IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

T.C.R.No.73 of 2018

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

..Vs..

Tvl. Bonomi Belgium Ventiel
India Pvt. Ltd.,
Idikarai Road, N.G.G.O.Colony,
Coimbatore - 641 022. ... Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order dated 29.08.2011, passed in CTA.No.48 of 2006, on the file of the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

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 to revise the order dated 29.08.2011, passed in CTA.No.48 of 2006, on the file of the Tamilnadu Sales

Tax Appellate Tribunal (Additional Bench), Coimbatore.

2. Short facts leading to the filing of the revision are that the respondent, Tvl. Bonomi Belgium Ventiel India Pvt. Ltd, manufacturers of Rough Castings, were assessed on a total and taxable turnover of Rs.14,34,34,900/- and Rs.13,84,88,186/- respectively, for the assessment year 2003-2004, under the Tamil Nadu General Sales Tax Act, 1959 by the Deputy Commercial Tax Officer, Thudiyalur 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 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 and determined the turnover as Rs.1,01,30,620/- at 1% and also levied penalty of Rs.4,4996/-.

3. Aggrieved against the order of the Assessing Officer, the respondent has filed an appeal before the Appellate Assistant Commissioner (CT) (Main), Coimbatore, who modified the appeal by dismissing the penalty and sustaining the assessment.

4. Against the orders of the Appellate Assistant Commissioner (CT) (Main), Coimbatore, the respondent/dealer has preferred an appeal before

the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore in C.T.A.No.48 of 2006.

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 29.08.2011, allowed the appeals filed by the respondent/dealer by stating that export is also a sale as contemplated 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. 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 registered as an intrastate 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 clasue 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.) (M.G.R., J.)

28.03.2018

Index: Yes/No.

Internet: Yes/No.

Speaking/Non speaking

dm

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

dm

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