

**General Marketing and Manufacturing Co. Ltd. Vs. the State of Tamil Nadu**

**LegalCrystal Citation :** [legalcrystal.com/818337](http://legalcrystal.com/818337)

**Court :** Chennai

**Decided On :** Feb-22-1979

**Reported in :** [1980]45STC96(Mad)

**Judge :** Sethuraman ;and Balasubrahmanyam, JJ.

**Appeal No. :** Tax (Revision) Case Nos. 345 and 346 of 1975

**Appellant :** General Marketing and Manufacturing Co. Ltd.

**Respondent :** The State of Tamil Nadu

**Advocate for Def. :** K. Venkataswami, Adv.

**Advocate for Pet/Ap. :** C. Natarajan, Adv.

**Judgement :**

Sethuraman, J.

1. These two revision petitions arise out of the order of the Sales Tax Appellate Tribunal, Main Bench, Madras, dated 24th May, 1975, in Tribunal Appeals Nos. 803 and 831 of 1974. The assessment years under consideration are 1968-69 and 1972-73. The assessee is a dealer in automobiles, tractors, earth-moving equipments and spares thereof. It has two divisions known as earth-moving division and automobile division. We are now concerned with the turnover in crawler tractors, dumpers and pay loaders. In the assessment year 1968-69, with reference to these items, the turnover was assessed to tax at 3 per cent. The assessing authority later revised the assessment on the ground that some of the items were single point goods assessable at 12 per cent. For the assessment year 1972-73, in the original assessment itself, the items were treated as liable to single point tax at a higher rate while the assessee contended that they do not form part of the First Schedule containing the items of goods liable to single point taxation. The Appellate Assistant Commissioner, in the appeals against both the assessments, confirmed them and the matter came before the Tribunal. The Tribunal, after considering elaborately the contention put forward by the assessee and by the department, came to the conclusion that the turnover in crawler tractors was liable to be taxed at 9 per cent. As regards rear dumpers and pay loaders, the Tribunal took the view that they are also liable to be taxed at 9 per cent. It is this order of the Tribunal that has given rise to the present revision petitions.

2. Though the assessing authority, as mentioned above, applied the rate of tax in relation to crawler tractors, as if they were motor vehicles, the Appellate Tribunal has brought the goods within the scope of item 55. It is, therefore, necessary only to

consider whether the goods under consideration fall within item 55 or not. The turnover in dispute falls into two groups, namely, (1) crawler tractors with a turnover of Rs. 95,004.16 for the assessment year 1968-69 and Rs. 6,134.87 for the assessment year 1972-73, and (2) dumpers and pay loaders with the turnover of Rs. 48,243.61 for the assessment year 1968-69 and Rs. 40,017.32 for the assessment year 1972-73.

3. As regards crawler tractors, though in the grounds of appeal, it was contended that they do not fall within the scope of item 55 and should be taxed as multi-point goods, the learned counsel for the assessee was not in a position to persuade us to hold that they are outside the scope of item 55. He had to concede that crawler tractors are, in any event, bull-dozers and, therefore, fall within item 55 of the schedule.. The assessment of the turnover with reference to crawler tractors as confirmed by the Tribunal is, therefore, sustained.

4. As regards dumpers and pay loaders alone, the question has to be examined as to whether they fall within item 55. Item 55, in so far as it is relevant for the purpose of the present discussion, runs as follows:

All varieties of tractors and bull-dozers, component parts of tractors and bull-dozers, tyres (including pneumatic tyres) and tubes ordinarily used for tractors and bull-dozers (whether or not such tyres and tubes are also used for other vehicles), and articles (excluding batteries) adapted for use generally as parts and accessories of tractors and bull-dozers.

5. The learned Additional Government Pleader does not contend that dumpers and pay loaders can be classified as bull-dozers. Therefore, the only point to be examined is whether they fall within the category of tractors. Item 55-A was introduced into the schedule under the Tamil Nadu General Sales Tax (Amendment) Act, 1973 (Act 16 of 1973). By Section 2(c) of that Act it was provided that after item 55 and the entries relating thereto, the following item and entries may be inserted:

55-A. Rear dumps, loaders, scrapers, forklift trucks and other similar varieties of machinery of which a mechanically propelled vehicle forms an integral part, tyres (including pneumatic tyres) and tubes ordinarily used for the above (whether or not such tyres and tubes are also used for other vehicles) and articles (excluding batteries) adapted for use generally as parts and accessories of the above.

6. In the statement of objects and reasons, in relation to the above amendment, it was stated:

There is now no specific entry in the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), to cover items of machinery like construction, mining and earth-moving equipments and forklift trucks. As a result, different interpretations have been given by the assessing officers regarding the rate of tax to be applied to these items under the said Act. In order to meet this situation, the Government decided that these items of machinery should be taxed at a uniform rate of 9 per cent at the point of first sale in the State by classifying them as a separate item in the First Schedule to the said Act. This has been given effect to by a notification issued under Section 59(1) of the said Act.

7. The opening words of the above extract itself show that there was no specific entry in the First Schedule to cover items of machinery which were brought within the

category of item 55-A. It would, therefore, follow that dumpers and pay loaders were not comprehended by item 55 and, therefore, the legislature felt it necessary to incorporate them in item 55-A. In the absence of a specific entry for this purpose, these goods for the relevant years would have to be taken only as falling outside entry 55 and thus within the category of goods liable to multi-point tax. There is no other entry in the First Schedule within which they can be brought.

8. The learned Additional Government Pleader contends that item 55-A was introduced only by way of a clarificatory provision in item 55. If so, it would not figure as a separate item. In fact, this contention is also inconsistent with what has been set out in the statement of objects and reasons already extracted as the statement of objects clearly shows that there is no specific entry in respect of this item of machinery brought within item 55-A.

9. The first agricultural tractor in Britain was built in or about 1902 and caterpillar tractors were invented in 1907. (See Book of Knowledge, Vol. 7). The word 'tractor' has thus acquired a meaning in commercial circles for a long time. In the commercial circles, dumper and pay loader would not have been understood as tractors. As far as tractors are concerned, the meaning given in 'Dictionary of Scientific and Technical Terms' published by McGraw-Hill is '(1) an automatic vehicle having four wheels or a caterpillar tread used for pulling agricultural or construction implements. (2) The front pulling Section of a semi-trailer -- also known as truck-tractor'. In ordinary terms, as shown by the Shorter Oxford English Dictionary, the meaning of 'tractor' is 'one who or that which draws or pulls something, esp., a traction-engine, 1856'. In the Random House Dictionary of the English Language, against the word 'tractor' the meaning given is '(1) a powerful motor-driven vehicle with large, heavy treads, used for pulling farm machinery, other vehicles, etc. (2) a short truck with a body containing only a semi-trailer to form a tractor-trailer'. In the light of the meaning given to the word 'tractor' in these dictionaries, it would be clear that rear dumper and pay loader sold by the assessee cannot be called a 'tractor'. The difference between a tractor and other vehicles is that the tractor merely pulls another item of machinery. Rear dumper as well as pay loader are self-moving machineries with wheels. As they do not pull any other item it is not possible to accept the contention that these fall within the scope of the word 'tractor' and that, even independent of item 55-A, they cannot be brought within the scope of the First Schedule. We are only concerned with the spares of rear dumpers and pay loaders in this case and what applies to the main machinery, i. e., rear dumpers and pay loaders, would apply to these spares also. It would, therefore, follow that the assessment with reference to dumpers and pay loaders as tractors would not be correct. The turnover regarding those items will have to be taxed only at the multi-point rate as no other item in the First Schedule applies to them. The revision is partly allowed. As the success is equal, there will be no order as to costs.