IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

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

Tax Case (Revision) No.61 of 2018

The State of Tamil Nadu
Represented by
Joint Commissioner (CT)
Coimbatore Division
Coimbatore ... Petitioner

..Vs..

Tvl.Interfit Techno Products Ltd
No.2, N.K.P.M. Layout
Kamaraj Road
Red Fields
Coimbatore - 18 ... 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), Coimbatore, dated 5th day of August 2011 and passed order in CTA No.270 of 2003 against the order of the appellate Assistant Commissioner(CT) Coimbatore dated 08.07.2003 and made in A.P. 1162/2001 against the order of the Commercial Tax officer, Trichy Road, Assessment circle, Coimbatore dated 10.08.2001 made in TNGST/1881275/99-2000.

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), Coimbatore, dated 05.08.2011 made in CTA No.270 of 2003.

2. Short facts leading to the filing of the appeal are that the respondent, TVl.Interfit India Limited, manufacturers of S.G. Iron Pipe Fittings, Fabric Cotton Yarn were finally determined on a total and taxable turnover of Rs.1,18,71,849/- and Rs.1,18,71,849/- respectively for the assessment year 1999-2000 under the Tamil Nadu General Sales Tax Act, 1959 by the

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Commercial Tax Officer, Trichy Road Circle, Coimbatore. During the course of check of accounts, it was found that the respondent had purchased goods against Form XVII declarations and used the same in the manufacture of goods which were sold to a place outside the State. Hence, the Assessing Officer, worked out the liability under Section 3(4) of the Act on the purchase value against Form XVII and by using a formula determined the turnover as Rs.1,18,71,849/- at 1%.

3. Aggrieved against the order of the Assessing Officer, the respondent has filed an appeal before the Appellate Assistant Commissioner (CT), Coimbatore, who dismissed the appeal by relying on the decision reported in 120 STC 214.

4. Against the orders of the Appellate Assistant Commissioner (CT), Coimbatore, the appellant/dealer has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTA No.270 of 2003.

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 common order dated 05.08.2011, allowed the appeal filed by the dealer by stating that export is also a sale as cntemplated in the first part of section 3(4) of the Tamil Nadu General Sales Tax ACt, 1959 and consequently held that purchase turnover of raw materials by issue of Form XVII declaration availing concessional rate of tax under Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959 corresponding to the export of manufactured goods could not be assessed to tax under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959.

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.

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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/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

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To

1. The Tamil Nadu Sales Tax
   Appellate Tribunal(additional Bench)
   Coimbatore.

2. The Appellate Assistant Commissioner(CT)
   Coimbatore.

3. The Commercial Tax officer
   Trichy Road, Assessment Circle, Coimbatore

4. The Joint Commissioner(CT)
   Coimbatore Division, Coimbatore

BR(CO)
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