
(2011) 09 MAD CK 0189

In the Madras High Court

Case No : TC (R) No's. 49, 50 of 2011 and MP. No. 1 of 2011

BAPL Industries Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 17, 17(1), 4E

Citation : (2012) 50 VST 499

Hon'ble Judges : M. Jaichandren, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : Hema Muralikrishnan, for the Appellant; R. Sivaraman, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—After serving notice on the learned Special Government Pleader (Taxes) appearing for the Revenue, the Tax Case Revisions are taken up for final disposal.

2. It is seen from the order of the Tribunal that as against the cancellation of levy of penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, the State preferred an appeal before the Sales Tax Appellate Tribunal. The Assessee also filed a Cross Appeal in respect of its plea for exemption u/s 4E of the Act. Placing reliance on the notification issued by the Government u/s 17 of the Tamil Nadu General Sales Tax Act in Notification No. 528 dated 21.11.1997, the Assessee submitted that the tax payable on the purchase of raw materials qualified for exemption and hence, the question of tax or penalty in the case on hand did not arise. Even though the Tribunal considered the claim of the Assessee as regards exemption under Notification No. 528 dated 21.11.1997, yet, in its concluding remarks, it recorded its decision only as regards penalty appeal filed by the Revenue, wherein it restored the penalty. Since the Assessee's Cross Appeal remained on the file without any final decision, the Assessee has filed the present revisions, one as against the order of the Tribunal restoring the penalty

and the other as against the Cross Appeal, for which there is no specific observation.

3. Heard Learned Counsel for the Assessee as well as the learned Special Government Pleader (Taxes) appearing for the Revenue and perused the material on record.

4. Learned Counsel appearing for the Assessee submitted that without considering the merits of the Cross Appeal and without giving specific finding on the Cross Appeal filed by the Assessee, the Tribunal committed a serious error in dealing with the levy of penalty alone. She pointed out that when the Assessee had made a specific issue as to the assessability of the Tribunal relating to the Assessee being a 100% Export Oriented Unit, the question of levy of penalty in the facts and circumstances of the case did not arise. While taking us through the provisions of Section 4E of the Tamil Nadu General Sales Tax Act, Learned Counsel for the Assessee placed reliance on Notification No. 528 dated 21.11.1987 which granted exemption to 100% export oriented units or units located in the Madras Export Processing Zone from payment of sales tax on the purchase of raw materials by it. Thus, as against refund or reimbursement on the tax paid on the purchase of any goods including consumables contained u/s 4E of the Act, the notification issued u/s 17(1) of the Tamil Nadu General Sales Tax Act, granted exemption from payment of sales tax, on all raw materials sold to the registered 100% Export Oriented Units in the State and units located in the Chennai Export Processing Zone.

5. The Assessee herein purchased cotton which is taxable at point of last purchase. Since the Assessee had not reported the turnover relating to the purchase of cotton, even though disclosed in the books of account, the Assessing Officer passed an order of assessment disallowing the claim of exemption on the last purchase of cotton to the extent of Rs. 54,03,893/- taxable at 2% as per Entry 2 of the Second Schedule to the Tamil Nadu General Sales Tax Act. The Assessing Officer also levied penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act to the tune of Rs. 1,17,336/-. Aggrieved by the said order, the Assessee preferred an appeal before the Appellate Assistant Commissioner, who modified the order passed by the Officer. While granting relief to the Assessee, the first Appellate Authority also deleted the penalty. Thus as against the order of the Appellate Assistant Commissioner, deleting the penalty, the State preferred an appeal before the Tribunal. The Assessee preferred Cross Objection, in which it contended that even though the Commissioner had deleted the penalty, the quantum of assessment should have been allowed in favour of the Assessee by following the notification.

6. As already pointed out, a perusal of the order of the Tribunal shows that while discussing the contention of the Assessee in paragraphs 9, 10, 11 and 12, there is no decision arrived ultimately on the claim of the Assessee on the claim of exemption based on Notification No. 528 dated 21.11.1997. On the other hand, immediately after referring the contention of the Assessee in the exemption as

raised in the Cross Objection, it went ahead with the penalty appeal preferred by the Revenue and restored the penalty.

7. We feel that without considering the claim of the Assessee on exemption based on Notification No. 528 dated 21.11.1987, passing of an order on the penalty appeal preferred by the State thereby restoring penalty would be totally illegal and hence, cannot be sustained at all. In the circumstances, with no decision rendered on the claim of exemption, the proper course herein would be to set aside the order of the Tribunal and remand the matter back to the Tribunal for de novo consideration of the levy of penalty along with the claim of the Assessee in the Cross Appeal.

8. Accordingly, along with the Assessee's Cross Objection on the assessability of the turnover pertaining to the last purchase cotton, the Tribunal shall consider the Revenue's appeal and pass order in both the appeals in accordance with law.

9. It may be relevant to note herein that even though Section 4E of the Tamil Nadu General Sales Tax Act contemplates reimbursement of the tax paid by a registered 100% export oriented unit or unit located in the Madras Export Processing Zone on purchase of any goods including consumables, but excluding plant and machinery, Notification 528 dated 21.11.1997 contemplated exemption from payment of sales tax on raw materials purchased by the 100% Export Oriented Unit. Learned Special Government Pleader pointed out that the exemption was only on payment of sales tax and not purchase tax. We do not think it is a correct understanding of the scheme of the Act. The Act contemplates levy of tax either at sale point or purchase point. On the mere fact that the levy is on at purchase point, does not mean, it ceases to be a sales tax. Irrespective of the point of levy, tax on goods is treated as sales tax only vide the decision reported in 98 STC 125 Sulochana Cotton Spinning Mills v. State of Tamil Nadu

10. In the circumstances, rejecting the contention of the Revenue, the order of the Tribunal is set aside and the matter is remanded back to the Tribunal for de novo consideration. The Tribunal is directed to pass orders on the Cross Objection filed by the Assessee by following Notification No. 528 dated 21.11.1997 and in accordance with law.

11. In the result, the above Tax Case (Revisions) are allowed. No costs. Consequently, connected MP is closed.