IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.03.2018**

CORAM:

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

Tax Case (Revision) No.49 of 2018

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

..Vs..

M/s.Forward Leather Company,
50, Raja Muthiah Road,
Periamet,
Chennai - 3 ... Respondent

Tax Case Revision filed under Section 38 of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai dated 21st December 2010 and passed order in TA No.187 of 2007.

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

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 (Main Bench), Chennai, dated 21.12.2010 made in T.A.No.187 of 2007.

2. Short facts leading to the filing of the appeal are that the respondent, Tvl.Forward Leather Company, Chennai, were assessed on a total and taxable turnover of Rs.5,75,17,736/- and Rs.5,46,85,228/-, respectively for the assessment year 2003-04, under the Tamilnadu General Sales Tax Act, 1959. The assessee had purchased raw materials against Form XVII and used the same for the manufacture of full shoes and despatched them to other countries. For violation of Section 3(4) of the Tamilnadu General Sales Tax Act, 1959, the assessing officer levied tax at 1% on the entire purchase of the above goods made against Form XVII for Rs.2,94,18,831/-. Besides, when the books of accounts of the appellant/dealer were called for and checked, the Assessing Officer had noticed that they had sold DEPB Licence (Duty Entitlement Pass Book) for Rs.2,34,74,921/- and the assessing officer had treated the transfer as sale of goods assessed to tax at 4%. Further the assessing officer, while verifying the purchase bills, noticed that they had purchased wattle extract from AISHTMA for Rs.2,24,114/- and therefore, assessed the turnover of Rs.2,24,114/- at 4% with surcharge at 5%, vide order dated 12.01.2005.

3. Aggrieved against the order of the Assessing Officer, the respondent / dealer has filed an appeal before the Appellate Assistant Commissioner (CT), who confirmed the assessment made by the Assessing Officer in AP No.62/2005 dated 22.03.2007.

4. Against the orders of the Appellate Assistant Commissioner (CT), the appellant/dealer has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (MB) Chennai in TA No.187 of 2007.

5. Following the decision of this Court in **Tube Investment of India Ltd., v. State of Tamil Nadu** reported in **[2010] 36 VST 67 (Mad.),** the Appellate Tribunal, by order dated 21.12.2010, allowed the appeal filed by the dealer by stating that since the export sale is fully covered by the definition of sale under Section 2(n) read with Explanation 3(a) of the TNGST Act, the Assessing authority cannot levy tax under Section 3(4) of the Act.

6. 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 legally correct in distinguishing the judgment 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 an interstate sale?

4. 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?

5. 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?

6. 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?

7. 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 the similar set of facts and substantial questions of law, following the decision of this Court in **Tube Investment of India Ltd., v. State of Tamil Nadu**, reported in **[2010] 36 VST 67 (Mad.),** and other similar cases, we dismissed Tax Case Revision Nos.42 & 43 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 **Tube Investment of India Ltd., v. State of Tamil Nadu,** reported in **[2010] 36 VST 67 (Mad.),** the same is dismissed. Substantial questions of law are answered against the Revenue. No Costs.

(S.M.K., J.) (V.B.S., J.)
19.03.2018

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

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

ars

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