

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.(R).Nos.45 and 46 of 2017

The State of Tamil Nadu,
Rep. by the Joint Commissioner (CT),
Vellore Division,
Vellore.

.. Petitioner
in both TCRs

Vs.

Tvl. Balaji Oil Industries,
No.39, 2nd Main Road,
Sipcot Industrial Complex,
Ranipet.

.. Respondent
in both TCRs

Common Prayer: Tax Case Revision Petitions filed under Section 38 of the Tamilnadu General Sales Tax Act, 1959, to revise the common order of the Tamilnadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 08.02.2010 passed in S.T.A.Nos.293 and 294 of 2006.

For Petitioner : Mrs.Narmada Sampath
Special Govt. Pleader (Taxes)

For Respondent : Mr.S.Ramanathan

COMMON ORDER

(Order of this Court was made by **S.MANIKUMAR, J.**)

Tax Case Revisions are filed against the common order in S.T.A.Nos.293 and 294 of 2006, dated 08.02.2010, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.

2. Short facts leading to the Tax Case Revisions are that the respondent herein, are manufactures of Vanaspathi and Bakery Shortening and assessee, on the file of the Commercial Tax Officer, Ranipet Assessment Circle, under the Tamil Nadu General Sales Tax Act, 1959. Their accounts were originally finalized by the assessing authority for the total and taxable turnover of Rs.2,20,329/- and Rs.8,13,79,589/-, for the assessment years 2002-03 and 2003-04 respectively. Subsequently, it was found out that the assessee had claimed and availed concessional rate of tax, on the purchase of spares for machinery, against Form XVII, for the value of Rs.3,34,220/- and Rs.2,20,329/- for the respective assessment years. The assessing authority, therefore, revised the assessment by levying differential rate of tax at 9.45%, under Section 3(5) of the Tamil Nadu General Sales Tax Act, 1959, on the above turnovers and also levied

penalty at 150% under Section 23 r/w. 45(2)(3) of the TNGST Act, 1959.

3. Aggrieved by the above, the assessee filed appeals in A.P.Nos.354 and 355 of 2005, before the Appellate Assistant Commissioner (CT), Vellore, which were allowed. Against which, State has preferred further appeals in S.T.A.Nos.293 and 294 of 2006, before the Tamil Nadu Sales Tax Appellate Tribunal (MB), Chennai, on the ground that spares and machineries, intended for repair and reconditioning, are not eligible to be purchased, against Form XVII, under Section 3(5) of the Tamil Nadu General Sales Tax Act, 1959, as per the clarification issued by the Commissioner of Commercial Taxes, Chennai K.Dis.Acts Cell-I/13063/2004, dated 14.09.2004 and therefore, the penalty levied by the assessing officer, under Section of the Act, is in order.

4. The Tamil Nadu Sales Tax Appellate Tribunal, Chennai, has framed two points for consideration, as follows:

“i) Whether the disputed turnover is not eligible for concessional rate of tax as provided under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959?

ii) Whether the penalty under Section 23 of the Tamilnadu General Sales Tax Act, 1959 is warranted in this case?”

5. After considering the rival submissions and facts and circumstances of the case, the Tribunal, vide common order, dated 08.02.2010, has dismissed the appeals, as hereunder:

“4) Point No.(i):

That the assessee were assessed to tax under the Tamilnadu General Sales Tax Act, 1959 for the assessment year 2002-2003 vide original assessment order dated 2.11.2005 and for the assessment year 2003-2004 vide the original assessment order dated 27.1.2005. In the said original assessment orders the assessing officer had allowed concessional rate of tax claimed by the assessee for the purchases under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959 by issue of Form XVII declaration forms. Thereafter, the assessing officer had invoked Section 16 of the Tamilnadu General Sales Tax Act, 1959 and assessed the disputed turnover to a higher rate of tax holding that the purchase of spares separately was not eligible for concessional rate of tax provided under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959. The revision order under Section 16(1) was passed on 24.11.2005 and 2.11.2005 for the assessment years 2002-2003 and 2003-2004 respectively. In addition to re-calling the concessional rate of tax allowed in the original assessment, the assessing officer did slap a penalty of Rs.47,376/- and Rs.31,232/- for the

assessment years 2002-2003 and 2003-2004 respectively, under Section 23 read with Section 45(2)(e) of the Tamilnadu General Sales Tax Act, 1959. When the aggrieved assessee took the matter in appeal before the first appellate authority, the said authority by his order dated 20.2.2006 allowed the appeals holding that the purchase effected by the assessee was eligible for concessional rate of tax under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959 and that penalty was not warranted.

5) The learned State Representative would submit that the assessing officer had followed the clarification issued by the Commissioner of Commercial Taxes in K.Dis. Acts I/13063/04 dated 14.9.2004 and held that the purchase of machinery spares for old machineries was not eligible to avail concessional rate of tax under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959 and this is the only ground in the memorandum of grounds of appeal filed by the revenue in both the cases.

6) A perusal of the clarification relied upon by the assessing officer and reiterated by the revenue before the first appellate authority and before this Tribunal would show that, that clarification was issued in favour of one M/s Suriya Engineering, Dindigul and that dealer was not a manufacturer of any goods, but was only running an engineering works shop engaged in carrying out repairs and reconditioning work in old machineries on job work basis. Hence, for the purchase of spares by such a mechanical shop owner for being used in repairing and reconditioning of old machineries, it was

clarified that concessional rate of tax under Section 3(5) against issue of Form XVII would not be available. It should be on the reasoning that carrying out repairs and reconditioning of old machineries would not amount to manufacture. But, in our case there is no dispute regarding the status of the dealer as manufacturer and regarding the use of the spares purchased by the dealer in the machineries which in-turn were used for manufacturing some other goods. There is no dispute that the factory is situated within the State of Tamil Nadu and the dealer had manufactured the goods for sale. Hence, we are of the view that the assessing officer had misconstrued the intend and purport behind the said circular and wrongly applied the same to the case of the assessee.

7) If we hold that the circular relied upon by the revenue does not apply to the facts of our case then there is no other ground or reason made out by the revenue to show that the disputed purchase turnover was not eligible for concessional rate of tax under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959. Hence, we hold that these disputed turnovers are eligible for the concessional rate of tax provided under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959 and this point is answered against the appellant.

8) Point No.(ii):

The assessing officer had imposed a penalty under Section 23 read with Section 45(2)(e) of the Tamilnadu General Sales Tax Act, 1959 for the alleged misuse of the Form XVII. While answering Point No.(i) we have held that the

assessee were eligible for concessional rate of tax for the disputed turnovers and as such there is no question of any misuse of Form XVII declarations and intun there is no question of imposition of penalty under Section 23 read with Section 45(2)(e) of the Tamilnadu General Sales Tax Act, 1959 and this point is also answered against the appellant.”

6. Aggrieved by the same, the Joint Commissioner (CT), Vellore Division, Vellore, has preferred the present Tax Case Revisions, on the following substantial questions of law:-

“(i) Whether in the facts and circumstances of the case, the Tribunal is legally correct in having concluded that purchase of spares for use in old machineries would also to be covered by section 3(5) of the Tamil Nadu General Sales Tax Act, 1959.

(ii) Whether the order of the Tribunal in having confirmed the order of the first lower authority by deleting the consequent penalty levies under section 23 of the Act is legally sustainable.”

7. Supporting the above substantial questions of law, Mrs.Narmada Sampath, learned Special Government Pleader (Taxes), submitted that the concessional rate of tax, as contemplated under Section 3(5) of the act, is only with regard to the goods, mentioned in the 8th Schedule, for installation and use in the factory site, for the manufacture of goods. She

further submitted that the Tribunal has failed to take note of the fact that mere purchase of spares, for replacement of old spares, in the old machinery, cannot be equated to that of installation, as enjoined in Section 3(5) of the TNGST Act, 1959.

8. Learned Special Government Pleader (Taxes), further contended that apart from the machineries of all kinds, mentioned in Sl.No.3 of Schedule-VIII to the Act, inclusion of parts, accessories and tools, in Entry 3(IX), was meant to extend the concessional rate of tax, only to those parts and accessories and in respect of tools, if only they were purchased separately, while installing new machineries.

9. Mr.S.Ramanathan, learned counsel for the respondent made submissions, in support of the impugned orders.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Before advertng to the rival submissions, Section 3 (5) of the TNGST Act, 1959, is extracted:-

“(5) Notwithstanding anything contained in sub-section

(2), but subject to the provisions of sub-section (1), the tax payable by dealer in respect of sale of any of the goods mentioned in the Eighth Schedule to any other dealer for installation of, and use in, his factory site situate within the State for the manufacture of any goods shall be at the rate of three per cent on the turnover relating to such sale.”

11. A reading of Section 3(5) of the Act makes it clear that the tax payable by a dealer in respect of sale of goods mentioned in the Eighth Schedule to any other dealer for installation and use in his factory site situate in the State for the manufacture of any goods shall be @ 3% on the turnover relating to such sales. In the present case, the respondent-dealer is a manufacturer, purchased spares, used for the purpose of manufacturing goods. It is not in dispute that the factory is situated within the State of Tamil Nadu and the dealer had manufactured the goods for sale. Spares for the machinery, specifically fall under Clause (3) of Eighth Schedule, which is extracted hereunder,

“Machineries of all kinds (other than those specifically mentioned in the First Schedule) worked by (i) Electricity (ii) Nuclear Power (iii) Hydro-dynamic and steam power (iv) diesel or petrol (v) Furnace Oil (vi) Kerosene (vii) Coal including coke and charcoal or (viii) any other form of fuel or power (excluding human or animal labour) (ix) parts and accessories of machineries and tools used with the machineries mentioned in

sub-item (i) to (viii) above.”

12. From a reading of the above provision, it is clear that the respondent has to satisfy three conditions, viz.,

- (i) The goods sold must be one as enumerated in the Eighth Schedule;
- (ii) The said goods must be used in the factory site within the State;
- (iii) It should be for the manufacture of any goods.

In the present case, the goods sold fall within the items mentioned in Entry 3 of the Eighth schedule. Therefore, the assessee has satisfied the first condition. In respect of the second condition, ie., use in the factory site within the State, there is no dispute that the same were used in the factory site, within the State. Hence, the second condition is also satisfied. The third condition is that the goods should be used in manufacture. Use may be direct or indirect, in the process of manufacture. At paragraph Nos.6 and 7, the Tribunal has considered the above aspects, and accordingly answered.

13. Plant and machinery are used for the purpose of manufacturing vanaspathi and bakery shortening. Since the goods are installed and used in the factory site, the respondent-dealer is entitled to the concessional rate of tax at 3% . Therefore, the Tribunal has rightly held that the

disputed turnovers are eligible for concessional rate of tax, provided under Section 3(5) of the Tamilnadu General Sales Tax Act, 1959. The assessee has satisfied all the conditions enumerated and Section 3(5) of the Act and hence, they are entitled to the concessional rate of tax under Section 3(5) of the Act.

14. Section 3(5) of the Act is a beneficial provision. It provides for concession in tax to encourage industrial activity. It is well settled principle that a taxing provision, granting concessional and incentives for promoting growth and development, should be construed liberally.

15. For the reasons stated above, this Court is of the considered view that these tax case revisions are liable to be dismissed. Accordingly, the substantial question of laws are answered in favour of the respondent/assessee and against the Revenue.

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[S.M.K., J.] [R.S.K., J.]

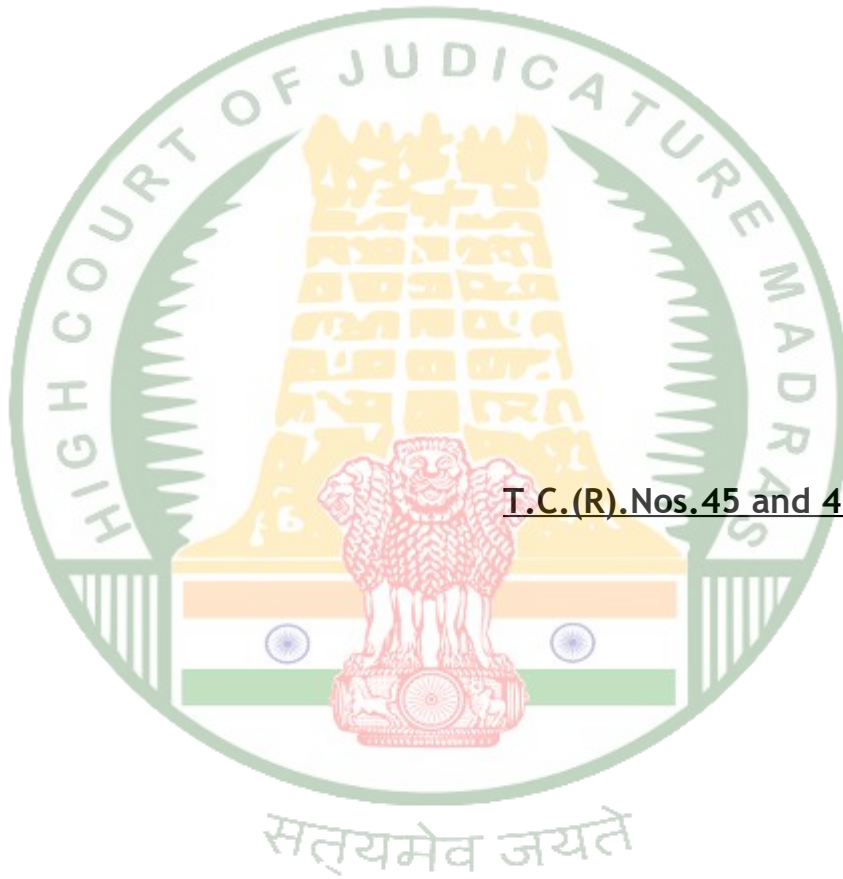
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