IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.No.124 of 2018

The State of Tamil Nadu,
Represented by,
The Deputy Commissioner (CT),
Salem Division,
Salem. ... Appellant / Petitioner

vs.

Tvl.Jansons Textile Processors,
No.68/A-1, Namakkal Road,
Tiruchengode. ... Respondent / Respondent

Prayer: This petitioner has been filed under Section 38(1) of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 25.04.2003 passed in CTSA.No.656 of 2001.

For Appellant : Mr.G.Nanmaran
Special Government Pleader

For Respondent : Mr.P.Rajavelu

ORDER

(Order of the Court was delivered by **C.SARAVANAN, J.**)

The present Tax Case Revision Petition is directed against the Impugned Order dated 25.04.2003 passed by the Appellate Tribunal whereby the appellant's appeals against Order dated 22.11.2000, 02.02.2001 and 24.12.2001 for the Assessment Years 1997-1998, 1998-1999 and 1999-2000 were rejected.

2. Relevant portion of the Impugned Order dated 25.04.2003 reads as under:-

> *"Following the above mentioned judgments, we hold that dyeing is only service contract and since the dyeing is not involved any sale of goods, levying tax on service charges attributing that dyes and chemicals are transferred during the time of processing is improper. Therefore, we find no reason to interference into the orders of the first appellate Authority as contended by the appellants state.*
>
> *10. With regard to penalty levied by the Assessing Authority, the first appellate authority has set aside and deleted such penalty deserving that the disputes involved in the turnovers have been reflected in the books of accounts and also the statement filed before the Assessing Authority. He has further observed that as per explanation under Section 12(3) of the Act,*

> *added by Act 60/97 effective from 1.4.96, no penalty can be levied u/s.12(3)(b) in the circumstances of the respondents case. The learned Authorised Representative for the respondent has also emphasis the fact that though penalty figures under the dispute in Form III, no arguments have been advanced by the state. He would further state the assessment relates to the assessment year 1997-98, 1998-99 and 1999-2000 and as much as there was no suppression of any turnover, such turnovers do not qualify for any turnover in view of the explanation u/s.12(3) of the Act, added by Act 60/97 with effect from 01.04.1996. The decisions reported in 28 STC 700 (SC) Jayaraj Nadar and 125 STC 505 (Madras High Court) Appollo Saline Pharmaceuticals are also clear in this regard and therefore he would argue that no penalty could be levied in the respondents case. Thus, the above facts and circumstances of the case, we are of the view that the first appellate authority has rightly deleted the penalty levied under Section 12(3)(b) of the Act by the Assessing Officer as unwarranted and hence it calls for no interference."*

3. No substantial question of law was framed when this appeal was admitted. The substantial question of law which ought to have been framed is as under:-

> *"Whether dyes and chemicals used in execution of works contract are liable to tax as works contract"*

4. As a matter of fact for the Assessment Year 1998-1999, the appellant herein had preferred T.C.(R).No.523 of 2006. The said T.C.(R).No.523 of 2006 came to be disposed of on 24.07.2013 placing reliance on an unreported decision of this Court in T.C.(R).No.846 of 2006 and etc. batch vide Order dated 01.07.2011.

5. Relevant portion of the Order dated 24.07.2013 in T.C.(R).No.523 of 2006 is reproduced below:-

> *"The Revenue is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment year 1998-1999 raising the following questions of law:-*
>
> > *"1. Whether the Sales Tax Appellate Tribunal is right in setting aside the assessment order on the ground that dyeing does not involve any sale of goods since levying tax on service charges attributing that dyes and chemicals are transferred during the time of processing is improper?"*
>
> *2. Learned Special Government Pleader (Taxes) appearing for the Revenue placed before us the unreported decision of this Court dated 01.07.2011 passed in T.C.(R).Nos.842, 817, 818, 819 to 823, 826, 841, 843, 849, 850, 870, 982, 987, 990, 1036, 1038 and 1040 of 2006, wherein identical question of law was raised. In the said revision, while following the decisions reported in RAINBOW COLOUR LAB AND ANOTHER V. STATE OF MADHYA PRADESH AND OTHER [2000] 118 STC 9 and ASSOCIATED CEMENT COMPANIES*

LIMITED V. COMMISSIONER OF CUSTOMS [2001] 124 STC 59, this Court held that after introduction of Section 3-B and after amendment made to the definition of 'sale' under Section 2 (n)(ii), the contention raised by the learned counsel for the assessee cannot be accepted, since by the operation of law, the transfer of goods involved in works contract would amount to 'sale' taxable under Section 3-B. ***The assessee therein had purchased the dyes and chemicals from outside the State. Consequently, this Court held that the entire turn over was assessable to tax. It is seen that this Court, as regards levy of penalty, set aside the levy, since there was no suppression of sale in the turnover****.*

3. In the circumstances, following the unreported of this Court dated 01.07.2011 passed in T.C.(R).Nos.842 of 2006 and etc. batch, the above Tax Case Revision is allowed, thereby the order of the Sales Tax Appellate Tribunal is set aside. ***However, as far as the levy of penalty is concerned, we delete the penalty levied under the order of the Sales Tax Appellate Tribunal. No costs.****"*

6. Since the issue have been already answered against the assessee in favour of the appellant which arose out of the very same Common Order, we find no reasons to take a different view.

7. Under these circumstances, Tax Case Revision Petition stands allowed in terms of the Order passed by this Court on 24.07.2013 in

T.C.(R).No.523 of 2006. No cost.

[R.S.K., J.] [C.S.N., J.]

04.09.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
rgm

To:-

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

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

rgm

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