IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.133 of 2018

The State of Tamil Nadu,
Rep., by the Joint Commissioner (CT),
Chennai (North) Division,
Chennai-600 006. ... Petitioner

-vs-

Tvl.Reliance Bearing Corporation,
No.119, Thambu Chetty Street,
Chennai-600 001. ... Respondent

Tax Case (Revision) filed under Section 36 of the Tamil Nadu General Sales Tax Act, 1959 to set aside the order dated 07.08.2014 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai in TA No.145/2008 and against the order dated 12/10/2007 and made in Appeal No.A.P.9/04 on the file of the Appellate Assistant Commissioner (CT) I, Chennai 108 and against the order dated 28/11/03 and made in Assessment No.TNGST/0020328/02-03 on the file of Commercial Tax Officer, Harbour II, Assessment circle.

For Petitioner : Mr.V.Haribabu,
Additional Govt. Pleader (Taxes)

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

This Tax Case (Revision) is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 07.08.2014 in TA No.145/2008.

2.The Revenue has filed this Tax Case (Revision) raising the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that bearing would fall under item 3 of 8th Schedule to the Tamil Nadu General

Sales Tax Act 1959 when there is specific entry under 66 of part C of 1st Schedule to the Tamil Nadu General Sales Tax Act 1959?

(ii) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the respondent/assessee is eligible to sell the bearings for concessional rate of tax against Form XVII declarations under section 3(5) of TNGST Act when the Section 3(5) contemplate sale of goods must be in the character of plant & machinery for manufacture of goods?

(iii) Whether on the facts and the circumstances of the case, the Tribunal is right in law in not considering the clarification issued by the Commissioner of Commercial Taxes in K.Dis.Acts Cell I / 47980 / 2001 dated 5.11.2001?

(iv) Whether on the facts and circumstances of the case, the Tribunal is right in holding that bearings could be sold against Form XVII which must be in the character of plant & machinery and its parts whereas the bearings are only consumable items and is the nature of revenue expenditure?”

3.We have heard Mr.V.Haribabu, learned Additional Government Pleader (Taxes) appearing for the petitioner.

4.The respondent/assessee was a dealer in bearings and accessories, which were finally assessed on a total and taxable turnover of 15,23,698/- against the reported turnover of Rs.15,23,698/- and Rs.15,22,598/- respectively for the assessment year 2002-03 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") vide assessment order dated 28.11.2003.

5.The Assessing Officer, on verification, found that the respondent/dealer effected sales of bearings under Section 3(5) of the TNGST Act against Form XVII declaration for lower rate of tax. The Assessing Officer disallowed the claim of concessional rate of tax on the said turnover and assessed the turnover to tax at 10% on the ground that bearings have specific entry in the I Schedule and they are not eligible to be sold against Form XVII declaration for lower rate of tax at 3% under Section 3(5) of the TNGST Act. The dealer preferred appeal before the Appellate Assistant Commissioner (CT)-I, in A.P.No.9 of 2004, which appeal was dismissed by order dated 12.10.2007, holding that the forms filed for an item not specifically enumerated in the VIII Schedule become invalid. Aggrieved against the order of the first appellate authority, the respondent/dealer filed second appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, who by order dated 07.08.2014, allowed the appeal filed by the dealer and set aside the order of the Appellate Assistant Commissioner. Aggrieved by the same, the Revenue has preferred the present Tax Case (Revision).

6.This Court, in an identical matter, in the case of The State of Tamil Nadu vs. Tvl.Phoenix Trading Corporation, [Tax Case (Revision) No.132 of 2018; Dated 30.08.2018] took note of the observations in the order passed by the Appellate Assistant Commissioner and upheld the decision of the Appellate Assistant Commissioner. The relevant portions of the order of this Court read as under:

> "6.After hearing the learned Additional Government Pleader appearing for the petitioner and carefully perusing the materials placed on record, we find the order passed by the Appellate Assistant Commissioner (CT) to be a well reasoned order wherein, apart from taking into consideration the factual position, the Appellate Assistant Commissioner (CT) has taken note of the settled legal position on the subject issue. After analysing the facts, the Appellate Assistant Commissioner (CT) has applied the legal position and taken a decision in favour of the respondent/dealer. The relevant portion of the order passed by the Appellate Assistant Commissioner (CT) is quoted hereunder for better appreciation.
>
> > "It is further to be noticed that the Eighth Schedule itself, when providing for exclusion, uses the words "other than those specifically mentioned in the First Schedule" while referring to the machineries of all kinds. Such an exclusion is not found in sub-item (ix) of Serial No.3 if the Eighth Schedule. It will be adding to the words to give such a construction in the said sub-item, to say that Bearings gets excluded because they are specifically mentioned somewhere else in the First Schedule.
> >
> > In view of the above, even though the bearings is not mentioned in the eighth Schedule, parts and accessories of machinery are included under item 3 of the eighth Schedule, and bearings can be treated only as part of machinery. Therefore, the contention of the appellant that bearings are parts of machinery which fall under entry 3 of the eighth schedule and eligible for concessional rate of tax on production of Form-XVII

declaration have some force."

7.Further, the Appellate Assistant Commissioner (CT) took note of an order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) in the case of Tvl.Sivakasi Off Set Printers vs. State of Tamil Nadu in T.A.Nos.82 and 783 of 2000, dated 09.10.2003, with regard to supply of printed materials viz., 'Cycle Booklets' as per the manufacture, which are not despatched in an assembled condition, but in a knocked down condition an assembling is done by the buyers/traders on the basis of the instructions given in the 'Cycle Booklets'.

8.In the said decision, the Tribunal followed the decision of this Court in the case of State of Tamil Nadu vs. Madras Petro Chem Ltd. reported in [1993] 89 STC 438 (Mad.) and held that concessional rate of tax at 3% is attracted and sales can be effected against Form XVII declarations.

9.We find from the memorandum of grounds of appeal that the Revenue has not disputed the factual position, which was taken note of by the Appellate Assistant Commissioner (CT), which has not been adequately dealt with in the order passed by the Tribunal. Thus, on facts, we are satisfied that the Appellate Assistant Commissioner (CT) was fully justified in allowing the appeal and considering the factual matrix. We are, therefore, of the view that the substantial questions of law, which have been raised, do not arise for consideration in this Tax Case.

10.Accordingly, the Tax Case (Revision), filed by the Revenue, is dismissed, the order, passed by the Appellate Assistant Commissioner (CT)-I dated 17.09.2004, is restored and the substantial questions of law, framed for consideration, are left open. No costs."

7.Thus, in view of the above, we are of the view that the substantial questions of law, which have been raised, do not arise for consideration in this Tax Case (Revision).

8.Accordingly, this Tax Case Revision is dismissed and the substantial questions of law, framed for consideration, are left open. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Joint Commissioner (CT),
The Government of Tamil Nadu,
Chennai (North) Division, Chennai-6.

2.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Chennai.

3.The Commercial Tax Officer,
The Commercial Taxes Department,
Harbour-II Assessment Circle,
Station No.191, NSC Bose Road,
Chennai-600 001.

4.The Appellate Assistant Commissioner (CT)-I,
VI Floor, Kuralagam Annexe, Chennai-108.

+1cc to Special Government Pleader SR.No.60277

VP(CO)
sm:12.10.2018

T.C. (R) No.133 of 2018