(2013) 08 MAD CK 0246

Madras High Court

Case No: Tax Case (Revision) No. 31 of 2009

Kwality Textiles		APPELLANT
	Vs	
State of Tamil Nadu		RESPONDENT

Date of Decision: Aug. 23, 2013

Citation: (2013) 66 VST 529

Hon'ble Judges: K.B.K. Vasuki, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: P. Rajkumar, for the Appellant; A.R. Jayapratap, Government Advocate (Taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.
The above tax case revision is filed at the instance of the assessee as against the order of the Sales Tax Appellate Tribunal for the assessment year 1996-97. The above tax case revision was admitted on the following substantial questions of law:

(1) Whether the Appellate Tribunal is correct in holding that the sales turnover of terry towels/cotton terry knitted towels is liable for tax as falling under entry 23 of Part B of the First Schedule to the TNGST Act up to July 16, 1996 and falling under entry 70 of Part B of the First Schedule to the TNGST Act from July 17, 1996?

(2) Whether the Appellate Tribunal is correct in holding that terry towels/cotton terry knitted towel sold by the petitioner is not an exempted commodity falling under item 2(iii) of Part A of the Third Schedule to the TNGST Act or under entry 16 of Part A of the Third Schedule to the TNGST Act?

(3) Whether the Appellate Tribunal is correct in holding that if terry towels are sold length it could have been exempted under the category of cloth, but as it is stitched articles, it comes under entry 70 of Part B of the First Schedule after July 17, 1996 and entry 23 of Part B of the First Schedule up to July 16, 1996?

The assessee/petitioner herein is the manufacturer of terry towels, cotton yarn and cotton waste. They claimed exemption from sales tax as terry towels/cotton terry knitted towels fall under the Third Schedule to the TNGST Act. The claim made by the assessee was rejected by the assessing officer on the ground that terry towel cloths were folded over and stitched on both sides and it was only a stitched article liable to tax. Hence, assessment was sought to be made, as the goods fall under entry 23 of Part B of the First Schedule to the TNGST Act till July 16, 1996 and thereafter under entry 70 of Part B of the First Schedule to the TNGST Act.

2. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner (Commercial Taxes). The first appellate authority referred to various decisions and arrived at the conclusion that tarpaulin is cotton fabric, exempted from sales tax levy. The first appellate authority pointed out that cutting the knitted fabric into different sizes and then stitching the four sides, thus, making into stitched knitted towels could not make it different from knitted fabric and the same would not amount to manufacture for a new commodity to emerge. The first appellate authority also held that knitted cotton fabric and knitted towels were the one and the same commodity and the same were exempted from sales tax. Thus, the first appellate authority accepted the case of the assessee. Consequently, he allowed the appeal and also deleted the penalty.

3. Aggrieved by this, the Revenue went on appeal before the Sales Tax Appellate Tribunal, which held that there was no specific entry in the Schedule relating to stitched articles made of cloth, however, the stitched articles was taxable under Part B of the First Schedule. The Tribunal pointed out that on the admitted fact by the assessee and the first appellate authority that the goods were stitched. Thus, even though it was terry towels, yet not sold in length, it came under entry 23 of Part B of the First Schedule up to July 16, 1996 and thereafter under entry 70 of Part B of the First Schedule. Since this aspect was not considered by the first appellate authority, the Tribunal set aside the order of the Appellate Assistant Commissioner and restored it to the assessing officer in this regard. Aggrieved by this, the assessee has filed the present tax case revision before this court.

4. The learned counsel appearing for the assessee pointed out that similar question whether the commodity dealt with by the dealer, i.e., terry towel would qualify for exemption or not, came up for consideration for the assessment years 1992-93 and 1995-96 and accepted the case of the assessee that terry towel was an exempted item. On remand by the Tribunal, the assessing officer passed the revised assessment order on July 16, 2007, wherein, the assessing officer accepted the case of the assessee that terry towel was not liable to tax and accordingly held that turnover of terry towel for the year 1995-96 was liable for exemption. Apart from that, the Department had also accepted the case of the assessee for the earlier years as referred to above.

5. The learned counsel for the assessee also relied on the decision of the honourable Supreme Court reported in Commissioner of Central Excise Vs. Tarpaulin International, , wherein the apex court held that ". . . there could not be levy of excise duty on the manufacturer of tarpaulin made-ups. The process of stitching tarpaulin sheets and fixing eyelets did not bring into existence a new and distinct product with total transformation in the original commodity and the process did not amount to ''manufacture'', since the tarpaulin, after stitching and eyeleting continued to be only cotton fabric. . .".

6. Applying the said decision to the facts of the present case, learned counsel for the assessee submitted that mere stitching on both edges would not make the goods in question as falling under the First Schedule for taxation. We agree with the submission of the learned counsel for the petitioner for the reason that the Department had already accepted the case of the assessee during 2007 for the assessment years 1992-93 and 1995-96. The Revenue does not dispute the fact that what was sold herein is the same goods, for which, the assessee was entitled the benefit of exemption for the assessment years 1992-93 and 1995-96. Thus, following the Supreme Court decision reported in Commissioner of Central Excise Vs. Tarpaulin International, , stitching on edges would not make any difference to deny exemption under the said entry. In the circumstances, we have no hesitation in accepting the case of the assessee.

7. The relevant entries in the Schedule read as under. Entry 2(iii) of Part A of the Third Schedule to the TNGST Act, reads as follows:

Terry towelling and similar woven terry fabrics (produced or manufactured in India) as described in column (3), against the heading ''58.02'' in column (1), of the First Schedule to the said Act.

8. Chapter 58.02 to the Central Excise Tariff Act, 1985 is extracted hereunder:

58.02. Terry towelling and similar woven terry fabrics, other than narrow fabrics of Heading No. 58.06; tufted textile fabrics, other than products of Heading No. 57.03.

--Terry towelling and similar woven terry fabrics, of cotton:

9. Entry 23 of Part B of the First Schedule till July 16, 1996 and entry 70 of Part B of the First Schedule after July 17, 1996 read as follows:

Stitched articles made of cloth other than articles of ready to wear apparels, hosiery goods and stitched handloom and mill-made handkerchief taxable at the point of first sale in the State under Part B of the First Schedule taxable at three per cent up to July 16, 1996 and four per cent from July 17, 1996.

Even a cursory reading of the entries as referred to above would show that the assessee''s goods fall under Part A of the third Schedule. In the circumstances, we have no hesitation in setting aside the order of the Sales Tax Appellate Tribunal.

Accordingly, we allow the tax case (revision) filed by the assessee. No costs.