

R. Viswanathan Vs State of Tamil Nadu

Court: Madras High Court

Date of Decision: July 25, 1995

Acts Referred: Central Sales Tax Act, 1956 " Section 5

Hon'ble Judges: Venkatachalam, J; Abdul Hadi, J

Bench: Division Bench

Judgement

Abdul Hadi, J.

Only a very short question is involved in this tax case (revision) preferred by the assessee. That is whether the order of the

Tribunal which only confirmed the order of the authorities below in holding that the sales of pallets effected by the assessee in favour of the

admitted exporter, M/s. Indian Insulators, could not claim exemption as penultimate sale prior to the actual sale in the course of export spoken to

in section 5(3) of the Central Sales Tax Act is correct.

2. The main goods exported by the abovesaid Indian Insulators to the foreign importer by name M/s. Baroid International Petroleum Services Inc.,

London, is mica scrap and they were exported in gunny bags and in keeping those gunny bags in the hold of the ship during the transit the

abovesaid wooden pallets were kept so that the mica scrap contained in the gunny bags do not get damaged in transit. No doubt the export order

in the present case which was secured by the abovesaid Indian Insulators was on September 26, 1979 and after the said order as on September

30, 1980, the assessee sold the abovesaid pallets to the said Indian Insulators for providing the abovesaid resting stand between the gunny bags

containing mica scrap.

3. On hearing the arguments of the learned counsel for the assessee, we have only to concur with the Tribunal in view of the very language used in

section 5(3) of the Central Sales Tax Act. It runs as follows :

Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the

export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place

after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

Now what is stated here is that the last sale of any goods preceding the sale occasioning the export of those goods is also to be deemed to be in

the course of export. The exemption now claimed is with reference to sale of pallets. The said pallets are admittedly not exported. They are only

made use of, as stated above, for enabling the main goods mica scrap to reach the destination port without getting damaged. That is all the purpose

of the abovesaid pallets. In other words, the expression ""those goods"" found in section 5(3) refers only to the goods earlier spoken to in section

5(3) in relation to the preceding sale. Admittedly, in the present case, the admitted sale in the course of export is only in relation to mica scrap.

Therefore, section 5(3) of the Act will have no application in the present case in relation to the said pallets.

4. No doubt the decisions in the case of Packwell Industries (P.) Ltd. Vs. The State of Tamil Nadu, and State of Tamil Nadu Vs. Catherene

Traders and another, were referred to before us. But they dealt with packing materials. In Packwell Industries (P.) Ltd. Vs. The State of Tamil

Nadu, it was found as of fact that the packing materials were not subject-matter of the contract for export. The commodity mentioned in the order

was only Indian frozen shrimps. Therefore it was held by this Court at the admission stage that the sale in relation to those packing materials could

not claim exemption u/s 5(3) of the Act.

5. State of Tamil Nadu Vs. Catherene Traders and another, is a case of banian being exported in polythene bags. There was factual finding that the

polythene bags were part and parcel of the commodity exported, namely, banian. On that factual finding, this Court held that the sale of the said

polythene bags also could claim exemption u/s 5(3) of the Act.

6. These decisions will have no applications to the present case since we are concerned not with the packing materials but the abovesaid pallets

which were only made use of in the hold of the ship so that the mica scrap which were kept in gunny bags do not get damaged in transit. So by no

stretch of imagination it can be stated that in the present case, the pallets were also part and parcel of the mica scrap exported. Therefore, the tax

case necessarily has to be dismissed and accordingly it is dismissed. No costs.

7. Petition dismissed.