BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.08.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

T.C.(MD)Nos.169 of 2012 and 5 to 14 of 2013

T.C.(MD)No.169 of 2012:-

Tvl.Nila Cold Storage (P) Ltd.,
38/1, Kandasamypuram,
Tuticorin, Tuticorin. ...Appellant

-Vs.-

The State of Tamil Nadu,
represented by its Assistant Commissioner
of Commercial Taxes-1,
Tuticorin. ...Respondent

PRAYER:- Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench) Madurai dated 15.03.2001 and passed in Madurai Tribunal State Appeal No.11/2006.

For Appellant :Mr.N.Inbarajan
For Respondent :Mr.T.Amjad Khan
Government Advocate

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COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.)**

A common order is passed in these 11 tax cases for the reason that the questions of law raised relate to identical issues both on merits as well as levy of penalty, in all appeals. The questions of law are as follows:

> *1.Whether the Sales Tax Appellate Tribunal, Additional Bench, Madurai committed an error of law in holding that the petitioners is not eligible to purchase goods availing concessional rate of tax under Section 3(5)?*
>
> *2.Whether in the facts and circumstances of the case the Sales Tax Appellate Tribunal is justified in holding that the petitioner is not a manufacturer and thereby they are not eligible to purchase goods against Form XVII declaration?*
>
> *3.Whether in the facts and circumstances of the case the revision of assessment by levying the differential of tax is justifiable under Section 3(5) of the Act?*
>
> *4.Whether in the facts and circumstances of the case the Sales Tax Appellate Tribunal is correct in confirming the levy of penalty under Section 23 of the At without giving a finding that there is mensrea?*
>
> *5.Whether in the facts and circumstances of the case the Sales Tax Appellate Tribunal without holding or finding that the petitioners fails without reasonable excuse to make use of the goods for the declared purpose in order to attract Section 45(2)(e) of the Act in order to invoke Section 23 of the Act for the levy of penalty is correct?*

2.As regards questions of law 1 to 3, they would have to be answered against the appellants in light of the admitted position that the capital goods, that have been purchased against Form-XVII declaration, have not been used for production or processing goods or manufacturing final products. The appellants are engaged in the business of export of canned sea foods in that they rent out cold storage facilities to third parties. This is the only nature of their business.

3.It is in this admitted factual context that concurrent findings have been arrived at by the authorities, through assessment, first appeal and second appeal, to the effect that the appellants are not engaged in production or manufacturing, and are hence not entitled for the grant of benefit of concessional rate of tax under Section 3(5) of the TNGST Act, 1959.

4.There is no serious contest to this finding of fact and in fact, no question of law has been raised to the effect that the finding of fact is perverse. In light of the same, questions 1 to 3 are decided adverse to the appellants and in favour of the Revenue.

5.As far as questions 4 and 5 are concerned, they relate to levy of penalty under Section 23 of the TNGST Act, 1959. Even on this score, the contest is not very severe for the reason that the sum total of the amount of penalty for all 11 tax cases is in the region of Rs.70,000/- only. Bearing in mind the smallness of the amount, we return these questions as unanswered preserve the issues for decision in a more appropriate case.

6.These Tax Cases are dismissed. No costs.

[A.S.M.J.,] & [R.V.J.,]
09.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

cmr

To

The Assistant Commissioner of Commercial Taxes-1,
The State of Tamil Nadu, Tuticorin.

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

cmr

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