
(2015) 02 MAD CK 0370
In the Madras High Court
Case No : T.C. No. 10 of 2015

Neel Industries Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(5)

Citation : (2015) 51 GST 909 : (2015) 80 VST 459

Hon'ble Judges : R. Sudhakar, J; R. Karuppiyah, J

Bench : Division Bench

Advocate : G.A. Dominic Savio Joseph, for the Appellant; Haribabu, Government Advocate, Advocates for the Respondent

Judgement

R. Sudhakar, J.

1. Mr. Haribabu, learned Government Advocate, is directed to take notice for the respondent. The issue raised in the present appeal is in relation to levy of higher rate of tax on purchase turnover of air drier, which was purchased on the strength of form XVII declaration and tax leviable at three per cent by virtue of section 3(5) of the Tamil Nadu General Sales Tax Act (for short, "the Act") read with clause (3) of the Eighth Schedule.

2. The assessee is a company engaged in the manufacture and dealing of tractor parts. The tractor parts manufactured for use as motor vehicle parts are sold to automobile manufacturers as well as to dealers in automobile spares.

3. The assessing officer assessed the purchase turnover of "air drier" and weighting systems made against form XVII declaration at 12 per cent and demanded differential rate of tax of nine per cent by declining to grant the benefit of concession rate provided under section 3(5) of the Act and ignoring form XVII declaration. Against the said order of the assessing officer, the assessee/appellant went on appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner gave relief in respect of weighting systems,

which is not the subject-matter of the present appeal and also allowed the appeal insofar as air driers is concerned and modified the penalty. The relevant portion of the order of the Appellate Assistant Commissioner is extracted hereinbelow for better clarity:

"Item (i): This item relates to purchase of drier which is used in the course of manufacturing activity in the factory premises and it is used for the purpose of maintaining the temperature of the factory room suitable to produce the tractor parts and hence, it cannot be said that drier is not used or not required in the manufacture of tractor parts. So the assessment made by the assessing officer at 12 per cent on Rs. 1,71,649 is reduced to three per cent on the basis of form XVII declaration filed by the assessee and thereby the appellants are entitled to relief of tax at nine per cent on Rs. 1,71,649 (tax relief works out to Rs. 15,448)."

4. Aggrieved by the said order, the Department went on appeal to the Tribunal. The Tribunal came to the conclusion that air drier is not a raw material component to go in the manufacture of parts. It is only an instrument to control the temperature of factory room just like any other air-conditioner, etc., and, accordingly, restored the order of the assessing officer together with penalty. For better clarity, the relevant portion of the order of the Tribunal is extracted below:

"The assessing officer assessed the purchase turnover of "air drier" and weighting systems made against form XVII at three per cent, and levied difference rate of tax of nine per cent (12-3 per cent). The Appellate Assistant Commissioner (CT) held that air drier is to increase room temperature in the process of manufacture of their parts. But, the air drier is not a raw material component to go in the manufacture of the parts. It is only an instrument to control the temperature of factory room just like any other air-conditioner, etc.

Point for consideration:

(1) Whether the order of the Appellate Assistant Commissioner (CT) is sustainable or not?

Heard both sides. Records perused.

The Authorized Representative emphasized that the gem dried is used to remove moisture by cooling the compressed air from 9 degree C temperature to 2 degree C to 3 degree C. The air drier does not fall within entry 21 of Part DD which applies only to electrical appliances. It explains the goods which fall under the above category are domestic and commercial appliances which are used in hotels, kitchen, etc.

Considering the nature and function of the goods, it is very clear that the appliance air drier purchased by the dealer was not a raw material component used in the manufacture as their parts. It is only an instrument to control the temperature of factory room just like air conditioner. The goods were neither spare parts nor capital goods for the manufacture of tractor parts. The purchase of the above goods effected by the dealers against issue of form XVII

declarations was not eligible for concessional rate. So, the contention of the dealer is not acceptable. The assessing officer correctly disallowed the concessional rate in this regard. In view of the above discussion this Tribunal holds Appellate Assistant Commissioner (CT) is not acceptable and liable to be set aside."

5. The question that arises for consideration in the present appeal is "whether the goods in question, viz., "air drier", would be covered under the provisions of section 3(5) of the Act and form XVII declaration in respect of goods mentioned therein and entitled to concessional rate of tax".

6. To buttress this argument, Mr. Dominic Savio Joseph, learned counsel for the appellant, relied upon section 3(5) of the Act to state that air drier, viz., the goods in question, was installed in the factory of the appellant, for the manufacture of goods and the list of capital goods set out in the certificate of registration is set out in form B and the same contains the following particulars:

"16. (c) Capital goods: Transformer, OCB, VCB, cables, panels, light fittings, copper and G wire, MCCB, ACD contractors, motor, starters, energy meter compressor, air drier, pipes and fittings..."

7. It is further submitted by the learned counsel for the appellant that since the said goods form part of form B, based on which form XVII declaration was filed, the tax deducted on the said goods at three per cent instead of 12 per cent, by the appellant is completely justified. The Tribunal has not considered the relevant forms in the light of section 3(5) of the Act and clause (3) of the Eighth Schedule and, therefore, the order of the Tribunal deserves to be set aside allowing the appellant to deduct tax at three per cent.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate, on notice, appearing for the respondent and perused the materials available on record as also the relevant provisions of the Act relied on by the learned counsel for the appellant.

9. To appreciate the case of the appellant, it is essential to look into section 3(5) of the Act on which heavy reliance is placed by the learned counsel for the appellant. A reading of section 3(5) of the Act makes it clear that the tax payable by a dealer in respect of sale of goods mentioned in the Eighth Schedule to any other dealer for installation and use in his factory site situate in the State for the manufacture of any goods shall be at three per cent on the turnover relating to such sales. For better clarity, section 3(5) is extracted hereunder:

"3. (5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the tax payable by dealer in respect of sale of any of the goods mentioned in the Eighth Schedule to any other dealer for installation of, and use in, his factory site situate within the State for the manufacture of any goods shall be at the rate of three per cent on the turnover relating to such sale."

10. As seen from the documents available on record, when the original authority

and the appellate authority accepts that those air driers are installed in the factory site situate in the State for the manufacture of any goods, it only means that the goods in question should be installed in the factory site in the course of manufacture of any goods. There is no intendment of actual use of the goods in the manufacture. The words "installation of in his factory" or "use in his factory" cannot be misread as to be used as inputs in the manufacture of goods. They are machinery used by the factory at site for manufacture of goods.

11. Further, de hors the above primary issue, a reading of the order of the Tribunal clearly reveals that the Tribunal has misconstrued that air drier is just like an air-conditioner. There is no necessity for the Tribunal to classify the goods by drawing an analogy to another equipment, viz., air conditioner. Further, it is clearly recorded by the Tribunal that air driers are used to remove moisture by cooling the compressed air from 9 degree C to 2 to 3 degree C and, it thus performs certain functions for the purpose of manufacturing activity undertaken by the assessee. Even otherwise, it specifically falls under clause (3) of the Eighth Schedule, which is extracted hereunder for better clarity:

"Machineries of all kinds (other than those specifically mentioned in this Schedule) worked by (i) electricity, (ii) nuclear power, (iii) hydro-dynamic and steam power, (iv) diesel or petrol, (v) furnace oil, (vi) kerosene, (vii) coal including coke and charcoal, or (viii) any other form of fuel or power (excluding human or animal labour) (ix) parts and accessories of machineries and tools used with the machineries mentioned in sub-items (i) to (viii) above."

12. From a reading of section 3(5) of the Act read with clause (3) of the Eighth Schedule, it is abundantly clear that the requirement as envisaged under section 3(5) of the Act is fully satisfied in this case. The goods are installed and used in the factory site. Therefore, the assessee's contention that he is entitled to concession rate of tax at three per cent is justified and is liable to be allowed. The Tribunal has erred in rejecting the contention of the assessee that it is entitled to the concessional rate of tax. For the reasons stated above, this court is of the considered view that this tax case revision is liable to be allowed. Accordingly, the substantial question of law is answered in favour of the appellant/assessee and against the Revenue. In the result, this appeal filed by the appellant/assessee is allowed setting aside the order passed by the Tribunal. However, in the circumstances of the case, there shall be no order as to costs.