BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.05.2017
CORAM:
THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

TAX CASE(R)(MD)No.11 of 2011

The State of Tamil Nadu represented
by the Deputy Commissioner (CT),
Tirunelveli Division, Tirunelveli-627 002. .. Appellant

Vs.

Tvl.Krishna Mines .. Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai dated 02.02.2000 passed in M.T.A.No.591 of 1999.

For Petitioner : Mr.R.Karthikeyan,
Additional Government Pleader
For Respondent :Mr.S.Karunakar

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

This Tax Case Revision has been filed by the state challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A.No.591 of 1999, dated 02.02.2000.

2.The above Tax Case Revision has been admitted on the following substantial question of law:

"Whether the Tribunal is right in cancelling the freight charges when admittedly the charges incurred were prior to the sale of goods delivered at the buyers' site?"

3. The learned counsel appearing on the either side would submit that the question raised in this revision is covered by an earlier decision of the Division Bench of this Court in the case of the respondent assessee for the assessment years 1978-79, 1979-80 and 1980-81 in W.P.Nos.3449 to 3451 of 1985, dated 09.01.1992 and for the assessment year 1985-86 in W.A.No.1773 of 1987, dated 19.09.1990. The said judgment is quoted herein below:

"The learned Single Judge, in spite of the fact that the decision of the Court in Agricultural Forma Ltd., Vs. State of Tamil Nadu ((1974) 34 STC 143) has discountenanced the inclusion of freight charges for the purpose of taxation, expressing the view that an appeal could be reported to, dismissed the writ petition. The question is no longer res integra and covered by the pronouncement of this Court and in-spite of that if the respondent proceeds to include the freight charges for the purpose of taxation, this Court will be in order to strike down the process reported to by the respondents.

In this view, the writ appeal is allowed, the order of the learned single judge is set aside and the petition W.P.7826 of 1987 will stand allowed. No Costs.”

4. Following the same, this Tax Case Revision is dismissed and the substantial question of law is answered in favour of the respondent / assessee. No costs.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To,

1 The Tamil Nadu Sales Tax Appellate Tribunal (AB),
Madurai.

2 The Deputy Commissioner (CT),
Tirunelveli Division, Tirunelveli.

3 The Appellate Assistant Commissioner (CT),
Tirunelveli.

+1cc to M/S.S.Karunakar, Advocate SR.No. 55848
+1cc to Special Government Pleader, SR.No. 55945

ORDER MADE IN
TAX CASE(R)(MD)No.11 of 2011
05.05.2017

JM/MMS/17.05.2017/2P/6C