IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2013

Coram

The Honourable Mrs.Justice **CHITRA VENKATARAMAN**
and
The Honourable Mr.Justice **T.S.SIVAGNANAM**

Tax Case (Appeal) No.128 of 2009

Dalmia Cement (Bharat) Ltd.,
Dalmiapuram .. Appellant

-vs-

The State of Tamil Nadu
rep.by the Deputy Commercial
Tax Officer, Lalgudi Assessment Circle
Lalgudi ... Respondent

Tax Case (Appeal) filed under Section 37 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Joint Commissioner (SMR) Commercial Taxes, Chennai-5 dated 10.06.2002 in his Ref.No.M2/MM2/18396/98 (S.M.R.No.II/760/98).

For Appellant : Mr. N.Inbarajan
For Respondent : Mr.Manokar Sundaram
Additional Government Pleader
(Tax)

JUDGMENT

(Judgment of the Court was delivered by

CHITRA VENKATARAMAN ,J)

The assessee is a manufacturer of cement. The assessee effected sales of levy cement as well as non-levy cement during the year 1983-84. Following the judgment of the Apex Court reported in

88 STC 151(SC) [Tvl.Ramco Cement Distribution Co.(P) Ltd., Dalmia Cement (Bharat) Ltd., Madras Cements Ltd., vs. State of Tamil Nadu], the Assessing Officer levied tax in respect of packing charges on a turnover of Rs.2,93,86,767/- which consisted of packing charges relating to cement sales governed by Cement Control Order to the extent of Rs.1,43,63,569/- and packing charges relating to cement sales not governed by Cement Control Order to the extent of Rs.1,50,23,190/-.

2. Aggrieved by the said order of assessment, the assessee filed appeal before the Appellate Assistant Commissioner, who allowed the assessee's appeal, taking the view that the packing materials separately charged, though included in the price of goods, were not liable to sales tax. Thus, the entire turnover was deleted from the assessment of Rs.2,93,86,767/-. The said order of the Appellate Authority was subjected to revisional proceedings under Section 34 of the Tamil Nadu General Sales Tax Act.

3. A reading of the notice issued by the Joint Commissioner shows that the revision was restricted on the turnover Rs.1,43,63,569/- relating to packing charges of cement sales governed

by the Cement Control Order. However, while passing the order in revision dated 10.06.2002, the Revisional Authority restored the entire assessment and thereby confirmed the *suo motu* revision. Subsequent thereto an errata order of assessment was passed on 10.10.2002 wherein it was specifically pointed out that the order of the Assessing Officer in levying tax on the packing charges collected on the sale of cement was found in order to the extent of Rs.1,43,63,569/- only. Thus, the revision order passed by the Joint Commissioner was concerned about the claim of the deduction on the packing charges relating to sale of cement under the Cement Control Order and that the other turnover was not the subject matter of revision.

4. As is evident from the reading of the Assessment Order this turnover relates to the packing charges relating to cement sales governed by the Cement Control Order. Thus, having regard to the limited scope of the revisional order, the liability in respect of packing charges on this turnover stands covered by the decision of the Apex Court reported in ***88 STC 151 [cited supra]*** wherein it was specifically held that packing charges and excise duty on packing materials should not be excluded under Rule 6(cc) of the Tamil Nadu General Sales Tax Act. Thus, when charges on packing also was

included in the Cement Control Order as part of the sale price, the question of deduction did not arise. Thus, applying the said decision, we reject the assessee's appeal. We make it clear that the turnover, which was the subject matter of revision as confirmed in the errata order relates to the turnover of Rs.1,43,63,569/- only relating to packing charges on the cement sales governed by the Cement Control Order.

5. Accordingly, the Tax Case (Appeal) is dismissed. No costs.

(C.V.,J.) (T.S.S.,J.)
27.11.2013

Index:Yes/No
Internet:Yes
vj2

To
1. The Appellate Assistant Commissioner
(CT), Trichy I

2. The Joint Commissioner (SMR) II
Commercial Taxes, Chennai.

3. The Deputy Commercial Tax officer
(Enf.)VI, Trichy

CHITRA VENKATARAMAN, J.
and
T.S.SIVAGNANAM, J.

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