In the High Court of Judicature at Madras

Dated: 16.06.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Ms.JUSTICE K.B.K.VASUKI

Tax Case (Revision) Nos.37 of 2009, 119 and 425 of 2011

The State of Tamil Nadu
represented by the
Deputy Commissioner (Commercial Taxes)
Coimbatore Division, Coimbatore - 18.
.... Petitioner in the above T.Cs

Vs.

Tvl.Nathan & Co.,
11, P.N.R. Layout,
Trichy Road,
Coimbatore.
.... Respondent in the above T.Cs

Revision Petitions under Section 38 of the Tamil Nadu General Sales Tax Act against the order dated 10.7.2003 made in Coimbatore Tribunal State Appeal Nos.428 of 1999, 441 of 2000 and 177 of 1999 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai for the assessment years 1995-96, 1996-97 and 1997-98 against the order of the Additional Appellate Assistant Commissioner (CT) Coimbatore-18 in Appeal No.1100/98/98-96 order dated 1/7/1998 against the CTSA No.428, 441 and 177/1999 against the Order of Deputy Commercial Tax Officer, Trichy Road Circle, Coimbatore dated 30.03.98 passed in TNGST No.1880072/95-96, 96-97 and 97-98.

For Petitioner : Mr.AN.R.Jayapratap Government Pleader (Taxes)
For Respondent : Ms.R.Hemalatha

C O M M O N O R D E R
(Order of the Court was made by R.SUDHAKAR,J.)

The above Tax Case (Revisions) filed by the Revenue as against the order dated 10.7.2003 made in Coimbatore Tribunal State Appeal Nos.428 of 1999, 441 of 2000 and 177 of 1999 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai for the assessment years 1995-96, 1996-97 and 1997-98 were admitted on the following substantial questions of law:

T.C.(A)No.37 of 2009:

"i) Whether in the facts and circumstances of the case, the Tribunal has erred in upholding the order of the lower appellate authority that butter and ghee sold with the name "Nathan's pure ghee"cannot be equated to brand name and hence not liable to higher rate of tax?

ii) Whether the order of the Tribunal in having deleted the consequent penalty levied by the assessing authority is legally correct?

T.C.(A)Nos.119 and 425 of 2011:

i)Whether in the facts and circumstances of the cae, the Appellate Tribunal is right in law in setting aside the assessment made at 12% on the sale of ghee and butter sold under a brand name especially when there is no distinction in the processing method of both branded and unbranded ghee?

ii) Whether in the facts and circumstances of the case, the goods which are sold under the product of "Nathans" acquiring the status of a brand name, which is a special name and hence the products naturally become a branded item attracting higher rate of tax?

iii) Whether in the facts and circumstances of the case, the brand name includes sale of goods with a trade symbol or trade mark or special name attracting higher rate of tax?"the order of the Appellate Tribunal is correct in interpreting the expression "does not sell the goods so manufactured" occurring in sub-section (4) of Section 3 of the Tamil Nadu General Sales Tax Act, 1959 as including not only intra state but also export sale?

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

The respondent/assessee purchased butter and ghee from the village through bought notes and effected both local and interstate sales. Originally, the Assessing Authority accepted the turnover reported by the assessee. Thereafter, the Assessing Authority after issuing notice enhanced the rate of tax at 12% instead of 5% on the turnover for the assessment year 1995-96; 12% upto 16.7.1996 and 11% upto 4.3.1997 and 10% from 5.3.1997 to 31.3.1997 for the assessment year 1996-97 and 10% for the assessment year 1997-98, on the ground that the assessee had sold the ghee under the brand name. Aggrieved by the said enhancement in the rate of tax on the sale of butter and ghee, the assessee filed appeals before the Appellate Assistant Commissioner, who set aside the assessment and restored the original assessment. Aggrieved by the orders of the first Appellate Authority, the Revenue filed appeals before the Tribunal. The Tribunal after examining the relevant records and after considering the submissions made on both sides, dismissed the appeals holding that mere mentioning of Nathan Pure Ghee could not be stated to be a registered trade mark or specific emblem or recognised symbol.

3. As against the said order of the Tribunal, the Revenue is before this Court.

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

5. The issue that arises for consideration in the above revisions is whether the goods sold by the respondent/assessee would be termed as "butter and ghee sold registered under the Trade and Merchandise Act", falling under Serial No.8 of Part D of First Schedule, liable to tax at 11% or they would be termed as "butter and ghee sold under brand name not registered under Trade and Merchandise Act", falling under Serial No.Chapter 10 A Part B of First Schedule, taxable at 4%.

6. The first Appellate Authority and the Tribunal, on facts, came to the conclusion that the goods sold by the respondent/assessee is termed as "butter and ghee sold under the brand name not registered under Trade and Merchandise Act", falling under Serial No.10A of Part B of First Schedule at 4%. Accordingly, the higher rate of tax has been set aside.

7. It is not in dispute that the respondent had not used any trade mark for selling butter and ghee. It is also not in dispute that the respondent had registered neither the name of the company nor his personal name under the provisions of Trade and Merchandise Marks Act, 1958. On facts, the Tribunal came to the conclusion that the words printed on the labels, viz., Nathan's Pure Ghee only denote that the product is manufactured by Nathan & Co., viz., the assessee company. The Department is not able to show any material that the goods sold by the assessee contain any trademark or brand name registered under the Trade and Merchandise Act. The Department is also not in an position to show any material that order of the first Appellate Authority and the Tribunal is in any way erroneous or irrational. Hence, we are not inclined to interfere with the order of the Tribunal on the question of fact, which appears to be not in dispute.

Accordingly, the above Tax Case (Revisions) stand dismissed. No costs.

-s/d-
Assistant Registrar

True copy

Sub-Assistant Registrar

To
1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
coimbatroe -18

2. The Additional Appellate Assistant Commissioner (CT),
Coimbatore - 18.

3. The Deputy Commercial Tax Officer, Trichy Road Circle,
Coimbatore.

4. The Secretary
Central Board of Revenue New Delhi.

+1 cc to Special Government Pleader (Sr.No.29579)

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