In the High Court of Judicature at Madras

Dated: 11.03.2015

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The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Mr.JUSTICE R.KARUPPIAH

Tax Case (Revision) No.11 of 2015

The State of Tamil Nadu
represented by
Joint Commissioner (CT),
Chennai (East) Division,
Chennai - 600 006.

.... Petitioner

Vs.

Tvl.Bayer Material Science Private Ltd.,
No.556, Anna Salai,
Chennai – 600 002.

.... Respondent

Revision Petition under Section 38 of the Tamil Nadu General Sales Tax Act 1959 against the order dated 29.03.2012 made in S.T.A.No.140 of 2011 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.

against the Order dated 07.10.2011 made in Appeal No.11/2011/TNGST on the file of Appellate Deputy Commissioner (CT) IV (FACT) Chennai and against the Order dated 18.3.2011 made in Assessment No.TNGST 0641042/2005-06 on the file of Assistant Commissioner(CT) III Assessment Circle, Chennai.

For Petitioner : Mr.Kanmani Annamalai
Special Government Pleader

O R D E R
(Order of the Court was made by R.SUDHAKAR,J.)

This Tax Case (Revision) is filed by the Revenue as against the order dated 29.03.2012 made in S.T.A.No.140 of 2011 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai raising the following substantial questions of law:

“i) Whether the order of the Appellate Tribunal is correct in interpreting the expression "does not sell the goods so manufactured" occurring in sub-section (4) of Section 3 of the Tamil Nadu General Sales Tax Act, 1959 as including not only intra state but also export sale?

ii) Whether the Appellate Tribunal is correct in invoking the principle of situs as envisaged in Explanation 3 (a) to Section 2 (n) of the Tamil Nadu General Sales Tax Act, 1959 for the purpose of interpretation of the expression "does not sell the goods so manufactured" as contained in sub-section (4) of Section 3 of the Act so as to bring it within the ambit of the said explanation?

iii) Whether the Appellate Tribunal is legally correct in distinguishing the judgment of the Hon'ble Supreme Court in the case of State of Karnataka – Vs – B.M. Ashraf & Co. reported in 107 STC 571 where it was held that a sale deemed to be in the course of export under Section 5 (3) of the Central Sales Tax Act, 1956, cannot be regarded as an intrastate sale?

iv) Whether the Appellate Tribunal is correct in construing that the levy of tax attracted under Section 3 (4) of the Act in the event of export sale of the manufactured goods as being a direct levy on the export sale itself and thus contravening Article 286 of the Constitution?

v) Whether the Appellate Tribunal is correct in placing a construction on expression "in any other manner" occurring under sub-section (4) of Section 3 of the Tamil Nadu General Sales Tax Act, 1959, would not include export sale within its ambit?

vi) Whether the Appellate Tribunal has failed to appreciate that Sections 3 (3) and 3 (4) of the Tamil Nadu General Sales Tax Act, 1959 are not designed as charging provisions as evident from the non-obstante clause occurring at the beginning of Section 3 (3) of the said Act?

vii) Whether the Appellate Tribunal has totally failed to consider that Tamil Nadu General Sales Tax Act, 1959, was enacted to levy tax on sales or purchases within the State of Tamil Nadu alone as evident from the pre-factory explanation to the said Act."

2. The brief facts of the case are as follows:

The respondent/assessee is a dealer in granules and drums. The assessee was assessed on a total and taxable turnover of Rs.1,53,62,866/- for the assessment year 2005-06 under the Tamil Nadu General Sales Tax Act, 1959. The Assessing Officer noticed that the assessee had purchased raw materials against Form XVII declarations, used the same in the manufacture of goods and sold the same by way of export. Hence, the Assessing Officer estimated the turnover used in the manufacture of goods exported at Rs.13,91,500/- by applying formula and assessed the same at 1% under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Appellate Assistant Commissioner, who allowed the appeal, thereby set aside the order of the Assessing Officer. As against the same, the State pursued the matter before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal, placing reliance on the decision of this Court dated 08.10.2010 in T.C.(A)No.39 of 2009, dismissed the appeal on the ground that export is also a sale as contemplated in the first part of Section 3(4) of the TNGST Act, 1959 and hence could not be assessed to tax under Section 3(4) of the TNGST Act, 1959.

3. Aggrieved by the order of the Tamil Nadu Sales Tax Appellate Tribunal, the Revenue is before this Court.

4. Learned Special Government Pleader appearing for the petitioner fairly submits that the issue involved in this Revision is covered by a decision of this Court reported in (2010) 36 VST 67 (M/s.Tube Investments of India Limited V. State of Tamil Nadu).

5. Heard learned Special Government Pleader appearing for the petitioner and perused the materials placed before this Court.

6. In the decision reported in (2010) 36 VST 67 (M/s.Tube Investments of India Limited V. State of Tamil Nadu), this Court, after relying upon number of decisions, held as follows:

> "32. When the underlining principles of the framers of the Constitution itself in respect of export sales was so very paramount, at the very outset, it should be held that the imposition of tax as provided under Section 3(4) to be applicable to such an export sale would run counter to such an intention of the Parliament, which cannot be countenanced. In other words, when the State lacks the legislative competence by virtue of the Constitutional embargo to levy any tax on export sale, the indirect creation of any tax liability on such 'export sales' on

the inputs purchased cannot at all be recognised. To put it differently, if the levy of 1% tax on the value of the goods purchased by the dealer who is dealing in manufacture of goods inside the State by availing concessional rate of 3% tax by using Form-XVII, under Section 3(3) of the Act would negate the very Constitutional restriction imposed under Article 286 as a 'deemed export' as set out under Section 5(3) of the Central Sales Tax Act, the same cannot be countenanced. In this context, it will be worthwhile to refer to a Division Bench decision of this Court reported in 2005 (3) LW 101 (N.PRIYADARSHINI VS. THE SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, FORT ST. GEORGE, CHENNAI-9 AND ANOTHER). Para 27 of the said decision is relevant for our purpose, which reads as under:-

".....27. In this connection, it may be mentioned that according to theory of the eminent jurist Kelsen (the pure theory of law) in every country there is a hierarchy of laws and the general principle is that a law in a higher layer of this hierarchy will prevail over the law in a lower layer of the hierarchy (see Kelsen's "The General Theory of Law and State") In our country this hierarchy is as follows:-

(i) The Constitution of India

(ii) Statutory law (which may be either Parliamentary law or law made by the State legislature).

(iii) Delegated Legislation (which may be in the form of rules made under the statute, regulations made under the statute, etc)

(iv) Purely administrative or executive orders."

Applying the said principles to the facts of this case, as in the hierarchy of law, the Constitution provision will supersede any conflicting statutory provision, we hold that the interpretation sought to be laid on behalf of the State, to hold that Section 3(4) will apply to the export sale of the assesses will run counter to the well laid legal principles referred to above and the same cannot be countenanced.

33. On these grounds itself, it can be held that there would be no scope for invoking Section 3(4) in regard to the export sales of the goods manufactured. "

7. In an identical circumstance, this Court in T.C.(A)Nos.38 and 39 of 2014 dated 17.9.2014 followed the above-said decision of this Court and decided the issue in favour of the assessee and against the Revenue.

8. In view of the law laid down by this Court in the decision cited supra, no tax can be collected without the authority of law. Therefore, following the above-said decision, we find no question of law much less any substantial question of law arises for consideration in this revision.

9. Accordingly, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To
1. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.
2. The Appellate Assistant Commissioner (CT) IV Chennai.(FACT) Anna Salai III, Assessment Circle, Chennai.

3. The Commercial Tax Officer, Anna Salai -III Assessment Circle, Chennai.

4.The Joint Commissioner (CT)
Chennai (East)Division
Chennai - 600 006.

1 cc to Spl Government Pleader(Taxes) SR.No.13869

T.C.(R) No.11 of 2015

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