

(2007) 08 MAD CK 0203

Madras High Court

Case No: None

Salem District Co-operative Milk
Producers Union Ltd.

APPELLANT

Vs

Commercial Tax Officer and
Another

RESPONDENT

Date of Decision: Aug. 21, 2007

Citation: (2008) 15 VST 180

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Advocate: R. Senniappan, for the Appellant; J. Ganesan, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Manikumar, J.

In W.P. No. 25038 of 2007, the petitioner has challenged the order of the second respondent, the Appellate Assistant Commissioner (C.T.), Salem, for the assessment year 1999-2000 under the Central Sales Tax Act, 1956.

2. In W.P. No. 25039 of 2007, the petitioner has challenged the order of the second respondent, the Appellate Assistant Commissioner (C.T.), Salem for the assessment year 1999-2000 under the CST Act.

3. In W.P. No. 25040 of 2007, the petitioner has challenged the order of the second respondent, the Appellate Assistant Commissioner (C.T.), Salem for the assessment year 1999-2000 under the Tamil Nadu General Sales Tax Act, 1959.

4. Brief facts leading to the writ petitions are as follows:

The petitioner is an Aavin Milk Producers' Union represented by its Managing Director, Mr. N. Subbaiyan. Earlier, the petitioner had filed W.P. Nos. 23095 and 23096 of 2006, challenging the order of the first respondent, dated March 31, 2006

on the ground that levy of tax on the exempted turnover of "tetra plain milk" is contrary to the statutory tariff No. 6 of the Third Schedule to the TNGST Act, 1959. While disposing of the writ petitions, this Court by an order dated July 20, 2006 (printed at page 184 infra) in paragraph 3, ordered as follows:

The question involved in these cases is whether the sale of the product by the petitioner is coming within the purview of entry No. 6 of the Third Schedule to the TNGST Act, so as to have exemption from sales tax. In order to resolve that, the petitioner has to establish before the authorities that the product sold by the petitioner would come within the entry as stated therein. This is the vital aspect of the matter. The law is very well settled that if the assessee sold the goods, which come within the purview of entry No. 6 of the Third Schedule to the TNGST Act, the petitioner is entitled to exemption on the turnover of the goods. It is for the petitioner to establish before the assessing officer with the necessary materials that the goods are exempted, which exercise cannot be done by this Court in the absence of materials which are necessary to form an opinion whether the goods are exempted or not. Hence, it is but proper for the petitioner to go before the appellate authority and get the order.

5. The petitioner was granted ten days time to file statutory appeals before the second respondent. Accordingly, appeals were preferred by the petitioner against the three assessment proceedings of the first respondent dated March 31, 2006. After hearing the rival arguments of both sides, the second respondent by order dated February 15, 2007, dismissed all the appeals filed by the petitioner. The operative portion in paragraph No. 4 of the order is as follows:

I have heard the rival arguments of both the representative and also perused the connected records before me. The points to be decided in this appeal are as follows:

(i) Whether the assessing officer is justified in levying tax at 16 per cent on the turnover of Rs. 16,14,79,635 representing the sales of tetra plain milk.

The Government have exempted from tax, the sales of tetra plain milk in G.O. Ms. No. 72 dated August 28, 2001. The operation of the notification can only be prospective and cannot be operated retrospectively to the sales effected during the earlier financial year of 1999-2000. Therefore, the levy of tax at 16 per cent on the turnover of Rs. 16,14,79,635 representing the sales of tetra plain milk is sustained. In the end, the appeal is dismissed.

6. Aggrieved by the orders of the second respondent, the Appellate Assistant Commissioner (C.T.), Salem, the petitioner has filed the present writ petitions.

The main contention of the petitioner is that the finding given by the second respondent with regard to the liability at 16 per cent on the turnover representing the sales of tetra plain milk is illegal. The petitioner has further submitted that the second respondent has failed to consider the directions given by this Court in W.P.

Nos. 23095 and 23096 of 2006 dated July 20, 2006¹. It is also contended that the sale of raw milk made bacteria-free by pasteurisation method and sold as plain milk in tetra pack is similar to milk packed in polythene film sachet and therefore, it is eligible for exemption under entry No. 27(i) of Part B of the Third Schedule to the TNGST Act and therefore, the imposition of tax and other consequential levies including huge penalty by the assessing authority on the sales turnover of the said commodity on the basis of the clarification issued by the Commissioner of Commercial Taxes in D. Dis. Acts Cell II.3965/2001 dated May 22, 2001 (Clarification No. 167 of 2001) is not legally enforceable.

7. The present writ petitions were heard and posted for orders. In the meantime, the petitioner has filed an additional typed set of papers and additional affidavit on August 20, 2007, bringing to the notice of this Court that the Commissioner of Commercial Taxes in his letter dated July 30, 2007, has clarified that the raw milk made bacteria-free by pasteurisation method/treatment and sold as plain milk in tetra pack, is similar to milk packed in polythene film sachet, and is eligible for exemption under entry No. 27(i) of Part B of the Third Schedule to the TNGST Act, 1959. In the additional affidavit, the petitioner has contended that the Commissioner has categorically stated that the clarification would have retrospective effect for the years from 1997-98 to 2000-01.

8. In view of the latest clarification issued in D. Dis/Acts.Cell.II/24252/2007 dated July 30, 2007 (Clarification No. 73 of 2007) that the raw milk made bacteria-free by pasteurisation method/treatment and sold as plain milk in tetra pack, is similar to milk packed in polythene film sachet, and is eligible for exemption under entry No. 27(i) of Part B of the Third Schedule to the TNGST Act, 1959 and the said clarification would have retrospective effect from the years 1997-98 to 2000-01, the orders of the second respondent for the assessment years referred to above are liable to be set aside and accordingly, set aside and the matter is remitted back to the Appellate Assistant Commissioner (CT), the second respondent, with a direction to take note of the latest clarification dated July 30, 2007 in D. Dis. Acts. Cell.II/24252/07 (Clarification No. 73 of 2007) and pass appropriate orders, after giving adequate opportunity to the petitioner-assessee to represent their case, within a period of four weeks from the date of receipt of a copy of this order. The above direction is in respect of writ petitions pertaining to levy of 16 per cent tax on the turnover representing sales of tetra plain milk.

9. In respect of levy of 12 per cent tax on the turnover of Rs. 1,88,739, not supported by C forms, which is under challenge in W.P. No. 25039 of 2007, it is open to the petitioner to represent his appeal before the second respondent and on receipt of the same, he is directed to consider the appeal independently, within a period of four weeks thereafter. The time spent in prosecuting the writ petitions is excluded.

With the above direction, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is also closed.