BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.REVISON (MD)No.19 of 2011

The State of Tamil Nadu
Represented by the
Deputy Commissioner (CT),
Madurai Division,
Madurai. : Petitioner

Vs.

Tvl. Sri Ayyappan Agencies,
Madurai. : Respondent

PRAYER: Tax Case Revision Petition is filed under Section 38 of the TNGST Act, 1959 to revise the order of the Sales Tax Appellate Tribunal (AB) Madurai dated 21.01.2004 in Madurai Tribunal State Appeal No.193 of 2001.
(A.P.No.442/98 dated 05.10.1999 on the file of the Appellate Assistant Commissioner (CT), Madurai (South), Madurai against TNGST No.462825/93-94 dated 31.10.1998 on the file of the Commercial Tax Office, Chitrakara Street Circle, Madurai)

For Petitioner : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R
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[Order of the Court was made by T.S.SIVAGNANAM, J.]

This Tax Case Revision has been directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Madurai.

2.Heard Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the petitioner.

3.The learned Additional Government Pleader appearing for the petitioner submits that as per Entry 8 of Part D of the First Schedule to the TNGST Act, as it stood prior to 04.05.1998 prescribes tax at the rate of 10% on the sales of Butter and Ghee. The condition, that brand name should be registered, was imposed only with effect from 04.05.1998 and it is applicable from the assessment year 1998-99 onwards. Therefore, the Ghee sold by the dealers under the brand name “Ganesh Mark Ghee” is taxable at the rate of 10% irrespective of the fact whether the brand name is registered or not. On the above question of law, the revenue seeks to maintain this Tax Revision Petition.

4.We have heard the learned counsel for the petitioner and carefully perused the materials placed on record.

5.Though it appears that the above question of law framed by the revenue may arise for consideration in this case, on closer scrutiny we found that this question does not arise on account of the factual background, which was considered by the Appellate Authority.

6.The documents produced were re-appreciated and a finding has been rendered that unbranded ghee was sold by the respondent dealer. To that effect, it would be worthwhile to refer the Paragraph 9(a) of the impugned order, which reads as follows:

> 9(a)In this cases the ghee sold during the assessment years under dispute is taxable @ 4% / 5% if it is sold without any brand name as the case may be. The contention of the appellants/Revenue is that the ghee sold by the assesees during the assessment year are bearing the brand name called “Ganesh Brand”. They further submitted that the learned appellate Assistant Commissioner (CT) is not correct in coming to the view that even though the ghee sold was under brand name it has not been registered under the Trade and Merchandise Marks Acts, 1958, hence taxable @ 4% or 5%. In similar case, decided by us, in MTSA NO.54/98 dated 24.11.2003 in the case of Tvl.Viswagiri Traders, Dindigul, we have taken a view that the ghee sold by some other agents were sold under brand name and are liable to tax at higher rate @ 10% falling under item 8 in Part D of the First Schdule to the TNGST Act, 1959, because in the above case, the respondents had not proved with any documentary evidence by appearing before us that the ghee sold by them were under brand name. But in this case, the learned counsel strongly contended that the ghee sold by the respondents in all these cases are only unbranded item. He relied on the statement Thiru.Tml. Narayanasamy, who is the Principal in all these cases given before the Enforcement Wing Officers, wherein he

contended that

" I am the partner of the firm Tvl. T.M.L. Narayanasamy at the above address and manufacturing both branded and unbranded ghee. The branded ghee was only sold to other State dealers under CST Act, 156. The unbranded ghee was despatched locally through our consignment agents."

So, he relied on the statement and contended that the Enforcement Wing Officers as well as the Assessing Officers had not disproved this fact. In the above circumstances, we asked the learned counsel to prove with the documentary evidence that the ghee sold by the respondents in all these cases were unbranded item only. The learned counsel produced copy of Form XX delivery note in which the ghee has been sent from Kangeyam i.e from the Principal to the respondents, wherein it has been mentioned as "pure ghee". However, the sale bill issued by the principal was available in the assessment file bearing TNGST.No.5200012/96-97 relating to Raja vs. Subramania Chettiar Sons, Dindigul, who was one of the respondents in these cases, wherein it has been described as unbranded ghee. Thus, he contended that the documents clearly prove that the ghee sold by the respondents are unbranded items. He further pointed out that during the relevant year to levy higher rate of tax under First Schedule under Entry-1 in para-E/8 in para - D as the case may be, it is necessary that the ghee should be a product whose brand name should be registered under Trade and Merchandise Marks Act, 1958. The other kind of butter and ghee even though sold under brand name, will fall under 10-A of Part B of the First Schedule liable for assessment @ 4%/5% as the case may be. The learned counsel contended that the above point was relied on by the Appellate Assistant Commissioner (CT) which is correct and the prayer of the appellants to restore the order of the Assessing Officer require no consideration. Perusal of all these details which were putforth before us by the Revenue shows that they had not established in these cases that the ghee sold by the respondents were sold under brand name which is evident from the bills issue by the principals and the documents accompanied the goods. Therefore, we have no hesitation to uphold the view of the learned Appellate Assistant Commissioner (CT) and accordingly it is confirmed."

7.The Appellate Tribunal verified the Form XX, Delivery note in which the ghee has been sent from Kangeyam from the principal to the respondent, where it has been mentioned as pure ghee. However, the sale bill issued by the principal was available in the assessment file bearing TNGST.No.5200012/96-97 relating to Raja VS. Subramania Chettiar Sons, Dindigul, who was one of the respondents in these cases, wherein it has been described as 'unbranded ghee.

8.This factual contention, which was put forth before the Tribunal, was accepted by the Tribunal. Consequently, the appeals filed by the revenue against the order passed by the Appellate Assistant Commissioner, CT was rejected.

9.On the given facts and circumstances, we find that there is no question of law arising for consideration and the matter is purely factual, which has been considered by the Tribunal and decision has been taken. Thus, no grounds have been made out to entertain the revision petition. Accordingly, this Tax Revision Petition is dismissed. No Costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

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

2. The Deputy Commissioner (CT)
   Madurai Division
   Madurai.

3. The Appellate Assistant Commissioner (CT),
   Madurai (South), Madurai.

4. The Commercial Tax Officer,
   Chitrakara Street Circle, Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55764

GK/TSG
TE/JC : 22/05/2017 : 4P/6C

ORDER MADE IN
T.C.REVISION (MD)No.19 of 2011
03.05.2017