IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MRS. JUSTICE R.KARUPPIAH

T.C. (R) NO. 14 OF 2015

The State of Tamil Nadu
Joint Commissioner (CT)
Chennai (East) Division
Chennai 600 006. .. Petitioner/Respondent

- Vs -

M/s. Raj Lubricants (Madras) Ltd.
Now known as Raj Petro
Specialities Pvt. Ltd.
2A-D, Dohi Towers
No.156, Poonamallee High Road
Kilpauk, Chennai – 10. .. Respondent/Appellant

Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act preferred against the order dated 20.12.10 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, made in T.A. No.14 of 2009 against the order of the Appellate Assistant Commissioner (CT) II, Chennai-108 dt.16.9.2008 and made in Appeal No.146/05 against the order of the Commercial Tax Officer, Tondiarpet Assesment Circle, Chennai-108 dt.27.6.2005 and made in TNGST/1200090/2001-02 for the Assessment Year 2001-02.

For Petitioner : Mr. Manohar Sundaram
AGP (Taxes)

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the respondent/assessee, the petitioner/Revenue is before this Court by filing the present revision.

2. The facts, in a nutshell, are as hereunder :-
The respondent/assessee is a dealer in petroleum products and it reported a total taxable turnover of Rs.9,92,52,018/= and Rs.9,05,02,905/= respectively for the assessment year 2001-2002 under the Tamil Nadu General Sales Tax Act. The accounts of the assessee were called for and checked. On verification, it was detected that the dealers had purchased raw materials against Form XVII to the extent of Rs.25,72,42,367/= in the year 2001-2002 and used them in

the process of manufacture of goods, which were disposed of otherwise than by way of sale, viz., stock transfer and export sales. The value of raw material used in the manufacture of goods that were stock transferred and sent for export sales attracts tax liability at 1% under Section 3 (4) of the TNGST Act. Since the manufactured goods had not been sold either locally or outside the State as a result of direct interstate sale, the assessing authority levied tax on the purchase turnover of goods under Section 3 (4) of the TNGST Act. Against the said assessment, the assessee preferred an appeal to the Appellate Assistant Commissioner, who dismissed the appeal against which the assessee preferred further appeal to the Tribunal. The Tribunal allowed the appeal filed by the respondent/assessee against which the present revision is filed by the Revenue.

3. Heard Mr.Manohar Sundaram, learned Addl. Govt. Pleader appearing for the petitioner.

4. In this revision, the following substantial questions of law have been framed for consideration :-

"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."

5. Though very many questions of law have been raised, as above, for consideration, the main ground raised in the revision is only in relation to the liability to tax in terms of sub-section (4) of Section 3 of the Tamil Nadu General Sales Tax Act.

6. However, at the time of admission of the revision, learned Addl. Government Pleader (Taxes) fairly concedes that the issue for consideration as to whether the export sale in question would come within the purview of Section 3 (4) of the Tamil Nadu General Sales Tax Act has already been considered by this Court in a batch of cases in Tube Investment of India Ltd. - Vs – The State of Tamil Nadu (T.C. Nos.249/06, etc. - dated 08.10.2010) and submits that the case on hand is squarely covered by the decision in Tube Investments case (supra).

7. In view of the said statement made by the learned Addl. Government Pleader (Taxes) that the ratio laid down in Tube Investments case (supra), is equally applicable to the case on hand, following the said ratio, these tax case revisions are also liable to be dismissed.

8. Accordingly, no question of law, much less substantial question of law arises for consideration in this revision and, accordingly, this revisions is, therefore, dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Joint Commissioner (CT)
State of Tamilnadu,
Chennai (East) Division
Chennai 600 006.

2. The Assistant Registrar,Tamil Nadu Sales Tax
Appellate Tribunal (Addl. Bench)
Chennai.

3.The Appellate Assistant Commissioner (CT) II,
VI Floor, Kuralagam Annexe, Chennai.

4.The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Chennai.

5.The Secretary, Central Board of Revenue,
New Delhi.

+1 cc to Spl.Government Pleader,SR.15789.
gr(co)
krd 10/4

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