
(2011) 04 MAD CK 0476

In the Madras High Court

Case No : TC. (R) No. 1164 of 2006 and TCMP. No. 1615 of 2006

Tamil Nadu Veneers Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(2B), 3(3)

Citation : (2011) 46 VST 439

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

Bench : Division Bench

Advocate : P. Rajkumar, for the Appellant; K. Radhakrishnan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The assessment year relates to 1994-95. The petitioner herein is a dealer in veneers timber as well as in timber. The veneer is used in the manufacture of plywood. The assessee claimed concessional levy of tax at three percent on the sale of veneers against form XVII and at four percent on the sale of timber to Government Departments. The assessing authority held that the said goods fell under the Sixth Schedule; hence, the question of applying concessional levy u/s 3(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the Act") did not arise. Consequently, the assessment was completed applying rate of tax at eight percent as the goods fall under the Sixth Schedule. The assessee filed an appeal before the Appellate Assistant Commissioner. Taking the view that veneer and timber are one and the same, timber being an item included under the Sixth Schedule, the assessee was not justified in claiming concessional levy u/s 3(3) of the Act. Thus, the appeal filed by the assessee was rejected. Aggrieved by the same, the assessee filed further appeal before the Sales Tax Appellate Tribunal. The Tribunal referred to the provisions of the Tamil Nadu General Sales Tax Act, 1959 u/s 3(3) and held that as timber fell under the Sixth Schedule, the assessee was not entitled to the

concessional levy u/s 3(3) of the Act. Thus the appeal filed by the assessee was dismissed. Aggrieved by the order of the Tribunal confirming the view of the authorities below, the present revision has been filed by the assessee. The learned counsel for the petitioner, producing the sample of the items dealt with by the assessee, submits that veneers and timber are not same to be taxed under the Sixth Schedule. He further pointed out to the dictionary meaning of veneer and submitted that veneers are peeled premium materials, and in commercial parlance, they are called as core veneer. They are used as an input between the face veneer to constitute the thickness of plywood. Since veneer is used on both sides of the plywood while manufacturing the same, by no stretch of understanding, veneer could be termed as timber and timber could be termed as veneer. He pointed out that the selected species of hardwood are put on peeling lathe machines, and at certain speed, these logs are rolled on the peeling lathes and the gears are adjusted to get a particular thickness of the layer of sheet from the hardwood logs. The thick sheet is called face veneer used on both sides of the plywood. The maximum thickness of the veneer would go up to 1 mm. After peeling, the rest of the wooden logs having more than 1 mm. thickness is called core veneer. This is used as an input between face veneer to constitute the thickness of the plywood. Consequently, the question of bringing it under the Sixth Schedule to reject the claim of the assessee, did not arise.

2. The learned Government Advocate, in support of the order passed by the authorities below, submitted that the assessee is not entitled to claim concessional levy as regards veneer and the same has to be treated as timber only. As already pointed out, the assessment herein relates to 1994-95. The relevant provision u/s 3(3) of the Act during the material point of time stood 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 goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labelling in connection with such manufacture inside the State, for sale by him of any goods other than those falling under item 22 in Part D mentioned in the First Schedule, 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.

3. Section 3(3) of the Tamil Nadu General Sales Tax Act was amended under the Act 38 of 1996 effective from July 17, 1996 by including the goods falling under item 1 of the First Schedule. The amended provision with effect from July 17, 1996 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 goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture,

and assembling, packing or labelling in connection with such manufacture inside the State, 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.

4. Prior to the inclusion of timber under the Sixth Schedule, the same was included under item 23, Part D of the First Schedule. Subsequently, with effect from April 1, 1994, the same was brought under the Sixth Schedule under entry 11 under the Act 32 of 1994, effective from April 1, 1994. Thus, on and from April 1, 1994 to July 1, 1996, timber was included under the Sixth Schedule assessable at the rate prescribed therein. Thereafter, from July 17, 1996, it was once again brought under the First Schedule under Part C entry 47, taxable at eight percent.

5. On going through the above provisions of the Act, it is clear that during the relevant assessment year 1994-95, all that section 3(3) of the Act read was that concessional levy was available with reference to sale of any goods for use in the manufacture of any goods mentioned in the First Schedule other than those falling under item 56, Part D of the First Schedule. Only on and from July 17, 1996, under Act 13 of 1996, the exclusion of goods falling under the Sixth Schedule, particularly to item 1 from being considered for the claim of concessional rate, was brought u/s 3(3) of the Act. Leaving this aside, a reading of the said section shows that the concessional levy u/s 3(3) of the Tamil Nadu General Sales Tax Act, 1959 is available in respect of tax payable by the dealer on the sale of any goods, including consumables, packing material and labels, but excluding plant and machinery. The second condition for qualifying the concessional levy u/s 3(3) of the Act is that the goods sold have to be used by the purchaser for the manufacture, assembling, packing or labelling in connection with such manufacture inside the State, for sale by him of any goods mentioned in the First Schedule, other than those falling under item 56 in Part D of the said Schedule. The end-product of sale may be of any goods mentioned in the First Schedule, other than what is specifically excluded therein. On the satisfaction of the above facts, the assessee would be entitled to claim concessional levy at three percent on the turnover relating to sale to a purchaser.

6. Going by the above-said provisions as they stood at the relevant point of time, the question of looking at the Sixth Schedule as such, does not arise, to reject the claim of the assessee. It may be of relevance to note herein that the Sixth Schedule falling u/s 3(2B) of the Act was inserted under Act 28 of 1992, substituted by Act 31 of 1992 and again substituted by Act 25 of 1993. It is also not the case of the Revenue that the manufactured goods fell for consideration under the Sixth Schedule.

7. The learned Government Advocate pointed out that having regard to the specific mentioning as regards the First Schedule u/s 3(3) of the Act and that

goods falling u/s 3(2B) of the Act are specifically included for grant of concessional levy, the assessee is not entitled to claim concessional levy u/s 3(3) of the Act.

8. A perusal of section 3(2B) of the Act shows that in the case of goods falling under the Sixth Schedule, tax shall be payable by a dealer at the first point of sale and under the second point of sale and at the rate mentioned therein. The proviso further stated that in calculating the liability at the point of second sale, the turnover of the goods liable to be taxed at the first point of sale shall be excluded. Principally, it is on the value addition that the liability was sought to be made u/s 3(2B) of the Act. Whatever be the nature of the liability u/s 3(2B), a reading of section 3(3) of the Act as it stood shows that section 3(2B) of the Act has no relevance to reject the claim of the assessee as regards the concessional levy for the simple reason that section 3(3) of the Act considers sale of "any goods" for the manufacture of goods falling under the First Schedule.

9. A reading of section 3(3) of the Act shows that it opens with a non obstante clause, that notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), concessional rate of tax at three percent is available to sale of any goods. As far as this part is concerned, there is nothing to read from section 3(3) of the Act that the Legislature intended to restrict the applicability of the provision to the sale of only those goods falling under the First Schedule for the purpose of use in the manufacture of goods. On the other hand, the restriction on the claim for concessional levy is with reference to the sale of goods manufactured, using the materials purchased at a concessional rate. That is, the goods manufactured are to be those falling under the First Schedule other than item 56 in Part D of the First Schedule and arrack. Thus, if these two conditions are satisfied, an assessee selling goods for use in the manufacture would be entitled to claim a concessional rate of tax u/s 3(3) of the Act. In considering any goods for sale to be used in the manufacture of goods, one need not trouble to find whether these goods fall under the First Schedule or under the Sixth Schedule. A reading of section 3(3) of the Act shows that the tax payable by a dealer in respect of sale of any goods including consumables, packing materials and labels other than capital goods for use in the manufacture and assembling, packing and labelling in connection with such manufacture for sale of the goods falling under the First Schedule other than the excluded goods, inside the State, would qualify for concessional levy. Going by the abovesaid provision, we have no hesitation in holding that the assessee is entitled to concessional rate of tax as given u/s 3(3) of the Act. The relevancy or otherwise of the Sixth Schedule, hence, loses its significance in the matter of considering the claim for concession. Even though timber was brought under the Sixth Schedule during the assessment year 1994-95, for the reasons we have already stated, such amendment does not stand in the way of considering the claim of the assessee; that even assuming for a moment that veneer is a timber falling under the Sixth Schedule, in the absence of any restriction to be read in the first part of section 3(3), viz., "in respect of sale of any goods", we have no hesitation in allowing the

contention of the assessee.

10. As regards the merits canvassed by the assessee herein, even though it is not necessary to go into the merits, for completion of the narration, we hold that the goods dealt with by the assessee could not be called as timber. A mere look at the material produced before us shows that it is only a scrapped material which is under commercial parlance, called veneer to be used at the top of the plywood that had been sold by the assessee. Given the fact that the timber and veneer are commercially a different goods and that the entry in the Sixth Schedule contemplates "timber including sized timber, but excluding fire wood", the item dealt with by the assessee would not fall either under timber or sized timber. As such, we have no hesitation in accepting the plea of the assessee that the item in question cannot be brought under Sixth Schedule to reject the plea. In the circumstances, the tax case revision stands allowed. No costs. Consequently, connected TCMP is closed.