IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.37 of 2018

The State of Tamil Nadu,
Represented by the Joint Commissioner (CT),
Chennai (Central) Division,
Chennai - 600 006 ... Petitioner

..Vs..

Tvl. Hongkong Kid Leathers
No.6, 4th Street,
2nd Floor, T.Nagar, Chennai - 17 ... Respondent

Tax Case Revision filed under Section 38 of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 27th day of February 2012 and passed order in STA No.417 of 2007.

For Petitioner : Mr.V.Hari Babu
Additional Government Pleader (Taxes)

ORDER

(Order of the Court was made by **S.MANIKUMAR,** ***J)***

Instant Tax Case (Revision) is filed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 27.02.2012 made in S.T.A.No.417 of 2007.

2. Short facts leading to the filing of the appeal are that the respondent, Tvl.Hongkong Kid Leathers, are doing business in Hides and Skins were finally assessed on a total and taxable turnover of Rs.2,96,83,474/- and Rs.2,96,83,474/- respectively for the assessment year 2004-05 under Tamil Nadu General Sales Tax Act, 1959. The respondent utilized the chemicals purchased against Form XVII for the manufacture of the goods which were also exported. Holding that export sale is neither a local sale nor an inter-state sale, the assessing officer arrived at the value of purchases made against Form XVII which were used in the manufacture of goods exported at Rs.1,83,12,813/- and assessed the same at 1% under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959 by adopting a formula.

3. Aggrieved against the order of the Assessing Officer, the respondent / dealer has filed an appeal before the Appellate Assistant Commissioner (CT) III, Chennai, and the Appellate Assistant Commissioner (CT) III, vide order dated 16.02.2007 in AP No.223 of 2006, though, sustained the disputed turnover, set aside the levy of tax at 9% on the turnover of Rs.1,83,12,813/-.

4. Against the orders of the Appellate Assistant Commissioner (CT), State has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal, Chennai in STA No.417 of 2007.

5. Following the decision of this Court in ***Golden Leathers Vs. Secretary, Sales Tax Appellate Tribunal, Chennai and others*** reported in **[2010] 35 VST 216 (Mad.)**, the Appellate Tribunal, by order dated 27.02.2012, dismissed the appeal filed by the State, and held thus,

> "... The chemicals which were used for the above purposes are consumed in the process. So the Hon'ble High Court of Madras has held that conversion of wet blue into finished leather is a manufacturing process and the chemicals used in the process is consumed. So in this aspect, the dealer is eligible to claim concessional rate of tax under Form XVII for the chemicals which was purchased by him. There is no any violation in using the chemicals which were stated in their declaration Form and it is decided that conversion of wet blue leather to finished leathers is a manufacturing process and the chemicals used in the process is consumable. We feel that there is no error in the order of the Appellate Assistant Commissioner in deleting the order of the Assessing Officer in respect of disallowance of concessional rate of tax for the purchase of goods as against Form XVII on the turnover of Rs.1,83,12,813/-.
>
> Regarding the levy of penalty under Section 23(b) there is no any deviation or misuse by the assessee/dealer which were stated in their declaration form. So in such

circumstances if there is no any violation in respect of declaration form which were filed by the assessee, the levy of penalty under Section 23(b) will not be attracted. In this aspect the Appellate Assistance Commissioner deleted the penalty which was imposed by the Assessing Officer under Section 23(b) of the Tamil Nadu General Sales Tax Act, 1959. We concur with the order of the Appellate Assistant Commissioner, we feel there is no necessity to interfere in the order of the Appellate Assistant Commissioner and hence we hereby confirm the order of the Appellate Assistant Commissioner and consequently the STA dismissed."

6. Being aggrieved against the order of the Tribunal, State has filed the instant Tax case (Revision) on the following substantial questions of law.

"1. 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 3 of the Tamil Nadu General Sales Tax Act, 1959 as including not only intra state but also export sale?

2. 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 Act, 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 to bring it within the ambit of the said explanation?

3. 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?

4. Whether the Appellate Tribunal is correct in 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?

5. Whether the Appellate Tribunal has failed to appreciate that sections 3(3) and 3(4) of the Tamil Nadu General Sales Tax Act, 1959 are not designed as charging provisions as evident from the non-obstante clause occurring at the beginning of Section 3(3) of the said Act?

6. 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?"

7. Earlier, on similar set of facts and substantial questions of law, following the decision of this Court in ***Golden Leathers Vs. Secretary, Sales Tax Appellate Tribunal, Chennai and others*** reported in **[2010] 35 VST 216 (Mad.),** and other similar cases, we dismissed Tax Case Revision

No.47 of 2017, filed by the State, at the admission stage itself.

8. As the instant Tax Case (Revision) is similar, on facts and law, following the decision in ***Golden Leathers Vs. Secretary, Sales Tax Appellate Tribunal, Chennai and others*** reported in **[2010] 35 VST 216 (Mad.),** the same is dismissed. Substantial questions of law are answered against the Revenue. No Costs.

(S.M.K., J.) (V.B.S., J.)
12.03.2018

Index: Yes/No.
Internet: Yes
Speaking/Non speaking
ars

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

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