Shaw Wallace & Co. Ltd.

Vs

The State of Tamil Nadu

Civil Appeals Nos. 795 and 796 of 1974

(CJI A.N. Ray, Jaswant Singh JJ)

23.03.1976

JUDGMENT

JASWANT SINGH, J. -

1. These appeals by special leave from the common judgment of the Madras High Court dated March 5, 1974, in Tax Cases Nos. 77 and 78 of 1974 which involve the interpretation of Section 3 and item No. 21 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 hereinafter referred to as 'the Act', shall be disposed of by this judgment.

2. The appellant, Tvl. Shaw Wallace & Co. Ltd., a public limited company, is a registered dealer under the Act and is an assessee on the rolls of the Commercial Tax Officer IV, Central Assessment Circle-23, Madras. Amongst other things, the appellant manufactures and deals in chemical fertilisers. It also prepares fertiliser mixtures. For the assessment years 1969-70 and 1970-71, the appellant claimed exemption on a turnover of Rs. 2,35,01,129.47 and Rs. 2,07,94,490.73 respectively relating to sales of fertiliser mixtures. The case of the appellant was that as the fertiliser mixtures were prepared by dry mixing of various chemical fertilisers [shown as sub-items (1) to (15) of S. No. 21 of First Schedule to the Act] according to the standard formula approved by the Director of Agriculture at its mixing works manually by means of shovels and as the resultant product could not be said to be a commodity different from the ingredients composing it which had been purchased within the State and had suffered tax under item No. 21 of the First Schedule to the Act, they could not be taxed again. The Assessing Officer disallowed the exemption on the entire turnover for the year 1969-70. He, however, allowed exemption on a turnover of Rs. 1,65,44,223.73 which represented the mixture sold after August 6, 1970 - the date when the Tamil Nadu General Sales Tax (Third Amendment) Act (26 of 1970) amending item 21 of schedule came into force. On appeal, the Appellate Assistant Commissioner (CT) 1, Madras City, found that part of the ingredients which went into the production of fertiliser mixtures had suffered tax under the Act. He, therefore, allowed exemption on the turnover which had suffered tax by following the earlier decision of the Sales Tax Appellate Tribunal dated July 27, 1972 in the case of Rallis India Ltd. T.A. No. 114 of 1971, where it was held that there is no manufacture and the resultant product viz. manure mixture is not a different product than the ingredients constituting it which have already suffered tax. The exemption allowed by the Appellate Assistant Commissioner for the year 1969-70 and 1970-71 amounted to Rs. 1,20,18,842.80 and Rs. 42,38,182.90 respectively. The appellant filed further appeals for both the years under Section 36(1) of the Act before the Tamil Nadu Sales Tax Appellate Tribunal against the orders of the Appellate Assistant Commissioner. The State of Tamil Nadu also filed enhancement petitions. Since the earlier order of the Sales Tax Appellate Tribunal dated July 27, 1972 in T.A. No. 114 of 1971 (supra) which was the basis of the relief granted by the Appellate Assistant Commissioner was reversed by the Madras High Court vide its judgment dated

September 18, 1973, in T.C. No. 18 of 1973 ((1974) 34 STC 532 (Mad HC)), the Sales Tax Appellate Tribunal by its orders Nos. 1138/1139 of 1972 dated February 21, 1974 cancelled the relief granted to the appellant by the Appellate Assistant Commissioner. The appellant thereupon took the matter in revision to the Madras High Court under Section 38 of the Act but its applications were dismissed at the stage of admission by that court on March 5, 1974 in the light of its earlier judgment dated September 18, 1973 in T.C. No. 18 of 1973 (supra) Revision No. 6 of 1973) where it was observed :

> Each of the component articles 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 ..... Whether the process adopted (in the preparation of manure mixture) 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 components.

3. In rendering this decision, the Madras High Court relied on the ratio of the decision of its own Court in Imperial Fertilisers and Company v. State of Madras ((1973) 31 STC 390 (Mad HC) to the effect that if the mixture sold has different chemical properties and is treated as a different commodity in commerce, its sale cannot be taken to be a second sale of chemical fertiliser merely because the components have suffered tax at an earlier stage as chemical fertilisers.

4. After failing to obtain a certificate of fitness for appeal to this Court, the appellant applied for special leave to this Court which was granted vide order dated March 15, 1974.

5. Appearing in support of the appeals, Mr. Desai has urged that as Section 3(2) of the Act provides for levy of sales tax in respect of goods mentioned in the First Schedule at the rate and only at the point specified therein and chemical fertilisers which are specified in sub-items (1) to (15) of item No. 21 of the First Schedule to the Act are liable to tax at the point of first sale inside the State, the sales of fertiliser mixtures which are prepared by mixing manually by means of shovels, some of the aforesaid chemical fertilisers mentioned at sub-items 1 to 15 in the schedule without admixture of any organic manure are not liable total inside the State, Mr. Desai has further urged that even if each fertiliser bears a specific commercial name, for the purpose of the Act, it has no identity except as a 'chemical fertiliser' and consequently the mixture of one or more chemical fertilisers cannot but be the same article entitled to application of single point scheme in respect of its ingredients. This, according to Mr. Desai, is the natural implication of the expression 'chemical fertilisers' followed by the expression "that is to say".

6. The principle question for determination in these appeals is whether the fertiliser mixtures in question can be treated as the same article as chemical fertilisers composing them.

7. For a proper determination of the contention raised on behalf of the appellant, it is necessary to refer to Section 3 of the Act and to item No. 21 of the First Schedule to the Act which run as under :

> 3. Levy of taxes on sales or purchases of goods. - (1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than fifteen thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year at the rate of (three per cent) of his taxable turnover . . .

> (2) Notwithstanding anything contained in sub-section (1), in the case of goods mentioned in the first schedule, the tax under this Act shall be payable by a dealer at the rate and only at the point specified therein on the turnover in a year relating to such goods whatever be the quantum of turnover in that year . . . .
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> Item 21 of the First Schedule : Chemical fertilisers, that is to say :
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> (1) Ammonium Sulphate; (2) Ammonium Nitrate; (3) Urea; (4) Ammonium Chloride; (5) Sodium Nitrate; (6) Calcium Ammonium Nitrate; (7) super phosphate singly; (8) super phosphate 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. Point of levy is at the point of first sale in the State, rate of tax is 3 1/2%.

8. A plain reading of the abovementioned provisions would show that it is only when a chemical fertiliser specified in sub-items (1) to (15) of item No. 21 of the First Schedule is sold in the same condition in which it is purchased that it is not subject to a fresh levy. Fertiliser mixture, it would be noted, is not the same article as the ingredients composing it. It is sold as a different commercial product. It is put to a different use and has different chemical properties. As such, it has to be treated as a different article from its component parts. The question whether there is any manufacturing process involved in the preparation of any fertiliser mixture or whether shovel mixing of the chemical fertilisers amounts to manufacture or not is wholly irrelevant for the purpose of the determination of the question before us.

9. The decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay ((1959) 10 STC 500 (Bom HC) on which reliance is placed by Counsel for the appellant in support of his contention has no bearing on the question before us as the language of the proviso to Section 8(a) of the Bombay Sales Tax Act, 1953 which fell for consideration in that case is not the same as Section 3 and item 21 of the First Schedule to the Act before us. It has also to be borne in mind that we are not called upon in the instant appeals to consider as to whether the chemical fertilisers which had been purchased by the assessee had been processed as in the case of Nilgiri Ceylon Tea Supplying Co. The only question before us, as already indicated, is as to whether there was any mixture of one or more of the articles shown as sub-items (1) to (15) of item No. 21. It is admitted by the appellant in the statement of the case that the fertiliser mixture is prepared by mixing various chemical fertilisers and fillers like china clay, gypsum etc. by a shovel. It cannot also be disputed that the fertiliser mixture is a marketable commodity different from its components, is put to different use and has different properties.

10. In the case of Imperial Fertiliser and Co. where the assessee purchased various items of chemical manure referred to in item 21 of the First Schedule to the Act and brought about a new product by mixing one or more of the said articles with one or more of the organic manure, the resultant product, it was held, could not be said to be the same chemical manure or fertiliser which the assessee had purchased, as the mixture would have different properties of its own and it could not be said that it retained the same characteristics or properties of any of the chemical manures or organic manures which went to make up the resultant mixture. It was further held in that case that for getting an exemption on the ground that the sale of an article is a second or subsequent sale, it much be established that there has been a sale of the same goods at an anterior point of time and if

there is no identity between the product purchased and the product sold, it is not possible to treat the sales of the product by an assessee as second sales.

11. In State of Tamil Nadu v. Rallis India Ltd. ((1974) 34 STC 532 (Mad HC), it was held that as manure mixture prepared from one or more of the articles mentioned in sub-items (1) to (15) of item No. 21 of the First Schedule has chemical properties different from its components and its use is also different, it is not possible to treat the manure mixture as the same article as the components themselves. The following observations made in this decision are pertinent :

> If the product obtained by mixing the various 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 components, whether the process of such mixture is one of manufacture or not.

12. In State of Tamil Nadu v. M/s. Pyare Lal Malhotra ((1976) 1 SCC 834 : 1976 SCC (Tax) 102) a bench of four Judges of this Court to which the one of us, namely. My Lord the Hon'ble Chief Justice was a party, had occasion to consider the meaning of the expression "that is to say" and the tests to be applied in determining whether the sale of a certain class of goods is subject to the levy of single point sales tax. With regard to the expression "that is to say", our learned brother, Beg, J. who spoke for the Court observed : [SCC p. 839 : SCC (TAX) p. 107, para 7]

> We think that the precise meaning of the words "that is to say, must vary with the context ..... But in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently employed to specifically enumerate separate categories of goods on a given list. The purpose of such specification and enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it.

13. In regard to the test for determining the taxable events in relation to the sales tax, same learned brother observed as follows : [SCC pp. 840, 841 : SCC (TAX) pp. 108, 109, paras 9, 10, 14]

> The mere fact that the substance or raw material out of which it is made had also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made . . . . As soon as separate commercial commodities change or come into existence, they become separately taxable goods or entities for purposes of sales tax . . . . The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they cease to be goods of one taxable description and become those of a commercially different category and description.

14. As in the instant cases, the mixtures produced by the appellant are different from their component parts, their properties and uses are also different and they are sold as different commercial products, the appellant was not entitled to the exemption claimed by it. The appeals accordingly fail and are dismissed with costs.

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