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 REVISION(MD)No.41 of 2011

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

Vs.

Tvl.Krishna Mines
Tirunelveli Junction .. 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.592 of 1999 against the order dated 29/09/1999 in Appeal No.46/98 passed by the Appellate Assistant Commissioner (CT) Tirunelveli, against the order dated 27/11/1997 in TNGST No.501185/84-85 passed by the Commercial Tax Officer Tirunelveli for the assessement year 1984-85.

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.592 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(CO)

/True Copy/

Sub Assistant Registrar

To
1. The Deputy Commissioner(CT)
   Tirunelveli Division.
2. The Additional Judicial Member and
   The Additional Department Members,
   TN Sales Tax Appellate Tribunal(AB) , Madurai
3. The Appellate Assistant Commissioner(CT),
   Tirunelveli.
4. The Commercial Tax Officer,
   Tirunelveli.

+1cc to Mr.S.Karunakar, Advocate Sr.No.55840
+1cc to The Spl.Government Pleader. Sr.No.55946

cmr/ssl/gcg

vb/rsk/sar4/29.05.2017/2p/7c

ORDER MADE IN
TAX CASE REVISION(MD)No.41 of 2011
05.05.2017