IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P NO. 39620 OF 2006

M/s. Stirling Dynamics P Ltd.,
Ayyanambakkam Village
Maduravoyal
Chennai 600 102

.. Petitioner

Versus

1. The Tamil Nadu Sales Tax Appellate Tribunal, (Main bench), represented by its Secretary, City Civil Court Campus II Floor, Chennai.

2. The Appellate Assistant Commissioner (CT) VI, Chennai.

3. The Deputy Commercial Tax Officer, Back Year/Koyambedu Assessment Circle, Chennai.

.. Respondents

Prayer:

petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in STA.No.180/2001 and quash the order dated 14.12.2005 passed therein.

For Appellant	:	Mr. C. Subramanian for Mr. K . J. Chandran
For Respondent	:	Mr. N.R.R.Arun Nataraj, Special Government Pleader (Taxes)

ORDER
(Order of the Court was made by R. MAHADEVAN, J.)

Seeking to quash the order dated 14.12.2005 passed by The Tamil Nadu Sales Tax Appellate Tribunal, Chennai, in S.T.A. No. 180 of 2001, the present writ petition is filed by the assessee.

2.The petitioner is a dealer in the business of erection of windmill and an assessee on the file of the third respondent. According to the petitioner, as per Entry 46 (xi) of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959 (in short The Act), "wind mills and any specifically designed devices which run on windmills" are exempted from the levy of sales tax. Therefore, they submitted their return for the assessment year 1996-1997, claiming exemption on a turnover of Rs.36,80,884/- relating to sale of wind mill brake assembly, a component part of a wind mill. However, the third respondent by order dated 25.02.1999 concluded that wind mill brake assembly is a part of the wind mill and therefore, the petitioner is not entitled to claim exemption on sale of the same.

3.Aggrieved by the order of the third respondent, the petitioner filed A.P. No. 224 of 1999 before the second respondent, who by order dated 23.03.2000, allowed the appeal filed by the petitioner on two grounds namely (i) when wind mill is exempted from the purview of tax, then its parts and accessories are also equally exempted from tax as spare parts and components; and (ii) The Special Commissioner and Commissioner of Commercial Tax, Chennai in his proceedings dated 13.11.1996 clarified that wind mill and its parts are not liable to tax and such clarification related to the assessment year 1996-1997 was applicable to the said assessment year as well.

4.Challenging the aforesaid order of the second respondent, the revenue filed an appeal before the first respondent / Tribunal. By order dated 14.12.2005 the Tribunal allowed the said appeal and restored the order of the Assessing Officer, stating that the clarification dated 13.11.1996 relied on by the Appellate Authority was subsequently withdrawn on 13.04.1998 and therefore, the same can no longer be relied on. It was also pointed out by the Tribunal that the exemption conferred under Entry 46 (xi) of the III Schedule is for wind mill alone and not for the spare parts of wind mill and therefore, the question of granting exemption will not arise. Therefore, the petitioner / assessee is before this Court with this writ petition for the aforesaid prayer.

5.The learned counsel for the petitioner vehemently contended that in an identical case, in Spheroidel Castings Limited v. State of Tamil Nadu [40 STC 596], it was held by a

Division Bench of this court that when exemption of tax was granted on sale of agricultural implements, the claim for exemption made by the assessee towards castings used as part of the mould board plough, also come within the scope of exemption granted for parts of agricultural implements. In the light of the said decision, the claim of the petitioner will have to be allowed, whereas the Tribunal lost sight of the said decision of this court and erroneously allowed the appeal filed by the Revenue, according to the learned counsel. Further, the learned counsel submitted that the withdrawal of the clarification dated 13.11.1996 issued by the Special Commissioner and Commissioner of Commercial Taxes, Chennai will have no bearing with respect to the claim of the assessee for exemption, inasmuch as the said clarification was very much in force during the relevant assessment year. Thus, according to the learned counsel, the items sold by the petitioner is a part of wind mill namely "wind mill brake assembly" and it has to be exempted from payment of tax and hence, the order impugned herein requires interference by this court.

6.Reiterating the averments made in the counter affidavit filed by the respondents, the learned Special Government Pleader (Taxes) appearing for the respondents submitted that since the parts and accessories of the wind mill are not eligible for exemption, the claims were disallowed and the same had been assessed to tax by the assessing officer. Referring to the Entry in III Schedule i.e., No.46(xi), the learned counsel submitted that when the entry reads as 'wind mills alone', the exemption is applicable only to the wind mills as a whole unit and it cannot be applied to the spare parts. Therefore, according to the learned counsel, the order passed by the Tribunal is perfectly valid in law and the same does not call for any interference at the hands of this court.

7.Heard the learned counsel for the petitioner and the learned Special Government Pleader (Taxes) appearing for the respondents and also perused the materials available on record.

8.A short question that arises for consideration herein is, whether the 'wind mill brake assembly' is exempted from payment of sales tax.

9.According to the petitioner, as the wind mill brake assembly is a part of the wind mill, it is exempted from tax as per Entry No.46(xi) of the III Schedule to the TNGST Act and accordingly, they filed returns claiming exemption on a turnover of Rs.36,80,884/- for the year 1996-97. However, the said claim was disallowed by the assessing officer, observing that only the wind mills are exempted from tax and the exemption granted to the same, cannot be applied to the spare parts or components.

While the First Appellate Authority reversed the said finding of the assessing officer and allowed the claim of the assessee, the Tribunal set aside the same and restored the order of the Assessing Officer, in the appeal filed by the Revenue. Hence, this writ petition, by the assessee.

10.At the outset, it would be apposite to extract the Entry 46(xi) of the Third Schedule to the TNGST Act, 1959, which reads as follows:

> "Windmills and any specially designed devices which run on windmills"

11.It is evident from the above extract that the exemption is granted only to the wind mills and any specially designed devices, which run on the same. Applying the same to the subject matter in issue, the 'wind mill brake assembly' is only a spare part of the wind mill and not a specially designed device and hence, the same cannot be entitled for the benefit of exemption, as granted to the wind mill as a whole unit. That is why, it was specifically pointed out by the Tribunal at paragraph No. 9 of the order impugned herein that the spare parts and accessories of wind mill, other than those specified in the schedule, would be classified under residuary Entry 67 Part D of first schedule and they are liable for payment of tax at 11%. The clarification dated 13.11.1996 relied on by the petitioner was subsequently withdrawn. Therefore, the Tribunal rightly set aside the order of the First Appellate Authority and restored the order of the assessing officer disallowing the claim of the petitioner seeking exemption on the sale of wind mill brake assembly.

12.In such view of the matter, the Writ Petition is liable to be dismissed and is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

1. The Tamil Nadu Sales Tax Appellate Tribunal,
(Main bench), represented by its
Secretary, City Civil Court Campus
II Floor, Chennai.

2. The Appellate Assistant Commissioner
(CT) VI, Chennai.

3. The Deputy Commercial Tax Officer,
Back Year/Koyambedu Assessment Circle,
Chennai.

+1cc to Mr. C. Subramanian, Advocate, S.R.No.63691
+1cc to the Special Government Pleader (Taxes), S.R.No.64177

WP No. 39620 of 2006

NR(CO)
PM/24/01/2022