BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.05.2017

CORAM:
THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
T.C.(R)No.178 of 2011

The State of Tamil Nadu
Represented by the
Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli – 627002. ...Petitioner

Vs.

Tvl. T. Manickam & Co.,
146, Palayamkottai Road,
Tuticorin. ... Respondent

PRAYER: Tax Case Revision Petition is filed under Section 38 of the TNGST Act, 1959, to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai dated 20.07.2004 passed in M.T.S.A.No.824/2002.

For Petitioner : Mr.R.Karthikeyan
Additional Government Pleader
For Respondent : Mr.R.D.Ganesan

O R D E R

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

Heard Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the petitioner and Mr.R.D.Ganesan, learned counsel appearing for the respondent.

2. This Tax Case (Revision) has been filed by the Revenue challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai, dated 20.07.2004 in M.T.S.A.No.824/2002.

3. The question which has been framed by the Revenue is whether the export of garnet sand effected by the respondent / assessee is taxable and whether the benefit of the Exemption Notification No.773 would apply to the facts and circumstances of the case. The assessee/dealers of garnet sand were finally assessed for the assessment year 1992-1993 and 1993-1994, accepting the reported total and taxable turn-over. Subsequently, on verification of the records, the Assessing Officer revoked the

exemptions granted in favour of the assessee in respect of the said turnovers and passed revised assessment orders and held that the turnovers are taxable at 8 %. Subsequently, by separate orders, imposed penalty under Section 12 (3) (b) (v) of the TNGST Act, 1959, for both the assessment years. This was put to challenge by the assessee by way of an appeal before the Appellate Assistant Commissioner, who allowed the appeal. Challenging the same, the Revenue preferred an appeal before the Sales Tax Appellate Tribunal. The Appellate Tribunal, after considering the factual position, held that the contention of the State that the assessee has exported the garnet sand after processing and hence, it is a different commodity to claim exemption is incorrect, since there was no evidence to show the different commercial commodity emerged after processing. Further, it was observed that mere processing is not enough to come to the conclusion that the new commercial commodity emerged. Cleaning and employing measures for preservation are also a kind of processing, but the activities do not produce a different commercial commodity.

4. The Tribunal placed reliance on the decision of the Honourable Supreme Court in the case of Deputy Commissioner of Sales Tax Vs. Shiphy International reported in Vol.69 STC 325 as well as the decision in the case of Deputy Commissioner of Sales Tax. v. Pio Food Packers reported in 46 STC 63.

5. The Tribunal also vacated the penalty imposed on the assessee by virtue of the separate orders. On the above grounds, the Tribunal dismissed the appeal of the Revenue. Admittedly, there was no evidence to show that after the alleged cleaning process adopted by the respondent, a different commercial commodity emerged. As held by the Honourable Supreme Court in Shiphy International, every processing does not bring about a change in the character and identity of the commodity. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps different types of processing at each stage. With each processes suffered, the original commodity experiences change. But it is only when change or a series of changes take the commodity to the point whether commercially it can no longer be regarded as the original commodity, but instead is recognised as a new and distinct commodity that it can be said that a new commodity, distinct from the original, has come into being.

6. By applying the said decision to the case on hand, the only conclusion that can be arrived at is that the Department had no proof to show that a distinct and new commodity emerged after processing. Further, the Notification No.773 does not make any distinction with regard to the type of sand for which exemption was granted up to the year 1993-1994. In such circumstances, the Tribunal was justified in rejecting the appeal filed by the Revenue. Further, the deletion of the penalty by under Section 12

(3) (b) (v) of the TNGST Act, 1959 was also justified as it has been passed by separate orders. Thus, the question framed are answered in favour of the assessee and against the Revenue and the Tax Case Revision is dismissed. No costs.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

1 The State of Tamil Nadu
Represented by the
Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli – 627002.

2 The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Madurai.

3 The Appellate Assistant Commissioner (CT),
Tirunelveli.

+1cc to Special Government Pleader, SR.No. 55861
+1cc to M/S.R.D.Ganesan, Advocate SR.No. 55710

T.C.(R).(MD).No.178 of 2011
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JM/RSK/SAR 3/16.05.2017/3P/6C