IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.04.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

T.C. (R) NO.28 OF 2015

The State of Tamil Nadu
rep. By Joint Commissioner (CT)
Coimbatore Division
Coimbatore. ... Petitioner

- Vs -

Tvl. Sri Venkateswara Packings,
No.1, Thirumalaisamy Street,
Siddhapudur,
Coimbatore - 641 044. ... Respondent

Petition filed under Section 38 of the TNGST Act, 1959, against the order dated 05.08.2011 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, made in CTA No.157 of 2004 arising against the Order of the Appellate Assistant Commissioner (CT), Coimbatore, dated 19.11.2003 in Appeal No.244/2002 and against Assessment Order for the year 2000-2001, dated 30.04.2002.

For Petitioner : Mr.Manoharan Sundaram, AGP (Taxes)

COMMON ORDER

(DELIVERED BY R.SUDHAKAR, J.)

The above revision is preferred by the Department aggrieved against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTA No.157 of 2004.

2. The respondent/assessee is a manufacturer of corrugated boxes and the assessment year relatable to the present cases are for the period 2000-2001. The respondent assessee had effected purchase of raw materials against Form XVII Declaration and used the same in the manufacture of goods which were sold to the place outside the State. 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 Tamil Nadu General Sales Tax 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, following the judgment of this Court in Tube Investment of India Limited - Vs - State of Tamil Nadu ((2010) 36 VST 67), allowed the appeal. Aggrieved by the said order of the Tribunal, the Revenue is before this Court by filing the above appeal.

3. In this appeal, 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 Section 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."

4. Though very many questions of law have been raised, as above, for consideration, the main ground raised in the appeal 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.

5. However, at the time of admission of the matter, Mr.Manoharan Sundram, learned Additional 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).

6. It is also brought to the notice of this Court by the learned Additional Government Pleader (Taxes) that the above position has been reiterated by this Bench as well in its subsequent decision in T.C. (R) Nos.30 and 31 of 2014 vide its order dated 27.08.2014.

7. In view of the said statement made by the learned Additional Government Pleader (Taxes) that the ratio laid down in Tube Investments case (supra), is equally applicable to the case on hand, which has been followed by this Bench as well in its subsequent decision, following the said ratio, this tax case revision is also liable to be dismissed.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT)
   Coimbatore Division
   Coimbatore.

2. The Appellate Asst. Commissioner(CT),
   Coimbatore.

+1cc to the Special Government Pleader(Taxes), S.R.No.19506

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RSK(CO)
CA(16/04/2015)