BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.01.2024**

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

T.C.(MD)No.44 of 2009

Tvl.Dalmia Cement (Bharat) Limited,
Dalmiapuram,
Trichy – 621 651. ...Petitioner

/Vs./

The State of Tamilnadu,
Rep. By the Deputy Commercial Tax Officer,
Lalgudy. ...Respondent

PRAYER:- Revision Petition - filed under Section 38 of the TNGST Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (Addl. Bench), Madurai, dated 23.04.2004 passed in Madurai Tribunal State Appeal No.1031 of 2000.

For Petitioner : Mr.P.Arun Jayatram
for Mr.P.Radhakrishnan
For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

DR.G.JAYACHANDRAN, J.
AND
C.KUMARAPPAN, J.

An interesting question of law has been raised in this tax case (revision) to decide whether fire brick used for lining the kiln for manufacturing cement will fall within the expression 'any goods used in manufacture and assembling, packing or labelling in connection with manufacturing as employed in Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "Act" for brevity) for seeking concessional rate of sales tax.

2. The petitioner herein is a manufacturer of cement. For the purpose of manufacturing cement, fire bricks have been purchased from M/s.Nataraj Ceramics and Chemical Industries producing Form XVII so as to avail concession under Section 3(3) of the Act. According to the petitioner / trader, fire bricks are used in kiln as goods in the process of manufacturing cement and therefore the dealer is entitled for concessional rate of tax. This contention was not accepted by the assessing authority and therefore, the assessing authority, for the assessment year 1990-91, imposed tax at the rate of 8% instead of 3%.

3. This demand of assessing officer / Deputy Commercial Tax Officer (DCTO) was challenged before the appellate authority, who allowed the appeal and held in favour of the trader stating that the fire bricks used in lining the kiln, which protects burnt at high temperature inside the kiln in the course of manufacturing cement, are necessary in manufacturing process and therefore, the trader is entitled for concession under Section 3(3) of the Act. This issue was further agitated before the Sales Tax Appellate Tribunal by the State. The tribunal vide order dated 23.04.2004 reversed the findings of the appellate authority. The order of the assessing officer was restored. Thus, the question whether the fire brick is a necessary component for manufacturing cement or not is subject to test.

4. The learned counsel appearing for the petitioner / trader / assessee submitted that the order of the appellate tribunal confirming the levy of penalty under Section 23 of the Act holding that there is a violation of Section 3(3) of the Act is erroneous and contrary to the plain interpretation of the statute. The learned counsel referring to Section 3(3) of the Act submitted that without fire bricks, the temperature in the kiln cannot be preserved, protected and if the temperature is not protected, manufacturing of cement is impossible. Therefore, fire brick purchased at concessional rate is in tune with Section 3(3) of the Act and there cannot be any penalty. The order of the appellate authority is in tune with proper interpretation of the provision and the purpose of granting concession in tax. The interpretation of the appellate tribunal injuring the purpose of concession granted under section 3(3) of the Act is liable to be set aside.

5. The learned Additional Government Pleader appearing for the State submitted that the fire brick used for lining the kiln is neither a raw material nor a product used for manufacturing the cement. It is yet another accessory to the plant, which is considered under Section 3(2) of the Act. Hence, the order of the tribunal has to be upheld.

6. Section 3(2) of the Act reads as below:-

"*Notwithstanding anything contained in sub-section (1) in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer at the rate and at the point specified therein on the turnover in each year relating to such goods whatever be the quantum of his turnover in that year.*"

7. Section 3(3) of the Act reads as below-

"*Notwithstanding anything contained in sub-section(2),(2-A) or (2-C), 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 materials and labels, but excluding plant and* *machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labeling in connection with such manufacture inside the Sate, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate of only three percent on the turnover relating to such sale."*

8. Concessional rate of tax under Section 3(3) of the Act is subject to Section 3(2) of the Act. If the fire brick is taken as an accessory to the plant or a component to the plant, the trader cannot take advantage of seeking concession. If it is considered as packing material in the manufacturing and assembling, then, the trader / assessee will be entitled for the concessional rate of tax.

9. On examining the purpose of fire bricks, it has been clearly understood by the authorities below that it is a material used for lining kiln to preserve heat and temperature. It is neither a spare part nor accessory to the kiln. It is goods or material used for lining the kiln in the process of manufacturing cement. Therefore, in the opinion of this Court, the trader / assessee must be given advantage of tax concession under Section 3(3) of the Act for purchase of fire bricks under concessional rate of tax. Therefore, the order of the tribunal is set aside. The order of the first appellate authority is restored. Accordingly, this tax case (revision) is allowed. No costs.

[G.J.J.,] & [C.K.J.,]
03.01.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes
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DR.G.JAYACHANDRAN, J.
AND
C.KUMARAPPAN, J.

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TO:-

The Deputy Commercial Tax Officer,
Lalgudy.

Order made in
T.C.(MD)No.44 of 2009

Dated:
03.01.2024