IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Tax Case (Revision) No.1616 of 2008

The State of Tamil Nadu
represented by
The Deputy Commissioner of Commercial Taxes,
Madras (North), Division,
Greams Road, Madraas - 600 006.
.. Petitioner

versus

Tvl. Kiran Wire Netting Company
145, Rasappa Chetty Street,
Madras - 600 003. .. Respondent

PRAYER: PETITION filed under Section 38 of the Tamil Nadu General Sales Tax Act against the order dated 22.07.1993 made in T.A.No.1147 of 1992 on the file of the Sales Tax Appellate Tribunal (Main Bench), Madras peferred against the order of the Appelate Assistant Commissioner (CT)-1, Madras in appeal No.389/90 dated 16.04.92 relating to assessment year 1987-88 against the proceedings of Commercial Tax Officer, Park Town-I, Assessment Circle, Chennai dt. 20.1.89 in TNGST NO.051335/87-88.

For Petitioner : Mr.Manoharan Sundaram, AGP(T)

For Respondent : Mr.T.Pramod Kumar Chopda

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

This Tax Case (Revision) filed by the Revenue as against the order of the Sales Tax Appellate Tribunal was admitted by this Court on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal is legally correct in holding that the sale of machineries and plants is not liable to tax since there was no sale of going business concern?”

2. The brief facts of the case are as follows:

The respondent/assessee is a dealer in G.I.M.S.wire, expanded metal, barbed wire etc. They claimed exemption on Rs.14,85,564.99 in the monthly return filed for the year 1987-88 on the ground that they had sold the unit as a whole to M/s.Vijay Industrial Corporation. The Assessing Officer denied the exemption to the tune of Rs.2,29,000/- holding that the assessee had sold the plant and machineries only and not the unit as a whole. Aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who confirmed the assessment, thereby dismissed the appeal. As against the same, the assessee pursued the matter before the Tribunal. The Tribunal found that the business was closed with effect from 01.04.1987 and hence the sale was as a whole of business. Hence, the Tribunal granted exemption on the turnover relating to the sale of entire unit to the tune of Rs.2,29,000/-, thereby allowed the appeal holding as follows:

> "5. On hearing the arguments of both the sides, we have perused the connected records. According to Explanation - 3 to Section 2(r) of the TNGST Act, many amount realised by a dealer by way of sale of his business as a whole shall not be included in the turnover". The case law cited by the learned Authorised Representative, viz., 69-STC-Page-62 is clear on the point that when one of the Units of a business is completely closed down and sold, the proceeds will not form part of the total or taxable turnover. The law relating to the sale of business as a whole with reference to the whole unit or a particular unit has been clearly laid down in 69.STC-62. The point for consideration in this case is whether the unit at No.47, Krishnamurthy Salai, has been completely sold by the appellants or not. The learned State Representative pointed out that the unit was functioning in a rented building. If the unit has been sold as a whole, even it was functioning in a rented building, the turnover relating to the sale of that unit as a whole will be entitled for exemption under Explanation -3 to Section 2(r) of the TNGST Act.
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> 6. The learned Appellate Assistant Commissioner in his order has pointed out that "though the appellants raised sale Bill No.1/87, dated 01.04.87, according to the General ledge at Page-61, plant and machineries accounts is credited under various dates from 24.04.87 to 30.07.87 for Rs.2,29,000.00. This clearly established beyond doubt that the said sale is only on account of plant and machinery used by the appellants to the new concern and not as a business as a whole sold by the appellants to Tvl.Vijay Industrial Corporation". When the appellants have actually closed down the business with effect from 01.04.87 and the amount due to the sale of business as a whole was received on different dates, that will not alter the character and nature of the transaction. We feel that inview of the decision reported

in 69-STC-Page 62, the appellants are entitled for exemption on the turnover relating to the sale of their Unit at No.47, Krishnamurthy Salai, amounting to Rs.2,29,000.00."

3. Not satisfied with the order of the Tribunal, the Department is before us raising the questions of law referred supra.

4. Heard learned Additional Government Pleader appearing for the petitioner and the learned counsel appearing for the assessee and perused the materials placed before this Court.

5. In an identical circumstance, this Court had an occasion to consider the claim of exemption on the sale turnover under Rule 6(d) of the Tamil Nadu General Sales Tax Rules. We find that in the decision reported in [1993] 89 STC 515 (State of Tamil Nadu Vs. Jeewanlal (1929) Limited), this Court held that if there is a sale of a particular unit of business as a whole, the benefit under the said rule can be invoked. In so holding, this Court further held as follows:

> "7. Coming to the facts and circumstances of the case, we find from the decision of this Court in Jeewanlal (1929) Limited v. Industrial Tribunal 1975 (48) FJR 212 that though the assessee was carrying on three different types of business under different trade names, the industrial licences were separate for the utensils department and the rolling mills department, and the two departments always existed as separate departments, with different types of activities. Notwithstanding the fact that there was one union of workmen and the factory licence was common for all three units the management was common and common balance-sheet was prepared for the entire factory, this Court upheld the finding of the Industrial Tribunal that having regard to the nature of the work carried on in the rolling mills section and the independent nature of the same, the said unit stood divorced and separate from the other two units. Functionally, the court held the unit which has been closed and disposed of to be a separate and independent unit. As a matter of fact, this court was of the view that even if it is held that the rolling mills section is not a separate undertaking, still the rolling mills section as an independent and separate unit ofthe main undertaking could be closed. It is based on the said findings of this Court that the Sales Tax Appellate Tribunal sustained the plea of the assessee, particularly noticing the fact that no part of the business pertaining to the rolling mills which has been closed has been retained or was being carried on. In the light of the peculiar circumstances of the case and the categorical findings rendered by the Tribunal, we find no error of law in the order of the Tribunal warranting our interference in this revision. The two decisions relied

upon by the Revenue have no relevance in the case on hand since rule 6(d) of the Rules was not the subject-matter of consideration therein as in the present case.

8. Further, we are of the view that the finding of the Tribunal that the unit in question is an independent one and the same has been sold as a whole, rendering the assessee eligible to claim the benefits of rule 6(d) of the Tamil Nadu General Sales Tax Rules, is correct and does not suffer from any infirmity warranting our interference. Consequently we see no reason to interfere with the order of the Tribunal."

6. In the present case, on facts, it has been found by the Tribunal that the business of the assessee had been closed down and the entire machinery were sold completely. Hence, the transaction would fall under Explanation 3 to Section 2(r) of the TNGST Act. We find that the above-said decision of this Court would squarely apply to the facts of the present case. Hence, following the above-said decision of this Court, the question of law is answered in favour of the assessee and against the Revenue. The assessee is entitled to the exemption of Rs.2,29,000/-.

7. In the result, the order of the Tribunal stands confirmed and this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Tamil Nadu Sales Tax Appellate Tribunal,
(Main Bench), Chennai.

2. The Deputy Commissioner (CT)Madras(North) Division.

3. The Commercial Tax Officer, Park Town-I, Assessment Circle,Chennai.
4. The Appelate Assistant Commissioner (CT)-I, Chennai.

+ 1 cc to Mr. Advocate SR.15795
+ 1 cc Special Government Pleader Sr.15795

KU(CO)
EU 06.04.2015