IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM :

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

Tax Case Revision No. 16 of 2014

The Salem District Co-operative Milk
Producers Union Ltd.,
Rep. By its General Manager,
Sithanoor, Thalavaipatti Post,
Salem – 636 302.

...Petitioner

-vs-

The State of Tamil Nadu,
Rep by the Commercial Tax Officer,
Rural Circle, Salem.

...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 Appeal No.21 of 2003, dated 11.10.2013.

For petitioner : Mr.S.Rajesh

For Respondent : Mr.V.Haribabu
Special Government Pleader

JUDGMENT

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

This Tax Case Revision is filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore in Appeal No.21 of 2003, dated 11.10.2013 for the assessment year 1990-91.

2. Heard Mr.S.Rajesh, learned Counsel for the petitioner and Mr.V.Hari Babu, learned Special Government Pleader for the respondent.

3. This Tax Case Revision has been admitted on 23.07.2014, on the following Substantial Question of Law:

> *" Whether the Tribunal was justified in holding that skimmed milk powder sold by the assessee/revision petitioner would fall under Entry 103 Clause 8 of the 1st Schedule to TNGST Act without the benefit of notification in GOP No.253 dated 17.03.1986."*

4. The petitioner is a registered dealer on the file of the Commercial Tax Officer, Rural Assessment Circle, Salem. The Assessing

Officer had determined the total and taxable turnover of Rs.30,46,59,277/- and Rs.4,86,60,947/- as against the reported total and taxable turnover of Rs.30,29,74,949.67/- and Rs.4,79,59,559.93/- respectively vide order dated 13.01.2000. The assessee/dealer is aggrieved by various additions and deletions and in this Tax Case Revision, we are concerned about the levy of sales tax at 10% for skimmed milk powder. The assessee filed appeal before the First Appellate Authority namely, the Appellate Assistant Commissioner, CT, Salem, who by order dated 14.08.2002 dismissed the appeal holding that the Assessing Officer rightly treated the same as milk and taxed it at 10%. The petitioner carried the matter before the Tribunal and the Tribunal after elaborately considering the findings of the First Appellate Authority as well as the Assessing Officer dismissed the appeal. This is how the petitioner/dealer is before us by way of this Tax Case Revision.

5. The short issue which is to be decided as to whether the petitioner is entitled to the reduced rate of tax at 4% claiming benefit under notification G.O.P No.253, dated 17.03.1986,which reads as follows:

"Sale of milk food including baby milk foods-
Reduction in rate of tax (Tamil Nadu)

Notification G.O.P.No.253 dated the 17th March, 1986

No.II (1)/CTRE/47(c)/86-In exercise of the powers conferred by sub-section (1) of Section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), the Governor of Tamil Nadu hereby makes a reduction in the rate of tax from ten percent to four percent in respect of the tax payable by any dealer under the said Act, on the sale of milk food including baby milk foods.

2. The notification hereby made shall come into force with immediate effect."

6. The above notification stood amended with effect from 26.09.1991 vide notification G.O.(P).No.402 dated 26.09.1991, which reads as follows:

"2. The amendment hereby made shall come into force on 26th September, 1991.

AMENDMENT- In the said notification, for the expression "milk food including baby milk foods", the expression "baby milk foods only" shall be substituted."

7. The petitioner's case is that for the period prior to 26.09.1991, the skimmed milk powder is a milk food and therefore chargeable only at 4%. The Assessing Officer held that the product

milk powder which is sold by the petitioner will fall under Entry 103 (viii) of the First Schedule of the Act and chargeable at 10%. The product which has been sold by the petitioner is skimmed milk powder. The question would be whether it can qualify as a milk food? Admittedly, on and after 26.09.1991, the benefit of reduced rate of tax is inapplicable because milk food was removed from the notification and the reduced rate of tax at 4% was restricted only to baby milk foods.

8. The petitioner's case is that the skimmed milk powder only undergoes a process of drying and therefore, it is a milk food in dry form. First of all, the notification in G.O.P. No.253 dated 17.03.1986 is a notification issued under exercise of powers conferred under Section 17 of the Act is an exemption notification or in other words, a notification to reduce the rate of tax. Therefore, interpretation given to such a notification should clearly and wholly lean in favour of the Revenue.

9. Furthermore, we are not entitled to read any words or figures into a notification and we have to go by the plain meaning of the items mentioned in notification. The notification in G.O.P.No.253

gives relief of reduced rate of tax for two products namely milk food and baby milk foods. On or after 26.09.1991, the reduced rate of tax for milk foods were totally removed and it was restricted only to baby milk foods. The interpretation given by the learned counsel for the petitioner is by reading Entry 103(viii) stating that milk food includes milk powder, the said Entry reads as follows:

TAMILNADU GENERAL SALES TAX ACT, 1959 – FIRST SCHEDULE

History:-This item was inserted by Act 17 of 1987, with effect from 1st January, 1987

103	... ... (viii)Milk Foods including milk powder;	At the point of first sale in the State	10%

10. The Entry 103(viii) deals with the items which are chargeable to tax at 10%. The items, which we are concerned in this case is milk food. Two distinct products have been mentioned in Entry 103(viii), they are milk food and milk food including milk powder. Therefore, the argument of the learned counsel for the petitioner that the words "milk powder" are mentioned in Entry 103(viii), therefore, it is a milk food is not tenable. The entry is inclusive entry not for all

purposes, but the entry includes only one of the products namely milk powder, there may be other products which are not included in Entry 103. Therefore to state that milk food is same as milk powder is a wrong interpretation of the Entry.

11. Thus, owing by the plain language of Entry 103(viii), we are of the considered view that the Assessing Officer rightly taxed the sale of skimmed milk powder which goes through a process before being marketed, at 10%, the finding is just and proper and calls for no interference.

12. In the result, this Tax Case Revision is dismissed and the substantial questions of law are answered against the petitioner. No costs.

[T.S.S.,J.] **[V.B.S.,J]**
04.02.2019

To

1. The State of Tamil Nadu,
   Rep by the Commercial Tax Officer,
   Rural Circle, Salem.

2. Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench),
   Coimbatore

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

mrm/ssb

T.C.R.No.16 of 2014

04.02.2019