
(2011) 03 MAD CK 0084

In the Madras High Court

Case No : Tax Case (Revision) No. 653 of 2006

Quality Water Management Systems Pvt. Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(5), 7A

Citation : (2011) 186 ECR 70 : (2011) 42 VST 308

Hon'ble Judges : P.P.S. Janarthana Raja, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : D. Trilokchand Chopda, for the Appellant; Haja Naziruddin, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—The Assessee has come on revision as against the order of the Tamil Nadu Sales Tax Appellate Tribunal in TA

No. 717 of 2001 and COP 402 of 2001 dated 03.05.2002.

2. The revision was admitted on 16.09.2008 on the following questions of law.

a. Whether the Tribunal is right in concluding that sale of water plant machinery i.e. Reverse Osmosis plant by the Petitioner do not fall u/s 3(5) of

the Tamil Nadu General Sales Tax Act, when the Petitioner satisfied both the conditions as prescribed under the Section?

b. Whether the Tribunal is correct in rejecting the claim of concessional levy when the Petitioner has filed declaration forms as per the provisions of

Section 3(5) of the Act?

3. The revision Petitioner/Assessee is a dealer in water treatment plant at Chennai, having registered office at No. 41/5, First Trust Cross Street,

Mandavelipakkm, Chennai-28. They have reported a total and taxable turn over of Rs. 26,41,284.27 and Rs. 13,66,962/-respectively. The

relevant assessment year is 1998-1999 and they have claimed exemption on the turn over of Rs. 12,74,322.27/-. While completing the

assessment, the assessing officer verified the accounts and found that the Assessee claimed benefit of exemption at the concessional rate of 3% u/s

3(5) of the Tamil Nadu General Sales Tax Act, 1959. The Assessee sold the water treatment plant for Rs. 11,00,000/-to one Arthanavi Loom

Centre, Kalarampathy, Salem. The Assessee has filed Form-XVII obtained from the customer. The assessing officer was of the view that the

Assessee is not entitled to the benefit of the concessional rate on the ground that the sale of water treatment plant is not with reference to any of the

plant and machinery mentioned in the Eighth Schedule and further held that the water treatment plant is not used for manufacturing of any goods.

Aggrieved by that order, the Assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held

that even though the water treatment plant used for the purpose of treating the water, which in turn is used for the purpose of bleaching and dyeing

of textiles in a textile factory, the same does not come under any of the entries in the Eighth Schedule and therefore, the Assessee is not entitled for

the benefit of concession u/s 3(5) of the TNGST Act. Aggrieved by that, the Assessee filed an appeal before the Tribunal. The Tribunal dismissed

the appeal and confirmed the order of the lower authorities. Aggrieved by that order, the Petitioner/Assessee filed the present revision.

4. The learned Counsel appearing for the Petitioner-Assessee submitted that the order passed by the Tribunal is illegal, wrong, without basis and

justification. He further submitted that the water treatment plant comes within the plant and machinery enumerated in the Eighth Schedule. He

further contended that the Tribunal is wrong in comparing Sections 3(5) with 7-A of the Act and wrongly holding that the water treatment plant is

not used in the manufacturing of goods by the Assessee. Therefore, the order passed by the Tribunal is not in accordance with law and the same

has to be set aside.

5. The learned Counsel appearing for the revenue submitted that the Tribunal has considered all the facts and circumstances of the case and

correctly rejected the claim of concessional rate of tax u/s 3(5) of the Act and that the water treatment plant cannot be used for the purpose of manufacture of any goods. The finding given by the Tribunal is based on valid materials and the same has to be confirmed.

6. Heard the learned Counsel on either side and perused the documents on record. The Petitioner effected sales of Reverse Osmosis Membrane

System for Rs. 11,00,000/-against Form XVII u/s 3(5) of the TNGST Act, 1959 and claimed concessional rate of tax at 3%. The dealer sold the

said plant to the customer and the said customer is the manufacturer of fabrics having looms and facility for dyeing fabrics. It was stated that the

process involves consumption of large quantity of water for processing and production of steam using boiler. In the manufacturing process, the

customer generates effluent which is subjected to a series of primary and secondary treatment using physico chemical and aerobic process. Since

the dealer was facing water shortage, they treated effluent is further purified in a Reverse Osmosis Membrane System to the extent that the effluent

is made fit to being re-cycled back into production of purified water. So the plant is used in reproduction processing, which results in production of

purified water. Therefore, it was contended by the Assessee/Petitioner that it is only a machinery and it is used in the manufacture of bleaching and

dyeing of fabric. The dealer filed a detailed technical note before the Tribunal. The relevant provision is Section 3(5) of the Act, which reads as

follows:

Notwithstanding anything contained in Sub-section (2), but subject to the provisions of Sub-section (1), the tax payable by a 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 percent on the turn over relating to such sale:

Provided that the provisions of this Sub-section shall not apply to any sale, unless the dealer selling such goods furnishes to the assessing authority

in the prescribed manner and within the prescribed period, a declaration duly filled in and signed by the dealer to whom the goods are sold,

containing the prescribed particulars in the prescribed form obtained from the prescribed authority:

Provided further that any such dealer, who, after purchasing the goods in respect of which he had furnished any declaration, fails to install the

goods and make use of the goods so purchased for the purpose specified in the declaration or disposes of such goods in any other manner within a

period of five years shall pay the difference of tax payable on the turnover relating to sale of such goods at the rate prescribed and three percent.

From a reading of the above provision, it is clear that the Assessee has to satisfy three conditions (1) the goods sold must be one as enumerated in

the Eighth Schedule; (2) The said goods must be used in the factory site within the State; (3) It should be for the manufacture of any goods. In the

present case, the goods sold come within the items mentioned in the Entry 3 of the Eighth schedule. The Eighth Schedule reads as follows:

Entry 3 of Eighth Schedule: ""Machineries of all kinds (other than those specifically mentioned in the first 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 in sub item (i) to (viii) above

From a reading of the above, it is clear that what is mentioned in Entry 3 is machineries of all kinds other than those mentioned in the First

Schedule. In the present case, the electricity is used for recycling of used water by Reverse Osmosis Technology. There is no dispute that the said

machinery is run by electricity and also does not come under the specified machinery in the First Schedule. Therefore, the said plant falls within the

3rd Entry. The Petitioner/Assessee satisfied the first condition. In respect of the second condition, ""use in the factory site within the State"", there is

no dispute by any of the authority that it is not used in the factory site within the State. So, the second condition is also satisfied. The third condition

is that the plant must be used in the factory for manufacturing. The specified word in the Section is ""used in the site specified within the State"" for

the manufacturing of goods. The use may be direct or indirect or aid in the manufacture. In the present case, a technical note was filed by the

Petitioner before the Tribunal, which clearly stated that the Reverse Osmosis Plant was used for the purpose of treating and recycling the water

which in turn is used for the manufacture of textiles. The customer is engaged in the manufacture of fabrics and having looms and other facility for dyeing the fabrics. The purpose of dyeing involves consumption of large quantity of water for the purpose of processing and production of steam using boiler. In the process of dyeing, the said customers used to generate effluent and the same is subject to a series of primary and secondary treatments. Further, there is acute shortage of water and the effluent was further purified in Reverse Osmosis System and the effluent is made fit to being recycled back into the process. It is not in dispute that the plant and machinery was used for treating effluent which resulted in production of purified water and the same is being used for processing the fabrics. Therefore, the plant and machinery is used for manufacturing fabrics. The Tribunal is wrong in comparing Section 3(5) with the Section 7-A of the Act and holding that the plant and machinery is used only as an aid in the manufacture of goods by the Assessee. What we have to see is, how the plant and machinery are used in the factory. The words "used in his factory site within the State for manufacture of goods" cannot be construed so narrowly so as to confine it to direct use only. It may be direct or indirect. Emphasis is only on use. Section 3(5) of the Act is a beneficial provision. It provides for concession for tax purposes to encourage industrial activity. It should be liberally construed. It is well settled principle that a provision which is a taxing statute, granting concessional and incentives for promoting growth and development, should be construed liberally. Therefore, we are of the view that plant and machinery is used for the purpose of treating water for the bleaching and dyeing in the textile factory. Therefore, it cannot be said it is not used for the purpose of manufacture. The Assessee has satisfied all the conditions enumerated and Section 3(5) of the Act and hence, they are entitled to the concessional rate of tax u/s 3(5) of the Act. In these circumstances, the order passed by the Tribunal is not in accordance with law and we set aside the order of the authorities below and answer the questions in favour of the Petitioner/ Assessee and against the revenue. Consequently, the revision is allowed.