IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/6/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE SUBRAMONIUM PRASAD

Tax Case (Revision) No.123 of 2018

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

Vs

Tvl.J.M.S.Engineering
195 Madukkarai Road
SIDCO
Coimbatore 21. ... 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 31st July 2015, and passed order in CTSA No.159 of 2008.

Appeal against the order passed by the Additional Appellate Assistant Commissioner (CT) Coimbatore, dated 24.03.2008 in Appeal No. and year AP/1094/06 and against the order passed by the Commercial Tax Officer, Podanur Assessment Circle, Coimbatore dated 31/03/06 for Assessment Number and year TNGST 1800442/2003-2004

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

O R D E R

(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 31/7/2015, made in C.T.S.A.No.159 of 2008.

2. Short facts leading to the filing of the revision are that the respondent, Tvl. J.M.S.Engineering, dealers in Tank and Valves were finally determined on a total and taxable

turnover of Rs.24,12,276/- and Rs.24,12,276/-, for the assessment year 2003 - 2004, under the Tamil Nadu General Sales Tax Act, 1959, by the Commercial Tax Officer, Podanur Circle, Coimbatore, in his proceedings dated 31/3/2006. While assessing the taxable turnover, the Assessing Authority disallowed the claim of concessional rate of 3% on the sales of storage tanks for Rs.4,77,450/- against Form XVII Declarations and disallowed the claim of exemption on the labour charges turnover of Rs.13,40,000/- for the manufacture and supply of tanks for which the materials were supplied by the customers and assessed the turnover at 12.6% as first sales of storage tanks. The Assessing Authority also levied a penalty of Rs.2,62,093/- under Section 12 (3) (b) of the TNGST Act, 1959.

3. Aggrieved against the order of the Assessing Officer, the respondent/dealer has filed an appeal before the Additional Appellate Assistant Commissioner (CT), Coimbatore, who allowed the appeal.

4. Against the orders of the Additional Appellate Assistant Commissioner (CT), State has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (AB) Coimbatore in CTSA No.159 of 2008.

5. By order, dated 31/7/2015, the Tamil Nadu Sales Tax Appellate Tribunal, set aside the order of the Appellate Assistant Commissioner in assessing Rs.13,40,000/- at 12% + 5% SC as outright sales, and surcharge has been modified.

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 and 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//
Sub Assistant Registrar

mvs.

To

1.Tamil Nadu Sales Tax,
Appellate Tribunal
(Additional Tribunal
(Additional Bench)
Coimbatore.

2.The Additional Appellate,
Assistant Commissioner(CT)
Coimbatore.

3.The Commercial Tax Officer,
Podanur Assessment Circle,
Coimbatore.

Tax Case (Revision) No.123 of 2018

SSI(CO)
GSP(20/07/2018)