IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.131 of 2018

The State of Tamil nadu,
Rep., by the Joint Commissioner (CT),
Coimbatore Division, Coimbatore. ... Petitioner

-vs-

Tvl.Janatics India Pvt Ltd.,
E-25, Sidco Industrial Estate,
Kurichi, Coimbatore-21. ... Respondent

Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 17.03.2015 passed in CTA No.64 of 2008, preferred against the order of the Deputy Commissioner(CT), Podanur Circle, Coimbatore made in Appeal No.AP 1015/06, dated 01/09/08 against the order of the Commercial Tax Officer, Podanur Circle, Coimbatore in the Assessment number TNGST.NO.1800708/2003-04, dated 30/11/2005.

For Petitioner : Mr.V.Haribabu,
Additional Govt. Pleader (Taxes)

******

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

This Tax Case Revision has been filed to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 17.03.2015 passed in CTA No.64 of 2008.

2.The above appeal has been filed raising the following substantial questions of law:-

> "(i) 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 (4) of section 3 of the Tamil nadu General Sales tax, 1959 as including not only intra state but also export sale?
>
> (ii) 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, 1959 for the purpose of interpretation of the expression "does not sell the goods so manufactured" as contained in sub section (4) of section 3 of the Act so as bring it within the ambit of the said explanation?
>
> (iii) Whether the Appellate Tribunal is legally correct in distinguishing the judgement 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 intrastate sale?
>
> (iv) 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?
>
> (v) Whether the Appellate Tribunal is correct 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?
>
> (vi) Whether the Appellate tribunal has failed to appreciate that section 3(3) and 3(4) of the Tamil Nadu General Sales Tax Act, 1959 are not designed as charging provision as evident from non-obstante clause occurring at the beginning of section 3(3) of the said act?
>
> (vii) 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?"

3.Mr.V.Haribabu, learned Additional Government Pleader appearing for the appellant fairly submits that the questions of law, which have been raised for consideration in this case, have been considered by this Court in the case of Tube Investments of India Ltd. vs. State of Tamil Nadu ([2010] 36 VST 67 (Mad)) and have been answered against the Revenue.

4.Thus, following the above referred decision, this Tax Case Revision is dismissed and the substantial questions of law, framed for consideration, are answered against the appellant/Revenue and in favour of the respondent/assessee. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench), Coimbatore-18.

2.The Commercial Tax Officer,
The Commercial Taxes Department,
Podanur Circle, Coimbatore-18.

3.The Appellate Deputy Commissioner (CT),
Coimbatore.

+1cc to Special Government Pleader sr.no.60276

T.C.(R) No.131 of 2018

cp(co)
nr 28/09/2018