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.No.30 of 2011

The State of Tamil Nadu
Represented by the
The Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli 627 002. ...Petitioner

Vs.

Tvl. Sree Ramalinga Spinners(P) Ltd,
Rajapalyam . ...Respondent

Vs.

PRAYER: Tax Case Revision Petition is filed under Section 37 of the TNGST Act, 1959, to revise the order of the Sale Tax Appellate Tribunal (Additional Bench), Madurai dated 29.10.1999 passed in M.T.S.A.No.6/99.

For Petitioner : Mr.R.Karthikeyan
Additional Government Pleader
For Respondent : Mr.M.D.Ibrahim Ali

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 appellant and Mr.M.D.Ibrahim Ali, appearing for the respondent.

2.The Tax Case Revision has been filed by the State challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal in appeals filed against the assessment made on the respondent dealer. The question of law is whether the transfer of hank yarn obligation is akin to transfer of REP licence / exim scrips involving all the element of sale including bargaining between seller and buyer and consideration for such transfer.

3. The question has already been decided by the Honourable Supreme Court in the case of Rajaratna Mills Limited vs. Commercial Tax Officer-1, Palani in Civil Appeal No.62 of 2008, dated 08.04.2016, by passing the following order:

> "After hearing learned counsel for the parties, we are of the opinion that the High Court has rightly held that once the hank yarn obligation created by excess production is transferred in the form of scrip, thereafter it would take the character of goods and would be exigible to sales tax. The finding to this effect of the High Court is, thus, without blemish and does not call for any interference.
>
> It was also argued by the learned counsel for the appellant that it was not a case where the penalty should have been imposed. It was argued that since the hank yarn utilisation was transferred only for statistical / date purposes without giving actual delivery of the hank yarn, the penalty should not have been imposed. The High Court has not dealt with this aspect. We find that a specific plea was taken in this behalf in the writ petition filed before the High Court. It is submitted in the grounds mentioned in the appeal that this plea was raised before the High Court as well.
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> Normally, in such circumstances, we would have relegated the appellant to the High Court to raise this plea and would have called upon the High Court to decide the same. However, we find that the impugned order is of the year 2004 and no useful purpose would be served in remanding the case on this limited aspect to the High Court. More so, when the entire record to decide the issue is placed before this Court as well.
>
> Thereafter, we have considered the aspect of penalty as well on merits and find substance in the aforesaid contention of the learned counsel for the appellant.
>
> Thus, this appeal is allowed to a limited extent. While retaining that part of the order whereby liability of sales tax is imposed upon the appellant, we set aside the penalty that is imposed.

The appeal is disposed of in the aforesaid terms.”

4. Following the above referred decision of the Honourable Supreme Court, the Tax Case Revision is allowed to the limited extent. While retaining that part of the order whereby liability of sales tax is imposed upon the respondent dealer, the penalty imposed on the respondent is set aside.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu
   Represented by the
   The Deputy Commissioner (CT),
   Tirunelveli Division,
   Tirunelveli 627 002.

2. The Additional Judicial member,
   Tamil Nadu Sales Tax Appellate Tribunal (AB),
   Madurai.

+1cc to Special Government Pleader, SR.No.55863
+1cc to M/S. MOHAMED IBRAHIM ALI, Advocate, SR.No.55632

T.C.(MD)No.30 of 2011
04.05.2017

SDS/MR/22.05.2017/3P/5C