IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.16942 of 2009
& M.P. No.1 of 2009

Tvl.Avanti Feeds Ltd.,
rep. By its Senior Manager
(Accounts) Y.Ramachandram
Manjakollai, Nagapattinam.

...Petitioner

Vs

The Commercial Tax Officer,
Nagapattinam.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in TNGST 3901998/2004-05 dated 01.06.2009 and quash the same as illegal, arbitrary and without authority of law.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.Hariharan, G.A.

O R D E R

The petitioner challenges an order of assessment dated 01.06.2009 for the period 2004-05 passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act').

2. The petitioner is engaged in the manufacture and sale of bacterial culture/organic manure. The issue that arises is the classification of certain products sold by the petitioner, which it claims as exempt from tax on the ground that the same would

fall under the categories of aqua feed/bacterial culture/organic manure. The petitioner has produced a certificate issued by the Principal Secretary and Head, Fisheries Research Station, Acharya N.G.Ranga Agricultural University, Kakinada, Andhra Pradesh, which specifically refers to the following products - 1. Bio Marine, 2. Ecornax, 3. Zoonami, 4. Promarine, 5. Combax, 6. Nutimix, 7. Ultimax, 8. Minermate, 9. Minerex, 10. O2 Marine, 11. O2 Max, 12. D.Flow, 13.D.O.Tuff, 14.Bio-Tuff. After verification of the aforesaid products, the products have been classified by the expert authority as follows:

Organic Manure (Bacterial Culture)

1. Bio Marine
2. Ecomax
3. Zoonami

3. The expert also confirms the position that the products are environmentally friendly and compatible, and utilisation of the same is for maintenance of water quality and production of healthy shrimps. The annexure to the report which contains the product parameters, the composition and the purpose, makes it apparent that the products which have been classified as organic manure (Bacterial Culture) would fall squarely within the ambit of Entry 7 of the Third Schedule to the Act. The Entry reads as follows:

> 'Entry 7. Bacterial culture for agricultural purpose, organic manures and all kinds of seeds including green manure seeds, excluding oil seeds those described in Second Schedule.'

4. The Assessing Authority after considering the claim of exemption proceeded on the basis of a clarification issued by the Commissioner of Commercial Taxes in the case of a third party assessee. The clarification is, upon a query posed to the Government Advocate in this respect, said to be unavailable and the Court thus does not have the benefit of the same. The clarification has been issued in response to a query raised by one Tvl.Sea Queen Agencies, Vedaranyam, where the nature of activity carried on by the assessee therein on the specific commodity dealt with by it is unclear. There is no specific averment to the effect that the products dealt with by the third party assessee is the same as that dealt with by the petitioner herein. The Commissioner has, in that case, opined that the commodities dealt with by the third party dealer would be taxable at highest rate.

5. At paragraph 6 of the counter, the Revenue relies on Entry 9 of 11th Schedule, which is patently incorrect insofar as there is no 11th Schedule to the Act at the relevant point in time. Mr.Hariharan, learned Government Advocate refers to Entry 40 of the First Schedule to the Act, which is a residuary entry taxing 'all other goods not specified elsewhere in any of the schedules' at the highest rate of tax.

6. On a careful analysis of the product description placed on record by the petitioner in regard to Bio Marine, Ecomax and Zoonami, it appears clear that these products are organic manures that are used for environmental protection and stability in prawn hatcheries and shrimp culture. The order of the Assessing Authority is completely bereft of any facts at all in support of his conclusion adverse to the petitioner and reliance is placed solely on the clarification issued in the case of the third party dealer.

7. Mr.Hariharan requests that the mater may be remanded back for de novo consideration. I see no reason to accede to this request insofar as the period of assessment is 2004-05 and there is a lapse of 15 years from the period of assessment till date. The Assessing Authority should not, in my view, be afforded a second innings simply for the asking, particularly when the order of assessment reveals no examination of facts or application of mind, for that matter at the original instance. Fortunately the assessee has placed on record the relevant facts that are uncontroverted by the respondent and have hence been taken into account for classifying the product in question.

8. The Writ Petition is allowed and the impugned order of assessment is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Nagapattinam.

+1cc to Mr.K.Soundararajan, Advocate SR.79963

+1cc to the Spl.Government Pleader SR.80794

W.P. No.16942 of 2009
& M.P.No.1 of 2009

NMI(CO)
CB(29/11/2019)