
(2008) 12 MAD CK 0046

In the Madras High Court

Case No : T.C. (R) No. 1821 of 2008 and M.P. No. 1 of 2008

V.L. Personal Care (P) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(1), 12(2), 12(3), 3(2)

Citation : (2009) 24 VST 400

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : R. Senniappan, for the Appellant; K. Radhakrishnan, Government Advocate (Taxes), for the Respondent

Judgement

K.K. Sasidharan, J.—This tax case is directed against the order dated April 8, 2008 in S.T.A. No. 204 of 2007 on the file of Sales Tax

Appellate Tribunal whereby the Tribunal set aside the order of the Appellate Assistant Commissioner classifying the products sold by the assessee

as ""medicinal preparations"" and declared them to be ""cosmetics"" and restored the order of the assessing authority.

2. The following are the substantial questions of law:

(1) Whether the Tribunal was correct in holding that the commodity sold by the petitioners are cosmetics which are coming under Part F, entry

10(i)(a), (b) and (c) of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959?

(2) The Tribunal failed to consider and follow the principle laid down by the honourable Supreme Court of India in the judgment Commissioner of

Central Excise, Calcutta Vs. Sharma Chemical Works, wherein the honourable Supreme Court has held that ""banphool oil"" could be classified as

medicaments. The product was hair oil and all its ingredients were said to be ayurvedic, which were found in ayurveda text books, and therefore

the product was liable to be classified as medicaments.

(3) Whether the Tribunal was right in rejecting the claim of sales return for the reason that the proof of evidence has been produced before the

appellate authority and not before the assessing officer?

(4) The Tribunal ought to have followed the principle laid down by this honourable court in the judgment Appollo Saline Pharmaceuticals (P) Ltd.

v. Commercial Tax officer (FAC) reported in [2002] 125 STC 505.

(5) Whether the Tribunal was right in restoring the penalty levied u/s 12(3)(b) of the Act without having any consideration of the Explanation to

Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959? Since the assessment was made u/s 12(1) and not u/s 12(2), penalty u/s 12(3)

(b) is not possible.

3. The appellant is an assessee and manufacturer of ayurvedic herbal medicines and natural products approved by the Director of Ayurveda,

Haryana and the products manufactured by them had a unique formula on the basis of 5000 years old ayurvedic receipts to suit all skin types.

Before the assessing authority, the assessee contended that their products are medicinal preparations and the same will not come under the

purview of ""cosmetics"" and accordingly claimed that they have to be assessed only as ""medicinal preparations"" and not as ""cosmetics"". However

the assessing authority was of the opinion that the products were only ""cosmetics"" and they cannot be classified as ""medicinal preparations"" and

accordingly assessed at 20 per cent with surcharge at five per cent u/s 3(2) of the Tamil Nadu General Sales Tax Act, 1959.

4. The assessment order was taken up by the assessee before the Appellate Assistant Commissioner. Before the appellate authority the assessee,

on the basis of the certificate issued by the Director of Ayurveda, Haryana, contended that the products manufactured by them would fall under the

category of ayurvedic medicines intended for use by specific persons only and as such the same cannot be classified as ""cosmetics"". The said

argument was accepted by the Appellate Assistant Commissioner and accordingly the order of the assessing authority was set aside. Aggrieved by

the said order, the Department filed a statutory appeal before the Tamil Nadu

Sales Tax Appellate Tribunal. The Tribunal without discussing the merits or otherwise of the order of the Appellate Assistant Commissioner, merely reproduced the reasoning given by the assessing authority and set aside the order of the Appellate Assistant Commissioner and restored the order of the assessing authority. It is the said order which is impugned in the present tax case at the instance of the assessee.

5. The learned Counsel for the assessee contended that there was no factual finding recorded by the Tribunal while setting aside the order of the Appellate Assistant Commissioner and in fact the Tribunal only reproduced the order of the assessing authority and no attempt was made by the Tribunal to consider the points advanced by the assessee.

6. We have gone through the order of the Tribunal. There was no attempt made by the Tribunal to assess the merits or otherwise of the contentions raised by the parties in support of their respective case. The Tribunal being the final forum of facts should consider the rival contentions and render a factual finding with regard to the lis. In the case on hand, the legality and correctness of the order passed by the Appellate Assistant Commissioner was at large before the Tribunal. Therefore the order must indicate the reasons which weighed with the Tribunal to set aside the order of the Appellate Commissioner. Except reproducing the views of the assessing authority, there is nothing in the order suggesting independent consideration of the matter by the Tribunal. Since we are remitting the matter to the Tribunal for fresh consideration, we refrain from expressing anything on merits.

7. In the result, the impugned order of the Tribunal is set aside and the matter is remitted to the Tribunal. It is open to the parties to produce materials in support of their contention before the Tribunal and the Tribunal has to give a factual finding with respect to the issues involved in the matter.

8. The tax case is disposed of subject to the above direction. No costs.