IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.02.2018**

CORAM:

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

Tax Case (Revision) No.26 of 2018

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

..Vs..

Tvl. Kumaran Packaging Industries,
19, Moorthy Reddy Palayam, Trichy Road,
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 7th July, 2014 and passed order in CTA No.13 of 2006.

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 07.07.2014 made in C.T.A.No.13 of 2006.

2. Short facts leading to the filing of the appeal are that the

respondent, Tvl.Kumaran Packaging Industries, manufacturers of corrugated boxes were originally assessed on a total and taxable turnover of Rs.1,15,91,045/- and Rs.81,67,986/- against the reported turnover of Rs.93,06,099/- and Rs.24,50,604/- respectively, for the assessment year 2001-2002 under the Tamil Nadu General Sales Tax Act, 1959 by the Commercial Tax Officer, Kangayam Circle, in his proceedings dated 31.12.2003. According to the Revenue, subsequently, it was found that the respondent had purchased goods against Form XVII declarations and used the same, in the manufacture of goods, sold to a place outside the State. Hence, the Assessing Officer has 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.42,96,076/-, assessed the said turnover at 1% in addition to the other levies, vide order dated 10.09.2004.

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.295/2004 dated 09.12.2005.

4. Against the orders of the Appellate Assistant Commissioner (CT), the appellant/dealer has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (AB) Coimbatore in CTA No.13 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 order dated 07.07.2014, 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.

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 No.47 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.),** 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.)

21.02.2018

Index: No.

Internet: Yes

Speaking/Non speaking

ars

S.MANIKUMAR, J.

AND

V.BHAVANI SUBBAROYAN, J.

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