IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM :

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

Tax Case Revision No. 2 of 2016

M/s.Mountain Springs,
No.19, Sasthri Road,
Ram Nagar, Coimbatore – 641 009.

...Petitioner

-vs-

The State of Tamil Nadu,
Rep by its Joint Commissioner(CT),
Coimbatore.

...Respondent

Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (for brevity 'the Act') challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore in C.T.S.A.No.205 of 2000 and C.O.P.No.101 of 2000 dated 17.06.2015.

For petitioner : M/s.V.Sundareswaran

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

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Tax Case Revision by the assessee is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) in C.T.S.A.No.205 of 2000 and C.O.P.No.101 of 2000 dated 17.06.2015.

2. This tax case revision has been admitted on the following Substantial Questions of Law:

> "*(i) Whether the Appellate Tribunal misdirected itself and thereby fell into an allowing the appeal of the State by overlooking the fact that in CTSA.Nos.230-233 of 1998 dated 11.01.1999 in the case of petitioner themselves for the assessment years 1992-93 to 1994-95 the Appeal was allowed in its favour on identical set of facts.*
>
> *(ii) Whether the Appellate Tribunal failed to appreciate the factual finding given by the Assessing Officer that the freight charges were shown separately in the invoices.*
>
> *(iii) Whether the Appellate Tribunal failed to*

appreciate that the inability of the petitioner to produce the written agreement of year 1996-97 in 2015 after the lapse of 15 years shall not mitigate against the bonafide claim of deduction for "freight charges" in view of the Rule 26(16) of the Tamil Nadu General Sales Tax Rules, 1959, more particularly in the light of the petitioner's own case in CTSA Nos.230-233 of 1998, dated 11.01.1999, relating to the assessment years TNGST 1992-93 to 1995-96."

3. We have heard Mr.V.Sundareshwaran, learned counsel for the petitioner/assessee and Mr.V.Hari Babu, learned Additional Government Pleader for the respondent.

4. The assessee is a manufacturer and dealer in Bisleri water bottles and stated to be effecting Sales Tax Ex-Works. It is the case of the assessee that their customers did not have transit facility and they requested the assessee to arrange transport. Therefore, the amount of freight charges are shown separately in the invoice and the price of goods is not inclusive of freight charges. It is the further case of the assessee that upon delivery of the goods, the amount for the sale of goods and freight charges are reimbursed. By referring to Rule 6(c) of the TNGST Rules, 1959, it is submitted that freight charges should be

excluded from the total turnover of the assessee as it does not form part of the sale price.

5. The year under consideration is 2006-07 and the Assessing Officer initially accepted that the assessee has shown freight charges separately in the sale invoice. An inspection was conducted in the business premises of the assessee on 05.11.1996 by the Enforcement Wing Officials and proposals in Form-D was forwarded to the Assessing Officer which ultimately led to the revision of assessment vide order dated 12.10.1998. Challenging the same, the assessee preferred an appeal before the First Appellate Authority. The First Appellate Authority after considering the factual position and referring to the decision of the Appellate Tribunal in respect of the assessee's own case for the assessment years 1992-1993, 1995-96 allowed the appeal.

6. The Revenue preferred an appeal before the Tribunal and the Tribunal by the impugned order has allowed the appeal. Before the impugned order was passed, the Tribunal allowed the appeal exparte without hearing the assessee and on receipt of the order passed by the Tribunal, the assessee filed Miscellaneous Petition to restore the appeal filed by the State and consider the same on merits. However, the

Miscellaneous Petition was dismissed by order dated 23.07.2013, this order was put to challenge by the assessee by filing Writ Petition in W.P.No.3240 of 2017 which was allowed on 18.02.2014 and the Tribunal was directed to rehear the matter.

7. Mr.V.Sundareshwaran, the learned counsel for the petitioner would contend that in respect of the order passed by the Writ Court, the Tribunal passed very same order and allowed the appeal.

8. Mr.V.Hari Babu, learned Additional Government Pleader sought to sustain the order passed by the Tribunal by referring to the order dated 12.10.1998 and submitted that the assessee should have shown the freight charges in their returns and then claimed exemption and having not done so, the Assessing Officer was right in revising the assessment and passing the order dated 12.10.1998.

9. Rule 6 of the said Rules states that tax or taxes under Section 3 or 4 shall be levied on the taxable turnover of the dealer. In determining the taxable turnover the amounts specified in Clause a to j, subject to the conditions satisfied therein were deducted from the

total turnover of a dealer. Clause c under Rule 6 would be relevant for the purpose of this case which reads as follows:

> "***Rule 6:*** *The tax or taxes under Section 3 or 4 shall be levied on the taxable turnover of the dealer. In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer;*
>
> *a)....*
>
> *b)....*
>
> *c)all amounts falling under the following three heads when specified and charged for by the dealer separately, without including them in the price of the goods sold:-*
>
> *(i) freight*
>
> *(ii) [xxx] Omitted by G.O.P.No.2022 Revenue dated 18th November 1967;*
>
> *(iii) charges for delivery;*
>
> *......"*

10. In terms of the above Rule, freight and charges for delivery are not to be included in the total turnover rather to be deducted from the total turnover. Therefore, we are of the view that the Revenue is not right in contending that the assessee has to first include the same in the total turnover and then claim exemption. The

expression used in Rule 6 is "deducted". Therefore, in our understanding, the deduction should be prior to submission of the return. Admittedly, in the case on hand, the freight charges have been shown separately and this has been recognized by the Assessing Officer himself. However, the Assessing Officer proceeded to revise the assessment rejecting the contention of the assessee.

11. As noticed above, in the assessee's own case for earlier assessment years, identical invoice was considered and the Tribunal by common order dated 11.01.1999 allowed the appeals. This order was placed before the Tribunal. When the present matter was heard by the Tribunal, the Tribunal in paragraph 13 of the impugned order referred to the earlier order passed by the Tribunal but does not distinguish the same on facts but finds fault with the First Appellate Authority stating that the First Appellate Authority has not done proper verification. The earlier order passed by the Tribunal in the assessee's own case would bind the Tribunal for the assessment year under consideration unless and until the Tribunal states that the said order is factually distinguishable. There is no such finding rendered by the Tribunal in the impugned order. In such circumstances, judicial discipline requires that the earlier order of the Tribunal is followed especially when it is in

the assessee's own case and identical transaction.

12. Further more, order passed by the Tribunal dated 11.01.1999 has attained finality as the Revenue has not challenged the same. Thus, considering the above, we are of the view that the Tribunal was wrong in allowing the appeal by the State and setting aside the order passed by the First Appellate Authority.

13. For the above reasons, this Tax Case Revision is allowed, order passed by the Tribunal is set aside and the order of the First Appellate Authority is restored and the Substantial Questions of Law are answered in favour of the assessee. No costs.

[T.S.S.,J.] **[V.B.S.,J]**
28.02.2019

To

The State of Tamil Nadu,
Rep by its Joint Commissioner(CT),
Coimbatore.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

mrm/ssb

T.C.R.No.2 of 2016

28.02.2019