IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.44760 to 44762 of 2002
and
W.M.P.Nos.65510, 65513, 65516 of 2010

1. M/s. Laxmi Impex,
rep. by its Partnet, Vijayendra Gupta
...Petitioner in W.P.No.44760 of 2002

2. M/s. Munnalal Sons and Co. (Perfumers) P. Ltd.,
rep. by its Director, Rajesh Pathak.
...Petitioner in W.P.No.44761 of 2002

3. M/s. N. D. Products,
rep. by its Proprietor,
Mr. Raghuvir Sharan Rajput.
...Petitioner in W.P.No.44762 of 2002

Vs.

1. The District Forest Officer,
Salem Division,
Salem.
..R-1 in W.P.No.44760 of 2002

2. The Commercial Tax Officer,
Salem Division, Salem. ..R-2 in W.P.No.44760 of 2002

3. The District Forest Officer,
Tirupattur Division, Tirupattur,
Vellore District.
..R-1 in W.P.Nos.44761 & 44762 of 2002

4. The Commercial Tax Officer,
Tirupattur Division,
Tirupattur.
..R-2 in W.P.Nos.44761 & 44762 of 2002

Prayer in W.P.No.44760 of 2002:-
Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to

call for records of the first respondent, having reference C.No.11593/2002 S, dated 08.11.2002 and to quash the same insofar as it directs payment of 12% sales tax on the sale value and consequently, to direct the first respondent to collect sales tax at 4% at Rs.20,06,212/- from the petitioner on the 45.000 MT of sandalwood purchased by the petitioner, in the course of inter-state trade within the meaning of Section 3 of the Central Sales Tax Act and to deliver the sandalwood on production of Form-C and payment of the sale consideration.

Prayer in W.P.No.44761 of 2002:-

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent, having reference C.No.11156/2002 S, dated 07.11.2002 and to quash the same insofar as it directs payment of 12% sales tax on the sale value and consequently, to direct the first respondent to collect sales tax at 4% at Rs.11,844/- from the petitioner on the 7.000 MT of sandalwood purchased by the petitioner, in the course of inter-state trade within the meaning of Section 3 of the Central Sales Tax Act and to deliver the sandalwood on production of Form-C and payment of the sale consideration.

Prayer in W.P.No.44762 of 2002:-

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent, having reference C.No.11157/2002 S, dated 07.11.2002 and to quash the same insofar as it directs payment of 12% sales tax on the sale value and consequently, to direct the first respondent to collect sales tax at 4% at Rs.11,844/- from the petitioner on the 7.000 MT of sandalwood purchased by the petitioner, in the course of inter-state trade within the meaning of Section 3 of the Central Sales Tax Act and to deliver the sandalwood on production of Form-C and payment of the sale consideration.

For Petitioner : M/s. C. Uma

For Respondent-1: Mr. E. Manoharan
Additional Government Pleader

For Respondent-2: Mr. S. Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard M/s. C. Uma, the learned counsel appearing for the petitioner, Mr. E. Manoharan, the learned Additional Government Pleader for the first respondent and Mr. S. Kanmani Annamalai, the learned Additional Government Pleader for the second respondent.

2. The petitioners have filed these Writ Petitions, praying for issuance of writ of certiorarified mandamus, to quash the orders passed by the first respondent, dated 07.11.2002 and 08.11.2002 respectively, insofar as it directs payment of 12% sales tax on the sale value and consequently, to direct the first respondent to collect sales tax at 4% from the petitioners for sandalwood purchase made by the petitioners, in the course of inter state trade within the meaning of Section 3 of the Central Sales Tax Act and to deliver the sandalwood on production of Form-C and payment of the sale consideration.

3. Identical Writ Petitions were considered by this Court, and they were dismissed, by order, dated 21.11.2012, and one such Writ Petition relates to the case of Surya Vinayaka Industries Limited and others Vs. and District Forest Officer, Salem Division, Salem and another). The operative portion of the decision reads as follows:-

> " " 12. Merely because there is movement of goods from the State of Tamil Nadu to another State at the instance of the buyer, that would not take it out of the purview of the term sale within the State. There are certain rules which provide for transportation of goods in question after the sale. But that does not change the character of the sale within the State consequent to tender cum auction sale. The benefit which the petitioners may get out of the provisions of the Income Tax Act is totally alien to the payment of tax under the TNVAT Act, 2006, as the two enactments operated in different fields. There is no scope or provision for reading one Act into the other, unless there is an express provision. Since the sale in this case was effected within the State of Tamil Nadu on the basis of the tender cum auction sale and the petitioners in all these cases have agreed to abide by the terms and conditions unconditionally, there cannot be any manner of doubt that the case squarely falls within the mischief of Section 3 of the TNVAT Act, 2006. Therefore, the demand for payment of value added tax under the TNVAT Act, 2006 is justified. There is no basis to justify the claim as inter-State sale. The said plea is specious and not as per law. The petitioners have not made out a case for the relief sought for both in law and on facts.

13. A similar issue was decided by a Division Bench of this Court in Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam and others, (2005) 140 STC 112, wherein it was held as under:

> "11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders who wanted to purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P or some other State, or remains within Tamil Nadu. Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale.

....

13. In the present case, there is no conceivable legal link between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the option of the petitioner and not under any legal obligation. Hence, the decision in South India Viscose Ltd. v. State of Tamil Nadu (1981) 48 STC 232 (SC): AIR 1981 SC 1604 is clearly distinguishable."

14. The decision of the Division Bench, cited supra, fortifies the view now taken by this Court. For the reasons stated supra and in view of the decision of the Division Bench of this Court, the plea of the petitioners that it is an inter-State sale has no legal basis and hence, the said contention is rejected. The challenge to levy of Tamil Nadu value added tax therefore fails.

In the result, these writ petitions are dismissed. No costs. Consequently, M.P.No.2 of 2011 (3 Petitions) and M.P.No.3 of 2011 (3 Petitions) are closed. ""

4. It is pointed out by the learned Additional Government Pleader for the first respondent/Forest Department that, as against the order passed by the Division Bench, in the case of Karnataka Soaps and Detergents Ltd., Vs. District Forest Officer, Sathyamangalam and others reported in [(2005) 140 112], which has been referred to in the case of Surya Vinayaka Industries Limited (supra), Special Leave Petition has been filed before the Hon'ble Supreme Court, and the matter was remanded to the Division Bench of this Court for fresh consideration. The Division Bench, on remand, considered the matter afresh and held that, the sale turnover will will determine whether it is local or interstate sale and the auction conducted by the Forest Department, being within the State of Tamil Nadu, the transaction is local. Merely because, the petitioner transported the goods outside the State will not bring the transaction within the ambit of the inter state sale.

5. Thus, following the decision in the case of , these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To
1. The District Forest Officer,
Salem Division,
Salem.

2. The Commercial Tax Officer,
Salem Division, Salem.

3. The District Forest Officer,
Tirupattur Division, Tirupattur,
Vellore District.

4. The Commercial Tax Officer,
Tirupattur Division,
Tirupattur.

+ 1 cc to The Special Govt.Pleader(Forest), SR.91170

+ 1 cc to The Special Govt.Pleader(Taxes), SR.91777

Writ Petition Nos.44760 to 44762 of 2002

nr 09/03/2018