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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR

AND

THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(R).Nos.22 to 24 of 2015

The State of Tamil Nadu
rep. by the Joint Commissioner (CT)
Chennai East Division, Chennai - 600 006.
now rep. by the Joint Commissioner (CT)
Large Taxpayers Unit, No.34 (Old No.123)
Dugar Towers, 5th Floor, Marshal Road
Egmore, Chennai - 600 008.

... Petitioner in all the Tax Cases

Vs.

Bata India Limited
No.829, Anna Salai
Chennai - 600 002.

... Respondent in all the Tax Cases

PRAYER: Revisions under Section 38 of the TNGST Act, 1959 against the order dated 25.4.2013 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in T.A.Nos.525 and 528 of 2002 and 307 of 2003 for the assessment years 1997-1998, 1996-1997 and 1999-2000 respectively and against the order of the Deputy Commissioner(CT), Appeals, Chennai, in Appeal Nos.AP.25/2001 and AP.246/2000, dated 28/12/2001 for the Assessment year 1997-1998 and 1996-1997 and AP.No.108/2002 dated 14.01.2003 for the Assessment year 1999-2000 and against the order of the Assistant Commissioner(CT) Zone IX, Chennai-6 in TNGST.No.0140053/1997-98, TNGIST.No.0140053/1996-97, dated 9.2.2001 and 30.06.2000 for the Assessment year 1997-98 and 1996-97 and TNGIST.No.0640687/1999-2000, dated 15.5.2002 for the Assessment year 1999-2000.

For Petitioner	:	Mr.A.P.Jayaprathap Special Govt. Pleader(Taxes)
For Respondent	:	Mrs. Lakshmi Sriram



O R D E R
(Made by R.SUDHAKAR, J.)

These revisions are filed by the Revenue against the order dated 25.04.2013 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in T.A.Nos.525 and 528 of 2002 and 307 of 2003 for the assessment years 1997-1998, 1996-1997 and 1999-2000 respectively.

2. The following questions of law have been framed for consideration in these revisions:

- "(i) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that it is not necessary to show the sale price separately in the invoice and that is sufficient if it is shown separately in the books of accounts?
- (ii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that explaining the scope of (1-A) of Section 2 (r) if the sale price is shown in the books of accounts it is sufficient to get deduction amounts even though the sale invoice contains lumpsum amount inclusive of tax without charging the tax elements separately?
- (iii) Whether on the facts and in the circumstances of the case the Tribunal was right in not following the order of this Court in Tax Case (Revision) No.1218 and 1242 of 2006 dated 19.09.2011 and W.P. No.37025 of 2002 dated 01.04.2004?
- (iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the consequential penalty?"

3.1. The facts in a nutshell are as under: The respondent/assessee is a dealer in various items of footwear, socks, readymade garments, etc. With the introduction of the Maximum Retail Price concept in the Standards of Weights and Measures (Packaged) Commodities Rules, 1990 under Notification dated 25.05.1990 in respect of the sales in retail outlet, the assessee collected maximum retail price, inclusive of tax. The assessee showed the price and tax separately in its accounts and claimed deduction of the tax component from the total turnover in accordance with Explanation (1A) to Section 2 (r) of the Tamil Nadu General Sales Tax Act, 1959, for various assessment years, viz., 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991-1992, 1992-1993, 1993-1994, 1995-1996 and also for the assessment years 1996-1997, 1997-1998 and 1999-2000, which is the subject matter of the present case.



3.2. The Assessing Officer, in respect of each assessment year, did not accept the assessee's plea for exclusion of tax component for the purpose of determining the taxable turnover. The assessee, therefore, filed appeals in respect of each assessment year before the Appellate Authority, of which some went in favour of the assessee and some went in favour of the Department and the matters, thereafter, went before the Tribunal. In some cases, the Tribunal decided against the assessee, while in some cases, the Tribunal held against the Department. Against such orders of the Tribunal which went against the Department, the Department filed these revisions on the questions of law, referred supra.

4. Heard Mr. Jayaprathap, learned Government Advocate (Taxes), appearing for the petitioner and Mrs. Lakshmi Sriram, learned counsel who took notice for the respondent and perused the materials available on record and the decisions relied upon by the learned counsel on either side.

5. In TC (R) Nos. 837/06, 847/06, 857/06, 867/06 and 848/06 (State of Tamil Nadu - Vs - Tvl. Bata India Ltd.), decided on 4.1.13, which pertains to the very same assessee/respondent, this Court, relying upon its earlier decision in S.M. Garments - Vs - State of Tamil Nadu (T.C. No. 1443/06 - dated 9.3.12) and the decision in State of Tamil Nadu - Vs - Ultramarine & Pigments Ltd. & Anr. (1979 (39) STC 53) answered the questions of law in favour of the assessee holding that by virtue of the said Explanation (1-A) to Section 2 (r), the assessee cannot be denied the benefit of exclusion of the tax component from the taxable turnover, if the sale price includes the tax component, but shown separately for the purpose of determining the taxable turnover with reference to books of accounts.

6. In M/s. Garware Nylons Ltd. - Vs - The State of Tamil Nadu (T.C. (R) No. 1928/06 - dated 8.6.12), considering the decision of this Court in S.M. Garments case (supra), it was held as under:-

"8. As far as the claim on deduction of sales tax and surcharge is concerned, we agree with the assessee's contention that the facts herein are distinguishable from the decision of this Court reported in 2012 (50) VST 147 (Mad) (Sundaram Industries Ltd. - Vs - State of Tamil Nadu (Mad.)). A reading of the said decision shows that where the parties had agreed on a consolidated amount inclusive of tax for the execution of the works contract, there was no bifurcation of the turnover which went in for deduction and those which went in for inclusion in the turnover. Thus this Court rejected the assessee's plea therein, wherein, a question of exclusion of turnover as per Explanation (1-A) to



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Section 2 (r) did not arise. In contract, the said reported decision was considered by this Court in the unreported decision in T.C. No.1443 of 2006 dated 09.03.2012 (Tvl. S.M. Garments, Chennai - Vs - The State of Tamil Nadu). Pointing out the distinct facts prevailing therein that the assessee had shown in the books of accounts, the turnover as well as the components of tax separately and that the purchasers also knew about the component of tax, this Court held that the assessee therein was entitled to deduction of the tax collected. Thus this Court pointed out that if the assessee is able to prove that it is shown separately and the buyers also know the position, the assessee is entitled to the benefit. In the context of the fact situation herein which are similar to the fact position in T.C. No.1443 of 2006 dated 09.03.2012 (Tvl. S.M.Garments, Chennai - Vs - The State of Tamil Nadu), we have no hesitation in accepting the case of the assessee herein that sales tax and surcharge charged would not form part of the turnover and that the assessee is entitled to deduction as per Explanation (1-A) to Section 2 (r) of the Tamil Nadu General Sales Tax Act. In the light of the above, we allow the Tax Case Revision filed by the assessee on this account."

(emphasis supplied)

7. Similarly, the case of the respondent/assessee in T.C. (R) Nos. 1725/08 & 1736/08 was also allowed in favour of the assessee by a similar order dated 4.1.13, wherein the issues dealt with were similar to the issues raised in the present case. Therefore, we find that the questions of law raised herein have already been answered by this Court in a batch of tax revisions in favour of the very same assessee in the cases filed by the Revenue.

8. It is also pertinent to mention herein that this Court, in a recent order in State of Tamil Nadu - Vs - Tvl. Trent Ltd. (T.C. (R) Nos.19 to 24 of 2014 - dated 27.08.2014), following the decision of this Court in S.M.Garments case (supra) and Ultramarine Pigments case (supra) has allowed the case in favour of the assessee therein.

9. Insofar as the third question of law is concerned, the same does not merit consideration as the same has been considered in S.M.Garments case and Sundaram Industries Ltd. case (supra) and the decision in Modern Food Industries case (supra) has been distinguished, and decision has been followed in similar matters by this Court.



10. In assessee's own case for the assessment year 1995-1996, this Court by order dated 10.9.2015 made in T.C.(R) No.18 of 2014 dismissed the revision filed by the revenue raising identical questions of law.

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11. As the questions of law raised by the Revenue have already been answered in favour of the assessee in similar matters and in assessee's own cases for previous assessment years, this Court finds that there is no merit in these revisions, which pertain to the assessment years 1996-1997, 1997-1998 and 1999-2000 and accordingly, the same deserve to be dismissed.

12. In the result, for the reasons aforesaid, there being no merit, these tax case revisions are dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//
sasi Sub Assistant Registrar

To:

1. The Joint Commissioner (CT)
Large Taxpayers Unit, No.34 (Old No.123)
Dugar Towers, 5th Floor, Marshal Road
Egmore, Chennai - 600 008.
2. The Manager
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Chennai - 600 104.
3. The Deputy Commissioner(CT) Appeals,
III Floor,Wavoo Complex, 191, N.S.C Bose Road,
Chennai - 1.
4. The Assistant Commissioner(CT),
Zone - IX, C.T.Buildings, 3rd Floor,
Greams Road,Chennai - 6.

+3cc's to M/s.Lakshmi Sriram, Advocate, S.R.No.11432
+3cc's to the Special Government Pleader(Taxes), S.R.No.11114 to 11116

T.C.(R).Nos.22 to 24 of 2015

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