

T.C. (MD) No.174 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.08.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

T.C.(MD).No.174 of 2012

M/s.Saghay Rubber Products
Represented by its Proprietor CT.Valliappan
252, Goods Shed Street
Madurai

...Appellant

Vs

1.The Joint Commissioner (CT)-III
(Suo Moto Revision)
Office of the Commissioner of Commercial Taxes
Chepauk, Chennai -5

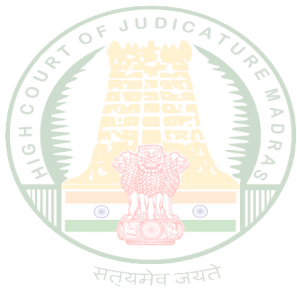
2.The Commercial Tax Officers
Nethaji Road Assessment Circle
Madurai

...Respondents

Prayer: Tax Case filed under Section 37 of TNGST Act, to revise the order of the Joint commissioner (SMR-III), Chennai in Ref.M3/66211/97-SMR No. 405/98 dated 17.08.2006 and modify the same.

For Appellant : Mr.S.Karunakar

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader

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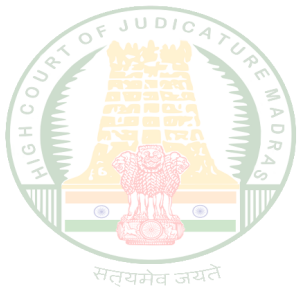
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(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The appeal has been filed by the dealer challenging the order of the first respondent herein in suo moto revision taken under Section 34 of Tamil Nadu General Sales Tax Act, 1959.

2.The appellant is a manufacturer of automobile fan belts and an assessee under the files of the second respondent herein. The dealer was originally assessed for the taxable turn over of “ two wheeler and tractor fan belts” to tax at 5% and 3% respectively by the second respondent herein. However, it was re-assessed at 8% on the ground that the above said item of goods were specifically included under Entry 50(vi) of Part-D of the first schedule of TNGST Act 1959 for the assessment year 1993-1994 and 1994-1995.The said re-assessment order was challenged by the dealer before the Appellate Assistant Commissioner (CT) and he was pleased to allow the appeal on the ground that the goods are only meant for two wheeler and tractors which are liable to be taxed at 5% and 3% respectively. As against the said order, the first respondent had initiated suo moto revision proceedings under Section 34 of TNGST Act, 1959.



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3.The first respondent herein had allowed the revision on the ground that spare parts and accessories are not exclusively used for motor vehicles, but on the other hand they are also used in other machineries such as grinders, drilling machines, automobiles etc., Based on the said findings, the first respondent classified the said goods as rubber products and assessed at 8% under item 50(vi) of Part-D of the first schedule of TNGST Act. However, the first respondent had deleted the penalty imposed under Section 12(3)(b) of TNGST Act. Challenging the said order, the present tax case has been filed by the dealer.

4.According to the learned counsel for the appellant, the materials manufactured and sold by the appellant are meant for two wheelers and tractors and they can be classified only as spare parts and accessories of the said vehicles which are assessable to tax at 5% and 3% falling under item 30 of part 'C' and item 27 of part 'B' of the first schedule of the TNGST Act respectively. He had further pointed out that entry 50(vi) in Part-D deals only with conveyor belts which have nothing to do with the parts and accessories dealt with by the appellant dealer.

5.The learned counsel for the appellant had further contended that the first respondent had erroneously relied upon *120 STC Page 59 (Tube*



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Investments of India Ltd. Vs. DCTO, Group III, Enforcement, Madras) which

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relates to exhaust pipes and tile pipes supplied to automobiles manufacturers.

The learned counsel had relied upon the judgement of the Division Bench of our High Court reported in (2012) 49 VST 195 (Mad) (*State of Tamil Nadu Vs.Ranjana Automotive Corporation*) and contended that when there is a specific entry relating to rubber belting, it has to be classified with parts and accessories under Entry Nos.27 and 43. The general entry dealing with rubber product falling Entry No.50 has no relevance and has proceeded to hold it against the revenue.

6.The learned counsel for the appellant had further relied upon the Division Bench Judgement of our High Court reported in (2012) 50 VST 315 (Mad)(*State of Tamil Nadu Vs. P.M.Engineering and Co.,*) to contend that when there is a specific entry to deal with the items in question, one cannot bring the said item under the general entry. Hence, he prayed for allowing the petition.

7.Per contra, the learned counsel appearing for the respondents had contended that the fan belts that are being dealt with by the appellant dealer are not only used as accessories, spare parts in motor vehicles, but they also used as spare parts for other machineries. Therefore, the first respondent has rightly brought the said assessment under entry No.50. Hence, he prayed for sustaining



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the order passed by the first respondent herein.

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8. We have considered the submissions made on either side and perused the materials available on record.

9. It is the specific case of the appellant/dealer that they are manufacturers of automobile fan belts and they deal with two wheeler fan belts and tractors fan belts alone. The invoice bills produced by the appellant would clearly establish the fact that the belts that have been sold by them are accessories to two wheeler or a tractor. Therefore, it is clear that the said goods would clearly fall within entry 30 of Part-C of the first schedule attracting 5% tax for the two wheeler parts. As far as the tractor belts are concerned, they fall under entry 27 of Part-B of the first schedule attracting 3% tax.

10. A perusal of item 50(vi) of Part D of the first schedule indicates that it relates to conveyor, transmission or elevator belts or belting of rubber whether combined with any textile material or otherwise which would attract 8% tax. As rightly pointed out by the learned counsel appearing for the appellant the Division Bench in the judgment reported in *(2012) 50 VST 315 (Mad) (State of Tamil Nadu Vs. P.M.Engineering and Co.,)* had categorically found that when there is a specific entry to deal with an item in question, the same cannot be brought under the general entry. In the present case, the two wheeler fan belts and tractor fan belts are specifically found mentioned under entry 30 of Part-C



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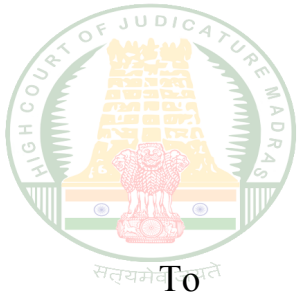
and entry 27 of Part-B. Therefore, the first respondent was not right in invoking entry 50 which is a general entry.

11.It is brought to the notice of the Court that the first respondent had initiated suo moto revision proceedings only for the assessment year 1993-1994 and 1994-1995. However, the assessment for the previous and subsequent assessment years have not been subjected to suo moto revision. Therefore, it is clear that the first respondent has cherrypicked the said assessment years for exercising his suo moto powers for reasons best known to him.

12.In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellant and the order impugned in the petition is set aside and this Tax Case is allowed. No costs.

[A.S.M.J.] & [R.V.J.]
09.08.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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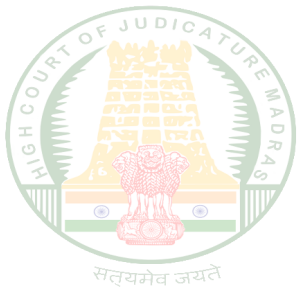
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Pre-delivery Judgment made in
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