IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **29.11.2013**

Coram

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

Tax Case (Appeal) No.130 of 2009

Bhavani Tea and Produce Company
Limited, No.11, East Periaswamy Road
Coimbatore 641 002. ... Petitioner

-vs-

The State of Tamil Nadu
Represented by the
Commercial Tax Officer
Mettupalayam Road Circle
Coimbatore ... 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 31.01.2003 passed in his Ref.No.N2/50933/96-S.M.R.No.96/98.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.Manokar Sundaram
Additional Government
Pleader (Taxes)

ORDER

(The Order of the Court was made by
T.S.SIVAGNANAM, J.)

This appeal, by the assessee is directed against the order passed by the Joint Commissioner (SMR) Commercial Taxes, Chennai dated 31.01.2003 in exercise of its *suo motu* power of revision under Section 34 of the Tamil Nadu General Sales Tax Act, 1959 [TNGST Act].

2. The facts, which are relevant for the disposal of this appeal are as follows:

The assessee is a registered dealer on the file of the Commercial Tax Officer, Coimbatore. They owned estates in the State of Kerala and the agricultural produce received by them from their own land located in the State of Kerala are being transported and disposed of in the State of Tamil Nadu. In this process, the assessee claimed to have disposed of Cardamom and coffee as the agricultural produce and claimed exemption in respect of such disposal, during the assessment year 1994-95. The Assessing Officer, rejected the claim stating that they are not entitled for the exemption as exemption under Section 2(r) of the TNGST Act is available only if the agricultural produce is grown inside the State of Tamil Nadu. Challenging such orders writ petitions were filed by the assessee before this Court, which was transferred to the Tamil Nadu Taxation Special Tribunal and the Special Tribunal in the decision reported in ***[1999] 114 STC 449***

[Bhavani Tea and Produce Co.Ltd., and another vs. Commercial Tax Officer, Mettupalayam Road Circle, Coimbatore and Another] held that the sale of agricultural produce by the assessee from their lands situated in Kerala is also eligible for exemption under section 2(r) of the TNGST Act. The assessee independently challenged the order of assessment dated 10.01.196 by filing appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, allowed the appeal insofar as it relates to the sale of raw coffee holding that the purchases effected by M/s.Brooke Bond India Limited have suffered tax at the hands of the purchaser. As far as the dispute regarding the sale of coffee, the First Appellate Authority allowed the appeal filed by the assessee. This order was sought to be revised *suo motu* by the Joint Commissioner by issuing notice under Section 34 of the Act. In response to the said notice, the assessee submitted its reply dated 28.03.1998. The Joint commissioner not being satisfied with the reasons given by the assessee rejected this sale and suo motu revised the order passed by the First Appellate Authority and confirmed the order of assessment. This is how the assessee is before this Court by way of this appeal.

3. We have heard Mr.N.Inbarajan, learned counsel appearing for

the assessee and Mr.N.Manokar Sundaram, learned Additional Government Pleader (Taxes) for the State.

4. Learned counsel for the assessee by placing reliance on the decision of the Tamil Nadu Taxation Special Tribunal in the assessee's own case reported in ***(1999) 114 STC 449 [cited supra]*** submitted that the Special Tribunal has held that if the definition of turnover is reflected only to the produce grown within the State, it would amount to discrimination. However, the learned counsel produced copies of the statement of details of raw coffee sold during the year 1994-95; copy of Form No.26 under the Kerala General Sales Tax Rules, 1963; copies of invoices raised by the assessee and copy of the sale invoices of M/s.Brooke Bond India Limited. By placing reliance on these documents, the learned counsel submitted that the coffee was their own agricultural produce, which was brought to the State of Tamil Nadu and sold to M/s.Brooke Bond India Limited, who in turn, paid tax on such produce. Learned counsel for the assessee further submitted that the decision of the Special Tribunal has been accepted by the State and the said decision covers the case on hand.

5. We have heard the learned Additional Government Pleader

(Taxes) appearing for the State on the above submission.

6. The issue, which came up for consideration before the Tamil Nadu Taxation Special Tribunal is with regard to the Constitutional validity of the words "within the State" occurring in Section 2(r) of the TNGST Act. The Special Tribunal after hearing the parties held that the definition of "turnover" in Section 2(r) of the TNGST Act provides for the exclusion of "proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber [natural rubber latex and all varieties and grades of raw rubber], grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise", the Special Tribunal pointed out that the full exemption given to the agricultural products from the State of Tamil Nadu whereas denial of such exemption to similar other agricultural products of other States, when sold in Tamil Nadu amounts to discrimination against the out-State agricultural products, which is prohibited by Articles 301 and 304 of the Constitution of India. Therefore, the Special Tribunal held that the words "within the State" occurring in section 2(r) of the Act offend Articles 301 and 304 of the Constitution and therefore, the said words "within the State" being violative and ultra vires has been struck down.

7. Therefore, the finding of the Special Tribunal in the instant case that merely because the agricultural products was brought from other State and therefore, not entitled for exemption cannot be countenanced. On the other hand, it has to be taken note as to whether it is the own produce of the assessee. In order to establish the same, the assessee at the first instance, while submitting their reply dated 28.03.1998 to the show cause notice issued under Section 34 of the Act submitted that they are agriculturists and the liability to pay tax is only on the purchaser, viz., M/s.Brooke Bond India Limited. Along with the explanation, the assessee filed documents, which have been filed before this Court, viz., the statement of details of raw coffee sold during the year 1994-95; copy of Form No.26 under the Kerala General Sales Tax Rules, 1963; copies of invoices raised by the assessee and copy of the sale invoices of M/s.Brooke Bond India Limited. These documents would show that it is their own produce and the goods,viz., coffee was brought to Tamil Nadu on stock transfer. Further more, the invoices raised from Kerala also states that it is their own estate produce and first agricultural sale despatch from the estate. Thus, by applying the decision of the Special Tribunal to the facts of the case, we have no hesitation to hold that the assessee is

entitled to exemption as claimed for.

8. For the above reasons, we allow the Tax Case(Appeal) by setting aside the order passed by the Joint Commissioner and the order of the First Appellate Authority is restored. No costs.

(C.V.,J) (T.S.S.,J)
29.11.2013

Index: Yes/No
Internet:Yes
vj2

To

1. The Commercial Tax Officer,
   Mettupalayam Road Circle
   Coimbatore.

2. The Appellate Assistant
   Commissioner(CT)Coimbatore.

3. The Joint Commissioner (SMR) III
   Chennai.

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

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