IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

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

Tax Case (Revision) Nos.45, 46, 47 and 49 of 2014

M/s.Chandra Textiles Ltd.,
1318, Avanashi Road,
Pellamedu,
Coimbatore - 641 004. ... Petitioner in all the Revisions

-vs-

The State of Tamil Nadu,
Rep. by The Deputy Commissioner
of Commercial Taxes,
Coimbatore. ... Respondent in all the Revisions

Common Prayer:

Tax Case (Revisions) filed under Section 38 of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959 r/w. Rule 30 of the TNGST Rules, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 13.11.2013 in CTSA.Nos.38/2002, 39/2002, 40/2002 and 58/2004 for the assessment years 1998-99, 1999-2000, 1997-98 and 1995-96. against the order of Additional Appellate Assistant Commissioner Comibatore in AP.NO.1323/00, 1089/01 and 1584/99 dated 28.03.2001 and 1469/00 dated 28.06.2002 against the assessment order of the Commercial Tax Officer, Peelamedu, North Circle, Coimbatore dated 30.01.2004 for the Assessment Number TNGST No.2120011 fo rA-Y 1998-99, 99-2000, 1997-98 and 1995-96.

For Petitioner
in all the Revisions : Ms.Hema Muraliskrishnan

For Respondent
in all the Revisions : Mr.Md.Shaffiq
Special Government Pleader

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

These tax case revisions have been filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTA.Nos.38/2002, 39/2002, 40/2002 and 58/2004 for the assessment years 1998-99, 1999-2000, 1997-98 and 1995-96.

2.These tax case revisions have been admitted on the following substantial questions of law:

> "a) Whether in the facts and circumstances of the case, the Tribunal is right in confirming the action of the assessing officer in levying tax on the transfer of property in dyes and chemicals in the course of inter-state trade or commerce and in the course of export of goods outside the territory of India?
>
> b) Whether in the facts and circumstances of the case, the Tribunal has not erred in overlooking the express deduction contained in Sec.3-B(2)(a) of the TNGST Act, 1959?
>
> c) Has not the Tribunal overlooked the fact that a party not appealing from a decision must be deemed to be satisfied with the decision, must be taken to have acquiesced t herein and be bound by it and therefore, cannot seek relief against a rival party in an appeal prepared by the latter and therefore restoration of the order of the assessing officer is wrong?"

3.Heard Ms.Hema Muralikrishnan, learned counsel for the petitioner/assessee and Mr.Md. Shafiq, learned Special Government Pleader for the respondent.

4.The petitioner/assessee is engaged in the business of cotton yarn. The modus operandi adopted by them as stated before the Tribunal is that they purchase cotton and convert the same into cotton yarn/cotton cloth and sell the same. The petitioner is also engaged in the business of bleaching, dyeing of cotton yarn, cotton fabric/cotton cloth for third parties. The petitioner would state that in their process, they engage in works contract of bleaching and dyeing of cotton yarn/cloth and the yarn is entrusted to them by their customers. It is further stated that the contract of bleaching/dyeing is entrusted to the petitioner by their customers not only within the State of Tamil

Nadu but also by customers outside the State of Tamil Nadu. The petitioner would further state that they effect of purchase of dyes and chemicals for the contract of bleaching and colouring of cloth/fabric from registered dealers within the State of Tamil Nadu and also interstate basis from the dealers outside the State of Tamil Nadu. The petitioner's case is that since most of the dyes and chemicals are washed away, there is no transfer of property in dyes and chemicals from the petitioner to its customers and the petitioner thus claimed the contract to be service contract not liable to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The Assessing Officer took a view that there was a transfer of property in the dyes and chemicals used by the petitioner in the works contract and bleaching and dye. Accordingly, he added 16% to the interstate purchases on dyes and chemicals effected by the petitioner levied tax on the same. Aggrieved by the said order, the petitioner preferred appeals before the First Appellate Authority. The First Appellate Authority allowed the assessee's case in toto and against which, the revenue filed an appeal before the Tribunal. The Tribunal allowed the appeal filed by the revenue and the assessee is before us by way of these tax case revisions.

5.Though three substantial questions of law have been framed for consideration, all three pertain to the entitlement for deduction under Section 3B(2)(a) of the TNGST Act. The question is whether the petitioner is entitled to make such a claim at this juncture for the first time before this Court in these tax case revisions. The petitioner appears to have been inspired to do so on account of partial relief granted by the first appellate authority in respect of the assessment pertaining to the assessment year 1996-97 and 2001-02. Those orders were passed in the year 2004, whereas the order passed by the first appellate authority in these cases is of the year 2001.

6.The learned counsel for the petitioner vehemently contended that a chart was filed before the Tribunal showing the month wise abstract, namely, the export purchases outside the State of Tamil Nadu and purchases within the State of Tamil Nadu and the Tribunal ought to have considered the same and granted the relief to that extent by allowing deduction under Section 3B (2)(a) of the TNGST Act.

7.We have considered the rival submissions and carefully perused the objections filed by the dealer before the Assessing Officer, the grounds of appeal before the first appellate authority and the stand taken before the Tribunal in the appeal filed by the revenue. Nowhere we find that such a plea was raised by the petitioner, i.e. claiming deduction under Section 3B(2)(a) of the TNGST Act. The petitioner consciously restricted their claim for deduction only under Section 3B(2)(a) of the TNGST Act. Thus, in these tax case revisions, for the first time such a plea cannot be allowed to be raised. We support this conclusion by stating that Section 3B deals with levy of tax on transfer of goods involved in works contract. Sub-section (2) of Section 3B of the TNGST Act states that the taxable turnover of the dealer on transfer of property involved in the execution of works contract shall, on and from 26.06.1986, be arrived at after deducting the amounts from the total turnover of the dealer. The deduction permissible under Section 3B(2) of the TNGST Act are as follows:

> "(a) all amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce:
>
> (b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract in the same form in which such goods were purchased:
>
> (c) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:
>
> (d) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:
>
> Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amounts is included in the return filed by such sub-contractor: and
>
> (e) all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

Serial Number	Type of Works Contract	Labour or other charges as a percentage value of the works contract
(1)	(2)	(3)
1.	Electrical Contracts	15
2.	All structural contracts	15
3.	Sanitary Contracts	25
4.	Watch and/or clock repair-contracts	50
5.	Dyeing contracts	50
6.	All other contracts	30

(f) all amounts (including the tax collected from the customer) refunded to the customer or adjusted towards any amount payable by the customer, in respect of unexecuted portion of works contract based on the corrections on account of measurements or check measurements, subject to the conditions that –

(i) the turnover was included in the return and tax paid: and

(ii) the amount including the tax collected from the customer is so refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid."

8.Clause (a) of Section 3B(2) of the TNGST Act deals with deduction where the amount involved in respect of the goods involved in the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce. Clause (e) of Section 3B(2) of the TNGST Act provides deduction for all amounts towards labour charges and other like charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract or such amounts calculated at the rate specified in column (3) of the Table, if they are not ascertainable from the books of accounts maintained and produced by the dealer before the Assessing Officer. Admittedly, the petitioner claimed flat rate as deduction towards labour charges at 50%. If such is the conduct of the petitioner, then it goes without saying that the petitioner at no point of time ever contemplated of claiming a deduction under Clause (a) of Section 3B(2) of the TNGST Act. The contention that for the assessment year 1996-97 and 2001-02, the first appellate authority had given proportionate relief and therefore, for these assessment years also such relief should be granted to the petitioner is a plea which is liable to be rejected for more than one reason. Firstly, such a plea for deduction was never claimed by the assessee before the first appellate authority, whereas for the assessment years 1996-97 and 2001-02, there was a specific claim in that regard. Therefore, the first appellate authority while passing orders in respect of those two years vide order dated 30.04.2004 examined the details furnished and granted proportionate relief.

9.Ms.Hema Muralikrishnan, learned counsel would contend that they faulted the entire assessment order as being contrary to Section 3B of the TNGST Act and before the appellate authority, they had no occasion to raise such a plea of deduction under Section 3B(2)(a) of the TNGST Act as the first appellate authority allowed the petitioner's appeal in its entirety and before the Tribunal it was not revenue's appeal and therefore, the petitioner is entitled to raise such a plea in these tax case revisions.

10.Such submission though appears to be convincing at the first instance, on a closer scrutiny proves otherwise. As pointed out earlier, the deduction requires to be claimed by the assessee and consciously the petitioner did not make any claim under Section 3B(2) of the TNGST Act and restricted the claim only under Section 3B(2)(e) of the TNGST Act at 50%. Hence, at this distance of time to raise such a plea which was never ever canvassed by the petitioner at any point of time cannot be permitted. Secondly, the assessee never even raised an alternate plea before the first appellate authority as raised by them in the appeals for the assessment years 1996-97 and 2001-02. Thus, the present attempt of the petitioner is to reopen settled matter on grounds which were never canvassed or in other words, on points which they were never aggrieved. Thus, for the above reasons, we find no merits in the revision petitions and they are dismissed. Consequently, the substantial questions of law are answered against the assessee. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Deputy Commissioner
   of Commercial Taxes,
   Coimbatore.

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

3. The Additional Apperance Assistant Commissioner,
   Coimbatore.

4. The Commercial Tax Officer,
   Peelamedu North Circle, Coimbatore.

+1cc to the Special Government Pleader(T), S.R.No.6234

+1cc to Ms.Hema Muraliskrishnan, Advocate in sr.5800 (07/05/19)

T.C.(R)Nos.45, 46, 47 and 49 of 2014

VSNII(CO)
CS/08/04/2019