

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.93 of 2018

The State of Tamil Nadu,
Rep. by the Joint Commissioner (CT),
Salem Division, Salem

... Petitioner

..Vs..

Tvl.Sri Venkateswara Package and Company
394-B, Padiyur, Tiruppur (via),
Kangayam - 638 701
Erode District.

... 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 17th day of June 2014 and passed order in CTA No.154 of 2005.

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

17.06.2014 made in CTA No.154 of 2005.

2. Short facts leading to the filing of the appeal are that the respondent, Tvl.Sri Venkateswara Package Company, manufacturers of Corrugated boxes were finally assessed on a total and taxable turnover of Rs.1,05,87,158/- and Rs.48,68,911/- against the reported turnover of Rs.82,39,307/- and Rs.21,78,007/- respectively for the assessment year 2002-2003 under the Tamilnadu General Sales Tax Act, 1959, by the Commercial Tax Officer, Kangayam Circle, in his proceedings dated 30.09.2004. 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.23,47,850/- at 1% vide order dated 30.09.2004.

3. Aggrieved against the order of the Assessing Officer, the respondent / dealer has filed an appeal before the Appellate Assistant Commissioner (CT), Erode, who confirmed the assessment made by the Assessing Officer in AP No.2/2005 dated 20.04.2005.

4. Against the orders of the Appellate Assistant Commissioner (CT) Erode, the respondent/dealer has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTA No.154 of 2005.

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 17.06.2014, 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. Order of the Tribunal, reads thus:

"6. We have considered the case. It is an admitted fact that the dealer-appellants are manufacturers of corrugated boxes, for which, they have effected purchase of raw materials and consumables against Form XII and effected the sales of finished product to the exporters. It is now well settled in the case of Tube Investments of India Limited V. State of Tamil Nadu reported in 36 VST 67 that export sales covered under the definition of "sale" and therefore no corresponding turnover U/S 3(4) of the Act should be arrived. The Hon'ble High Court of Madras has also held that 3(4) tax has to be levied only in the event of dispatch of goods effected to other state branch or other state agents. As far as the case on hand is concerned, the dealer-appellants have effected sales of finished products to the exporters and they

have not effected any branch transfer or consignment transfer to other state. In view of the above facts and circumstances of the case, the dealer-appellants are not eligible to tax U/S 3(4) of the Act and therefore, it is ordered to delete the levy of tax made U/S 3(4) of the Act on the turnover of Rs.23,47,850/-."

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.)

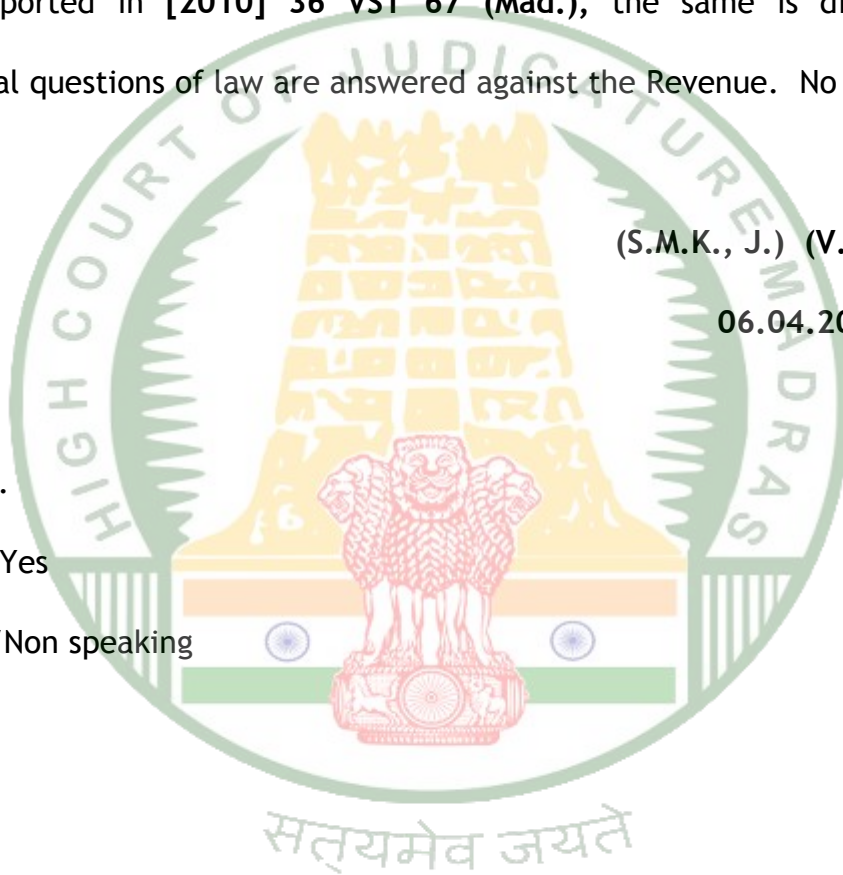
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