

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Tax Case (Revision) Nos.42 and 43 of 2017

The State of Tamilnadu,
rep. by the Joint Commissioner (CT),
Chennai (Central) Division,
Chennai. ... Petitioner in all TCRs.

v.

M/s.Forward Shoes Pvt. Ltd.,
No.50, Raja Muthiah Road,
Periamet, Chennai-3. ... Respondent in TCR.42/17

M/s.ITC Ltd.,
T.H.Road, Chennai-19. ... Respondent in TCR.43/17

Prayer in TCR.No.42 of 2017: Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to set aside the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 30.11.2010, passed in T.A.No.188 of 2007.

Prayer in TCR.No.43 of 2017: Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to set aside the order of

the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 30.11.2010, passed in T.A.No.298 of 2007.

For Petitioner : Mrs.Narmatha Sampath,
Special Government Pleader

For Respondent : Mr.K.S.Chandran
in TCR.No.42 of 2017

For Respondent : Mr.N.Inbarajan
in TCR.No.43 of 2017

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Tax Case Revision No.42 of 2017, is filed against the order, dated 30.11.2010, passed in T.A.No.188 of 2007, passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, for the assessment year 2003-04.

2. Tax Case Revision No.43 of 2017, is filed against the order, dated 30.11.2010, passed in T.A.No.298 of 2007, passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, for the assessment year 2001-02.

3. Short facts leading to Tax Case Revision No.42 of 2017, are that M/s.Forward Shoes Pvt. Ltd., Chennai, were assessed on a total and taxable turnover of Rs.2,79,54,101/- for the assessment year 2003-04, under the Tamil Nadu General Sales Tax Act, 1959 (In short, "the Act"). The assessee had purchased materials such as thread, taps, foils and solutions, against Form XVII and used the same for the manufacture of shoes and dispatched them to other countries. Alleging violation of Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, the assessing officer levied tax at 1%, on the turnover of Rs.2,00,81,189/-, pertaining to the purchases of raw materials, against Form XVII, availing concessional rate of tax and used the same for manufacture of goods and exported the same. Aggrieved by the same, the assessee has filed an appeal, before the Appellate Assistant Commissioner (CT)-III, Chennai and the said appeal came to be dismissed on 22.03.2007. Against which, the assessee has preferred an appeal in T.A.No.188 of 2007, before the Tamil Nadu Sales Tax Appellate Tribunal (Main Branch) Chennai. Following the decision of this Court in **Tube Investment of India Ltd., v. State of Tamil Nadu** reported in [2010] 36 VST 67 (Mad.), the Appellate Tribunal, by its order, dated 30.11.2010, allowed the appeal.

4. Facts leading to Tax Case Revision No.43 of 2017, are that M/s.ITC Ltd., Chennai, respondent herein, dealers in Cigarettes and manufacturers of Printed Card Board Boxes, Greeting Cards, etc., were assessed on a total and taxable turnover of Rs.1415,99,59,443/- and Rs.134,45,720/- respectively, for the assessment year 2001-02, under the Tamil Nadu General Sales Tax Act, 1959. Upon scrutinising the accounts, it was found that the assessee had purchased goods, against Form XVII declarations and used the same for the manufacture of cartons, which were sold locally and interstate and also exported to other countries, including Nepal. Alleging violation of Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, the assessing officer, vide assessing proceedings, dated 30.09.2005, levied tax at 1%, on the turnover of Rs.1,05,13,200/-, pertaining to the purchases of raw materials, against Form XVII, availing concessional rate of tax and used the same for manufacture of goods and exported the same. The assessing officer also levied penalty, under Section 16(2) of the TNGST Act, 1959. Aggrieved by the same, the assessee filed an appeal, before the Appellate Assistant Commissioner (CT)-VI, Chennai and the said appeal came to be partly dismissed on 12.04.2007, sustaining levy of 1% tax, while setting aside

the penalty. Against which, the assessee has preferred an appeal in T.A.No.298 of 2007, before the Tamil Nadu Sales Tax Appellate Tribunal (Main Branch) Chennai. Following the decision of this Court in **Tube Investment of India Ltd., v. State of Tamil Nadu** reported in [2010] 36 VST 67 (Mad.), the Appellate Tribunal, by its order, dated 30.11.2010, allowed the appeal.

5. As similar orders have been passed in both the cases in T.A.Nos.188 and 298 of 2007, suffice to extract the relevant portions of one such order, in the case of T.A.No.188 of 2007, as follows:

"9. The learned counsel for the appellant would simply and at the same time strenuously submit that export sale is also a sale as mentioed in Section 3(4) of the TNGST Act, 1959 and hence, export sale cannot be disallowed for the purpose of availing concessional rate of tax in respect of the corresponding purchase of raw materials. The learned State Representative would submit that a correct interpretation of Section 3(4) of the TNGST Act, 1959, would make it abundantly clear that local sale of the manufactured goods alone will qualify for purchase of raw materials at the concessional rate of tax under Section 3(3) of the TNGST Act, 1959. In support of this contention, the learned State

Representative would rely upon the case law reported in (2004) 136 STC 215 in "ELGI Equipments v. Assistant Commissioner of Commercial Taxes" and (1997) 107 STC 571, in "State Karnataka v. B.M.Ashraf & Co.,"

10. To repel this contention, the learned counsel for the appellant/assessee would submit that recently a Division Bench of the Honourable High Court of Madras, in a batch of Tax Case Revisions by a common order, dated 08.10.2010 has held that "export sale" is also a "sale" as contemplated in the first part of Section 3(4) of the Act and hence, not eligible to tax under Section 3(4) of the TNGST Act, 1959.

11. We are of the considered view that the case law relied upon by the learned State Representative, viz., (1997) 107 STC 571 arose out of the interpretation of Section 6 of Karnataka Sales Tax Act, 1957, in the matter of levy of purchase tax. But in our case, we are concerned about the tax liability under Section 3(4) of the TNGST Act, 1959, which has been specifically considered and answered by the Honourable High Court of Madras in the above stated case. In this case, the Honourable High Court of Madras has held that the ratio held in 107 STC 571 could not be applied to the question involving levy of tax under Section 3(4) of the TNGST Act, 1959. We, by respectfully following the observation made by the Honourable High Court of Madras stated supra, hold that the case law in 107 STC 571, could

not be applied to the question involved in our case. Further, the other case law relied upon by the learned State Representative (2004) 136 STC 215 in "ELGI Equipments cannot also advance the case of the Revenue inasmuch as it was rendered by the Honourable Tamil Nadu Taxation Special Tribunal and on the other hand, the case law relied on by the counsel for the appellant is the one rendered by the Honourable High Court of Madras and we are bound by the decision of the Division Bench of Honourable High Court of Madras only.

12. Hence, we have no hesitation to hold, by respectfully following the ratio held by the Division Bench of Honourable Madras High Court of Madras in Tax Case No.39/2009 and in a batch of cases, dated 08.10.2010, that export is also a sale as contemplated in the first part of Section 3(4) of the TNGST Act, 1959 and consequently, hold that purchase turnover of raw materials by issue of Form XVII declaration availing concessional rate of tax, under Section 3(3) of the TNGST Act, 1959, corresponding to the export of manufactured goods could not be assessed to tax under Section 3(4) of the TNGST Act, 1959 and we answer this point in favour of the appellant.

In the result, the appeal is allowed."

6. Being aggrieved by the same, the present Tax Case (Revision) petitions, have been filed, on the following substantial questions of law,

"(1) 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?

(2) 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 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?

(3) Whether the Appellate Tribunal is legally correct in distinguishing the judgment of Hon'ble Supreme Court in the case of State of Karnataka vs. B.M. Ashraf & Co. reported in 107 STC 571 wherein 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?

(4) . 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?

(5) Whether the Appellate Tribunal is correct in placing a construction on the 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?

(6) 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?

(7) 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?"

7. In support of the substantial questions of law raised, Mrs.Narmatha Sampath, learned Special Government Pleader submitted that the Appellate Tribunal has grossly erred in interpreting the

expression "does not sell the goods so manufactured "occurring in sub Section (4) of Section 3 of the TNGST Act, 1959, as including not only intra state but also export sale, without appreciating the fact that Section 3(3) and 3(4) of the said Act, 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.

8. Learned Special Government Pleader further submitted 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 prefatory explanation to the said Act and therefore, the Tribunal has failed to appreciate that the principle of situs, as envisaged in explanation 3(a) to Section 2(n) of the Tamil Nadu General Sales Tax Act, 1959, is not relevant, while interpreting the expression "does not sell the goods so manufactured" as contained in sub Section (4) of Section 3 of bring it within the mischief of the said explanation.

9. Placing reliance on a decision in **State of Karnataka v. B.M.Ashraf & Co.**, reported in **107 STC 571**, learned Special Government

Pleader submitted 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 "intrastate sale". She therefore submitted that the Tribunal has erred in interpreting the expression "in any other manner" occurring under sub Section (4) of Section 3 of the TNGST Act, 1959, would not include export sale within its ambit.

10. On the contention that the State has filed SLP(C)Nos.8629 to 8678 of 2012, before the Hon'ble Supreme Court, against the decision made in **Tube Investment of India Ltd., v. State of Tamil Nadu**, reported in [2010] 36 VST 67 (Mad.), learned Special Government Pleader fairly submitted that the abovesaid SLPs are dismissed, on the ground of delay and review petition has been filed.

Heard the learned counsel appearing for the parties and perused the materials available on record.

11. Few provisions relevant for the instant tax case revision are as follows:

(i) Explanation 3(a) to Section 2(n) of the Tamil Nadu General Sales Tax Act, 1959, reads as follows:

"Explanation (3)-

(a) The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State--

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation."

(ii) Sub-Sections (3) and (4) of Section 3 of the said Act, read as follows:

"Section 3(3): Notwithstanding anything contained in (sub-section (2), (2-A) or (2-C), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labelling in connection with such

manufacture inside the State, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall bear the rate of only three per cent on the turnover relating to such sale:

PROVIDED that the provisions of this sub-section shall not apply to -

(a) any sale of high speed diesel oil, light diesel oil and molasses; and

(b) any sale, unless the dealer selling such goods furnishes to the assessing authority in the prescribed manner and within the prescribed period, declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority :

PROVIDED FURTHER that any dealer who, after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the difference of tax payable on the turnover relating to sale of such goods at the rate prescribed and three per cent :

PROVIDED ALSO that the dealer purchasing the goods maintains a separate stock account for each of the goods

purchased by him showing such particulars as may be prescribed."

.....

Section 3(4): Where any dealer, after availing the concessional rate of tax under sub-section (3), does not sell the goods so manufactured, but despatches them to a place outside the State either by branch transfer or by transfer to an agent, by whatever name called, for sale, or in any other manner, except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay in addition to the concessional rate of tax already paid under sub-section (3), tax at one per cent on the value of the goods so purchased."

(iii) Section 5(3) of the Central Sales Tax Act, 1956, is extracted hereunder:

"5. When is a sale or purchase of goods said to take place in the course of import or export:-

(1)

(2)

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of

such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

12. In **Tube Investment of India Ltd., v. State of Tamil Nadu**, reported in [2010] 36 VST 67 (Mad.), after considering a catena of decisions, a Hon'ble Division Bench of this Court, held as follows:

"24. Under Section 3(3), the sale of any goods including consumables, packing materials and labels and excluding certain specific goods sold to another dealer for use by such dealer for manufacturing any other goods inside the State of Tamil Nadu for sale of any goods other than certain exempted goods, such sale would attract levy of only 3% by way of sales tax to be collected by the seller. The levy is however subject to Section 3(1) wherein the turnover limit for levy of tax has been prescribed. The proviso to Section 3(3) however makes it clear that any dealer after purchasing the goods by using Form-XVII violates the conditions of such purchase as stipulated in Section 3(3) and the declaration contained in Form-XVII but dispose of such goods in any other manner should pay the difference of tax payable on the turnover relating to sale of such goods at the rate prescribed under the Act and the 3% which is already paid. The second proviso prescribes that a separate stock account of the goods

purchased by using Form-XVII should be maintained by the purchasing dealer.

25. As submitted by the learned counsel, the apparent purport of Section 3(3) is to provide a concessional rate of tax for the purchasing dealer who carries on any manufacturing activities inside the State and who also sell such manufactured goods within the State except by way of inter state sale which is governed by the CST Act. It is also apparent that in the event of such sale of manufactured goods taking place in the State, as such sale, would be the first sale would result in collection of revenue by way of tax at the rate prescribed for such goods under the Act.

26. It is also clear from a reading of Sections 3(3) and 3(4) that the liability of tax provided for under Section 3(4) has got very many interlinked factors which are to be fulfilled. The opening set of expression contained in Section 3(4) makes it clear that after availing of concessional rate of tax under sub-section(3), if the purchasing dealer fails to perform the sale in this State but resort to other modes of disposal of such manufactured goods either by way of branch transfer or by transfer to an agent to a place outside the State for the purpose of sale except by way of interstate sale or purchase, then in those cases, levy of 1% tax on the value of the materials purchased under Section 3(3) of the Act gets attracted.

27. The crucial test to be made therefore relates to the expressions "does not sell the goods so manufactured" and "in any other manner" used in Section 3(4) of the Act. The stand of the revenue of the State is that since the words "in any other manner" occurs prior to the exempted category of "interstate sale" and after the covered category of despatch to a place outside the state by way of branch transfer or by transfer to an agent for the purpose of sale, it should be construed that the export sale would fall under the said set of expressions "in any other manner" in as much as such sale is not within the State.

28. To counter the said submission, on behalf of the assesseees it is contended that if really the law makers wanted to restrict the sale only to a sale inside the State and not to export sale, such a restriction would have been clearly set out in the Section itself as has been provided in Sections 3(3), 7(A)(b) and 9(b) of the Act.

29. At the very outset, it will be worthwhile to make a mention about the restrictions imposed on imposition of tax by the State on Export sales under Article 286(1)(a) & (b) of the Constitution. In fact there is a Constitutional embargo on the States to enact any law providing for levy of tax both on interstate sale or purchase as well as export sale that takes place to any territory outside the country. The apparent purpose is quite clear that in the case of interstate

sale the same is covered by the provisions of the Central Sales Tax Act in which the respective States get a part of the tax collection. As far as the export sales are concerned, it is needless to state that in the national interest, when by virtue of such exports, considerable foreign exchange is earned, by way of incentives and to augment more of such exports, the levy of any tax on such export sale is prohibited.

30. In fact under Section 5(3) of the Central Sales Tax Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export is also to be deemed as export sales. Such extended definition of export making it applicable even to the last sale or purchase of any goods plays a vital role in the article to be exported. Ultimately it only implies that the Constitutional framers want to attach great significance to export and its promotion in the national interest of earning sizeable foreign exchange.

31. Keeping the above prospective in mind, it will be appropriate to examine as to whether the export sale would fall within set of expression "but does not sell the goods so manufactured" as used in Section 3(4) of the Act.

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.

34. When we examine the other submissions of the learned counsel appearing for the petitioners that the export sale is fully covered by the definition of 'sale' under Section 2(n) read along with Explanation 3(a) and thereby that is also a sale within the State, on that ground as well, no liability by way of tax can be fastened under Section 3(4) of the Act. The said submission of the learned counsel for the

petitioners is also well founded.

35. When we examine Section 2(n) which defines sale to mean "every transfer of the property in goods other than by way of a mortgage, hypothecation, charge or pledge by one person to another in the course of business for cash, deferred payment or other valuable consideration". The Explanation 3(a) makes it further clear that such export sale should also be construed as a sale for the purposes of this Act. In order for a sale to come within the fiction of sale as prescribed in Explanation 3, the conditions are:

- (a) the goods should be within the State;
- (b) such situs of the goods in the case of specific or ascertained goods should be at the time of contract of sale or purchase was made; and
- (c) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase either by the seller or the purchaser irrespective of whether the assent of the other party is prior or subsequent to such appropriation.

36. Therefore, Explanation-3 to Section 2(n) is wider in amplitude. It can never be disputed that the goods manufactured by availing the concessional rate of tax in respect of those materials purchased in the manufacture of such goods as provided under Section 3(3) by itself would make it unambiguous that such goods are within the State.

37. In the case on hand, it is not in dispute that Explanation-3(a)(i) is attracted viz., that such goods are specific or ascertained goods. It is also not in dispute that such ascertainment of the goods were existing at the time when the contract of sale or purchase in respect of the export was made. When such stipulations to be satisfied as prescribed under Explanation-3 are fulfilled, certainly the export sale is also deemed to be a sale as defined under Section 2(n) of the Act for the purpose of the Act.

38. When once we are able to assimilate the definition of 'sale' in the case of an export under the provisions of the Act, we are convinced that such a sale, is nothing but a sale for which an exigency of tax liability would not occur as provided under Section 3(4) of the Act.

39. In other words, the expression "but does not sell the goods so manufactured" cannot be put against the export sale in order to levy the tax on the value of the goods so purchased by availing the concessional rate of tax under Section 3(3) of the Act.

40. In view of our above conclusions, we have no hesitation to hold that such an export sale cannot be brought under the set of expressions "in any other manner" as used in Section 3(4) of the Act.

41. As rightly contended by the learned counsel for the petitioners, the said set of expressions having been used

following the expression "for sale" and applying the maxim Ejusdem Generis, it can only mean and taken to the effect that any despatch to a place outside the State either by way of branch transfer or by transfer to an agent by whatever manner called, either for sale or for any other purpose, certainly it cannot be attributed to an export sale. It would be directly covered by the definition of 'sale' under Section 2(n) of the Act and thereby would not come within the exclusion of sale. We therefore need not have to even deal with the submission based on the comparison made by making a reference to Section 7(a), 7(b) and 9(b) of the Act.

42. On behalf of the State, heavy reliance was placed upon the decision of the Hon'ble Supreme Court reported in (1997) vol 107 STC 571 (STATE OF KARNATAKA VS. B.M.ASHRAF & CO.). That was a case where, the assessee thereon purchased fish oil from unregistered dealers within the State of Karnataka, in turn, it sold the said oil to another dealer, who purchased the said oil in order to comply with the export order from its buyer in a foreign country. The assessee therein, claimed exemption from payment of sales tax on the sale made to another by claiming umbrage under Section 5(3) of Central Sales Tax Act 1956 i.e., last sale or purchase prior to the export. The said claim was however rejected by the assessing authorities. In fact, the levy of tax was based on Section 6 of the Karnataka General Sales Act,

which provided for levy of purchase tax under such circumstances, as stipulated under Section 6 of the said Act. Section 6(1) of the Karnataka General Sales Tax Act specifically stipulated as under :-

'....6(i) :- either consumes such goods in the manufacture of other goods for sale or otherwise (or consumes, otherwise) or disposes of such goods in any manner other than by way of sale in the State, or

(ii) dispatches them to a place out side State except as a direct result of sale or purchase in the course of inter-State trade or commerce'

Dealing with the said provision as well as after considering Section 5 of the Central Sales Tax Act, the Hon'ble Supreme Court has held as under in paragraph 12 :

" ...12. Similarly situs is irrelevant as regards the sales being in the course of export, as in the present case. In the context of sales tax law, the expression "sale in the State" occurring in Section 6 can only mean a local sale or an intra State sale as opposed to sale in the course of export or in the course of inter-State trade or commerce. Therefore, wherever, there is a sale in the course of export or an inter-State sale, then, that would not be regarded as a "sale in the State" falling under Section 6(i) of the Act and therefore, sale by the respondent to Kalbhavi, which was admittedly a sale in the course of export under Section 5(3) would not be

regarded as "sale in the State"

43. While examining the reliance placed upon the said decision on behalf of the State, it will have to be noted that Section 6 of the Karnataka General Sales Tax Act is more or less in pari materia with Section 7(A) of the Act i.e., (TNGST Act). From what has been laid down by the Hon'ble Supreme Court in the first blush, it does appear that irrespective of the fact that the sale of fish oil by the assessee therein was a sequel to an export order thereby governed by Section 5(3) of the CST Act, but, yet the Supreme Court held that such a sale cannot be construed as a 'Sale' in the State and consequently it does not fall within the Set of expressions specifically stipulated in Section 6(i) of the Karnataka GST Act.

44. But at the very outset, it will have to be stated that the said decision can be considered in the event of a question arising relating to the exigibility of tax (purchase tax) under Section 7-A of the Act. Consequently, it is relevant to note that in Section 6(i) of the Karnataka Act, a specific expression 'by way of sale in the State' has been used and the decision of the Hon'ble Supreme Court was primarily while interpreting the said expression contained in Section 6(i) of the Karnataka Act. It is well laid down principle that a judgment cannot be an authority for a proposition which was not canvassed before it. In this

context, it will be appropriate to refer to the decision of the Hon'ble Supreme Court reported in 2003(4) Labour Law Notes = AIR 2003 SC 2661 = (2003) 11 SCC 584 (ASHWANI KUMAR SINGH VS. UTTAR PRADESH PUBLIC SERVICE COMMISSION AND OTHERS), wherein, the Hon'ble Supreme Court has held as under:-

".....Observations of courts are not to read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes...."

In this regard, reliance can also be placed upon the decision reported in (2004) 2 SCC 362 (MEHBOOB DAWOOD SHAIKH VS. STATE OF MAHARASHTRA), wherein, the Supreme Court in paragraph 12, has held as follows:-

".... A decision is available as a precedent only if it decides a question of law. A judgment should be understood in the lights of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before

this Court.'

Reliance can also be placed upon the decision reported in AIR 2008 SC 1120 (SUDESH KUMAR VS. STATE OF UTTARAKHAND). In para 22, the Hon'ble Supreme Court has held as under:-

".....The Court would not construe a Section of a statute with reference to that of another statute unless the latter is in pari materia with the former. Therefore, a decision made on a provision of a different statute will be of no relevance unless underlying objects of the two statutes are in pari materia."

Support can also be had on the very recent decision of the Hon'ble Supreme Court reported in 2009 (8) SCC 483 (BIHAR SCHOOL EXAMINATION BOARD VS. SURESH PRASAD SINHA). In paragraphs 20, 21, 22, the Hon'ble supreme Court after referring to certain earlier decisions has held as under in para 23:-

".... 23. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the facts of the case and the reasoning contained therein. ..."

45. Applying the principles referred to in the above two decisions and the reliance placed upon Ashraf's case, it will have to be held that the said decision rendered in the context of the specific provisions contained in Section 6(i) of

the Karnataka Act cannot be mutatis mutandis apply to the case on hand where Section 3(4) are worded differently. While in Section 3(4) the qualifying words are 'does not sell the goods so manufactured' and the expression by way of sale in the State as contained in Section 6(i) of the Karnataka Act is significantly absent in Section 3(4). Therefore, what are to be examined while applying Section 3(4) is as to whether the dealer after availing the concession rate of sale under Section 3(3) failed to effect a sale. It is unnecessary for that dealer to establish that such a sale was a 'sale either by way of intra state sale or export sale'. Keeping the above specific content of Section 3(4) in mind, when we examine, the definition of sale as contained in Section 2(n) read along with explanation 3(a) of the Act, the position becomes clear to the effect that by virtue of the fact that the manufactured goods of the assessee is available in the State and by virtue of compliance of explanation of 3(a) to Section 2(n), the transaction of the assessee even by way of export satisfies the definition of sale under the Act and consequently the application of Section 3(4) automatically gets excluded. Therefore, having regard to the application of Section 2(n) read along with explanation 3(a) of the Act, the invocation of Section 3(4) of the Act stands excluded. The said legal position viz., reading of Section 2(n) into 3(4) being a special situation in the case on hand, which legal

position was not present in Ashraf's case, we have to hold that whatever stated in Ashraf's case cannot be applied to the case on hand.

46. In this context, the reliance placed upon the decision reported in 41 STC 409 (POLESTAR ELECTRONIC (PVT.)LTD. VS. ADDITIONAL COMMISSIONER, SALES TAX, AND ANOTHER), of the Hon'ble Supreme Court on behalf of the Assessee, fully fortifies their claim. At page 422, the Hon'ble Supreme Court has held as under:-

"....It may be pointed out in the first place that the legislature could have easily used some such words as "inside the Union Territory of Delhi" to qualify the word "resale", if its intention was to confine resale within the territory of Delhi, but it omitted to do what was obvious and used the word "resale" without any limitation or qualification, knowing fully well that unless restrictions were imposed as to situs, "resale" would mean resale anywhere and not merely inside the territory of Delhi. The legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that "resale" should be within the territory of Delhi and not outside, the legislature would have said so in plain unambiguous language which no layman could possibly misunderstand. It is a well-settled rule of interpretation that where there are two expressions which might have been

used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all. We may repeat what Pollock, C.B., said in *Attorney-General Vs. Sillem*. That "if this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation ; it might have been expressed in language so clear that no human being could entertain a doubt about it". We think that in a taxing statute like the present which is intended to tax the dealings of ordinary traders, if the intention of the legislature were that in order to qualify a sale of goods for deduction, "resale" of it must necessarily be inside Delhi, the legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting "resale" inside the territory of Delhi is not without significance and it cannot be made good by a process of judicial construction, for to do so would be to attribute to the legislature an intention which has chosen not to express and to usurp the legislative function."

47. Applying the ratio laid down therein and having regard to the specific provision contained in explanation 3(a)

to Section 2(n) wherein, it has been specifically provided that by virtue of the said explanation and the satisfaction of which would include the sale or purchase of goods as deemed sale or purchase for the purposes of this Act and in the event of satisfaction of the stipulations contained in Explanation 3(a), such transaction will have to be necessarily construed as a 'sale' within the State, it will stand excluded for the application of Section 3(4) of the Act. When once such a construction is authorized under the Act, negative stipulation viz., 'does not sell the goods so manufactured' contained in Section 3(4) will not apply and consequently, invocation of Section 3(4) in the case of even an export sale will stand excluded. The reliance placed upon the decision reported in 63 STC 169 (MADRAS MARINE AND CO., VS. STATE OF MADRAS) by the assesses is also helpful to the petitioner. At page 176, the Hon'ble Supreme Court has held as under:-

"....The ratio of this decision would be applicable to the facts and circumstances of this case. It was rightly urged that the appropriation of goods took place in the State of Tamil Nadu when the goods were segregated in the bonded warehouse to be delivered to the foreign going vessels. It was not a case of export as there was no destination for the goods to a foreign country. The sale was for the purpose of consumption on board the ship. It was not as if only on delivery on board the vessel that the sale took place. The

mere fact that shipping bill was prepared for sending it for customs formalities which were designed to effectively control smuggling activities could not determine the nature of the transaction for the purpose of sales tax nor does the circumstances that delivery was to the captain on board the ship within the territorial waters make it a sale outside the State of Tamil Nadu."

To support the above conclusion, the decision of the Hon'ble Supreme Court reported in 134 STC 473 (ASHOK LEYLAND LTD VS. STATE OF TAMIL NADU AND ANOTHER) can also be referred to. Paragraphs 69 and 71 of the said decision reads as under:-

"...69. The expression "For the purpose of this Act", unless the context otherwise requires would mean "all the purposes" thereof.

71. The expression "for the purpose of the said Act" must also be given effect to. The same would ordinarily mean "for the purpose of all the provisions of the said Act"."

Applying the said ratio, it can be safely held that the export sale of the petitioners would squarely fall under the definition of 'sale'.

48. We therefore hold that the 'export sale' is also a 'sale' as contemplated in the first part of Section 3(4) of the Act and consequently the exigibility to tax as provided under

the said Section cannot be applied.

49. On behalf of the assesses, reliance was placed upon 2002 8 SCC 139 (CEMENTO CORPORATION LTD VS. COLLECTOR, CENTRAL EXCISE). In paragraph 17, the Hon'ble Supreme Court held as under:-

".....17. In our view, the Tribunal and the Collector have incorrectly interpreted the provisions of Tariff Item 23 of the First Schedule to the 1944 Act. The tariff heading of the entry is "Cement.". Therefore when TI 23(2) speaks of "all others" it means "all other kinds or varieties of cement". It is axiomatic that if the product is not cement but can be used for some purposes like cement, such product is not cement. The test as enunciated by the Tribunal for determination of the question of classification is no doubt how the product is known to the trade. The appellant has produced evidence to show that lympo had never been known or indeed advertised as "cement" whether of a superior or inferior quality, but was known as a cement substitute. The respondents have produced nothing to show to the contrary. A substitute necessarily implies a difference in identity. When once it is admitted that lympo is a cement substitute, the Tribunal could not have come to the conclusion that lympo was cement or a variety of cement. In our view, there is no ambiguity in the definition of TI 23(1) or TI 23(2). Even if there were, on the principle that when

two constructions can be equally drawn, the one favourable to the taxpayer should be adopted, the Tribunal should have held in favour of the appellant."

50. Applying the said principle to the case on hand, in the first place, we do not find any doubt at all to hold that there was a 'sale' viz., 'situs of sale' was within the state and consequently, the application of Section 3(4) of the Act stands excluded. Assuming if there is any doubt, it will have to be held that constructions which would favour the tax payer should be adopted and on that basis it will have to be held that Section 3(4) will not apply.

51. The contention of the learned Special Government Pleader (Tax) that the concession rate of tax provided under Section 3(3) of the Act by the State was with the paramount principle that the ultimate manufactured goods would derive better revenue at the time of its first sale within the State and that if an export sale were to be brought within the definition of 'sale' and thereby applicability of Section 3(4) is excluded, the state would be deprived of its revenue in all respects and that was not the contemplation of the provision contained in Section 3(3) and 3(4) of the Act.

52. In fact the said contention was repelled by the Hon'ble Supreme court in the following words in paragraph 5 of the decision reported in (1994) 2 SCC 434 (PRINTERS (MYSORE) LTD. AND ANOTHER VS. ASSTT. COMMERCIAL TAX

OFFICER AND OTHERS):-

"...Section 8, read as a whole, *synter alia* : where a dealer purchases goods (being non-declared goods) required by him for use in the manufacture or processing of goods for sale and issues Form 'C' to the selling dealer, the selling dealer shall be liable to pay tax only @ 4% as per Section 8(1) and not 10% as provided in Section 8(2), provided that the certificate of registration of the purchasing dealer specifies the class of goods purchased by him. (In case of declared goods, the selling dealer has to pay tax at the rate applicable to sale of such goods within the appropriate State.) It necessarily means that the selling dealer will collect (pass on) tax from the purchasing dealer only at the said concessional rate. The idea behind this provision is self-evident. It is to ensure that the price of the product manufactured by such purchasing dealers does not go up to the detriment of the consumers of those goods. The Parliament does not want to tax both the raw material and the finished goods at the full rate. Where the finished goods are meant for sale, the raw material utilised or consumed for the manufacture of said finished goods is taxed at the concessional rate, for the reason that the State derives revenue again by taxing the sale of the finished goods. However, it is not necessary that the finished goods are actually subjected to tax on their sale ' for they may be

exempted either by the Act or by a notification issued thereunder. It is enough that the finished goods are meant for sale. Ordinarily, of course, their sale is taxed."

Therefore, when a constitution embargo is created on export sales, on that sole ground, the contention of the respondent will have to be rejected.

53. The reliance placed upon the Division bench decision of this Court reported in 38 STC 519 (THE STATE OF TAMIL NADU VS. CHETTINAD CEMENT CORPORATION LTD.) on the interpretation of explanation 3 to Section 2 (n) of the Act on behalf of the State, cannot be accepted for the simple reason that in the said decision, what all the Division Bench has said is that the purpose of explanation of 3 to Section 2(n) is to fix the situs of the sale, for the purpose of taxation and made it clear that the question as to when the sale is completed was outside the scope of Explanation 3. As a matter of fact, the conclusion of the Division Bench to the effect that Explanation 3 to Section 2(n) was purported to fix the situs of the sale supports the sale of the assessee. Therefore, based on the said decision the interpretation to Section 3(4) cannot be made.

54. The decision relied upon by the State reported in 138 STC 169 (KRISHNA TRADERS AND ANOTHER VS. COMMERCIAL TAX OFFICER ANNANTHANPATTY CIRCLE, SALEM AND OTHERS) cannot also be applied inasmuch as the said

decision follows the decision of the Supreme Court in Ashraf's case. The Division Bench rejected the contention of the assessee claiming exemption from purchase tax of Section 7(A) of the Act by relying on Section 5(3) of the CST Act inasmuch as the said decision was rendered in the context of application of Section 7(A) of the Act. For imposition of purchase tax, the ratio of the decision of the Hon'ble Supreme Court in Ashraf's case was fully applicable. The said decision cannot however be applied to the case relating to the applicability of Section 3(3) and 3(4) of the Act. Reliance was placed upon the decision of the Supreme Court reported in 95 STC page 93 (STATE OF ORISSA VS. JOHRIMAL GAJANAND). The Hon'ble Supreme Court while dealing with the provision contained in the Orissa Sales Tax Act, in the context, where an Assessee, a registered dealer to the said Act, purchase certain goods from another registered dealer based on a declaration furnished by it for resale of the purchased goods in the state and the goods were however sold in the course of inter state trade, in that context, held as under at page 97:-

"It is the admitted case of the assessee that the sales in question were the sales in the course of inter-State trade and if that is the position then the question of the same sales being the sales within the State did not arise."

Having regard to the peculiar facts involved in that case, the

decision rendered therein cannot be applied to the facts of this case.

55. Similarly, the Division Bench decision reported in 45 STC 291 (PONNU SAW MILLS VS. THE STATE OF TAMIL NADU) cannot also be applied inasmuch as the said decision came to be rendered while applying Section 7-A of the Act. Inasmuch as the said section varies in very many degrees as compared to 3(3) and 3(4) of the Act, the same cannot be applied to the facts of this case. Similar is the decision reported in 87 STC 315 (STATE OF TAMIL NADU VS. A.S.RAJ & CO.,). Therefore, the same cannot be applied to the facts of this case.

56. Having regard to our above conclusions, we hold that Section 3(4) of the Act will have no application since situs of the export sales of the petitioners for the purpose of said Section was the State of Tamilnadu and by virtue of the said factual position, the applicability of Section 3(4) stands excluded for the exigibility of tax. The questions are accordingly answered in favour of the petitioners/assessee."

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13. In **State of Tamil Nadu v. Essar Inc.**, reported in [2015] 79 VST 588 (Mad.), while considering the very identical substantial questions of law, stated supra and following the decision in **Tube**

Investment of India Ltd.,'s case (cited supra), a Hon'ble Division Bench of this Court, dismissed the appeal filed by the State Government.

14. In an identical case made in **Tax Case (Revision) Nos.38 to 40 of 2016 [State of Tamil Nadu v. Tvl.Saint Gobain Glass India Ltd.,]**, following the decision in **State of Tamil Nadu v. Essar Inc.,** reported in **[2015] 79 VST 588 (Mad.),** a Hon'ble Division Bench of this Court, dismissed the tax case, at the admission stage itself.

15. **State of Karnataka v. B.M.Ashraf & Co.,** reported in **107 STC 571,** has already been distinguished in **Tube Investment of India Ltd., v. State of Tamil Nadu** reported in **[2010] 36 VST 67 (Mad.).** Therefore, reliance placed on **B.M.Ashraf's** case (cited supra), would not lend any support to the Revenue. Needless to state that as per the laws of precedent, decision of this Court binds a co-ordinate Bench. Reference can be made to few decisions,

(i) A Hon'ble Division Bench of Bombay High Court in **CIT v. Thana Electricity Supply Ltd.,** reported in **(1994) 206 ITR 727 (Bombay),** held as follows:

"(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows:

(i)

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench."

(ii) In **Rajasthan Public Service Commission v. Harish Kumar**

Purohit reported in (2003) 5 SCC 480, the Hon'ble Court held that a

bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course for it is to refer the matter to a larger bench.

(iii) In **State of Punjab v. Devans Modern Breweries Ltd.**, reported in (2004) 11 SCC 26, the Hon'ble Supreme Court, at Paragraph 339, held as follows:

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See **Pradip Chandra Parija v. Pramod Chandra Patnaik**, reported in 2003 (7) SCC 01, SCC at paras 6 and 7; followed in **Union of India v. Hansoli Devi**, reported in 2002 (7) SCC 01, SCC at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. **Kalyani Stores**, reported in AIR 1966 SC 1686 and **K.K. Narula**, reported in AIR 1967 SC 1368, both have been rendered by the Constitution

Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."

16. While considering a question, as to mere filing of SLP, against an order, would render the order, ineffective in initiating contempt proceedings, a Hon'ble Division Bench of Allahabad High Court in **S.P. Agarwal v. R.R. Upadhyia** reported in **1978 Cri LJ 789**, has observed as follows:

"It is the duty of each and every person who is a party in a proceeding before a Court to comply with the orders of the Court and if he has any grievance against the order he is free to file appeal or to make application before that Court for modification or discharge of the same, but unless that order is stayed, varied or modified the party concerned has no justification to flout the order of the Court. Thus, a mere filing of the appeal under Article 136 of the Constitution before the Supreme Court against any order of the High Court cannot be a justification for disobedience or non-compliance of the orders of the High Court. Of course the position would be different if the Supreme Court takes cognizance of appeal and passes any positive order of stay."

17. A Hon'ble Division Bench of Himachal Pradesh High Court in

Hans Raj Dhir vs State Of Himachal Pradesh reported in **1985 Cri LJ 1030**, observed as follows:

"Mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and till an application for stay is moved and granted by the appellate Court, or, in the alternative, the Court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate Court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is sub-judice, may amount to contempt of Court punishable under the Contempt of Courts Act, 1971."

While observing thus, the Hon'ble Division Bench of the Himachal Pradesh High Court has considered a decision of the Hon'ble Supreme Court in **Baradakanta Mishra v. Bhimsen Dixit** reported in **1973 Cri.L.J. 19**.

18. In **Dr.Sajad Majid v. Dr.Syed Zahoor Ahmed** reported in **1989 Cri.L.J 2065**, a Hon'ble Division Bench of Jammu and Kashmir High Court, faced with a similar situation, like in the present case, has observed and ordered, as hereunder:

"8. It is not disputed before us that SLP against the Court direction has been filled before the Supreme Court. It is also not disputed that no stay has been obtained against the implementation of the order but all the same the Court direction has been kept in abeyance by the respondent simply under the pretext of pendency of appeal before the apex Court against the Court order. There is no doubt that appeal against a judgment from one forum to another forum may be available under the Statute, the question is : Whether this provision even if availed by a party without obtaining a stay from the appellate Court will ipso facto keep the implementation of the order in abeyance?Non-compliance of the order during the pendency of appeal without stay order appears to us an attempt by a party to support his intention of not complying the Court direction. The, initiation of contempt proceedings for non-compliance of an order, in our opinion, will forestall only after service of stay order on the party provided, firstly, a certain period for compliance has been specified and within that period no contempt proceedings will lie. Secondly, when after the service of order the party has obtained stay from the appellate forum. Thirdly, on motion by the party time is granted by the Court for execution of the order which passed the same. No other circumstances apparently can be made available to a party against whom the order has

been passed to sleep over the execution of the order or flout its execution. Mere pendency of appeal before the appellate Court against the order will not absolve the party not to comply the order and if he so does, it will be on his own risk without any legal justification and the provisions of appeal even if availed without any stay, will expose the party to contempt proceedings, for non-compliance and pendency of such appeal will not protect him from facing the proceedings of non-compliance of the order. Once a relief has been granted by a Court not modified or varied by such Court or its execution staved by appellate Court, its compliance is warranted from the date the party against whom it is passed or from the date he acquires knowledge of the said order. This observation will dispose the argument of Mr. Khan having submitted that no time limit is specified in the order of implementation. We, therefore, make it clear that a party against whom order has been passed by the Court, having knowledge of the same or the order being served on him, cannot take refuge of limitation period for preferring an appeal for non-compliance of the order or even if the appeal has been filed but no stay has been obtained against the order, contempt proceedings will be entertained against such party for non-compliance. However, it is the discretion of the Court finally, while holding the defaulting party guilty, to pass appropriate orders looking to the gravity

of the matter and conduct of such party, but in no case rebate of non-compliance of the Court order will be made available merely an appeal without stay is pending."

19. The Hon'ble Supreme Court in **Collector of Customs, Bombay v. M/s.Krishna Sales (P) Ltd.**, reported in **AIR 1994 SC 1239 = 1994 Supp (3) SCC 73**, wherein, at Paragraph No.6, observed as follows:

"If the authorities are of the opinion that the goods ought not to be released pending the appeal, the straightforward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal. As is well-known, mere filing of an appeal does not operate as a stay or suspension of the order appealed against."

20. Though the above decisions were rendered in the context of contempt, the principles of law, on the effectiveness of an order passed, can be made applicable to the case on hand.

21. Having regard to the dismissal of the Special Leave Petitions, filed against the decision of this Court made in **Tube Investment of India Ltd.,**'s case (cited supra) and following the above decisions made in **State of Tamil Nadu v. Essar Inc.,** reported in [2015] 79 VST 588 (Mad.) and **Tax Case (Revision) Nos.38 to 40 of 2016 [State of Tamil Nadu v. Tvl.Saint Gobain Glass India Ltd.,]**, this Court is inclined to dismiss this tax case revision petitions, as no question of law, much less substantial question of law, arises for consideration in the present revision.

22. In the result, the Tax Case Revisions are dismissed. No Costs.

(S.M.K., J.) (R.S.K., J.)
16.11.2017

Index: Yes

Internet: Yes
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To

The Tamilnadu Sales Tax
Appellate Tribunal (Main Bench),
Chennai.

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S. MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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Tax Case Revision Nos.42 and 43 of 2017

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16.11.2017