of "Brine" in liquid form and the "salt" in crystal form are different. "Brine" form the basic solution or raw material for manufacture of Caustic Soda and hence the exemption granted from levy of tax to "salt" under Entry 10 of the third schedule is not available to "Brine".

4. That order was taken on appeal by the assessee before the Appellate Assistant Commissioner, Pondicherry, who by his order dated 9.10.1990 confirmed the finding of the Assessing Officer on both the points. On further appeal, the Sales Tax Appellate Tribunal, by its order dated 5.11.1992, allowed the appeal by reversing the order of the lower authorities. The correctness of the said order is now questioned in the tax case revision by framing the above said two questions of law.

5. Mr. T. Murugesan, learned Government Pleader appearing for the petitioner has submitted that the Tribunal went wrong in granting exemption under Gazette

notification in G.O.Ms. No. 15/74/Fin.(CT), dated 25.6.1974 to the petitioner in respect of the sales turnover of liquid chlorine inasmuch as the same is manufactured by the petitioner from the unit taken on lease from the third parties. The very purpose of granting exemption is only for the Industrial development. The respondent being not the owner of the unit in which the liquid chlorine was manufactured, such goods are not entitled to the benefit under the notification. He further contended that there is no finding arrived at by the Tribunal in order to grant the relief of tax exemption in respect of the sales turnover of "Brine". It is his contention that both the assessing authority as well as the first appellate authority have clearly given a finding to the effect that "Brine" is manufactured by purifying the "salt" and diluted with water in a particular proportion and in order to maintain the liquid form, chemical is also added and the "Brine" by itself is a new product manufactured out of "salt". Even in common parlance, "Brine" could not be considered as a "salt". No ordinary prudent man would buy "Brine" for "salt" since "Brine" is a mixture of water and "salt" with some chemicals. When such a clear finding has been recorded by the authorities below, the Tribunal without giving any reason, whatsoever, to differ from the lower authorities, has just jumped to the conclusion without any basis that the exemption in respect of the total turnover of the sale of "Brine" is available as is available to "salt" as per entry No. 10 of the third schedule to the PGST Act.

6. On the other hand, Mr. K.J. Chandran, learned counsel appearing for the respondent has contended that the Assessing Officer as well as the first Appellate authority have committed serious error in interpreting the Government notification in G.O.Ms. No. 15/74/Fin.(CT) dated 25.6.1974 to the effect that the benefit of the notification is available only to the persons, who own the Industries. There is nothing in the notification, which prohibits the benefit to the person, who manufactured the goods in an Industrial undertaking owned by others. The interpretation so arrived at by the sales-tax Appellate Tribunal is very much in consonance with the terms of the notification and as such no exception could be taken to the finding arrived at by the Tribunal that the respondent, who has manufactured liquid chlorine from the leasehold industry is entitled to the benefit of notification. Mr. Chandran further contended that the reasoning given by the Tribunal for arriving at the above conclusion would equally apply for reversing the finding of the lower authorities in respect of exemption claimed for the sales turnover of "Brine" under entry No. 10 of the third Schedule to the PGST Act.

7. We heard the arguments of the learned counsel on either side and perused the material on record.

8. In order to appreciate the argument advanced on behalf of either parties, and in order to resolve the dispute, we find it apposite to refer the notification with which reliance was placed by both the parties claiming exemption by the assessee and rejecting the same by the Department:

"GOVERNMENT OF PONDICHERY FINANCE DEPARTMENT

(G.O.Ms. No. 15/74/Fin.(CT), dated 25th June, 1974)

NOTIFICATION

In exercise of the powers conferred by sub-section (3) of section 19 of the Pondicherry General Sales Tax Act, 1967 and in supersession of G.O.Ms. No. 6/74/Fin. (CT), dated 1st April, 1974 of the Finance Department, the Lieutenant-Governor, Pondicherry, being satisfied that it is necessary so to do in public interest, is pleased to exempt the tax payable under the said Act on the turnover from the sales of goods manufactured by the following industries located in this Union territory and registered with the Government of Pondicherry namely:-

(1) Small scale industries which went into production on or after 6th November 1969; and

(2) All industries other than small scale industries which went into production on or after 1st April, 1971.

as certified by the Director of Industries, Pondicherry.

2. The exemption in respect of the above said industries shall be effective and valid for a period of five years from the date of commencement of production.

(By order of the Lieutenant-Governor)

R.BADRINATH, Secretary to Government."

9. Section 19 of the Pondicherry General Sales Tax Act empowers the Government to exempt or reduce the rate of tax payable under the Act on the sale or purchase of any specified goods or class of goods at all points or at a specified point or points in the series of sales by successive dealers. The exemption or reduction in rate of tax may also be granted in regard to the whole or any part of the turnover of any specified class of persons or in respect of any specified class of sale or purchase. Such an exemption or reduction of rate of tax may be extended to the whole of the Union territory or to any specified area or areas therein and may be subject to such restrictions and conditions as may be specified in the notification. Invoking the power, the Government of Pondicherry has issued the above notification exempting the tax payable under the Act on the turnover from the sales of goods manufactured by small scale industries, which went into production on or after 6th November, 1969 and all industries other than small scale industries, which went into production on or after 1st April, 1971 as certified by the Director of Industries, Pondicherry. Such exemption as per the notification would be effective and valid for a period of five years from the date of commencement of the production. There is no dispute about the power of the Government for issuance of such an exemption notification having regard to the language employed.

10. On a careful reading of the notification, with reference to the language

employed therein, it is clear that the Government on being satisfied and in public interest was pleased to exempt the tax payable under the PGST Act on the turnover from the sale of goods manufactured by small scale industries, which went into production on or after 6th November, 1969 and all other industries other than small scale industries which went into production on or after 1st April, 1974 as certified by the Director, Industries, Pondicherry, which are located within the union territory of Pondicherry. It is evident from the G.O. that exemption from payment of tax is given on the sale of goods manufactured by the above said category of industries for a period of five years from the date of commencement of production. The requirement as per the notification is that the goods must have been produced either by the small scale industries, which went into production on or after 6th November, 1969 or any other industries other than small scale industries, which went into production on or after 1st April, 1974, as certified the Director of Industries, Pondicherry. The industries must be located within the Union territory of Pondicherry. If the above said requirements are fulfilled, the goods manufactured from such industries are exempted from tax for a period of five years from the date on which they went into production. There is no stipulation that in order to avail the benefit of exemption as granted by the notification, the goods must be manufactured from the above said class of Industry owned by the assessee. In order to give certain reliefs to the classes of industries as stated in the notification, which started their production on or after the date above stated, the Government has exempted the goods manufactured from the industries from the levy of sales-tax. The exemption could only be regarded to the goods manufactured from the above said category of industries. It is not granted with regard to the person who owns such industries. The notification no way prohibits the manufacture of goods by a person from leasehold industries nor it is confined to the industries owned by him. Hence, the finding arrived at by the Tribunal in respect of exemption claimed by the assessee, in our view, is in accordance with the notification.

11. In respect of the turnover claimed exemption under entry No. 10 of the third Schedule of the PGST Act on the ground that the sale of "Brine" is exempted under the said entry has been rejected by the Assessing Officer and confirmed by the first appellate authority on the ground that entry No. 10 of the third schedule exempted only "salt" from payment of tax and not the "brine". For recording such a finding, the Assessing Officer as well as the Appellate Authority have given reasons that the "Brine" for which exemption is claimed by the respondent is not a product as enumerated under entry 10 of the third schedule. What was enumerated was only "salt" and not "Brine". "Brine" and "salt" are two different commercial commodities. "salt" is a white crystal substance, which gives sea water in its characteristic taste. They also recorded a finding that "Brine" was manufactured by purifying and diluting "salt" with water and certain chemicals and it could not be considered as "salt" under entry 10 of the third Schedule. But on the contrary, the Tribunal, though extracted the grounds taken by the revenue as well as the assessee and also recorded to the decisions relied on by both sides

in an elaborate fashion , without considering or discussing the points raised and without discussing how the decision cited on either side is applicable to the facts of the present case, has simply jumped to the conclusion by saying that for all the reasons, it is found that the conclusion arrived at by the Appellate Assistant Commissioner rejecting the exemption in respect of the total turnover on the sale of "Brine" is different from "salt" within the meaning of entry No. 10 of the third schedule of Pondicherry General sales Tax Act is unjustified and it is not maintainable under law. The reference in the order of the Tribunal "for all the reasons" as we find it, refers to the reasons for the availability of exemption under the Government Orders, and we have carefully scanned the order of the Tribunal, but we find that the Tribunal has not given any reason for its conclusion that the "Brine" and "salt" are the same commodity, though the conclusion was prefaced by the expression, "for all the reasons". We are of the view that the Appellate Tribunal, as a final fact finding authority, should consider the arguments, pros and cons, and arrive at a conclusion on the basis of its reasons, and if without reasons, the Tribunal comes to the conclusion, it will become a difficult task for this Court to test the correctness of the conclusion arrived at by the Tribunal. There is absolutely no discussion on the grounds taken by either of the parties and the application of the decision relied on by them to the facts of the case. Hence, we are of the view that it is appropriate to remit that part of the turnover to the Appellate Tribunal so as to record a finding as to whether a "Brine" manufactured by the assessee would come within the entry 10 of the third schedule of PGST Act after discussing the contentions raised on behalf of either parties and applying the decision cited by them.

12. For the fore-going reasons, we are disposing the revision as above stated by deciding the first question of law in favour of the assessee and against the revenue. In respect of the second question of law, the conclusion arrived at by the Appellate Tribunal is set aside and the matter is remitted back to the Appellate Tribunal with a direction to consider the contentions raised by the parties and also apply the decision cited by them and record a clear finding as to whether the "Brine" manufactured by the respondent would encompass within the entry 10 of the third schedule to the Act, which is enumerated as a "salt". No costs.