IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28482 & 28483 of 2005

M/s.Surya Vinayak Industries Limited,
Rep. by its Director,
Mr.Sanjeev Agarwal,
Zone-H-4/5, Plot No.55,
Suvidha Kunj,
Pitampura,
Delhi -110 034. .. Petitioner in both WPs.

..Vs..

The District Forest Officer,
Salem Division,
Salem – 636 007. .. R-1 in WP 28482/2005

The Commercial Tax Officer,
Salem Division,
Salem. .. R-2 in WP 28482/2005

The District Forest Officer,
Tirupattur Division,
Tirupattur, Vellore District. .. R-1 in WP 28483/2005

The Commercial Tax Officer,
Tirupattur Division,
Tirupattur,
Vellore District. .. R-2 in WP 28483/2005

Prayer in W.P.No.28482 of 2005 : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of the 1st respondent having reference C.No.7547/2005 S dated 28.07.2005 and quash the same in so far as it directs payment of 12% Sales Tax on the sale value of 8.000 MT (Lot No.7- 3.000 MT & Lot No.42 – 5.000 MT) of sandalwood and consequently direct the 1st respondent to collect Sales Tax at 4% at Rs.10,38,120/- on the 8.000 MT (Lot No.7- 3.000 MT & Lot No.42 – 5.000 MT) of sandalwood valued at Rs.2,59,53,000/- on production of Form-C.

Prayer in W.P.No.28483 of 2005 : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of the 1st respondent having reference C.No.9191/2005 S dated 05.08.2005 and quash the same in so far as it directs payment of 12% Sales Tax on the sale value of 2.350 MT (Lot Nos.1 - 0.600 MT, Lot No.2 – 0.750 MT, Lot No.3 – 1.000 MT) of sandalwood and consequently direct the 1st respondent to collect Sales Tax at 4% at Rs.2,68,343/- on production of Form-C.

For Petitioner in both WPs: Ms.C.Uma

For Respondents in both WPs : Mr.S.V.Vijay Prashanth, Additional Government Pleader (Taxes) for R1

Mr.M.Hariharan, Additional Government Pleader (Taxes)for R2

C O M M O N O R D E R

The learned counsel for the writ petitioner fairly made a submission that in respect of the payment of sales tax, the Apex Court of India decided the issue and based on the orders of the Apex Court of India, this Court also passed an order in W.P.No.21314 of 2005 dated 26.07.2018, which is extracted hereunder:

> "The question involved in this Writ Petition, viz., whether the purchase of the sandalwood by the Petitioner, who is carrying on business outside the State of Tamil Nadu in public auction from the Forest Department of the Government of Tamil Nadu amounts to an inter-state sale without any liability for taxation under the provisions of Tamil Nadu General Sales Tax Act, 1959, has already been decided by the Division Bench of this Court in Karnataka Soaps and Detergents Ltd. -vs- The District Officer, (order dated 07.02.2005 in W.A.No.3195 of 2004) in which it has been held as follows:-
>
> > "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 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.

12. .....

13. In the present case, there is no conceivable legal think between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the opinion of the petitioner and not under any legal obligation."

As that ratio laid down squarely applies to present case as well, the Petitioner cannot be granted the relief as sought in this Writ Petition.

2. The learned counsel for the

Petitioner submits that the same view has been expressed by this Court in the order dated 20.12.2017 in W.P.Nos.44760 to 44762 of 2002.

3. Following the aforesaid decision, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs."

2. In view of the order, cited supra, the writ petitions stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Pns/svn

To

1.The District Forest Officer,
Salem Division,
Salem - 636 007.

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,
Vellore District.

+1cc to M/s.C.Uma, Advocate, S.R.No. 88112
+1cc to the Special Government Pleader, S.R.No. 88556

W.P.Nos.28482 & 28483 of 2005

RGN(CO)
GN(14/02/2019)