IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE T.RAJA

T.C. (R) NO. 29 OF 2015

The State of Tamil Nadu
rep. By the Joint Commissioner (CT)
Coimbatore. .. Appellant /Appellant

- Vs -

Tvl. Unitech Packaging
Rayar Thottam
Ravathur Post
Coimbatore. .. Respondent /Respondent

Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act against the order dated 29.7.11 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai made in CTSA No.24/09.

Against the proceedings of the Appellate Assistant Commissioner (CT) Pollachi dt.18.5.2007 and made in A.No.92/03.

Against the Proceedings of the Deputy Commercial Tax Officer, Palladam,dt. 13.11.2002 and made in TNGST 6241259/2001-02.

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

ORDER
(DELIVERED BY R.SUDHAKAR, J.)

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

2. The respondent assessee in this case is a dealer in corrugated boxes and the assessment order relatable to the present case is for the period 2001-2002. The Assessing Officer noticed that the assessee had purchased raw materials at concessional rate of tax against Form XVII Declaration and used the same for manufacture of goods for the purpose of export out of the country. 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 allowed the appeal against which the Department 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), dismissed the appeal filed by the Revenue.

3. The petitioner/Revenue, aggrieved by the abovesaid order of the Tribunal, is before this Court by filing the present revision.

4. In the present 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, 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 (2010 (36) VST 67) 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 decision, 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, accordingly, this revision is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Joint Commissioner (CT)
Coimbatore.

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

3.The Deputy Commercial Tax Officer,
Palladam.

4.The Appellate Assistant Commissioner,
Commerical Taxes, Pollachi.

+1 cc to Spl.Government Pleader,SR.17047.

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