

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

WRIT PETITION NOS.44296, 44297 AND 44298 OF 2006
AND

M.P.NOS.1 TO 1 OF 2006

Oswal Oils and Vanaspathi Industries,
(Prop. Oswal Woollen Mills Ltd),
represented by its Authorised
Signatory A.P.Jain,
No.10, Cochrane Basin Road,
Chennai - 600 021.

... Petitioner in all
the Writ Petitions

Versus

1. The Commercial Tax Officer,
Washermanpet I Assessment Circle,
20, Kummam Amman Koil Street,
Tondiarpet, Chennai - 600 081.
2. The Appellate Assistant Commissioner (CT)-II,
VI Floor, Kuralagam Annexe,
Chennai - 600 108.
3. The Sales Tax Appellate Tribunal
(Additional Bench),
Represented by its Secretary,
New City Civil Court Buildings,
High Court Complex,
Chennai - 600 104

... Respondents in all
the Writ Petitions

PRAYER IN W.P.NO.44296 OF 2006:-

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the Third respondent herein in T.A.No.258 of 2003 dated 15.09.2006 and quash the same.

PRAYER IN W.P.NO.44297 OF 2006:-

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the Third respondent herein in T.A.No.262 of 2003 dated 15.09.2006 and quash the same.

PRAYER IN W.P.NO.44298 OF 2006:-

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the Third respondent herein in T.A.No.257 of 2003 dated 15.09.2006 and quash the same.

For Appellant : Mr.N.Prasad
in all W.P'S

For Respondents : Mr.Richardson Wilson
Additional Government Pleader
(Tax)
in all W.P'S

COMMON ORDER

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

All these writ petitions arise from the common order dated 15.09.2006 passed by the third respondent/Tamil Nadu Sales Tax Appellate Tribunal in T.A.Nos.258, 262 and 257 of 2003 relating to the assessment years 1990-91, 1991-92 and 1992-93 respectively.

2. The petitioner company is engaged in the business of manufacture of refined oil and vanaspathi. For the purpose of packing their products, they purchased Tin containers against form XVII declaration and claimed concessional rate of tax at 3% under section 3(3) of the Tamil Nadu General Sales Tax Act, 1959, (in short, "TNGST Act") for the assessment years in question viz., 1990-1991, 1991-1992 and 1992-1993. After scrutiny of the same, the assessment officer passed the original assessment orders dated 27.03.1998, levying tax under section 23 of the TNGST Act and penalty under section 45(2)(e) of the TNGST Act, for the violation of section 3(3), after having held that since the tin containers were used for packing the vanaspathi manufactured by the petitioner, the same can be treated only as packing materials and hence, they were not eligible for the concessional rate of tax on the purchase of tin containers against Form XVII declaration.

3. Challenging the orders of assessment, the petitioner preferred appeals before the Appellate Assistant Commissioner (CT), Chennai, who, by a common order dated 25.06.1999, set aside the original assessment orders and remanded the matter to the assessing officer for fresh consideration, after verifying the entries in the registers for all the years, in which they had filled up all the details of purchases and its disposal in packing vanaspathi and oil etc. Pursuant to the said order of remand, after examining the objections filed by the petitioner, the assessing officer/first respondent passed the revised assessment orders dated 28.03.2002, confirming the earlier assessment orders levying tax and penalty at 150%, with a finding that the TNGST Act prohibited any dealer from issuance of Form XVII for their purchases of packing material prior to 1993 under section 3(3); and contravention of the provision of the Act resulted in misuse of Form XVII and such an act was punishable under section 23 of the TNGST Act.

4. Aggrieved over the revised assessment orders, the petitioner preferred appeals before the Appellate Authority/second respondent, who, by a common order dated 14.02.2003, confirmed the revised assessment made by the first respondent/assessing officer with respect to levy of tax, but modified the order relating to penalty, by restricting it to 100% of the tax due. Challenging the order of the Appellate Authority, both the petitioner and the State preferred appeals before the third respondent/Tamil Nadu Sales Tax Appellate Tribunal. Upon hearing both sides, the Tribunal dismissed all the appeals, by a common order dated 15.09.2006, which is impugned in all these writ petitions.

5. The learned counsel for the petitioner in all these writ petitions submitted that the tin containers purchased by the petitioner against Form XVII, were used for packing Vanaspathi and they formed an inextricable part of the manufacturing activity. Adding further, the learned counsel submitted that the process of manufacture of Vanaspathi oil includes (i) Pre-refining (ii) Hydrogenation (iii) Post-refining (iv) deodorisation (v) purification with vitamins and (vi) packaging and refrigeration. After the manufactured oil is filled into tins or containers, it will be refrigerated to get the desired consistency and texture. Thus, the tin containers are stacked in a cold room with ample space for free circulation of refrigerator air and the rate of cooling is carried out to get good gram sizes. Therefore, the empty tin container is not merely a packing material, but a crucial component used in the manufacturing activity; and the process of packing vanaspathi in tin containers is integrally connected with the manufacturing activity. The learned counsel also invited the attention of this Court to the notification dated 26.11.1985 issued by the

Government of India under Clause 14 of Vegetable Oil (Control) Order 1947 and submitted that the delivery and/or sale of Vanaspathi should be in tin containers; the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 also mandates sale and delivery of Vanaspathi in packages, which were to be in units of 5 kilograms; and therefore, packing of refined oil or vanaspathi in tin containers was one of the integral parts of the manufacturing activity of vanaspathy. Without considering those aspects, the assessing officer erred in concluding that the tins purchased have not gone into production and changed its identity and they were used as packing materials and therefore, the petitioner was not eligible for concessional rate of tax under section 3(3) of the TNGST Act and they committed an offence under section 45(2)(e) for violating the provisions of section 3(3); and the said finding of the assessing officer was also erroneously affirmed by the Appellate Authority as well as the Tribunal. In support of the said contentions, the learned counsel placed reliance on several case laws. Even otherwise, the learned counsel submitted that in the absence of suppression of any material particulars, the imposition of penalty is unwarranted. Therefore, the learned counsel sought to quash the orders passed by the authorities below.

6. Per contra, the learned Additional Government Pleader (Taxes) appearing for the respondents would contend that the tin containers purchased by the petitioner against form XVII did not fulfil the condition incorporated in the TNGST Act namely "for use by the latter in the manufacture inside the State". The Assessing Officer, upon considering the objections raised by the petitioner categorically held that the tin containers would be eligible for concessional rate of tax, only if they are used as an integral component in the manufacturing process and not otherwise. According to Section 3 (3) of the Act, the goods which are used in the manufacture of other product alone, can be purchased at concessional duty against form XVII. Accordingly, the Assessing Officer was wholly justified in disallowing the claim of concessional rate of tax made by the petitioner, which is in accordance with the law prevailing during the relevant assessment years. The said finding of the assessing officer was rightly confirmed by the appellate authorities. Therefore, the learned counsel prayed for dismissal of the writ petitions.

7. We have considered the rival submissions made by the parties and also perused the materials placed on record.

8. The issues involved in the present writ petitions are (i) whether the purchase of tin containers during the assessment years 1990-91, 1991-92 and 1992-93, for packing purpose, is eligible for concessional rate of tax at 3% against issuance of

Form XVII declaration; (ii) whether the penalty imposed by the assessing officer for violation of section 3(3) of the TNGST Act is correct; (iii) Whether the quantum of penalty at 150% imposed on the petitioner by the assessing officer, which was restricted to 100% by the appellate authority as affirmed by the Tribunal, is justified.

9. According to the petitioner, they effected purchase of tin containers against declaration in form XVII as contemplated under section 3(3) of the TNGST Act and the same were used by them in the manufacture of Vanaspathi inside the State. Further, section 3(3) of the TNGST Act provides the concessional rate of tax at 3% in respect of any goods other than consumables for use by the purchasing dealer in the manufacture inside the State for sale by them of any goods mentioned in the First Schedule other than those falling under item 70(c) and item 107 of the said Schedule. Therefore, the petitioner is entitled for concessional rate of tax for purchase of tin containers by them.

10. To buttress the stand of the petitioner, the learned counsel for the petitioner placed reliance on several decisions, more particularly, (i) M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd v. Sales Tax Officer, Kanpur and another [(1965) 1 SCR 900: AIR 1965 SC 1310 : (1965) 16 STC 563], in which, the Hon'ble Supreme Court pointed out that "the process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production. Goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. Drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods". (ii) Collector of Central Excise, Calcutta-II v. M/s. Eastend Paper Industries Limited, [(1989) 4 SCC 244], wherein, it was held by the Hon'ble Supreme Court that "anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be component part of the end product; the paper to be marketed is not complete until it is wrapped in wrapping paper; hence, under Rule 56A of the Rules, the assessee would be entitled to the benefit of deduction of the duty to be charged on all wrapping papers, if any." (iii) Brooke Bond Lipton India Limited v. State of Karnataka [109 STC 265], in which, it was observed by Karnataka High Court that "the packaged blended tea produced in

the industrial unit of the petitioner is a manufactured product, the contributing inputs being garden teas of various colour and flavour and the packing materials". (iv) Appollo Saline Pharmaceuticals (P) Ltd v. Deputy Commercial Tax Officer and another [125 STC 500], wherein, it was held that "having regard to the nature of the goods and the need for a container in order to make those goods marketable, it must necessarily be held that the bottles used by the petitioner were bottles used in or for manufacture of I.V. fluids". (v) Glaxo Smithkline Consumer Healthcare Limited v. State of Tamil Nadu [TC(R) Nos.1665, 1632 and 1619 of 2008 and WP.Nos.33772 to 33777 of 2007 dated 24.08.2012], in which, it was held by this court that "the purchase of labels and caps are integral to the manufacturing activity and for the purpose of trade; Going by the decision of the Apex Court in the assessee's own case rendered in CA.No.2891 of 1985 dated 23.09.1994 - HMM Limited v. Collector of Central Excise, holding that screw cap shall be deemed to be a component part of Horlicks and hence, the assessee is entitled to the concessional excise levy". Thus, according to the learned counsel, the tin containers were used in the manufacturing activity and it is one of the important and essential ingredients in the supply and sale of vanaspathi. However, the authorities below erred in disallowing the claim of the petitioner for concessional rate of tax, which warrants interference by this court by allowing these writ petitions.

11. On the other hand, it is the stand of the respondents that the tin containers are packing materials and they are not used in the manufacturing activity and hence, the petitioner was not entitled to avail the concessional rate of tax under section 3(3) on the purchase of packing materials, as against issuance of form XVII declaration. Accordingly, the first respondent levied tax at the rate of 8% upto 06.05.1990 and at 5% from 07.05.1990 on the purchase of packing materials, which was rightly affirmed by the appellate authorities.

12. Before going into the rival submissions, it is but necessary to refer to the relevant provision of section 3(3) of the Act, which reads as under:

"Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of sale of any goods, other than consumables to another for use by the latter in the manufacture inside the State for sale by him of any goods - mentioned in the First Schedule other than those falling under items 70(c) and 107 of the said Schedule or involved in the execution of works contract shall be at the rate of only three per cent on the turnover relating to such sale."

Subsequently, section 3(3) was amended, with effect from 12.03.1993 and the same is quoted below for ready reference:

“Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub section (1), the tax payable by a dealer in respect of sale of any goods, including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture and assembling, packing or labelling in connection with such manufacture inside the State, for sale by him of any goods mentioned in the First Schedule other than those falling under item 56 in Part D of the said Schedule and arrack, shall be at the rate of only three percent on the turnover relating to such sale”.

Thus, it is evident from the aforesaid provisions that the packing materials were not included for the purpose of availing concessional rate of tax against issuance of Form XVII declaration and the same were taken into consideration only after amendment of section 3(3) of the Act i.e., with effect from 12.03.1993.

13. Concededly, the dispute arisen for consideration herein pertains to the assessment years 1990-91, 1991-92 and 1992-93 and the petitioner purchased tin containers against the form XVII declaration, during that period i.e., prior to amendment. After taking note of the same and also in the light of the materials placed before it, the assessing officer was of the view that the petitioner purchased the tin containers for using the same as packing materials for their oil manufactured and hence, rejected the claim of the petitioner seeking concessional rate of tax at 3% for the same against issuance of XVII declaration under section 3(3) of the Act. The said finding of the assessing officer was also affirmed by the Appellate Authority as well as by the Tribunal. The learned counsel for the petitioner heavily contended that the tin containers were used by the petitioner in the manufacture of vanaspathi and not for packing purpose by placing reliance on the decisions referred to above, which cannot be countenanced by this court, as the same are factually distinguishable and are not applicable to the facts of the present case, though the ratio laid down therein are not disputed. It is also to be noted that the provisions of law cannot be interpreted by altering, deleting or inserting any words by this court and hence, the tin containers purchased by the petitioner cannot be construed as if the same were involved in the manufacturing activity, in the absence of any concrete material to prove the same.

14. At this juncture, it is noteworthy to refer to the decision of the Hon'ble Supreme Court in Union of India v. Rajiv Kumar [(2003) 6 SCC 516], wherein, in paragraphs 22 and 23, it was held as follows:

"22. While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co, (2000) 5 SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process.

23. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time, a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou (1966) 1 QB 878 : (1965) 3 All ER 539 (CA) (All ER p.544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC 1963 AC 557 : (1963) 1 All ER 655 (HL)] where AC at p.577 (All ER p.664 I) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges".]

15. In view of the aforesaid legal principles and also considering the fact that prior to amendment of section 3(3),

the packing materials were excluded from the concessional rate of tax against form XVII declaration and there is no material to prove that the tin containers purchased by the petitioner were used in the manufacturing activity, this court finds no good reason to interfere with the well considered findings of the Authorities below, disallowing the concessional rate of tax under section 3(3), against issuance of form XVII declaration, during the material point of time. The first issue is accordingly, answered against the petitioner.

16. With respect to the issue nos.2 and 3 relating to penalty, the findings of the third respondent/Tribunal are quoted below for ready reference:

"When it has been decided that the appellants are not eligible to avail concessional rate of tax at 3% under section 3(3) of the TNGST Act and their purchase of packing materials against Form XVII, no doubt this is a cross violation of the conditions stipulated in section 3(3) of the TNGST Act and as per law it warrants penalty under section 23 of the TNGST Act....

Thus, the levy of penalty under section 23 is also in accordance with law and infact though the assessing authority has levied penalty at 1-1/2 times the tax payable on the turnover. The first appellate authority has restricted the quantum to one time. Here also we do not find any reason to interfere with the orders of the first appellate authority and thus we sustain the order of the Appellate Assistant Commissioner in having reduced the quantum of penalty to 100% against 150%".

"In this case the assessing authority has levied penalty under section 23 of the TNGST Act at 1-1/2 times the tax due on the disputed turnover. But on appeal the first appellate authority has modified the quantum of penalty to one time i.e.100% instead of 150% levied by the assessing officer. The contention of the State is that the purchase of tin container against Form XVII is an offence as the dealers are not entitled to tin containers against Form XVII and that the above purchasers have also not been used in manufacture of oil and therefore the commission of offence and guiltiness is apparent in this case. Therefore the penalty leviabale is only 150% and it cannot be reduced to 100% as the sections 23 do not contemplate such graded levy of penalty. The claim of the State has been examined.

Section 23 has been extracted above. It enables the assessing officer to impose a penalty in a sum not exceeding 1-1/2 times the tax payable on the turnover that means the quantum of penalty should not exceed 150%. Thus it enables the assessing authority to levy penalty either 50% or 100% or at 150%. In this case the assessing officer has levied maximum penalty at 150% whereas the first appellate authority has reduced the same to 100% which is no doubt is in accordance with the provisions of Section 23 of the TNGST Act and so we find no illegality in the order of the first appellate authority and we sustain the order of the first appellate authority".

As rightly held by the third respondent, when the petitioner is not entitled to claim concessional rate of tax under section 3% of the TNGST Act, they are liable to pay penalty under section 23 of the TNGST Act, for violation of the provision of section 3 (3). Accordingly, the assessing officer levied penalty and the same was affirmed by the appellate authorities, which in the opinion of this court, warrants no interference, as the first issue relating to claim of concessional rate of tax under section 3(3), is decided against the petitioner. Accordingly, the second issue is also answered against the petitioner.

17. At the same time, the quantum of penalty at 150% determined by the first respondent/assessing officer, which was subsequently, restricted to 100% by the second respondent/appellate authority as affirmed by the third respondent/Tribunal, in the facts and circumstances of the case, is slightly on the higher side and hence, the same is reduced to 50%, in the opinion of this court. Accordingly, the third issue raised herein is answered in favour of the petitioner.

18. To sum up, the order of the third respondent/Tribunal is modified to the extent as indicated above. All these writ petitions are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
Washermanpet I Assessment Circle,
20, Kummal Amman Koil Street,
Tondiarpet, Chennai - 600 081.
2. The Appellate Assistant Commissioner (CT)-II,
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+1cc to Mr.N.Prasad, Advocate, S.R.No.32749
+1cc to the Government Pleader, S.R.No.33758

W.P.NOS.44296, 44297 AND
44298 OF 2006

JPL(CO)
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