IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Revision) Nos.11 and 12 of 2012
and M.P.Nos.1 and 1 of 2012

Tvl.S.K.Rainguards Products,
No.86, Vannagaram Road,
Athipet, Chennai-58. ... Petitioner
in both the Revisions

-vs-

The State of Tamil Nadu,
Rep. by The Deputy Commissioner (CT),
South Zone, Chennai. ... Respondent
in both the Revisions

Common Prayer: Tax Case (Revisions) filed under Section 38 of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959 against the order of the Sales Tax Appellate Tribunal (Main Bench), Chennai dated 17.08.2010 in STA.No.132/2007 and 133/2007 for the assessment year 2002-03 and 2001-02.

For Petitioner
in both the Revisions : Mr.S.Raveekumar

For Respondent
in both the Revisions : Mr.Mohammed Shaffiq
Special Government Pleader

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COMMON ORDER

(Order of the Court was made by T.S.Sivagnanam, J.)

These revisions filed by the dealer are directed against the order of the Sales Tax Appellate Tribunal (Main Bench), Chennai dated 17.08.2010 in STA.No.132/2007 and 133/2007 for the assessment year 2002-03 and 2001-02.

2.The revisions have been admitted on 03.04.2012 on the following substantial question of law:

> "Considering the facts and circumstances of the case, whether the Tribunal was right in holding that expansion joint filler board is assessable under Entry E/8 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 and 16% as against the claim of the assessee to have the rate of tax fixed at 12% under the residual entry?"

3.The question is with regard to the rate of tax leviable on the product dealt by the petitioner. The name of the product is "Expansion Joint Filler" which is a soft material made of sugar cane waste and in the revised assessment under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) for the assessment year 2002-03, the Commercial Tax Officer, Koyambedu

Assessment Circle by order dated 15.06.2006 held that the product is taxable at 12% as it is classifiable under Entry 40 of Part D of Ist Schedule of the TNGST Act. However, prior to that in the Central Sales Tax (CST) assessment, which is the subject matter before us, namely, for the assessment years 2001-02 and 2002-03, the authority has classified the product under Entry 8 of Part E of Ist Schedule of the TNGST Act. No doubt on the date when he completed the assessment under the Central Sales Tax Act (CST Act) vide assessment orders dated 31.03.2005 and 13.07.2005, the product was classified under Entry 8 of Part E of Ist Schedule of the TNGST Act. However, the said order stood revised by order dated 15.06.2006, wherein the product was classified under Entry 40 of Part D of Ist Schedule of the TNGST Act and 12% tax was payable.

4.Considering these facts, we are of the view that the Tribunal ought not to have taken a different stand and held that the product was classified under Entry 8 of Part E of Ist Schedule of the TNGST Act when there is no fresh material placed before the Tribunal to examine the nature of the product. Admittedly, no remand report was called for regarding use of the product, its characteristics were not gone into but these aspects were dealt with by the Assessing Officer while completing the assessment under the TNGST Act vide order dated 15.06.2006 for the assessment year 2002-03. Hence, we are of the view that the product dealt with by the assessee is classifiable under Entry 40 of Part D of Ist Schedule of the TNGST Act and taxable at 12% and not under Entry 8 of Part E of Ist Schedule of the TNGST Act. Accordingly, these tax case revisions are allowed and the substantial question of law is answered in favour of the assessee. No costs. Consequently, connected M.Ps are closed.

(T.S.S.,J.) **(N.S.K.,J.)**
13.12.2018

cse
Index: Yes/No
Internet: Yes/No

To

1.The State of Tamil Nadu,
Rep. by The Deputy Commissioner (CT),
South Zone, Chennai.

2.The Sales Tax Appellate Tribunal (Main Bench),
Chennai.

T.S.SIVAGNANAM, J.
and
N.SATHISH KUMAR, J.

cse

T.C.(R) Nos.11 and 12 of 2012
and M.P.Nos.1 and 1 of 2012

13.12.2018