IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

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

T.C.Nos.44, 45, 46 & 47 of 2016
and
CMP No.9892 of 2017

Meenakshi India Limited,
29/16 Whites Road, 4th Floor,
Royapettah,
Chennai - 600 014. ... Petitioner in all TCs.

Vs.

The State of Tamil Nadu,
Represented by
The Assistant Commissioner (CT),
Kothawalchavadi Assmt. Circle,
Chennai. ... Respondent in all TCs.

COMMON PRAYER: Tax Case Revisions filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (Addl.Bench), Chennai – 104, dated 02.05.2016, passed in Tribunal Appeal Nos.78, 79, 84/2011 & 93/2010 respectively.

In all TCs.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.TNC Kaushik
Additional Government Pleader

COMMON ORDER

*(Order of the Court was made by **R.SURESH KUMAR, J.**)*

Since the issue raised in all these Tax Case revisions is one and the same filed by the same assessee in respect of the four assessment years, namely, 2002-03, 2003-04, 2004-05 & 2005-06, with the consent of the learned counsel appearing for both sides, all these four cases are heard together and are disposed of by this common order.

2.The questions that were framed on which the Tax Case Revisions were admitted is that whether the Coffee and Pepper, both white and black, grown by the petitioner would be agricultural produce within the meaning of Section 2 (r) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act').

3.The short facts which are required to be noticed for the disposal of these Tax Case Revisions are as under:

That infact the petitioner/assessee is a dealer under the TNGST Act, 1959 (in short hereinafter referred to as 'the Act') and is dealing with textile business mainly and also since he is having an agricultural land where he has grown Coffee plantation, out of which, he gets Coffee seeds are being marketed as an agricultural produce.

4.For the relevant assessment years returns were filed combinedly for all his business including the agricultural produce.

5.For the sake of convenience, the facts leading to the assessment year 2002-03, which is the subject matter in TCR No.44 of 2016 alone are traversed.

6.That the return submitted by the petitioner/dealer having been considered, an assessment order has been passed by Assessing Authority on 19.03.2004, where the assessment has been completed. Insofar as the agricultural produces, namely, the Coffee and Pepper are concerned, the claim made by the petitioner/dealer is that these two produces, being agricultural products, are totally exempted under Section 2 (r) to explanation 1 to the Act, hence, they have to be given full exemption.

7.This plea of the petitioner/dealer having been considered was accepted by the Assessing Authority in the original assessment order, dated 19.03.2004. The relevant portion of the said order reads thus,

> *In respect of sales of Agriculture produce-Coffee and Pepper cultivated in their land and sold as such are not liable to be included in the*

turnover at all as per the provisions of Section 2 (r) to Explanation (1) to the TNGST Act 1959 and therefore the claim of exemption is allowed in full.

8.However, subsequently, the assessment has been reopened by way of a revision where show cause notice has been issued on 28.11.2005 by the Assessing Authority calling for the objections from the petitioner/dealer for the proposed revision. The petitioner/dealer infact had given his objections on 06.12.2005.

9.These objections, according to the Assessing Authority, having been considered was rejected and the relevant portion of the order of the revised assessment, dated 24.08.2006, passed by the Assessing Authority reads thus,

Hence the dealers were issued a notice in the office notice dt.28.11.2005 calling for their objections for the above proposed revision. The dealers in their letter dated 06.12.2005 have objected to it. Their objection was gone through carefully which is not acceptable in view of the clarifications received from the C(CT) on the sales of Coffee, Tea and Pepper.

Hence I disallowed the exemption on sales of Coffee and Pepper already given to the dealers and proposed to revise the sales turnover of Coffee and Pepper as under:

10.Aggrieved over the said order of the revisional assessment passed by the Assessing Authority where the exemption already been granted in respect of the sale of Coffee and Pepper since has been disallowed, the petitioner/dealer filed an appeal before the First Appellate Authority i.e., the Appellate Assistant Commissioner, who passed an order on 24.09.2008, where the Appellate Assistant Commissioner having discussed the issues in detail has ultimately partly dismissed the Appeal in A.P.No.174 of 2006, partly remanded A.P.No.173 of 2006, partly dismissed and partly remanded A.P.No.187 of 2006 and partly dismissed and partly remanded A.P.No.23 of 2007.

11.Aggrieved over by these orders passed by the First Appellate Authority i.e., the Appellate Assistant Commissioner, the petitioner/dealer preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.78 of 2011 etc., batch.

12.Though the Tribunal has passed separate orders in respect of each of the appeals similarly, the very same issues since has been dealt with in all these orders, the order passed in T.A.No.78 of 2011 corresponding to the assessment year 2002-03 is taken into account for the disposal of these cases in this order.

13.The Tribunal also having discussed rightly on the issue that has been placed before the Tribunal has ultimately dismissed the appeals filed by the appellant/dealer by an order dated 02.05.2016. Aggrieved over the said order passed by the Tribunal, the present Tax Case revisions have been filed.

14.We have heard Mr.N.Prasad, learned counsel appearing for the petitioner/dealer and Mr.TNC Kaushik, learned Additional Government Pleader appearing for the Revenue.

15.Though there has been a total exemption provided under Section 2 (r) to Explanation 1 of the Act, for agricultural produces are concerned and such an exemption also initially had been given by the Assessing Authority by the original assessment order, dated 19.03.2004, subsequently, in the revisional assessment such an exemption provided has been disallowed. The reasons stated by the Assessing Authority for disallowing such an exemption as has been extracted herein above, by the Assessing Authority in his order dated 24.08.2003 has been made in one paragraph, wherein, only one line has been given as if the objections raised by the dealer was gone through thoroughly and which is not acceptable in view of the clarifications received from the Commissioner, Commercial Taxes, on the sales of Coffee, Tea and Pepper.

Except this one line, not even a whisper is available in the said revisional assessment order, dated 24.08.2006.

16.Almost similar orders have been passed in respect of TC Nos.45 & 46 of 2016. However, in respect of TC No.47 of 2016, the Assessing Authority has simply dealt with the said issue by stating that the dealer sold Coffee seeds grown in their farm. Coffee in any form is taxable @ 10% under Entry 1 – C. Subsequently, it has been reduced to 8% and in respect of item No.4 i.e., Pepper, it is the finding of the Assessing Authority that this is also their farm product sales. It was also taxable at 4%. Except these two lines, nothing has been stated in the said revisional assessment order, dated 13.04.2009, in respect of the assessment year 2005 – 2006 covered under TC No.47 of 2016.

17.Therefore, the sum and substance of the issue is that, in all these revisional assessment orders passed by the Assessing Authority, the exemption sought for by the petitioner/dealer under Section 2 (r) to Explanation 1 of the Act, has been denied or disallowed for the only reason that in view of the clarifications received from the Commissioner, Commercial Taxes, such a decision was taken by the Assessing Authority.

18.When this was questioned ultimately before the Tribunal by the petitioner/dealer, who carried the appeal before the Tribunal, the Tribunal also in its order which is impugned herein has referred to about the said circular issued by the Commissioner, Commercial Taxes at one place, where also the Tribunal has simply referred that the clarifications issued by the Commissioner, Commercial Taxes, dated 03.04.2006, is one of the reasons which strengthened the arguments of the Additional State Representative to argue on behalf of the Revenue, apart from that, citations were placed before the Tribunal.

19.Therefore, what is the clarification that has been issued by the Commissioner, Commercial Taxes, dated 03.04.2006, has never been placed or been discussed anywhere in these proceedings right from the assessment till the order passed by the Tribunal, which is impugned herein.

20.If the Assessing Authority comes to such a conclusion for rejecting the objections raised by the petitioner/dealer for not providing the exemption under Sections 2 (r) to the Explanation of the Act by citing the clarification circular issued by the Commissioner, Commercial Taxes, dated 03.04.2006, such a decision should have been clearly stated by the Assessing Authority at the first instance and that should have been gone into both by the First

Appellate Authority as well as the Tribunal. However, since the very content of the circular, dated 03.04.2006, itself has not been made known to any of these authorities, the question of discussing such circular also might not have arisen. However, in the Tribunal's order as stated supra, though it has been referred with the number and date of the clarification circular issued by the Commissioner, Commercial Taxes, even there also no such discussion has been made as to what was the clarification given by the Commissioner, Commercial Taxes, whether it would overcome the statutory exemption provided under the Act and if at all any clarification was given based on which the statutory exemption provided under the Act, can be restricted to certain dealers, who are involved in such processes, whether those processes really the dealer concerned has undergone. Based on these literature which is available, all the matters to be gone into which have never been gone into by any of these authorities.

21.Therefore, we do not have any hesitation to hold that the assessment order, dated 24.08.2006, in respect of the assessment year 2002 – 2003 and all other assessment orders by way of revision in other assessment years, which are covered under this batch of Tax Cases Revisions are unsustainable since there has been no reason given by the Assessing Authority for coming to such a conclusion except the cryptic one line reasoning.

22.Hence, the basic assessment order itself since become an unsustainable one, the ultimate finding given both by the Assistant Commissioner Appeals as well as the Tribunal need not be gone into as it would be a futile exercise. Hence, we are of the considered view that the assessment orders are to be set aside and the matters can be remitted back to the Assessing Authority for reassessment.

23.In the result, the following orders are passed in this batch of Tax Cases Revision that,

(i) The respective assessment orders in all these cases passed by the Assessing Authority are set aside,

(ii) Hence the orders passed by the Appellate Authority as well as the Tribunal has become otiose, the validity of those orders need not be gone into.

(iii) The Assessing Authority now is directed to reassess the issue by giving an opportunity of being heard to the petitioner/dealer and on receipt of such notice from the Assessing Authority, it is open to the petitioner/dealer to putforth the case by filing the documents which have been already filed or additional documents in support of the claim that has been made by the petitioner/dealer and after giving such an opportunity of being heard, the Assessing Authority shall pass a fresh assessment order on merits and in accordance with law as early as possible, preferably, within period of three months from the date of receipt of a copy of such input and personal hearing from the petitioner/dealer.

24.With these orders, all these Tax Cases Revisions are ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

(R.S.K., J.) **(C.S.N., J.)**
18.10.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

The State of Tamil Nadu,
Represented by
The Assistant Commissioner (CT),
Kothawalchavadi Assmt. Circle,
Chennai.

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