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

TAX CASE REVISION(MD) No.40 of 2011

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

Vs.

Tvl. Rajapalayam Co-operative
Milk Supply Society Limited,
Rajapalayam. .. Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai dated 25.05.2004 passed in M.T.S.A.No.337 of 2003.

For Petitioner : Mr.R.Karthikeyan,
Additional Government Pleader.
For Respondent : Mr.Lakshmi Sriram

ORDER

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

Heard Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the Petitioner/Revenue and Mr.Lakshmi Sriram, learned counsel appearing for the respondent.

2.This Tax Case Revision is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai in M.T.S.A.No.337 of 2003 dated 25.05.2004.

3.The respondent is the Rajapalayam Co-operative Milk Supply Society, who are assessed to tax for the year 1997-1998 under the TNGST Act by an order of assessment dated 08.05.2002. The dispute was with regard to the rate of tax that has to be levied on the turnover. Whether it is at 8% or at 1% on the sale of Milk Peda(பால்கோவா). The Assessing Officer disallowed the claim for exemption made by the respondent-society, who relied upon a notification issued in S.R.O.A.1968 of 1959, dated 01.04.1959 and levied tax at 8% under Entry 12 of Part C of the First Schedule to the TNGST Act and also levied penalty under Section 12(3)(b) of the Act.

4.Aggrieved over such order, the respondent-society preferred an appeal before the Appellate Assistant Commissioner. By order dated 05.09.2002, the Appellate Assistant Commissioner allowed the appeal and set aside the order of assessment made on the respondent-society.

5.Aggrieved by such decision, the Revenue filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, which was dismissed by order dated 25.05.2004, against which this revision has been filed.

6. On a perusal of the grounds raised in the revision petition, we find that the only one ground which appeared to be raised as a question of law is Ground No.3, wherein it has been stated that the correct rate of tax is 8% under Entry 12 of Part C of the First Schedule. However, the question is as to whether the respondent-society is entitled to the benefit of the notification dated 01.04.1959 is a factual matter, which was considered by the Appellate Tribunal in great detail. By applying said notification, the rate of tax would be 1% and the benefit of the notification was extended only to Co-operative Milk Supply Societies and Unions. The revenue miserably failed to establish before the Tribunal as well as before the Appellate Assistant Commissioner that such notification was either withdrawn or recinded or does not apply to the respondent-society.

7. Thus, unless and until, the Revenue had been successful in establishing this fact, the question of considering the legal position does not arise. Thus, we find that there is no question of law arising for consideration in this revision. Hence, this Tax Case Revision is dismissed. No costs.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1.The Additional Judicial member,
Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Madurai.
2.The Deputy Commissioner (CT),
Tirunelveli.
+1cc to Special Government Pleader, SR.No.55763

ORDER MADE IN
TAX CASE(MD) No.40 of 2011
03.05.2017

SDS/JC/SAR 3/12.05.2017/2P/4C