

Supreme Court of India

Deputy Commissioner Of Sales Tax ... vs Madras Rubber Factory Limited on 19 January, 1998

Equivalent citations: JT 1998 (8) SC 436, (1998) 9 SCC 329

Bench: S Agrawal, K Venkataswami, A Misra

ORDER Civil Appeals Nos. 425-428 of 1998

1. Delay condoned.

2. Special leave granted.

3. These appeals are directed against the judgment of the Kerala High Court dated 3-4-1996 in TRCs Nos. 126, 130 and 131 of 1993 and TRC No. 159 of 1995. By the impugned judgment the High Court has decided the following two questions against the appellant:

"1. Whether in the facts and circumstances of the case the Tribunal was right in directing the deletion of the amount of cess from the taxable turnover?

2. Whether in the facts and circumstances of the case the Tribunal was right in holding that sales effected are in the course of inter-State sale and not sale within the State?"

4. Question 1 now stands concluded in favour of the appellant by the recent judgment of this Court in State of Kerala v. Madras Rubber Factory Ltd., As regards the second question whether the sales were effected in the course of inter-State sales or within the State of Kerala, we find that the Appellate Authority viz. the Deputy Commissioner (Appeals) as well as the Sales Tax Appellate Tribunal after considering the documents on record have arrived at the finding that the sales were inter-State sales. The High Court has agreed with the said finding. No ground is made out for interference with the said finding. The appeals are, therefore, partly allowed to the extent that the cess has to be included in the turnover of the respondent as per the decision of this Court and the judgment of the High Court in that regard is set aside. No order as to costs. Civil Appeals Nos. 429-430 of 1998

5. Delay condoned.

6. Special leave granted.

7. We have heard the learned counsel for the parties.

8. These appeals are directed against the common judgment of the Kerala High Court dated 28-10-1993 in TRCs Nos. 136 and 137 of 1993. Rubber cess was paid by the respondent on the rubber produced. The High Court, on the basis of the Full Bench decision of the Court in Madras Rubber Factory Ltd. v. State of Kerala, (1989)74STC56(Ker) has held the cess was not includible in the purchase turnover of the respondent. As regards the rate at which tax was leviable, the appellant was claiming that the respondent was using synthetic rubber for manufacturing the superior quality tread rubber and repairing materials and tax was leviable at 12 per cent and not at 10 per cent as

held by the Deputy Commissioner (Appeals) as well as by the Sales Tax Appellate Tribunal. The High Court has, however, held that the appellant was not able to point out any material to show that the Appellate Tribunal had committed any error of law in holding that the respondent was using synthetic rubber in the manufacture of tread rubber.

9. Insofar as rubber cess being included in the purchase turnover of the respondent, the matter now stands concluded by the recent judgment of this Court in *State of Kerala v. Madras Rubber Factory* wherein it has been laid down that the rubber cess is includible in the purchase turnover of the manufacturing by whom the rubber is used. In view of the said decision, the impugned judgment of the High Court holding that cess could not be included in the purchase turnover cannot be upheld and has to be set aside. As regards the rate of tax, we do not find any infirmity in the impugned judgment of the High Court and the same is, therefore, upheld.

10. In the circumstances, the appeals are partly allowed and the impugned judgment of the High Court is set aside to the extent it holds that rubber cess paid by the respondent on production of rubber is not includible in the purchase turnover. No order as to costs.