IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.01.2018**

CORAM:

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

Tax Case (Revision) No.7 of 2018

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

..Vs..

Tvl. Polyfines India Ltd.,
15/349, Mettupalayam Road,
Coimbatore - 641 043 ... 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 19th day of May 2014 and passed order in CTA No.56 of 2005.

For Petitioner : Mr.V.Hari Babu
Additional Government Pleader

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 19.05.2014 made in C.T.A.No.56 of 2005.

2. Short facts leading to the filing of the appeal are that the respondent Tvl.Polyfines India Ltd., a dealer in PVC hoses and PVC Resins were finally determined on a total taxable and resale turnover of Rs.51,32,452/-, Rs.36,86,952/- & Rs.14,45,500/- respectively, for the assessment year 2002-03 under the Tamil Nadu General Sales Tax Act, 1959 by the Commercial Tax Officer, Mettupalayam Road Circle, Coimbatore in his proceedings dated 14.01.2004. At that time of check of accounts, the Assessing Authority found that the dealer has exported finished goods after using raw materials purchased against Form XVII and therefore, the Assessing Authority levied tax under Section 3(4) of the TNGST Act on a turnover of Rs.1,06,000/- at the rate of 1%.

3. Aggrieved by the said proceedings, the dealer filed an appeal viz., appeal No.38 of 2004, before the Appellate Assistant Commissioner (CT) (Main), Coimbatore, who vide order dated 24.02.2005, dismissed the assessment under Section 3(2).

4. Aggrieved against the orders of the Appellate Assistant Commissioner (CT), the appellant/dealer preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (AB) Coimbatore in Appeal No.56 of 2005. 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 its order dated 19.05.2014 allowed the appeal filed by the dealer 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. 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?"

5. Earlier on 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 No.47 of 2017, filed by the

State, at the admission stage itself.

6. As the instant Tax Case (Revision) is similar, following the decision in **Tube Investment of India Ltd., v. State of Tamil Nadu,** reported in **[2010] 36 VST 67 (Mad.),** the instant Tax Case (Revision), is dismissed. Substantial questions of law are answered against the Revenue. No Costs.

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

30.01.2018

Index: Yes/No.

Internet: Yes

Speaking/Non speaking

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S.MANIKUMAR, J.

AND

V.BHAVANI SUBBAROYAN, J.

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30.01.2018