IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

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

Tax Case (Revision) No.102 of 2015

M/s.Thakkar Brothers,
No.73, Devaraja Mudali Street,
Chennai-600 003. ... Petitioner

-vs-

The State of Tamilnadu,
Rep., by Deputy Commissioner (CT),
Now by Joint Commissioner (CT),
Chennai (North) Division,
PAPJM Buildings, Greams Road,
Chennai-600 006. ... Respondent

Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1958 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai, dated 29.05.2015 passed in S.T.A.No.510 of 2006 for the assessment year 2000-01. against the order of the Appellate Assistant Commissioner (CT-)1 Kuralagam Annexe, VI Floor, Chennai-108 made in Appeal No.222/2002 dated 08.04.2004 for the Assessment Year 2000-01 against the order of Commercial Tax Officer, Rattan Bazaar Assessment Circle, Chennai-108 (1st Floor, Kuralagam Annex) made in T/0300333/2000-01 dated 27.09.2002 for the Assessment year 2000-01.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

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ORDER

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

This tax case revision, filed by the assessee under section 38 of the Tamil Nadu General Sales Tax Act, 1958 (hereinafter referred to as "the TNGST Act"), is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai (for brevity "the Tribunal"), in

S.T.A.No.510 of 2006, dated 29.05.2015, for the assessment year 2000-01.

2. The above tax case revision was admitted, on 06.01.2016, on the following substantial questions of law:-

> "(i) Whether the factual findings and the consequential conclusion of the appellate Tribunal is perverse and contrary to the factual matrix of the case?
>
> (ii) Whether the Appellate Tribunal erred in confirming the classification of "cotton coated fabrics" falling under entry 14/Part B/Third Schedule read with section 8 of the TNGST Act, 1959 falling under Tariff entry "59.03" (exempted) as "PVC sheets" falling under Tariff entry "3920-12" under unclassified item taxable at 8% is correct?
>
> (iii) Whether the Appellate Tribunal failed to appreciate the law that the non-payment of Additional excise duty is not essential for goods falling under tariff Entry "59.03" of the Central Excise Tariff, 1944?
>
> (iv) Whether the Appellate Tribunal failed to consider the classification by the department for the earlier years and subsequent years that goods namely "cotton coated fabrics" sold by the petitioner as falling exempted under Section 8 of the Act read with entry 14/Part B/Third Schedule of the Tamil Nadu General Sales Tax Act, 1959?"

3. Heard Mr.V.Sundareswaran, learned counsel for the petitioner/assessee and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent/Revenue.

4. The short question, which falls for consideration is whether the assessment for the year 2000-01 under the provisions of the TNGST Act, dated 21.03.2002, could have been reopened. While completing the assessment and passing the order dated 21.03.2002, the Assessing Officer verified the claim of exemption made by the assessee towards the second sale of PVC plastic sheets and cotton coated fabrics. The Assessing Officer verified the purchase bills and found that the purchases in respect of sale of PVC plastic sheets were purchased from local dealers and they had suffered tax in the State and therefore, held that the assessee is entitled for second sales.

5. In respect of cotton coated fabrics, the Assessing Officer noted that the sales are exempted from tax under the provisions of the TNGST Act, as the tax is "Nil". Accordingly, by a speaking order, allowed the claim of exemption on the

turnover. However, the Assessing Officer sought to reopen the assessment by issuing notice and ultimately, by order dated 27.09.2002, revised the earlier order and cancelled the exemption granted.

6. We have perused the order dated 27.09.2002, which is the revised assessment order and we find that there was no valid ground to reopen the assessment. In fact, reading of the order shows that the Assessing Officer himself is not clear as to on what reason, he reopened the assessment. Therefore, we can safely conclude that the reopening of the assessment was a clear case of change of opinion. The assessee challenged the revised assessment order before the Appellate Assistant Commissioner (CT)-I, Chennai. The first appellate authority perused the purchase bills issued by the manufacturer and after examining the records, held that the exemption granted by the Assessing Officer in the original assessment order dated 21.03.2002, is valid and proper. The State filed appeal before the Tribunal, which framed three questions for consideration and the first of the three questions being whether the disallowance of claim of exemption was correct or not.

7. We have perused the order passed by the Tribunal and we find that the Tribunal referred to the letterhead of the assessee, which shows the products that the assessee is dealing with and then came to the conclusion that the assessee is not entitled for the claim of exemption. The manner in which the Tribunal has passed the impugned order and reversed the decision of the first appellate authority is wholly erroneous.

8. To be noted that for the earlier assessment years and the subsequent assessment years, viz., 1999-2000, 2001-02 and 2002-03, exemption has been granted in respect of the same type of transaction as is being done by the assessee. Thus, we find that the Tribunal erroneously reversed the order passed by the first appellate authority, dated 08.04.2004.

9. For the above reasons, this tax case revision is allowed, the impugned order passed by the Tribunal is set aside, the order passed by the first appellate authority is restored and the substantial questions of law are answered in favour of the petitioner/assessee. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
2nd Floor, City Civil Court Buildings,
High Court Campus, Chennai-600 104.

2. The State of Tamilnadu,
Rep.by Deputy Commissioner(CT),
Now by Joint Commissioner(CT),
Chennai (North) Division,
PAPJM Buildings, Greams Road,
Chennai-600 006.

3. Appellate Assistant Commissioner,
(CT)-1, Kuralagam Annex VI Floor,
Chennai-108

4. The Commercial Tax Officer,
Rattan Bazaar, Assessment Circle,
1st Floor, Kuralagam Annex, Chennai-108.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.736
+1cc to the Special Government Pleader, S.R.No.1134

Tax Case (R) No.102 of 2015

SKV(CO)
CS/15/02/2019