IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM

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

W.P.No.18137 of 2005 and W.M.P.No.19612 of 2005

M/s.Rajani Traders
rep.by its Proprietor C.V.Ravi Gandhi,
No.95, Subbiah Mudali Street,
Coimbatore-641 001. ... Petitioner

Vs.

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

2.The Additional Appellate Assistant Commissioner (CT), Coimbatore.

3.The Commercial Tax Officer, RG Street Circle, Coimbatore. ... Respondents

Prayer in W.P.18137/2005: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the first respondent in his order in Coimbatore Tribunal Appeal No.13/2001 dated 27.01.2005 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondents : Mr.Mohammed Shafiq
Special Government Pleader (Taxes)

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

The Assessee M/s.Rajani Traders has filed this Writ Petition aggrieved by the order passed by the learned Sales Tax Appellate Tribunal dated 27.01.2005, by which the Assessee was denied the exemption on the interstate sales of wheat bran claimed to have been sold by the assessee as cattle feed. The observations made by the Tribunal in the impugned order for denying exemption to the Assessee are quoted below for ready reference.

" 4.In the grounds of appeal, the appellants have contended that the assessment made on the disputed turnover representing the sales of wheat bran used as cattle feed for the disputed assessment year was improper, the same confirmed by the Additional Appellate Assistant Commissioner was also improper, sales of wheat bran for cattle feed was exempted from tax under entry 57(v) of Part B of the Third Schedule to the TNGST Act, 1959 and the same was also confirmed by the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes in Letter No.Acts Cell No.III/17958/99 dated 23.3.99 reference 5574/99 dated 9.4.99 letter No.L.Dis Acts Cell IV/48340/00 dated 5.10.00. The appellants have further contended that, the sales of wheat bran used for cattle feed was exempted from tax under the CST Act, 1956, the same was exempted from tax under the CST Act, 1956, the same was also confirmed by the clarification issued by the Commissioner of Commercial Taxes already mentioned, the levy of Central Sales Tax at 10% made by the Assessing Authority and the same confirmed by the Additional Appellate Assistant Commissioner was against the provisions of law, also without considering the facts of their case and the clarifications issued by the Commercial Taxes Department were binding on all Assessing Authorities. Thus, the appellants have prayed to set aside the assessment made on the disputed turnover and allow exemption on the same as sale of exempted goods.

5. The appeal is heard in presence of Thiru C.V.Thiagaraj, Chartered Accountant/Authorised Representative for the Appellants and Thiru K.S.Kandasamy, Additional State Representative for the Respondent. The appellants have also filed written arguments at the time of hearing maintaining the same grounds already putforth in their grounds at the time of filing that the goods involved is exempted, the same sold is to cattle food dealers, the same is really eligible for exemption and the assessment is made disallowing the exemption is improper. The arguments of the appellants are that the sales of wheat bran is exempted from tax, the same sold is used as cattle feed and the same is eligible for exemption. The arguments of Additional State Representative are that the sales of wheat bran is not exempted from tax, exeption granted is a conditional one, the condition imposed is that when the same sold used for cattle feed alone is eligible

for exemption, the goods sold is not fulfilling the conditions imposed and the same treated as taxable sales is proper. These have been examined. The assessment made relates to 1998-99. The appellants are dealers in wheat products. The disputed turnover represents sales of wheat bran effected to other State dealers and claimed exemption on the same as sales of exempted goods. Assessing Authority has considered the claim of exemption and concluded that the same is not sold to be used by the dealer for cattle feed. Only conditional exemption is available for the said commodity and treated the same as taxable under CST Act for not fulfilling the conditions. The said turnover is assessable to tax at 10% for want of C Forms. The appellants have contended that the said goods sold is used for cattle feed by the purchasers. The clarification issued by the Commissioner of Commercial Taxes in Acts Cell-III/17958/99 dated 23.3.99 also confirms the goods sold to cattle feed dealers as exempted goods. The clarifications issued by the Commissioner of Commercial Taxes relied on by the appellants have been considered. The clarification also stipulates that the wheat bran sold for dealers to be used as cattle feed alone is eligible for exemption. The appellants have not fulfilled that the goods sold is used by the purchasers as cattle feed and also sold as cattle feed. Therefore, the goods sold to other state dealers for not fulfilling the conditions imposed as taxable sales by the Assessing Authority and the same is confirmed by the first appellate authority is treated as proper. In fine, the appeal stands dismissed."

2. Learned counsel the Petitioner Assessee Mrs.Hemalatha contended that since the wheat bran in question was sold only to the cattle feed dealers in the course of interstate sale and Entry 57(v) of Part A of Third Schedule of TNGST Act exempts cattle feed and wheat bran used for cattle feed other than those falling under Item 12 of Part B of the First Schedule which is taxable at 4%, therefore the exemption available to the Assessee on sales made within the State was available to the Assessee even on the interstate sales made by the Asssessee by virtue of Section 8(2)(A) of the Act.

3. On the other hand, Mr.Mohammed Shafiq, learned Special Government Pleader (Taxes) appearing for the Revenue supported the impugned order and urged that since the exemption in question is not general in nature, but only under specified circumstances

viz., when the wheat bran is used for cattle feed, the assessing authority had rightly denied the exemption to the Assessee.

4. Learned counsel for the petitioner also relied upon the Circular issued by the Department dated 25.09.2002, in which the Special Commissioner and Commissioner of Commercial Taxes stated that the wheat bran not fit for human consumption falls under the head of Aquatic Feed, Poultry Feed and Feeding stuff for animals enumerated under Sl.No.5 in Part-B of the Third Schedule to the TNGST Act, 1959 exempt from liability. The relevant Circulars are quoted below for ready reference.

THE THIRD SCHEDULE
GOODS EXEMPTED FROM TAX BY SECTION 8
Description of Goods
Part-A

....
....
57. (i) Poultry Feed
(ii) Rabbit Feed
(iii) Monkey Feed
(iv) Pig Feed
(v) Cattle Feed and Wheat Bran used for cattle feed other than those falling under item 12 of Part-B of the First Schedule.
(vi) Fish Feed"

THE **SCHEDULES AS AMENDED UP TO DATE INCLUDING TAMIL NADU 1997-98 BUDGET AMENDMENTS** FIRST SCHEDULE

GOODS IN RESPECT OF WHICH SINGLE POINT TAX IS LEVIABLE UNDER SUB-SECTION (2) OF SECTION 3

Serial No.	Description of Goods	Point of levy in the State
12	Cattle Feed Compounds including feed supplements and concentrates	First Sale

5. Having heard the learned counsel for the parties, we are of the opinion that though the cattle feed is generally exempted under Entry 57 of Part-A of Third Schedule, which prescribes the list of goods exempted from tax by Section 8(2)(A) of the Act,

however wheat bran used for cattle feed (other than those falling under Item 12 of Part B of the First Schedule) is exempted from payment of tax only if the wheat bran is used for cattle feed. Since wheat bran can be used for both purposes, as cattle feed as well as for human consumption, the legislature has exempted the wheat bran from payment of tax only if it is used for cattle feed. Entry 12 of the First Schedule in Part B which levies 4% tax prescribes the 'First Sale' as 'Point of Tax' on Cattle Feed Compounds including Feed Supplements and Concentrates.

6. The Petitioner Assessee, who is a dealer of Wheat products inter alia also seems to have sold wheat bran to certain cattle feed dealers of other States, as claimed by the Assessee, in the course of interstate trade and commerce. In our opinion, to avail the exemption from tax with reference to Section 8(2)(A) of the Act, the Assessee has to first establish before the Assessing Officer that the wheat bran in question is sold as cattle feed. Obviously, the question of fact has to be established by the Assessee on relevant evidence. But, this exercise of fact finding based on relevant evidence does not seem to hve been taken place in the present case, as the Assessment Order does not disclose any such exercise undertaken by the Assessing Officer before denial of exemption to the Assessee. The Assessment Order in the present case is passed on the following reasons.

> "As per the entry 57(v) of the III Schedule, cattle feed and wheat bran used for cattle feed only is exempt from tax under local Act. Hence the sale of wheat bran is exempt from tax under local Act only on specified condition (ie) if it is used for cattle feed only. Accordingly, the interstate sale of wheat bran is liable to tax under CST Act, 1956 since there is no specific notification or Government Orders exempting the interstate sales of wheat bran from tax under the CST Act, 1956."

7. Before holding that the sale of wheat bran by the Assessee under specified conditions of specified circumstances, the Assessing Officer ought to have undertaken the exercise of returning the finding of facts as to whether the wheat bran sold by the Assessee in the course of interstate trade and commerce was a cattle feed or not. Since this exercise was not undertaken, the denial of exemption to the Assessee, without arriving at such finding of facts cannot be sustained. The higher appellate authority also did not seem to have undertaken any such fact finding exercise.

8. Therefore, we are of the opinion that the matter deserves

to be remanded back to the learned Assessing Authority for undertaking the said exercise of fact finding as to whether the wheat bran sold by the Assessee in the course of interstate sale was a cattle feed or not, which is obviously for the Assessee to establish such facts with relevant evidence before the Assessing Officer.

9. Accordingly, the present writ petition is disposed of by setting aside the impugned orders of the Revenue authorities and remanding the case back to the Assessing Officer for undertaking the said exercise once again. In view of the matter being old, we expect the Assessing Authority to complete the said exercise of remand and pass orders within a period of six months from today. The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

KST

To

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

2.The Additional Appellate Assistant
Commissioner (CT), Coimbatore.

3.The Commercial Tax Officer,
RG Street Circle, Coimbatore.

+1cc to Ms.R.Hemalatha, Advocate, SR.No.7010.
+1cc to Government Pleader(Taxes), SR.No.7739.

W.P.No.18137 of 2005

PM(CO)
CSR: 26.02.2020