

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.Nos.74 to 78 of 2017

Tvl.Sakthi Sugars Limited
180, Race Course Road
Coimbatore - 641 018.

... Petitioner in all TCs.

Versus

The State of Tamil Nadu
represented by the
Deputy Commissioner (CT)
Coimbatore.

.. Respondent in all TCs.

These Tax Cases have been filed under Section 38 of the TNGST Act, 1959, against the order dated 02.07.2013 made in CTSA Nos.131, 139, 140, 286 and 293 of 2002 by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18, against the order dated 03.12.2001, 02.01.2002, 02.01.2002, 05.04.2002 and 20.03.2002 made in A.NO.81 of 2000; 71/2000, 73/2000, 85/2000&5 of 2001 respectively by the Deputy Commissioner (CT) Appeals Coimbatore against the Assessment order dated 18.05.2000, 20.03.2000, 31.03.2000, 16.07.2001, 20.02.2001 the order of the Assistant Commissioner (CT) Fast Track Assessment circle I, Coimbatore for the Assessment years 1991-1992 against TNGST Nos.225726/91-92, 1989-90 against TNGST Nos.260182/89-90, 90-91 against the TNGST NO.225726/90-91 /94-95 against the TNGST NO.225726/94-95, 92-93 against the TNGST NO.225726/92-93 Respectively.

For Petitioner in all TCs. : Mr.M.P.Senthil Kumar
for Mr.N.Muthu kumar
For Respondent in all TCs. :Mr.S.Kanmani Annamalai
AGP, (TAXES)

COMMON ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN, J.)

The present Tax Cases were filed against the findings of Sales Tax Appellate Tribunal in its common order, dated 02.07.2013 made in CTSA Nos.131, 139, 140, 286 and 293 of 2002 and the following questions of law were raised by the petitioner in all the Tax Cases:-

- a) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the Effluent Treatment cum Bio Gas Plant erected by the petitioner is not entitled to exemption as per Notification No.II (1)/CTRE/113(c)/87 dated 10.09.1987 issued in terms of Sec. 17 of the TNGST Act ?
- b) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in applying the decision of the Hon'ble Supreme Court in the case of Orient Traders vs. CTO, Tirupathi (13 VST 530) to the effect that an exemption notification has to be construed strictly, against the petitioner when the same is to be applied in favour of the petitioner insofar as the petitioner is entitled to the benefit of the exemption notification ?
- c) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in ignoring the following facts and the materials produced by the petitioner to come to the perverse conclusion that the petitioner is not entitled to the benefit of exemption notification?
 - (i) Spent wash released from distilleries contains a heavy load of organic matters, that are digested by anaerobic bacteria in the digester called 'anaerobic digester', which in turn releases bio-gas. Therefore, the plant erected by the petitioner is only an Effluent-cum-Bio Gas plant

eligible for exemption under Notification No. II(1)/CTRE/113(c)/87 dated 10.09.1987 upto the period 31.03.1994 and as per Sl.No.46 of Part-B of III Schedule from 01.04.1994 onwards till date.

(ii) Copy of letter issued by Dr.V.V.N.Kishore, Senior Fellow of Tata Energy Research Institute (TERI), New Delhi.

(iii) Copy of Certificate issued by one Dr.L.Devarajan, Professor of Soil Science, Department of Soil Science and Agricultural Chemistry, Tamil Nadu Agricultural University, Coimbatore.

(iv) Process flow chart of the plant

(v) Literature relating to specifications for Bio-Gas Plant by Indian Standards Institution, New Delhi.

2. As the facts and law involved in all the above tax cases are one and the same, all the cases are taken up together and decided by a common order.

3. The brief facts leading to the present cases are that the petitioner company engaged in manufacturing and marketing white sugar and other allied products including Effluent Treatment-cum-Bio-Gas Plant. The petitioner company filed a return under TNGST Act and thereafter, sought for exemption of income from the sale of Effluent Treatment-cum-Bio-Gas Plant (ETBGP) in terms of exemption provided under Section 17 of the Tamil Nadu General Sales Tax Act. However, the Assessing authority did not apply the exemption and determined the total and taxable turn over as against the petitioner, as per the returns filed including the income from the sale of Effluent Treatment-cum-Bio-Gas Plant.

4. The claim of the petitioner is that the petitioner set up an Effluent Treatment-cum-Bio-Gas Plant for the purpose of treatment of effluent generated by the

industrial unit and conversion of the same into bio-mass and utilisation of bio-mass to produce bio-gas used for running the plant, for which purpose, the petitioner have approached the Indian Renewable Energy Development Authority (IREDA) for necessary funding, which was for setting up of the plant.

5. It is the further case of the petitioner that IREDA granted approval for the Effluent Treatment-cum-Bio-Gas Plant, which comes within the purview of renewable energy device and therefore, entitled for exemption under Section 17 of the TNGST Act. The Assessing Officer rejected the exemption claimed by the petitioner on the ground that the product in respect of which the exemption claimed is not eligible for exemption for the reason that the exemption is given only to renewable energy equipment and devices like bio-gas plant and not to a pacca effluent treatment plant erected by the dealer. As against the rejection orders passed by the Assistant Commissioner, appeals were filed before the Appellate Deputy Commissioner of Commercial Taxes, who remanded the matters, with a direction to the Assessing Officer to call for the accounts and pass fresh orders, within a period of three months.

6. Challenging the order passed by the Deputy Commissioner of Commercial Taxes, appeals were preferred by the respondent herein and the Sales Tax Appellate Tribunal by a common order, dated 02.07.2013 partly allowed, partly remanded and partly dismissed the State Appeals in C.T.S.A.Nos.131/02, 139/02, 140/02 and 293/3 and partly allowed and partly dismissed C.T.S.A.No.286/02 with a direction to levy penalty under Section 24(3) of the Act for the belated payment of the last purchase Tax on planting and transport subsidy and transport charges paid to the third party/lorry owners.

7. The main contentions raised by the petitioner before this Court is to set aside the order passed by the Sales Tax Appellate Tribunal in the appeals filed by the State and to sustain the order of the Deputy Commissioner (Appeal). The learned counsel appearing for the petitioner further argued that bio-gas plant utilises a fixed film process for the production of bio-gas, that requires bio-mass as a mandatory input. A fixed film process is a biological treatment process that employed materials, such as rock, plastic, wood or any other natural and synthetic solid material that will support bio-mass upon its surface as well as within its porus

structure. The petitioner further claims that bio-mass is produced by the process carried out in effluent treatment plant that converts the effluent generated by the unit into bio-mass suitable for bio-gas production. However, the Assessing Authority adopted a view that the products in respect of which exemption is claimed is not eligible for exemption, for the reason that the exemption is available only to "renewable energy equipment and devices like bio-gas plant" and not for effluent treatment plant erected by the dealer and failed to give exemption as claimed by the petitioner invoking Section 17 of TNGST Act.

8. The learned counsel drew our attention to the Notification of Tamil Nadu Government Gazette, dated 30.06.1986 which is as follows:-

"Sale by any dealer of renewable energy equipments and devices and systems designed to use solar bio-mass and wind energy and energy saving devices mentioned in the list I and II appended to this Notification.

Appendix

List - I

Renewable Energy Devices:-

(i) Flat Plate solar collectors,

.....

.....

(xiii) Biogas plants and biogas engines

....."

9. The learned counsel also pointed out that the process carried out by the petitioner are sought to be distinguished by the Assessing Officer and the State Appellate Tribunal, on the basis that the exemption is intended to be granted only to those bio-gas plants erected in rural areas using local bio-degradable wastes, such as animal wastes, which according to the learned counsel for the petitioner, is not borne out of records and factually, it is not correct.

10. Learned counsel appearing for the petitioner also drew our attention to the opinion rendered by the Senior Fellow, Tata Research Institute and other expert opinions, which in fact, ought to have been considered by the State Appellate Authority; and the Tribunal is not basing its conclusion on the opinions rendered by the expertise, which is totally incorrect. It is the further

argument of the learned counsel appearing for the petitioner that the Assessing Officer, while levying penalty under Sections 12(5) and 12(3)(b) of the Act for the difference in Tax arrived at, for the reason of denial of claim of exemption of ETBGP and denial of claim of concessional levy of tax on castings by treating them as finished out parts, is totally incorrect and sought to set aside the order passed by the State Appellate Tribunal by allowing the present Tax Case Revision Petitions.

11. Heard the learned counsel appearing on either side and perused the materials available on record.

12. The petitioner claims exemption, as per the notifications issued under Section 17 in Notification No.II (1)/CTRE/113(c)/87, dated 08.12.1990) and Notification No.II (1)/CTRE/237/90, dated 26.12.1990) for the sale of their products as Effluent Treatment-cum-Bio-Gas Plant and filed their revised return.

13. It is seen from the records that the Assessing Officer in order to verify the genuineness of the exemption sought for by the petitioner for the respective assessment years, collected the relevant documents relating to effluent treatment systems, after visiting the petitioner's premises and thereby forming an opinion, by reading the process and description of the effluent treatment system along with structural sketch and the fixed film process for effluent treatment system seems to have been collected from the petitioner's premises. The rejection of exemption by the Assistant Commissioner was on the basis of the above data and details collected from the petitioner's premises.

14. It is clear from the records that the effluent treatment of wastage of about 1000 to 1100 cubic meters of spent wash trade effluent comes from the distillery when the plant is operated in full capacity. The effluent that comes from the distillery pose a great challenge to the environment due to the high volume of suspended solids, high bio-chemical oxygen which are highly acidic in nature. Bio-gas is not a main product, which comes out during the distillery process. However, bio-gas is produced in the process of treating the effluent coming from sugar factory, which is highly dangerous and strictly prohibited by the Pollution Control Board.

15. It could be seen from the records that as per the Notification issued under Section 17, bio-gas plant and bio-gas engines alone are exempted and exemption is not applicable to the products made by the dealer from their produce namely the fixed film process for effluent treatment cum-bio gas plant. The original dealer has paid tax by disclosing the same as 'work contract' only and subsequently, they filed revised return and claimed exemptions.

16. On a perusal of the order passed by the Assessing Authority, namely, the Assistant Commissioner, it is seen that the appellate authority had determined the petitioner's total taxable turn over as hereunder:-

Sl. No.	CTSA No.	Name of the Dealer/ Respondents Tvl.	Assessment Year	Date of Assessment order	Total & Taxable Turnover	
					Reported Rs.	Determined Rs.
1	131/02	Sakthi Sugars Ltd., Coimbatore	1991-92 TNGST	18.5.00	933488253/ 426192121	943221504/ 524559048
2	132/02	..do..	1988-89 TNGST	20.3.00	383445341/ 218317200	390851851/ 236198270
3	133/02	..do..	1986-87 TNGST	20.3.00	230143863/ 122218910	242186421/ 151651191
4	139/02	..do..	1989-90 TNGST	20.3.00	709495580/ 335263725	699603018/ 421688205
5	140/02	..do..	1990-91 TNGST	31.3.00	928147791/ 361267483	613485771/ 472348831
6	271/02	..do..	1995-96 TNGST	22.3.01	2776197806 / 1673070890	2607034648 / 1931287176
7	286/02	..do..	1994-95 TNGST	16.7.01	2320788898 /132347875 4	2233180842 / 1548428491

Sl. No.	CTSA No.	Name of the Dealer/ Respondents Tvl.	Assessment Year	Date of Assessment order	Total & Taxable Turnover	
					Reported Rs.	Determined Rs.
8	291/02	..do..	1995-96 CST	28.2.01	1418496847 / 227722580	1927426191 / 228008907
9	293/02	..do..	1992-93 TNGST	20.2.01	1049646466 / 471400602	1032113064 / 631048377

17. It is also worth noting the details of assessment made by the Assessing Authority on the sale of effluent treatment plant and sale of finished castings treated as automobile spares as hereunder:-

Sl. No.	CTSA No.	Assessment Year	Nature of Transactions	
			Sales of Effluent Treatment Plant Rs.	Sales of Finished Castings treated as Automobile Spares Rs.
1	131/02	1991-92 TNGST	4,03,06,235	1,71,95,593
2	132/02	1988-89 TNGST	...	10,85,490
3	133/02	1986-87 TNGST	...	94,710
4	139/02	1989-90 TNGST	21,75,000	19,29,473 / 84,63,778
5	140/02	1990-91 TNGST	1,67,08,888	1,10,97,285
6	286/02	1994-95 TNGST	18,74,856	...
7	293/02	1992-93 TNGST	7,41,05,252	2,21,33,547

18. It is clear from the above Tabular column that the Assessing Authority levied penalty under Section 12 (5) and 12(3)(b) of the Act for the tax difference arrived at between the tax assessed as per the Assessment order and the tax paid as per the returns. The details of penalty thus arrived at by the Assessing Authority are extracted hereunder:-

Sl. No.	Assessment Year	Penalty Rs.
1	1991-92 TNGST	1,04,50,400/- u/s.12(5) (iii)
2	1988-89 TNGST	13,82,258/- u/s.12(5)
3	1986-87 TNGST	1,35,586/- u/s.12 (3)
4	1989-90 TNGST	10,85,986/- u/s.12(3) 4,17,600/- u/s.12(5) (iii)
5	1990-91 TNGST	12,14,600/- u/s.12(3)
6	1995-96 TNGST	1,25,52,998/- 15,53,410/- 27,47,453/- u/s.12(3) (b) (iii)
7	1994-95 TNGST	67,60,688/- u/s.12(3) (b) (i)
8	1995-96 CST	3,93,250/- u/s.9(2-A) of the CST Act read with Sec.12(3) (b)
9	1992-93 TNGST	25,28,049/- u/s.12(3) (b) 1,55,62,103/- u/s.12(5) (iii)

19. The petitioner had filed an appeal before the Appellate Deputy Commissioner, Coimbatore, who after hearing the arguments and on perusal of the records, passed the final order which is hereunder:-

Sl. No.	CTSA No.	Assessment Year	AP. No. & Date	Result
1	131/02	1991-92 TNGST	81/00 dt.3.12.01	Partly Dismissed Partly Remanded and Partly allowed
2	132/02	1988-89 TNGST	69/00 dt.3.12.01	Partly Dismissed Partly Remanded and Partly allowed

Sl. No.	CTSA No.	Assessment Year	AP. No. & Date	Result
3	133/02	1986-87 TNGST	57/00 dt.3.12.01	Partly Dismissed Partly Remanded and Partly allowed
4	139/02	1989-90 TNGST	71/00 dt 2.1.02	Partly Dismissed Partly Allowed and Partly Remanded
5	140/02	1990-91 TNGST	73/00 dt 2.1.02	Partly Dismissed Partly Allowed and Partly Remanded
6	271/02	1995-96 TNGST	8/01 dt.5.3.02	Partly Dismissed and Partly allowed
7	286/02	1994-95 TNGST	88/01 dt.5.4.02	Partly Dismissed and Partly allowed
8	291/02	1995-96 CST	7/01 (CST) dt.5.3.02	Partly Dismissed Partly Remanded and Partly allowed
9	293/02	1992-93 TNGST	5/01 dt.20.3.02	Partly Dismissed Partly allowed and Partly Remanded

20. As against the said orders, State had filed the appeals.

21. It is clear from the records and the arguments putforth by the respondent that both effluent treatment plant dealt with by the dealer and bio-gas plant on which exemption was allowed as per the notification are different and not one and the same. As the facts remain, during the inspection, the Enforcement Wing Officers found that the petitioner had despatched the materials for erection of effluent treatment plant in various distilleries and on verification, it was found that they had originally submitted their returns in Form A-1 disclosing the same under the head 'works contract' and paid tax at 5%.

22. Thereafter only, the petitioner, with a view to avail the claim of exemption as per the notification issued under Section 17 of TNGST Act, changed the sale of products of effluent treatment cum bio-gas plant and filed a revised return by claiming exemption on the turn over above mentioned. It is only after receiving the revised claim, the Inspecting Officer had visited the plant and found that the petitioner had mainly

constructed the effluent treatment system for effluent treatment of wastage of about 1000 to 1100 cubic meters of spent wash effluent, which comes out daily from the distilleries when the plant is operated in full capacity.

23. It would be appropriate for this Court to rely upon the case law reported in 1976 STC 328 in the case of Madanraj Subbaraj ..vs.. State of Tamil Nadu, wherein it has been held as follows:-

"When two or more works which are susceptible or analogous meaning are coupled together noscitur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other the meaning of the more general being restricted to a sense analogous to that of the less general."

24. Using the above principle, it could be established that bio-gas is only a by-product and the industrial waste, which comes out from the distillery has to be treated, for which the effluent treatment plant was constructed by the petitioner and not to produce bio-gas as a main product. Simply because bio-gas is obtained as a by-product in the treatment of industrial waste, the effluent treatment plant, which is mainly used to treat the spent wash released from distilleries, could not be treated as a bio-gas plant.

25. As far the Notification No.II(1)/CTRE/113(c) 87 dated 10.09.1987 in G.O.P.No.1014/CT & RE dated 10.09.1987 is concerned, which is relied upon by the petitioner claiming exemption, the said notification was in force from 01.04.1987 to 31.03.1990 and as per Notification No.II (1)/CT & RE/237/90, dated 26.12.1990 and G.O.P.No.705/CTRE, dated 08.12.1990, exemptions were allowed for the renewable energy equipments and saving devices for a period from 01.04.1990 to 31.03.1992. Subsequently, as per Notification No.II (1)/CTRE/41/(a-4)/93, dated 17.03.1993 and G.O.P.No.87/CT&RE, dated 17.03.1993 with retrospective effect from 01.04.1992 to 31.03.1994, the goods mentioned therein were exempted from tax. The above notification was cancelled by G.O.P.No. 92 CTRE, dated 23.03.1994 and Notification No.II (1)/CTRE/29(a-5)/94, dated 23.03.1994 effective from 01.04.1994, the renewable energy equipments and devices listed in the above notification were brought under the third schedule from 01.04.1994 as per item

No.46 of part-B of third schedule. Thus, it is abundantly clear that the bio-gas plant and bio-gas energies are continuously enjoying tax exemption from the period from 01.04.1987.

26. The intention of the Government to give exemption is to promote bio-gas, which is an alternative energy and which is a green energy produced from the animal wastes. There is a clear difference between the intention of the Government and what the petitioner has claimed for. The petitioner has constructed the effluent treatment plant for treating his effluent discharged from the distilleries, after production of alcohol. The exemption claimed by the petitioner is only to treat the spent wash released from the distilleries and not to produce the bio-gas. The petitioner is claiming exemption beyond the scope of the Government order and on a careful perusal of the notification under which, the petitioner claims exemption, the notification expressly does not exempt the effluent treatment plant, through which the discharge of distillery is treated and by which, bio-gas as a by-product is produced.

27. Under these circumstances, it is clear that the State Appellate Authority has considered each and every requirements and meted out the legal requirement, while passing the impugned orders. Hence, we are of the view that Tax Cases fail and deserve to be dismissed.

28. Accordingly, all the Tax Cases stand dismissed.
No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ps/mra
To

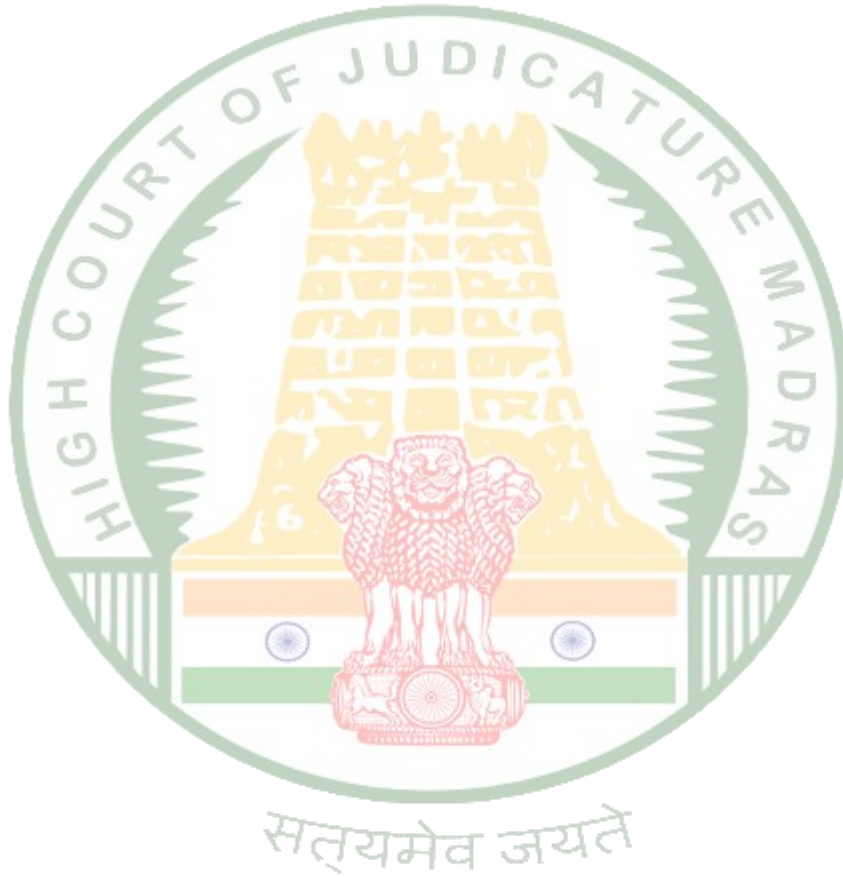
1. The Presiding Officer
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
Coimbatore-18.
2. Deputy Commissioner
Commercial Taxes
Coimbatore.

3.The Assistant Commisioner Commercial Tax,
Fast Track Assessment Circle I,
Coimbatore.

+5ccs to Mr.N.Muthu kumar , Advocate SR.No. 46593

T.C.Nos.74 to 78 of 2017

A.SK(14/08/2019)



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