IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

T.C.No.72 of 2009

M/s.Manali Petrochemical Ltd.
97, Mount Road
Guindy, Chennai – 600 032. .. Petitioner/Appellant

Vs

The State of Tamil Nadu
Rep by the Deputy Commissioner
of Commercial Taxes
Chennai South Division
Chennai. .. Respondent/Respondents

Prayer : Tax Case filed under Section 38 of the TNGST Act, 1959 read with Rule of the TNGST Rules, 1959, praying to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in T.A.No.890/2002 dated 16.12.2008 against the order of the Appellate Assistant Commissioner(CT)V, Kancheepuram in A.P. No. 211/2000 dated 13.12.2001 related to the Assessment order in TNGST 6220368/94-95 dated 31.03.2000 by the Commercial Tax officer, Saidapet, Assessment Circle.

For Petitioner : Mr.B.Raveendran

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

ORDER

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

This tax case filed by the assessee is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, Chennai in T.A.No.890/2002 dated 16.12.2008 for the Assessment Year 1994-1995 under the Tamil Nadu General Sales Tax Act, 1959.

2. This tax case has been admitted on the following substantial question of law :

"Whether on the facts and circumstances of the case, the Appellate Tribunal is right in sustaining the levy of tax @ 12% on sales of Gas Chromotograph and

Servo Type Local Transmitter when the same are electronic goods liable to tax @ 3%?”

3. The question which falls for consideration is whether the equipments namely Gas Chromotograph and Servo Type Local Transmitter used by the petitioner as machinery in the manufacturing plant are electrical equipments per se or electronic equipments. This issue has to be decided for ascertaining the rate of tax payable by the assessee which had been proposed in the revision notice issued by the Assessing Officer. The petitioner had submitted then reply contenting that the aforesaid equipments which is in dispute are electronic equipments and are taxable at 3% under Item 50 Part-B of First Schedule to the Tamil Nadu General Sales Tax Act, 1959. However, the Assessing Officer, bunched up these equipments along with other equipments namely Capacitor Bank, Relay and Control Panel etc., and referred all the equipments as electrical equipments and levied tax at 12%.

4. The petitioner filed an appeal before the Appellate Assistant Commissioner (CT) Kancheepuram in Appeal No.211/2000. Before the Appellate Authority, the petitioner sought to substantiate its case by producing the Technical Write-up of the equipments and claimed that the equipments are electronic items/electronic assemble. The Appellate Commissioner vide his order dated 13.12.2001, dismissed the appeal thereby confirming the order of the Assessing Officer. Challenging which, the petitioner-company had preferred an appeal in T.A.No.890/2008 before the Tamil Nadu Sales Tax Appellate Tribunal, which appeal was partly allowed and partly remanded by the Tribunal vide its order dated 16.12.2008. This order is under challenge in this tax case.

5. Heard Mr.B.Raveendran, the learned counsel for the petitioner and Mr.VHaribabu, learned Additional Government Pleader (Taxes).

6.1 We have perused the order passed by the Appellate Assistant Commissioner and found that in Paragraph No.4 (ii) of the said order, the Appellate Authority has referrred to the technical write-up given by the assessee, but has not given any specific finding/reasoning why the equipments viz., Gas Chromotograph and Servo Type Transmitter are treated as electrical equipment under Item 7 of the Part 'D' of the Ist Schedule of the Act and why the technical write-up produced by the assesse was rejected.

6.2. Further, the petitioner had carried the matter on appeal before the Sales Tax Appellate Tribunal and this appeal too ended with the same facts.

7. As pointed out, the Appellate Assistant Commissioner has not discussed about the technical write-up though he has referred it in his order. There is no finding to to establish that the equipments used by the petitioner are electrical items. Furthermore, we find that the Appellate Assistant Commissioner neither rendered an opinion that the technical write-up supports the case of the assessee or otherwise. Thus, we hold that a factual exercise is required to be done by going through the technical write-up, and if the equipments are still available, inspection of the equipments should also be done.

8. For the above reasons, we deem it appropriate that the matter should be remanded for fresh consideration. Accordingly, this tax case is allowed and the impugned order is set aside and the matter is remanded to the Assessing Officer, who shall consider the submissions made by the petitioner and examine as to whether those equipments are electrical or electronic equipments. The authorised representative of the petitioner should be afforded an opportunity of personal hearing before a decision is taken. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To:
1. The Deputy Commissioner
of Commercial Taxes
Chennai South Division
Chennai.

2. The Appellate Assistant Commissioner(CT V)
Kancheepuram.

3. The Commercial Tax officer
Saidapet Assessment Circle.

+1 CC to Mr.B. Raveendran, Advocate sr 40548.
+1 CC to The Govt. Pleader sr 40222.

T.C. No.72 of 2009

GJII(CO)
SP(12/07/2018)