IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.19449 of 2004

M/s.Malt and Allied Products
Company Private Ltd.,
161, Greams Road,
Chennai - 600 006. ... Petitioner

Vs.

The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
Chennai. ...Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Certiorari to call for the records of the respondent in T.A.No.795/2000 and quash the order dated 31.7.2002 passed therein.

For Petitioner : Mr.B.Ravindran

For M/s.Chandran Karuppiah & Ramani

For Respondent : Mr.R.Swarnavel

Government Advocate (Taxes)

ORDER
(Order of the Court was made by DR.VINEET KOTHARI,J.)

The Assessee - M/s.Malt and Allied Products has approached this Court by way of present writ petition aggrieved by the order dated 31st July 2002 passed by the learned Tamil Nadu Sales Tax Appellate Tribunal, whereby the appeal filed by the Assessee was dismissed and the Tribunal held that the Assessee was not entitled to exemption on the sale of agricultural and municipal waste conversion device under entry 46 of Part B of III schedule of the Tamil Nadu General Sales Tax Act (in short 'TNGST) which provided such exemption on the aforesaid agricultural and municipal waste conversion devices, the authorities below held against the

Assessee that the commodity in question purchased by Assessee only a boiler and therefore, it was not entitled to exemption. The relevant portion of the learned Tribunal in the present case is quoted below for ready reference.

> "6.We find that the appellants claimed exemption on the strength of the entry 46 of Part B of III Schedule of the Tamilnadu General Sales Tax Act which contemplate renewable energy equipments devices. We find that the assessing authority rejected this claim exemption on two grounds. Firstly the assessing authority found that the commodity which was purchased and sold by the appellant only boiler in a dismantled form like pumps, chennels, Chimney, valves, bolts, nuts. Therefore, the learned assessing authority came to the conclusion that the ordinary boiler sold could not be equated to the renewable energy equipment. The second ground was that the appellants sold the aforesaid boiler to one Tvl.Common Wealth Factory Feroka Kerala for commercial purpose only.
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> 7.Admittedly, we find from the copies of delivery challen that the goods involved in this case are none other than the parts and accessories of a simple boiler. Despite this to strengthen the contention regarding the claim of exemption the learned counsel filed an affidavit by the Manager Finance of the appellant stating that the appellant purchased Municipal Waste Conversion device. We find that the affidavit does nothing but contradict the copy of delivery challan which is a documentary evidence filed before us. We are unable to understand as to how the affidavit could tilt the case in favour of the appellant when the evidence itself shows that what was sold is none other than an ordinary boiler.
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> 8.According to Entry 46 of Part B of III Schedule Municipal waste conversion devices producing energy only are exempted by the Government. As rightly found both by the learned assessing authorities and the learned Appellate Assistant Commissioner, we find the appellant sold only boiler and boiler accessories which cannot be at any stretch of imagination equated to renewable energy equipments."

2.The learned counsel for the Assessee Mr.B.Ravindran submitted that the said goods in question were purchased by the Assessee from a registered dealer M/s.Veesons in Trichy within the State of Tamil Nadu and drawing our attention towards the Invoice, the said goods were purchased as agricultural and municipal waste conversion devices viz., Harizontal Multitubular Agrowaste Fired 150 PSI Working Pressure Boiler with Fusible Plug and he submitted that the said goods in question were in fact used by the Assessee for 3, 4 years to manufacture fuel out of the Agrowaste like groundnut/coconut shell etc. and after that user the item in question was sold to a dealer in Kerala claiming exemption from payment of CST, he submitted that Trichy dealer also treating the said goods as exempt from Sales Tax, did not charge sales tax from the Assessee and therefore, rightly claimed the exemption on the interstate sale of the said second item as agricultural and municipal waste conversion devices and even though the same appeared to be a boiler also, the exemption could not be denied. He submitted that the learned Revenue Authorities had wrongly treated it as simple boiler ignoring the user of the commodity in question which squarely fall within the exemption entry quoted above. He therefore submitted that the writ petition filed by the Assessee deserves to be allowed.

3.On the other hand, the learned counsel for the Revenue urged that the commodity in question was nothing but a boiler and since it was not used for manufacture of fuel out of municipal waste which is generally sewage or other waste collected by Municipal authorities, therefore, the Assessee was not entitled to exemption and the Tribunal has rightly denied the same.

4.We have heard both the learned counsels and perused the entry 46 of the III schedule to TNGST in Part B which exempts the commodities mentioned therein from tax reads as under:

"46.Renewable energy equipments and devices
(i) .....
(ii) .....
(iii) .....
(iv) .....
(v) .....
(vi) .....
(vii) .....
(viii) .....
(ix) .....
(x) .....
(xi) .....
(xii) .....
(xiv) Municipal waste conversion devices producing energy."

5.Having heard the learned counsel for the parties, we are of the opinion that the Revenue authorities below have unnecessarily taken a narrow and pedantic view of the matter.

What was purchased by the Assessee as an exempt item from Trichy dealer was clearly shown to be agricultural and municipal waste conversion device and the detailed description of the goods was also given in the Invoice produced before the authorities below and quoted by us above. Merely because the word 'Boiler' is also used in the said description of goods ignoring the very user of the said commodity as for conversion of Agrowaste like coconut shells etc. to manufacture fuel, it cannot be said that the said commodity loses its character as 'agricultural and municipal waste conversion device'. There is no reason to restrict the said meaning only for those devices which are used for treating the municipal waste like sewage etc. as contended by the learned counsel for the Revenue. The Agrowaste is also a waste which can be converted into fuel and if it is so used, then, it would fall within the ambit and scope of entry 46 of Part B of III schedule of the Act, quoted by us above.

6.There is no scope for treating as a simple Boiler, the word adopted by the Revenue authorities for reasons best known to them so as to take it out from the ambit and scope of entry 46 quoted above. The commodity in question was originally sold from the dealer within the State itself as exempt form sales tax under the same entry. Therefore, merely because it is resold in the course of interstate trade to another dealer in Kerala, the same could not have over night become taxable commodity. There is no dispute before us that the assessment of the Trichy dealer who sold the said goods as exempted goods to the Assessee in present case was never questioned on that ground and therefore, we do not find any justification for authorities below to take a view against the Assessee and deny the exemption to the said Assessee in the present case. Therefore, the writ petition filed by the Assessee, in our opinion, deserves to be allowed and accordingly, it is allowed. All the orders passed by the three authorities denying the exemption to the Assessee are set aside to that extent. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl
To
The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
Chennai.
+1cc to Mr.B.Ravindran , Advocate SR.No. 15066
+1 cc to Spl Government Pleader Sr.No. 15853

W.P.No.19449 of 2004

A.SK(17/03/2020)