IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

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THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.36194 & 36195 of 2003
& W.P.M.P.Nos.43933 to 43936 of 2003

M/s. Naresh International
rep. by its Partner,
Mr.Naresh Chand .. Petitioner in W.P.No.36194/03

M/s. Natural Aroma Exports
rep. by its Proprietor
Ashish Kapoor
.. Petitioner in W.P.No.36195/03

- vs -

1. The District Forest Officer,
Sathyamangalam Division,
Sathyamangalam.

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

3.The Branch Manager,
State Bank of India,
Kannuj Branch, Kannauj,
Farrukkabad District. .. Respondents in both W.Ps.

Prayer in W.P.No.36194/03 : Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus seeking a direction to call for the records of the 1st respondent having Proc.No.L/10681/2001, dated 21.10.2003 and quash the same and consequently direct the 1st and 2nd respondents to accept the C Form and release the Bank Guarantee amount of Rs.1,49,660/- under B.G.No.2285, dated 18.01.1999 issued by the 3rd respondent.

Prayer in W.P.No.36195/03 : Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent having Proc.No.L/1454/2001, dated 10.11.2003 and quash the same and consequently direct the 1st and 2nd respondents to accept the C Form and release the Bank Guarantee amount of Rs.2,06,781/- under B.G.No.KNJ/26/2, dated 21.11.1996 issued by the 3rd respondent.

For Petitioner in both W.Ps. : Mrs. C.Uma

For Respondents in both W.Ps. : Mr.M.Santharaman, AGP for R1

: Mr.G.Dhanamadhri, GA for R2

COMMON ORDER

These writ petitions have been filed seeking to issue a writ of Certiorarified Mandamus seeking a direction to call for the records of the 1st respondent having Proc.No.L/10681/2001, dated 21.10.2003 & Proc.No.L/1454/2001, dated 10.11.2003 and quash the same and consequently direct the 1st and 2nd respondents to accept the C Form and release the Bank Guarantee amount of Rs.1,49,660/- under B.G.No.2285, dated 18.01.1999 and also to release the Bank Guarantee of Rs.2,06,781/- under B.G.No.KNJ/26/2, dated 21.11.1996
issued by the 3rd respondent.

2. The short facts which are required to be noticed for the disposal of these writ petitions are as follows:

(i) That the petitioner carrying on business on distillation and sale of Sandalwood related products in Delhi. It is a registered dealer under the Central Sales Tax Act. The petitioner had participated in the auction conducted by the first respondent on 09.09.1998 for sale of sandalwood, who was the successful bidder in the said action for 7.000mt. of sandalwood and by sale confirmation dated 01.02.1999 and for 6.000mt. vide sale confirmation dated 20.08.1996, the first respondent confirmed the sale of sandalwood in favour of the petitioner.

(ii) On confirmation of sale, the petitioner was directed to pay a sales tax of Rs.2,99,320/- & Rs.2,06,523/- on the total sale of Rs.37,50,854/- & Rs.25,81,538/- respectively for the sandalwood purchased by the petitioner. Since the petitioner was in the business of sale of sandalwood oil in Delhi and it has not involved in any trading in Tamil Nadu, the petitioner since had only participated in the auction conducted by the first respondent and purchased the sandalwood for the purpose of moving the same, out of the State of Tamil Nadu to Delhi, the inter-state movement arises as an incident of contract of sale, hence, the petitioner is liable to pay tax at 4% only. Therefore, in this context, the demand made by the respondent to pay sales tax is under challenge in these writ petitions.

3. In this regard, the respondents invoked the bank guarantee for a sum of Rs.1,49,660/- under B.G.No.2285, dated 17.01.2004 and vide B.G.No.KNJ/26/02, dated 21.11.96 for a sum of Rs.2,06,781/- . Therefore, the petitioner has approached this Court with the aforesaid prayer to quash the said demands and to accept the C Form and release the bank guarantee given by the petitioner.

4. Heard Mrs.C.Uma, learned counsel for the petitioner as well as Mr.M.Santhanaraman, learned Additional Government Pleader for the first respondent and the learned Standing counsel appearing for the second respondent.

5. Learned Additional Government Pleader appearing for the first respondent would submit that the issue raised in this writ petition is no more res intergra as in number of cases, it has already been settled.

6. In this context, the learned Additional Government Pleader relied upon a Division Bench Judgement of this Court in a batch of writ appeals in W.A.No.3195 of 2004 & others in the matter of Karnataka Soaps vs. The District Forest Officer, Sathyamangalam Division, Sathyamangalam & Others dated 07.02.2005 wherein, it has been held that, this kind of sale of sandalwood would be only considered as Inter-State sale and therefore, the purchaser has to pay tax under the Tamil Nadu Act and not under the Central Sales Tax Act.

7. Following the said judgement of the Division Bench, number of cases had been decided. Two such decisions made by a learned Judges of this Court, has also been relied upon by the learned Additional Government Pleader. The case in W.P.No.21314 of 2005, in the matter of M/s. Deep Industries, rep. by its Managing Partner Vs. The Branch Manager, Bank of India, Calicut Branch, Calicut and others, dated 26.07.2018 and another one in W.P.No.19307 of 2002 in the matter of M/s. Tej Bahadur & Sons rep. by its Partner, Hyderabad vs. The Commercial Tax Officer, Salem and another, dated 06.07.2018.

8. In view of these orders, learned Additional

Government Pleader would submit that, the plea raised by the petitioner cannot be accepted and therefore, it has to be rejected.

9. I have heard the learned counsel appearing for the petitioner, who would fairly submit that in view of the canteena of decision of this court since the issue has already been decided in favour of the department, following the said judgements, suitable orders can be passed in these writ petitions also.

10. I have considered the said submissions made by both sides and also perused the orders passed by this Court.

11. Since the purchase of sandalwood at Tamil Nadu even though by the purchaser outside the State, the same was treated only as an inter state sales. In that view of the decision, the present issue raised by the writ petitioner in this case also can be decided only in favour of the department, as the purchase of sandalwood made by the petitioner by auction conducted by the first respondent on 09.09.1998 also would be considered only as a Inter-State sales. Therefore, the petitioner has to necessarily pay the tax as claimed or demanded by the respondent and under the provisions of the said Act. Since the petitioner has already given the bank guarantee for the purpose of said tax due and payable to the State Tax authorities, the said bank guarantee can be invoked by the respondent and can be credited to the taxation authorities to settle the tax due. Therefore, the prayer sought for by the petitioner in this writ petition cannot be granted.

12. In the result, these writ petitions are failed and therefore, they were dismissed. The consequent action can be taken to invoke the bank guarantee and settle the matter with the bank authorities of the respondent bank, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To,

1. The District Forest Officer,
Sathyamangalam Division,
Sathyamangalam.

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

3.The Branch Manager,
State Bank of India,
Kannuj Branch, Kannauj,
Farrukkabad District.

+1 cc to M/s.C.Uma, Advocate Sr.No.67400
+1 cc to The Special Government Pleader, (Forest), Sr.No.67232
+1 cc to The Special Government Pleader,(Taxes), Sr.No.67150

W.P.Nos.36194 & 36195 of 2003

CSL/02.05.2019