

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

T.C.(R).No.79 of 2018

The State of Tamil Nadu,
rep. by the Joint Commissioner (CT)(FAC),
Chennai (North) Division,
Chennai - 6. .. Petitioner

Vs.

Tvl.Lalchand Bhimraj
No.11, Nyniappa Naicken Street,
Chennai-3. .. Respondent

Prayer: Tax Case Revision Petition filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order dated 06.02.2012, passed in S.T.A.No.50 of 2004, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

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

ORDER
(Order of this Court was made by S.MANIKUMAR, J.)

Tax Case Revision Petition is filed to revise the order dated dated 06.02.2012, passed in S.T.A.No.50 of 2004, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, by which, the

Tribunal upheld the order of the Appellate Assistant Commissioner, setting aside the assessment on a turnover of Rs.1,19,000/- at 11% and penalty.

2. Short facts leading to the Tax Case Revision are that Tvl.Lalchand Bhimraj was finally assessed for the year 1996-97 under the Central Sales Tax, 1956, on a total and taxable turnover of Rs.1,53,86,140/-, by the Commercial Tax Officer, Evening Bazaar Assessment Circle, vide proceedings CST.No.21032/96-97, dated 29.08.2002. The appellant has disputed the assessment sale of sugar and levy of penalty of Rs.19,734/-, under section 9(2) of the Central Sales Tax Act, 1956 read with Section 16(2) of the Tamil Nadu General Sales Tax Act, 1959. On appeal, the Appellate Assistant Commissioner (CT)-I allowed the appeal and thereafter, the Assessing Officer reassessed the sale of sugar, as the item was not 100% sugar and it contained 96% of Sucrose and 4% of Starch.

3. The respondent dealer sold Sugar N.F. (National Farinuiary, USA) to an inter state dealer, Tvl.Smith Kline Bleacham Asia (P) Ltd., Bangalore, for Rs.1,19,600/-, vide Invoice No.11161, dated 24.08.96. The consignment was intercepted at Poonamallee Check post and the goods were detained. The dealer moved the Tamil Nadu Taxation Special

Tribunal, Chennai, for release of goods. The Tribunal directed to send a sample of the goods to the Government Analyst, Food, Analysis Laboratory, King Institute, Guindy, Chennai-32, for testing. The sample was found to have contained 96% of sucrose and about 3% of corn starch. Since there was admixture of starch in it to the extent necessary for purpose required for its use, the Assessing Officer has made assessment of tax on the turnover of Rs.1,19,600/- at 11% towards sale of sugar and levied penalty, under Section 16(c) of the Act.

4. Aggrieved by the order of the Assessing Officer, the respondent-dealer filed an appeal before the Appellate Assistant Commissioner (CT), on the ground that the consignment contained only sugar powder and therefore, it is an exempted commodity, falling under Entry 5 of the Third Schedule to the TNGST Act, 1959. It was further contended that the consignment consisted of sugar powder and it is borne out by the Certificate in Ref.R.No.8486/PVT/96, dated 09.10.1996, issued by the Government King Institute Campus, Guindy, wherein, it has been clearly stated that the sample was found to contain 96.3% sucrose and also 3% of corn starch and therefore, the assessee contended that levy of penalty was wrong and there was no suppression and all the turnovers were available in the books of accounts. Considering the facts and

circumstances of the case, the Appellate Assistant Commissioner (CT)-1, Chennai, vide order, dated 31.03.2003, held as follows:

"5. I have heard the arguments of both the sides with connected records. The Assessing Officer has assessed the appellants on a turnover of Rs.1,19,600/- at 11% towards the sale of sugar. The Assessing Officer in his order, dated 29.08.2002, has observed as follows:

"When they sold sugar N.F. for Rs.1,19,600/- vide invoice No.11161/24.8.96 to Tvl.Saith Kline Beachem "Asia Private Limited, Bangalore. It was intercepted at Poonamalle Checkpost on 21.08.96 and detained as the goods transported are different from the goods noted in the invoice. They moved the Tamil Nadu Taxation Special Tribunal for the release of the goods. The Tribunal in its order in OP.1491 of 1996, dated 06.09.1996 has directed to release the goods on furnishing a bank guarantee for a sum of Rs.15,000/- and sending the sample for test. The Government analyst, Food analysis Laboratory, King Institute, Guindy, Chennai-32, in their test reported has opined that the sample of sugar powder was analysed and found that it contain starch, sucrose total ash and ash insoluble.

Thus, it is clear that the goods dealt by the dealer is not sugar and is proposed to be treated as taxable general goods and it is proposed to levy tax at 11% on the turnover of Rs.10,81,080/-.

The Learned Advocate who has appeared at the time

of final hearing has argued that sucrose is sugar and the Assessing Officer has levied tax without any basis. The Learned Advocate has further argued that the Assessing Officer has not understood the meaning of sugar properly since sucrose is sugar even if the contents of Sucrose at 96% in the sugar. The Learned Advocate has also relied on the case law reported in 117 STC 108, 114 STC 7, 19 STC 24 and in 61 STC 190. The Hon'ble High Court of Kerala reported in 61 STC 190 in the case of the State Trading Corporation of India Limited v. The Assistant Commissioner (Assessment) and another has held as follows:-

"Sugar as defined in Item No.1 of the First Schedule to the Central Excise and Salt Act, 1944".

Sugar is defined in the First Schedule to the Central Excise and Salt Act, 1944 (The Excise Act) under Entry No.1 as Follows:-

"Sugar produced in a factory ordinarily using power in the course of production of sugar. "Sugar means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105° Centigrade, would be more than ninety".

The Learned Advocate has also filed an Analytical reported received from the Department of Public Health and Preventive Medicine wherein the Government has analysed and certified as follows:

The sample received from you has been analysed with results as under:

Appearance	: While Fine Powder
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Moisture : 0.35%

Extraneous matter
Insoluble in water
Comprising of Starch : 3.3%

Microscopic Examination: Corn

Content of Sucrose : 96.3

Total ash : 0.1%

Ash insoluble in (dil)
HCL acid : 0.01%

Test for starch : Positive

Test for Saccharin : Negative

Test for Sulphan-di-oxide: Negative

The sample is found to contain 96.3% of sucrose and about 3% of corn starch.

The Assessing Officer has assessed the appellants since the item sold by the appellants is not 100% sugar and it contains 96% sucrose and 4% of starch. According to oxford dictionary "Sucrose" means a compound which is the chief component of cane or beat sugar'. The argument of the learned Advocate is reasonable and justifiable in view of the case Law referred supra. The contention of the Assessing Officer that the item contains 4% starch cannot be taken as valid ground for rejecting the claim of the appellants which is very negligible which has also been decided in the court of law in the cases referred supra. In view of the above, the assessment made by the Assessing Officer on a turnover of

Rs.1,19,600/- at 11% is set aside.

PENALTY: The Assessing Officer has levied penalty of Rs.19,734/- towards the balance of tax assessed and paid. The Learned Advocate has also argued that penalty levied by the Assessing Officer is wrong since the assessment is made under Section 12(1) and not under Section 12(2). Penalty cannot be levied in view of the decision reported in 28 STC 700 and 125 STC 505. The arguments of the Learned Advocate is reasonable and justifiable. Penalty cannot be levied in view of the decision referred supra. Therefore, the penalty levied is deleted.

In fine, the appeal stands ALLOWED."

5. Against which, State preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal and the same was dismissed on 06.02.2012, as hereunder:

"On perusal of records, it shows, on the basis of the analytical report from the King Institute, Guindy, Madras and also the definition explained in Entry 1 of the Central Excise and Salt Act, 1944, the Appellate Assistant Commissioner came to a conclusion that the disputed product is sugar. In this appeal before this Tribunal, the appellant/State have not disputed regarding the nature of product, i.e., whether it is sugar or not? But they have taken a plea that at Page 151 of the CST assessment file, the assessee themselves have stated that they have purchased sugar from the local dealers, but no local purchase of sugar N.F. reported in the A-9 returns filed the assessee being the importer of sugar

from other countries, the sale of imported sugar is liable to tax. The sale made by the respondent is liable to tax in the absence of local purchase details. On perusal of the Central Sales Tax assessment file at Page 749, dated 15.07.2002, the department issued a pre-revision notice to the respondent/assessee and he given reply on 26.08.2002, that "we have purchased sugar from local registered dealers and repacked it and sold it to the customers. Hence, there is no manufacturing activity are mixing is involved." It was found at the Page 751 of the CST assessment file. In the State appeal, the State agitated the dispute of turnover regarding invoice No.11161 and disputed turnover of Rs.1,19,600/- and the tax dispute is Rs.13,156/-. On perusal of the TNGST assessment file, the respondents have filed A-9 returns along with A-1 monthly returns for the year 2006-07 under Tamil Nadu General Sales Tax Act, 1969, in which, they have disclosed sugar purchased from local registered dealers. So it cannot be presumed that the respondent/assessee have imported sugar and sold locally. So in this aspect, the order of the Appellate Assistant Commissioner is correct one. Hence, we feel that there is no necessity to interfere in the order of the Appellate Assistant Commissioner and we hereby upheld the order of the Appellate Assistant Commissioner.

In fine, the State Appeal is dismissed."

Revision, on the following substantial questions of law:-

“(1) Whether the Tribunal is right in holding that the dealer has purchased sugar, when they categorically admitted before the Tamil Nadu Sales Tax Appellate Tribunal that the product is sugar N.F. according to standard specification of N.F. (National Farinuiary, USA) and it is used as sweetening agent in medicines.

(2) Whether the Tribunal is right in holding that the dealer dealt with goods is only sugar whereas the goods claimed by the dealer as Sugar N.F.

(3) Whether the Tribunal is right in holding that the product is sugar when the Government analytical report specify that the goods in question is having 96% of Sucrose and rest of 4% Starch and Ash as insoluble.

(4) Whether the Tribunal has erred in not considering the report submitted by the Government Food Analyst Laboratory, King Institute which opined that the product is mixture of sucrose and starch and therefore, it can be safely presumed that the product is not 100% sugar.

(5) Whether the Tribunal is right in holding that the commodity is sugar whereas the dealer themselves admitted it is sweetening agent used for medicines.

(6) Whether the tribunal is right in deleting the penalty levied under section 12(2) holding that the assessment is made under section 12(1) of Act when the assessment is made but for inspection conducted by

checkpoint, otherwise the transaction not brought into light."

7. Supporting of the above substantial questions of law, the Joint Commissioner (CT), Chennai (North) Division, Chennai, has submitted that the respondent, dealing with drugs and raw materials, is not entitled to deal with either indigenous sugar or imported sugar. He further submitted that the respondent purchased sugar N.F (National Farinuiary, USA) and that the same is not reported in A-9 returns submitted before the Assessing Authority. Government Analyst, namely, Food Analysis Laboratory, King Institute, Guindy, Chennai, in the test, has reported that on analysis of the sample of sugar powder, it was found that it contains starch, sucrose total ash and ash insoluble. Therefore, the sample report categorically states that the goods dealt with, by the respondent is not sugar and hence, it is liable to be levied tax @ 11%, under entry 67 of part D of the First schedule.

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8. Revision petitioner has further submitted that Analytical Report of the Government Analyst has proved that the goods dealt by the respondent is having sugar content of 96% alone and rest of the contents are Starch and Ash and therefore, submitted that it cannot be termed as

respondent themselves have admitted before the Tamil Nadu Taxation Special Tribunal that they had bought sugar in granules and powdered them to Sugar N.F., and therefore, the Tribunal ought to have held that the goods dealt with by the respondent is not a sugar, but a sweetening agent in medicine and therefore, liable to tax under residuary Entry 67 of Part D of the First Schedule.

Heard the learned counsel appearing for the parties and perused all the materials available on record.

9. Sugar is defined in Item No.8 of the First Schedule to the Central Excises and Salt Act, 1944 (Act 1 of 1944), which means any form of sugar containing more than 90 per cent of sucrose. Sugar defined in item No.1 of the First Schedule to the Central Excise and Salt Act, 1944 (The Excise Act) under Entry No.1, as follows:

"Sugar produced in a factory ordinarily using power in the course of production of sugar. "Sugar means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight to 105 degree centigrade, would be more than ninety."

10. It is the admitted case of the State that the sample of the

consignment, viz., sugar powder, was sent to the Government Analyst, viz., Food Analysis Laboratory, King Institute, Guindy, Chennai-32, for testing and that the same was found to have contained 96% of sucrose and about 3% of corn starch.

11. In **Rasoi Products v. Commercial Tax Officer** reported in **(1982) 51 STC 248 (Cal)**, the Calcutta High Court held that when pepper, black pepper, white pepper and turmeric are powdered, there is no substantial change in the commodities and that the powders are not again liable to sales tax.

12. In **Ram Bhadur Takkur Takkur (P) Ltd. v. Coffee Board** reported in **[1991] 80 STC 199**, this Court held that when coffee seeds are powdered and coffee powder results, there is no substantial change in the identity of the two goods for purposes of sales tax.

13. In **New Swastik Flour Mill v. State of Karnataka** reported in **[1992] 84 STC 49**, following the Patna High Court decision in **Dhanbad Flour Mills v. State of Bihar [1989] 75 STC 47**, the Karnataka High Court held that atta, maida and soji which are produced out of wheat, though different in form from the parent substance, they are nothing but wheat

in substance for purposes of the sales tax law.

14. In **Nazareth Foods (P) Ltd v. The Assistant Commissioner (CT)** [W.P.Nos.11121 to 11124 of 2011, dated 29.04.2013], a Hon'ble Division Bench of this Court, while dealing with the grant of exemption on the sale of "coriander powder" and "turmeric powder", held as follows:

"In view of the above, the Court has no hesitation to hold that the goods, namely powder form of turmeric and coriander, continue to enjoy the benefit of exemption despite their being a specific omission of the powder form from 1.1.2007 to 31.3.2008. The benefit of exemption granted based on returns filed is in order."

15. Sugar is defined in Item No.8 of the First Schedule to the Central Excises and Salt Act, 1944 (Act 1 of 1944), which means any form of sugar containing more than 90 per cent of sucrose. Test report states that the sample sugar contained 96.3% of sucrose. Section states any form, which includes powder form also. When sugar is made into powder, it does not change the "substantial identity and character" or "essential nature" and it does not lose their natural form. Mere change into

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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powdered form, does not change the "essential nature" of the commodity. Decisions quoted apply to the case on hand. In view of the above discussion and decisions, the substantial questions of law raised are answered against the revenue and this tax case revision is dismissed. No costs.

[S.M.K., J.] [M.G.R., J.]
28.03.2018

Index: Yes/No

Internet: Yes/No

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To

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

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T.C.(R).No.79 of 2018