(2011) 06 MAD CK 0517

In the Madras High Court

Case No : Tax Case (Revision) No. 603 of 2006

The State of Tamil Nadu APPELLANT

Vs

Tvl. P.M. Engineering and Company RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17(1)

Citation : (2012) 50 VST 315

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

Bench : Division Bench

Advocate : R. Sivaraman, Spl. G.P. Tax, for the Appellant; P.V. Sudhakar, for Chandran, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—As against the common order of the Tribunal relating to the two Assessees, the present revision is filed as regards the Assessee viz., Tvl. P.M. Engineering and Co., Coimbatore for the assessment year 1995-96 by raising the following question of law:

1. Whether in the facts and circumstances of the case, the Tribunal is legally correct in treating beltings as spares of textile machinery being eligible for concessional rate of tax at 4% as per G.O.P.87 CT and RE dated 17.03.1993 when there is a specific entry in 50 Part D of the First Schedule of TNGST Act, 1959 covering the said goods?

2. Evidently, the Assessee is a dealer in Textile machinery, spares and beltings. In respect of sale of belts, the Assessee claimed concessional rate of tax, as sales of textile machinery parts and accessories, such as beltings would fall under Entry 35, Part ''D'' of First Schedule of TNGST Act, 1959 and it reads as follows:

35. 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 is sub-items (i) to (viiii) above.

3. In exercise of power u/s 17(1) of the Act, under G.O.P. No. 87 CT RE dated 17.03.1993, the Government granted reduction in rate of tax on the sale of parts and accessories of textile machineries thereof. The Revenue sought to assess the sales of belts under the Entry viz., 50 (vi) of Part ''D'' assessable at 8% as a rubber product. The relevant entry viz., Entry 50 (vi) of Part ''D" reads as follows:

50 Rubber latex compound and rubber products (excluding pharmaceutical and surgical products) namely:

(vi) Conveyor, transmission or elevator belts or belting of rubber-whether combined with any textile material or otherwise

Aggrieved by the rejection of claim of the concession and imposing levy at 8%, the Assessee filed appeal before the Appellate Assistant Commissioner, who, confirmed the assessment holding that when there is specific entry for belting, the same could not be classified under Textile Machinery. The Appellate Assistant Commissioner referred to the clarification from the Commissioner of Commercial Taxes in Acts Cell II/25871/96 dated 23.04.1996 and held that when there is a specific entry relating to belting, the same will prevail over any general entry. Thus, the Appellate Assistant Commissioner dismissed the appeal. Aggrieved by the same, the Assessee filed further appeal before the Tamil Nadu Sales Tax Appellate Tribunal.

4. Applying G.O.P.87 CT RE dated 17.03.1993 granting concessional levy on textile machinery parts and accessories, the Tribunal held that the Assessee was entitled to concessional levy. It also referred to the decision of the Tamil Nadu Taxation Tribunal in O.P. No. 600/97 dated 17.11.1998 and held that belts, which are textile machinery, parts and accessories are entitled to reduced rate of tax. In the light of the above, the Tribunal set aside the tax levied at 8% by the Assessing Officer. The Tribunal also cancelled levy of penalty. Aggrieved by the same, the Revenue is on appeal before this Court.

5. Entry 50 Part D of the I Schedule deals with conveyor transmission or elevator belts or belting made of rubber latex compound, whether combined with any textile material or otherwise. Principally, this Entry is about rubber products specified therein, excluding pharmaceuticals and surgical products. Entry 35 is a specific Entry on machineries of all kinds. This includes parts and accessories of machineries. Thus, when there is a specific Entry dealing with machineries, parts and accessories, the mere fact that belts dealt with accessories of textile machineries are made of rubber or rubber compounds or combined with any textile material or otherwise, by itself, would not justify an assessment, bringing the item in question under Item 50, relating to rubber products.

6. It is a well settled proposition of law that when there is a specific Entry to deal with an item in question, one cannot bring the said item under a general Entry. It is admitted by the Revenue that the Assessee is a dealer in textile machinery, parts and accessories and the Assessee is not dealing in a general goods, namely, conveyor transmission or elevator belts or dealing in rubber, whether combined with any textile material or otherwise. On the above-said fact, when the Assessee is a dealer in textile machinery and the item in question dealt with by the Assessee is an accessory to the textile machinery, we have no hesitation in confirming the order of the Tribunal. Accordingly, the Tax Case Revision stands dismissed and the substantial question of law is answered against the Revenue. No costs.

