IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2022

CORAM :

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.29600 of 2007
and M.P.Nos.1 of 2007 & 1 of 2008

Tvl. Tamil Nadu Mill Stores,
Rep. by the Proprietor, S.Selvakumar
No.188, Raja Mill Road,
Pollachi-642 001. .. Petitioner

Versus

1. Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Rep. by the Secretary,
Coimbatore-18.

2. The Deputy Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi. .. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records of the first respondent in CTSA No.63/02 dated 20.03.2007 and quash the same as illegal.

For Petitioner : Mr.Rajeshsivanandam

For Respondents : Mr.V.Prasanth Kiran (R2)
Government Advocate

<u>O R D E R</u>

<u>S.VAIDYANATHAN,J</u>
and
<u>C.SARAVANAN, J</u>

The Petitioner has filed this Writ Petition challenging the Impugned Order dated 20.03.2007 passed by the Sales Tax Appellate Tribunal (in short 'Tribunal) Coimbatore. By this order dated 20.03.2007, the Tribunal has allowed the Appeal filed by the Respondent Commercial Tax Officer. The relevant portion of the Impugned Order reads as under:

> "5. *We have heard the Additional State Representative and perused the connected material records. The point for consideration in this appeal is:*
>
> *Originally the dealer has been assessed on a total and taxable turnover of Rs.1,40,25,771/- and Rs.38,45,063/- by the order of the Assessing*

Authority namely Deputy Commercial Tax Officer, Pollachi West dated 31.03.00. During the original assessment, the dealers contention was that he had sold only laterals which forms part and parcel of the drip irrigation material and it was assessed at 4% under Entry 69-A of Part B of First Schedule. Subsequently, on verification of the assessment file, it was revealed that the dealer has purchased only PVC pipes from one Tvl.Telecom Wires and Cables, Bangalore and the purchase bills had been filed in the assessment file itself describing the commodities as PVC pipe, tubing etc., Based on the above purchase bills, the revision of assessment had been taken place. Even when the revision of assessment took up by the Assessing Authority, the dealer was under the stand that what he had sold was only drip irrigation equipments and not PVC pipes and the pipes that had been sold were only lateral which which is used exclusively for drip irrigation purpose. For his support, he had also produced the purchase bills from Tvl.Telecom Wires and Cables, Bangalore which shows that the goods that had been sold was only PVC Pipes, which is used only for agricultural purpose. When the matter was before the Appellate Assistant Commissioner, the Appellate Assistant Commissioner accepted the contentions of the dealer and allowed the appeal. The findings of the Appellate Assistant Commissioner was that the Assessing Officer had not verified the sale bills and the end use to which these goods were put to pass on the description of the commodities in the purchase bills only. The Assessing Authority had taken it as PVC pipes whereas, the Appellate Assistant Commissioner had found fault with the Assessing Officer that the Assessing Officer had not verified the sale bills and the end use. It is a settled law by the Hon'ble Supreme Court and also by the Hon'ble High Cout that the user theory cannot be applied in classifying the commodity under the taxing statute.

So, the findings of the Appellate Assistant Commissioner that the end use had not been verified by the Assessing Authority is not correct. The second thing is while dealing with the issue, the Appellate Assistant Authority is not correct. The second thing is while dealing with the issue, the Appellate Assistant Commissioner had clearly pointed out the various description in the purchase bills . He says at page 5 para 7 of his order that:

> *"It is obvious from the above the revision has been made based on the purchase bill of Telecom Wires and Cables, Bangalore only wherein there is a mentioning about the 16mm plastic pipe. 12mm plastic pipe."*

So, this clearly shows that the purchases made by the dealer was only plastic pipes. More than that, the seller had issued a certificate, which is as follows:

> "*The seller had also issued a letter stating that they have described in the sale bills issued by them was only PVC pipes and it was for Central Excise Purpose."*

Whether it is for Central Excise Purpose or for any other purpose, the question is what was sold by the dealer was only PVC pipes and it had also been accepted by the seller and the purchase bills had also been filed in the assessment file itself describing the commodity that had been purchased as PVC pipes. When the dealer had effected purchase of PVC pipes, the dealer cannot in turn sell laterals. If the dealer had purchased laterals, then there is every point in accepting the contention of the

> *dealer that he had effected only laterals and not PVC pipes. But as seen from the purchase bills, it is very clear that the goods purchased were only PVC pipes and the end use need not be seen by the Assessing Authority as the user theory had been struck down by the Hon'ble Supreme Court as well as by the Hon'ble Court in several cases. So, what was purchased was PVC pipes and what should have been sold was only PVC pipes and not laterals and the revision of assessment made by the Assessing Authority is correct and the same is restored setting aside the order of the Appellate Assistant Commissioner*."

2. The dispute in the present case pertains to the assessment year 1998-1999. It relates to classification and rate of duty payable on the item purchased by the Petitioner and sold to various farmers. The rival entries from the Tamil Nadu General Sales Tax Act, 1959 which are relevant to the case on hand are as follows:-

Section (1)	***Description of goods (2)***	***Rate of Tax (3)***	***Point of levy in the State (4)***
Entry 69-A Part B - I Schedule (From 5.3.1997 – 26.3.2002)	Sprinkler and Drip irrigation equipments	4%	First sale
Entry 45 Part-D -I schedule (omitted from	P.V.C.Pipes, tubes and fittings of all varieties including flexible and rigid pipes, hoses and tubes, whether transparent	11%	First sale

Section (1)	*Description of goods (2)*	*Rate of Tax (3)*	*Point of levy in the State (4)*
23.1.2000)	or not, P.V.C. and plastic water-supply items and and sanitaryware		

3. The undisputed facts as admitted by the Petitioner is that the petitioner is a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act 1959 and Central Sales Tax Act, 1956 and purchased PVC pipes of different diameter from M/s.Telecom Wires & Cables, Bangalore & Others. The pipes purchased were to be sold by the petitioner to various farmers as a part of a Drip Irrigation System.

4. The Petitioner claimed pipes sold along with other components of the drip irrigation was liable to sales tax under Entry 69-A to the 1st Schedule to TNGST Act, 1959 as it existed between 05.03.1997 and 26.03.2002. The assessment was also completed by the Assessing Officer vide order dated 31.03.2000. However, assessment was revised on the ground that the petitioner had wrongly paid lower tax by paying tax under entry 69-A- Part B to I schedule at 4% instead of tax at 11% in terms of Entry 45 of Part D to the 1st Schedule of the said Act.

5. The Deputy Commercial Tax Officer confirmed the stand of the

Revenue vide order dated 31.08.2001. Aggrieved over the same, the Petitioner preferred an Appeal before the Appellate Assistant Commissioner (CT), Pollachi in A.P.No.142/2001 dated 24.10.2001. The Appellate Assistant Commissioner (CT), Pollach by order dated 24.10.2001 allowed the Appeal of the petitioner. Aggrieved the said order, the State preferred an appeal in CTSA.No.63 of 2002 before the Tribunal. The Tribunal allowed the State Appeal vide order dated 20.03.2007 which is impugned in this Writ Petition.

6. The learned counsel for Petitioner submitted that the Tribunal has passed the order was without perusing the sales bills of the supplier. It is further submitted that the Tribunal erred in holding that the sales effected by the petitioner was liable to assess at 11%.

7. The impugned order is defended by the learned counsel for the 2nd Respondent stating that the same is well reasoned and does not warrant interference. It is further submitted that the Tribunal took note of the decisions of this Court and has correctly observed that the user theory cannot be applied while classifying the commodity under the

taxing statute. It is therefore submitted that the order of the Appellate Commissioner has been correctly set aside by the Tribunal.

8. We have considered the submissions made by the learned counsel appearing for the Petitioner as well as learned counsel for the 2nd Respondent.

9. The classification claimed classification is Section 69 A - Part B to the 1st Schedule to Act, which is extracted supra and the invoices which have been filed by the Petitioner *prima facie* indicate that the Petitioner has raised invoices on the farmers for drip irrigation system and therefore classified the sale as that of drip irrigation equipment and paid tax at 4%. What has been cleared by the Petitioner along with the invoices which have been filed indicates that they were cleared as kit for the drip irrigation system not separately as pipes. Therefore, their classification will be along with the main item which was supplied by the petitioner for drip irrigation equipments. If the petitioner had cleared the pipes independently, the clarification dated 04.11.1999 of the Commissioner of

Commercial Tax would apply.

10. Therefore, we are of the view that the order passed by the Tribunal holding that the Petitioner had wrongly adopted the rate of tax in terms of Section 69 A of the 1st Schedule to Act may not correct based on sampling. The Tribunal also would not have got an opportunity to see all the invoices raised by the Petitioner during the period in dispute.

11. Therefore, we set aside the impugned order of the Tribunal dated 20.03.2007 and remit the case back to the 2nd Respondent Deputy Commercial Tax Officer or such other officer sitting in his place to examine all the invoices raised by the Petitioner during the period in dispute and determine the liability in terms of the above observation and Classification/Circulars dated 04.11.1999 of Commissioner of Commercial Tax.

12. Thus, this Writ Petition is allowed by way of remand with the above observations. Since the dispute pertains to the assessment year

1998-1999, we expect the 2nd Respondent or such other officer occupying the position shall endeavour to complete the *de novo* proceeding, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.] **[C.S.N., J.]**

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Index : Yes / No
Internet : Yes/No
arr/kkd

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