IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.18016 of 2008
and
M.P.No.1 of 2008

Tvl. Swathi Corporation,
7, Hanumatharayan Koil Lane,
Chennai - 1 ... Petitioner

Vs

1. The Special Commissioner and Commissioner,
of Commercial Taxes, Chepauk,
Chennai - 600 005.

2. The Deputy Commercial Tax Officer,
Loan Square I Assessment Circle,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records relating to the impugned proceedings of the 2nd respondent in TNGST/0140546/2003-04 dated 06.06.08 and quash the same.

For Petitioner : Mr.S.Raveekumar

For R1 & R2 : Mr.V.Haribabu
Addl. Government Pleader(T)

O R D E R

The writ petition has been filed by the petitioner praying to issue a writ of Certiorari calling for the records relating to the impugned proceedings of the 2nd respondent in TNGST/0140546/2003-04 dated 06.06.08 and quash the same.

2. By order dated 06.06.2008 passed by the second respondent, the second respondent has levied purchase Tax on the export turn over on the petitioner. Originally assessment

were completed and exemption was allowed. Subsequently, a revision notice dated 13.03.2007 was issued to the petitioner. The petitioner has given a detailed reply. However, by the impugned order, the second respondent has denied the benefit. The operative portion is reads as under:

> The commodities Turmeric, Coriander, Tamarind, Asafoetida are conditionally exempted to tax if the sales turnover not exceed Rs.300 Crores. Therefore, the purchase turnover of these goods, purchases under circumstances without payment of tax and despatched to a place outside the State, is by way of export to other countries is liable to tax @ 12% u/s 7(A)(1)(c).

3. The petitioner has filed a writ petition and had obtained an interim order way back in 2008. The respondents have now filed counter and have opposed the prayer in the writ petition on the ground that the petitioner has a alternate remedy before the Appellate Assistant Commissioner (CT) as per Section 31 of the TNGST Act 59 and therefore, writ petition is liable to be dismissed. Secondly, the learned counsel for the respondents submits, since the goods are exempted from Sales Tax, they cannot be exempted from the Purchase Tax.

4. Countering the argument, the learned counsel for the petitioner has brought to my attention the decision of the Hon'ble Division Bench of this Court relying on Tube Investments of India Ltd. vs. State of Tamil Nadu [2010] 36 VST 67 (Mad), wherein, the Division Bench has referred to Article 286(1)(a) and (b) of the Constitution of India and applying the principles to the facts of the case therein, which was conflict in statutory provisions and therefore, Section 3(4) will apply to export assesses.

5. Further, the Hon'ble Division Bench referred para 53 of the decision of the Hon'ble Supreme Court reported in Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473. The Court had concluded that “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. Following the decision of the Hon'ble Division Bench, I am inclined to allow the prayer though the petitioner had an alternative remedy. However, after having admitted the writ petition in 2008, it would be unfair to relegate the petitioner to work out the remedy before the Appellate Assistant Commissioner (CT) now, as the issue is no longer res integra.

6. Accordingly, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Special Commissioner and Commissioner,
   of Commercial Taxes, Chepauk,
   Chennai - 600 005.

2. The Deputy Commercial Tax Officer,
   Loan Square I Assessment Circle,
   Chennai.

+1cc to Mr.S.Raveekumar, Advocate, S.R.No.73136
+1cc to the Special Government Pleader(T), S.R.No.73638

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AK(Co)
CS/03/12/2018