IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Tax Case Revision No.176 of 2009

M/s. Nag Leathers (P) Ltd.,
rep. by its M.D., S.C.Pillai,
SIPCOT, Ranipet-632 403. .. Petitioner

Vs.

The State of Tamil Nadu,
rep. by the Deputy Commissioner (CT),
Vellore Division, Vellore-632 001. .. Respondent

This Tax Case Revision is filed under Section 38 of the Tamil Nadu General Sales Tax Act,1959, to revise the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai-104 dated 23.01.2009 in T.A.No.199 of 2004.

For Petitioner : Mr.P.Rajavelu for
M/s R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai,
Standing Counsel for the Department

*****

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao, J.)

The Assessee has preferred this Revision under Section 38 of the Tamil Nadu General Sales Tax Act,1959 to revise the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai-104 dated 23.01.2009 in

T.A.No.199 of 2004 .

2. The Tax Case Revision has been admitted for consideration of the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in drawing its impugned finding sustaining the tax levy by interpreting / understanding the word "sell" in Sec. 3(4), by interpolating the phrase "sale in the State" into it when it is not in the Statute, which amounts to rewriting the law by the Revenue?

(ii) Whether on the facts and in the circumstances of the case and in law the Tribunal is justified in drawing its impugned finding sustaining the tax levy allowing itself to be influenced in deciding this issue, by the Supreme Court Judgement in (1997) 107 STC 571 (State of Karnataka vs. Ashraf & Co) dealing with on alien Act for a different purpose containing specific provision in the statute as "sale in the State", which provision is not there in Sec. 3(4) of the TNGST Act 1959?

3. The petitioner is a manufacturer of Shoes and Shoe uppers in Tamil Nadu. The manufactured products are exported by it. In the process of manufacture, it purchases the necessary materials availing concessional rate of tax as provided for under Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959. There is no dispute on this factual score. However, under sub-section (4) of Section 3, where a dealer, after availing the concessional rate of tax under sub-section (3), does not sell the goods so manufactured, but dispatches them to a place outside the State either by branch transfer, or by transfer to an agent, for sale, or for disposal in any other manner, except as a direct result of sale or purchase in the course of inter-state trade

or commerce, is required to pay in addition to the concessional rate of tax paid under sub-section (3), tax at one percent on the value of the goods so purchased. It is therefore, clear that for attracting the provision contained in sub-section (4) of Section 3 of the Act, the crucial question of fact to be decided is whether the sale has taken at a place outside the State either by way of branch transfer or by transfer in any other manner for the purpose of selling the same at the place which is falling outside the State.

4. In cases where the manufactured goods are sold by way of export, no such transfer of goods can be construed to have taken place outside the State to attract the requirement of payment of additional tax at 1% as provided for in Sub-Section 4 of Section 3 of the Act. In **Tube Investments of India Ltd., vs. State of Tamil Nadu** reported in **(2010) 36 VST 67 (Mad),** a Division Bench of this Court has held that Section 3(4) of the Act will have no application to export sales. We are in complete agreement with the reasons assigned by the Division Bench in Tube Investments of India Limited and subscribe to the same reason.

5. Accordingly, we allow this Tax Case Revision and answer the substantial questions of law holding that the sales effected by the petitioner by way of export sub-section (4) of Section 3 of the Act would not get attracted.

(N.R.R.,J.) (A.S.M.,J.)
26.10.2016

Index: Yes / no

Internet: Yes / no
gr.
Copy to
TheDeputy Commissioner (CT), Vellore Division, Vellore-632 001.

NOOTY.RAMAMOHANA RAO, J.
and
Dr.ANITA SUMANTH, J.

gr.

T.C.(R).No.176 2009

26-10-2016