IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Revision) No.1747 of 2008

The State of Tamil Nadu
represented by
The Addl. Deputy Commissioner of Commercial Taxes,
Madras Division,
Madras - 600 001. ... Petitioner

versus

Tvl.Jeya Frozen Foods,
Plot No.13, S.N.Chetty Street,
Madras - 600 013. ... Respondent

PRAYER: PETITION filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal as against the order dated 22.8.1980 made in T.A.No.1237 of 1979 on the file of the Sales Tax Appellate Tribunal (Main Bench), Madras. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

against the order of the Appellate Assistant Commissioner (Commercial Taxes) I, Madras City, relating to the assessment year 1977 - 78 TamilNadu General Sales Tax Appeal No.281/79, dated 10.12.1979;

against the proceedings of the Appellate Assistant Commissioner (CT) I, Madras dated 10.12.1979 and made in TNGST.600273/1977-78, dated 8.6.1979 for the Assessment year 1977-78; and

against the proceedings of the Joint Commercial Tax Officer, Commercial Taxes Department, Royapuram Assistant Circle, Madras dated 3.6.1979 in TNGST.600273/1977-78 for the assessment year 1977-78.

For Petitioner : Mr.Manoharan Sundram,
Additional Government Pleader.

O R D E R

(Made by R.SUDHAKAR,J.)

This Tax Case (Revision) is filed by the Revenue as against the order of the Sales Tax Appellate Tribunal dated dated 22.8.1980 made in T.A.No.1237 of 1979.

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

The assessment in this case relates to the assessment year 1977-78. The respondent/assessee is a dealer in marine products, like, shrimps, frog legs etc. The assessee filed a return claiming exemption on the whole turnover being the last purchase of shrimps and frog legs within the State as they exported the commodity through E.I.D.Parry India (India) Ltd. under an agreement by virtue of sub-section (3) of Section 5 of the CST Act, 1956. The Assessing Officer held that the last purchase should not be held for exemption under sub-section (3) of Section 5 of the CST Act as no evidence was let in by the assessee to show that the purchases made from fishermen and others in retail was for the purpose of complying with the agreement in relation to export. Hence, the Assessing Officer assessed the entire turnover and levied 5% single point under section 3(2) of the CST Act on the turnover of Rs.67,40,238/- and 4% multipoint tax under Section 3(1) of the CST Act on the turnover of Rs.2,697/-. As against the order of the Assessing Officer, the respondent/assessee filed an appeal before the Appellate Assistant Commissioner, who granted partial relief to the assessee, thereby modified the assessment holding as follows:

> "There is the reasonable conclusion that the purchases to the extent of Rs.26,92,242.13 and not covered by the export invoices raised by the exporters should have been disposed of other than by way of export sales and that such transaction do not fall under the purview of sub-section 3 of section 5 of the CST Act,1956. It is therefore held that the assessment made on the purchases relating to a turnover of Rs.26,92,242.13 is sustainable. As regards the remaining turnover of Rs.40,47,990.87, the appellant are entitled to exemption under section 5(3) of the CST Act. Accordingly, the turnover of Rs.40,47,900.87 is ordered to be deleted from the turnover assessed at 5%. Resultantly, the appellants would be liable to tax on a turnover of Rs.26,92,242.13 at 5% and on a turnover of Rs.2,597.00 at 4%. The assessment stands modified to this extent. The assessing officer will give effect to this order.
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> 8. To sum up the appellants are entitled for relief

> on the turnover of Rs.40,47,990.87 at 5% and the consequential relief of additional sales tax and surcharge on the said turnover."

3. Aggrieved by the above-said order, the assessee pursued the matter before the Tribunal. The Tribunal, after further detailed enquiry on the claim of the assessee, held that the Appellate Assistant Commissioner failed to consider that the supply of goods under an agreement is based on Bill No., date, Order No. date and Invoice No. date and the assessee had satisfied the requirements under Section 5(3) of the CST Act in respect of the turnover. The Tribunal, on the basis of the factual verification and the submissions made by the State Representative, who submitted after verification that the exemption could not be allowed anyway to the extent of Rs.76,918/-, granted the relief to the extent of Rs.26,15,324.13. For better clarity, the relevant portion of the order of the Tribunal reads as follows:

> "6. The learned counsel reiterated the grounds already raised and submitted that the Appellate Assistant Commissioner was not justified in holding that the purchase of sea food made on the date of export invoices did not satisfy the test. He brought to our notice the affidavit filed explaining the method of buying, freezing and exporting and pointed out that all these can be done within a day. He further submitted that the Appellate Assistant Commissioner failed to appreciate that even though date of export invoice was as noted on date of purchase, actual date of shipment as per Bill of Lading was later. It is pointed out that the practice is to file the export invoice, with export contract for completing the customs shipping formalities and to obtain processed shipping bills; that only thereafter the goods are accepted for export and bill of lading is issued by the carriers. The learned counsel placed before us a statement incorporating the items disallowed by the Appellate Assistant Commissioner against the Bill No. date, order No. and date, Invoice No. and date etc. to show that there was prior commitments to export in respect of this order. The learned State Representative submitted a verification report and stated that the exemption cannot be allowed anyway to the extent of Rs.76,918/-.
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> 7. We have heard both sides and perused the connected records.
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> 8. We notice that though the Appellate Assistant Commissioner has mentioned that the appellants were the agents of E.I.D.Parry Ltd. the exporter, yet he did not

consider the applicability of Section 5(1) as probably there was no such claim. Such a claim under section 5(1) was not made before us either. Hence it is unnecessary to consider this aspect. We find as regards Section 5(3) exemption (from the statements filed) that except the sum of Rs.76,918/- in respect of other transactions, there was a firm prior commitment by the exporter at the time of purchase. In other words, no distinction can be drawn between the substantial turnover on which relief was granted by the Appellate Assistant Commissioner and the rest except the few instances as indicated in the verification report of the learned State Representative. Accordingly the relief is admissible to the extent of Rs.26,15,324.13 (i.e. Rs.26,92,242.13 minus 76,918.00 = 26,15,324.13)."

4. From a reading of the order of the Tribunal, it is clear that the the entire issue now raised is pure question of fact. When the State Representative has submitted a report after verification of the details submitted by the assessee and there being no question of law for consideration, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Appellate Assistant Commissioner(Commercial Taxes)I,Madras City.

3.The Joint Commercial Tax Officer, Commercial Taxes Department, Royapuram Assistant Circle, Madras

+1cc to the Special Government Pleader(Taxes), S.R.No.24765

T.C.(R) No.1747 of 2008

PA(CO)
CA(22/05/2015)