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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/3/2018

C O R A M

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

Tax Case (Revision) No.85 of 2018

The State of Tamil Nadu,
Represented by the Joint Commissioner (CT),
Chennai (East) Division,
Chennai 600 006. ...Appellant/Respondent

Vs

Tvl.Associated Printers (M) Pvt Ltd
No.815/114 Anna Salai
Chennai 2. ...Respondent/Petitioner

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), Chennai, dated 3rd May, 2012 and passed order in TA No.227 of 2007. against the order of the appellate Assistant Commissioner (CT IV Kuralagam Avenue VI Floor, Chennai-108 in AP.No.05/07 dated 8.3.2007 the order of Deputy/Commercial Tax Officer (Additional) Anna Salai-III, Assessment Circle, 621, Sire mansion, Anna Salai, Chennai-6, dated 27.11.2006 made in TNGST No.0640007/2004-05.

For appellant ...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), Chennai, dated 3/5/2012, made in T.A.No.227 of 2007.

2. Short facts leading to the filing of the revision are that the respondent, Tvl. Associated Printers (M) Pvt Ltd., dealers in printed material, have reported a total taxable and resale turnover of Rs.12,09,27,633/-, Rs.2,93,23,419/- and Rs.77,02,311/- respectively, in their monthly return in Form A-1 filed under the Tamil Nadu General Sales Tax Act, 1959, for the year 2004 - 2005. They are the manufacture of carton boxes and printing materials for export purposes. The have have effected purchase of raw materials against Form XVII.

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These are against the condition governing the use of Form XVII and this also attracts liability to tax at 1% on the corresponding value of local purchases against Form XVII. The turnover under Section 3 (4) of the Tamil Nadu General Sales Tax Act, 1959 as shown below:-

Total purchases of raw materials against Form XVII	...	Rs.1,00,70,287.00
Total taxable sales reported under TNGST & CST Acts	...	Rs.6,26,77,230.00
For Export sales against certificate	...	Rs. 17,54,496.00

Estimated turnover u/s 3 (4) of

$$\frac{\text{Rs.}17{,}54{,}496 \times 1{,}00{,}70{,}287}{6{,}26{,}77{,}230} = \text{Rs.}2{,}81{,}893/-$$

3. Therefore, a turnover of Rs.2,81,893/- will be proposed to be assessed at 1%, under Section 3 (4) of the TNGST Act, 1959. On appeal, the Appellate Assistant Commissioner had dismissed the appeal, for the reasons stated thereon. Against the order of the Appellate Assistant Commissioner, the dealers had filed Second Appeal, before the Tamil Nadu Sales Tax Appellate Tribunal (AB) Chennai. The Appellate Tribunal, by its order, dated 3/5/2012, following the judgment of the Division Bench of the Hon'ble Court, in Tax Case No.39 of 2009 and in a batch of cases, dated 8/10/2010, reported in 36 VST 67, in which it is held 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" has allowed the appeal filed by the respondent.

4. 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

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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 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.

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6. 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)

//True Copy//

Sub Assistant Registrar

mvs.

To
1. The Joint Commissioner (CT)
Chennai (East) Division, Chennai 600 006.

2.The Secretary, Tamil Nadu Sales Taxes
Appellate Tribunal(Additional Bench) Chennai.

3. The Appellate Assistant Commissioner (CT)IV
Kuralgam Avenue vi, floor, Chennai-108/

4.The Deputy/Commercial Tax Officer,
(Additional) Anna Salai-III,
Assessment Circle 621, Sire mansion,
Anna Salai, Chennai-6.

Tax Case (Revision) No.85 of 2018

SKV(CO)
EU(20/04/2018)

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