IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.04.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.90 of 2018

The State of Tamil Nadu,
Rep. by the Deputy Commissioner (CT),
now re-designated as Joint Commissioner (CT),
Vellore Division. ... Petitioner

..Vs..

Tvl.Sunrise Tanners,
152, MBT Road,
1st Cross, Ranipet ... Respondent

Tax Case Revision filed under Section 38 of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 18th day of November 2010 and passed order in STA No.358 of 2007.

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 (Main Bench), Chennai, dated 18.11.2010 made in STA No.358 of 2007.

2. Short facts leading to the filing of the Tax Case (Revision) are that the respondent, Tvl.Sunrise Tanners, dealers and manufacturers of Tanned and finished leathers had reported a total and taxable turnover of Rs.1,52,00,733/- and Rs.5,72,077/- respectively, in the annual return in Form A1 for the year 2003-04 and assessee on the file of the Commercial Tax Officer, Ranipet (SIPCOT) assessment circle. The place of business of the assessee was inspected by the Enforcement Wing Officials on 8.1.2004 and noticed excess stock of 352 pieces of finished leather valued Rs.1,26,720/-. The Assessing Authority made equal time addition for probable omission and estimated the total suppression at Rs.2,53,440/- @ 4%. The assessee purchased chemicals locally against form XVII declarations and used it for the manufacturing purposes and the finished produced were exported. Therefore, the Assessing authority estimated the turnover liable to tax under Section 3(4) of the Act at Rs.15,08,663/- @ 1% rejecting their claim of the assessee on the turnover of Rs.20,851/- under Section 3(4) of the Act.

3. Further, the assessee also purchased dyes and chemicals by issue of form XVII declaration and used it for the manufacturing purposes for converting wet blue into finished leather. Since wet blue leather and finished leather are one and the same commodity and there was no manufacturing activity involved, the Assessing Authority held that they are

not entitled to purchase dyes and chemicals by issue of Form XVII and therefore assessed the turnover of Rs.29,75,729/- at 9% under Section 3(3) of the Act. The Assessing Authority also estimated the first sale value of finished leather effected out of the interstate purchases at Rs.11,95,521/- by adopting a formula since the assessee had not maintained separate stock account for local and interstate purchases.

4. Besides, the Assessing Authority levied penalty of Rs.4,21,811/- under Section 23 read with 45(2)(e) of the Tamil Nadu General Sales Tax Act, 1959, for violation of 3(3) of the Act and also Rs.7,604/- under Section 12(3)(b) of the Act for the stock variation noticed, at the time of inspection vide order dated 27.02.2006.

5. Aggrieved against the order of the Assessing Officer, the respondent / dealer has filed an appeal before the Appellate Assistant Commissioner (CT), Vellore, who, vide order in AP.No.84 of 2006 dated 09.11.2006, allowed the appeal by deleting the assessment on the turnover of Rs.2,53,440/- representing addition as per stock variation and also the assessment made on the turnover of Rs.14,87,812/- at 1% pertaining the purchase value of raw materials against misuse of Form XVII under Section 3(4) of the Act. The First Appellate Authority also deleted the assessment made on the turnover of Rs.29,75,729/- in respect of purchase of chemicals against Form XVII under Section 3(3) of the Act and also the assessment made on the estimated first sales of leather from interstate sales on the turnover of Rs.11,95,521/- @4%. Consequently, the First Appellate Authority deleted the penalties imposed both under Section 23 read with

45(2)(e) and 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

6. Being aggrieved by the orders of the Appellate Assistant Commissioner (CT) Vellore, the State has preferred an appeal before the Tamilnadu Sales Tax Appellate Tribunal (Main Bench), Chennai in STA No.358 of 2007.

7. The Appellate Tribunal, by order dated 18.11.2010, dismissed the appeal filed by the State, by deleting the assessment made by the Assessing Authority on the entire addition on the ground that the stock variation noticed at the time of inspection was below 2%. Further, 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, deleted the turnover under Section 3(4), by stating that since the export sale was 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.

8. Assessment under Section 3(3) was also deleted by the Appellate Tribunal, by following the decision of this Court in **Golden Leathers v. Secretary, TNSTAT** reported in **[2010] 35 VST 216 (Mad.),** wherein it is held that the disputed turnover was liable for concessional rate of tax under Section 3(3) by issuance of Form XVII declarations and further held that conversion of wet blue into finished leathers amounts to manufacture.

9. The appellate tribunal dismissed the challenge made by the State, with regard to the assessment made on the turnover of Rs.11,95,521/-, since separate accounts were maintained for taxable and non taxable goods, and there was no necessity for estimating the first sale value of finished leather, by adopting the formula. The tribunal also deleted the penalty under Section 23 read with 45(2)(e) of the Tamil Nadu General Sales Tax Act, 1959 as there was no misuse of Form XVII declarations and the penalty under Section 12(3)(b) on the ground, that the entire addition due to stock variation was deleted.

10. 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?

8) Whether the Tribunal has committed a grave

procedural error in having overlooked the judgements of Supreme Court in a case of A.Hajee Abdul Shukuoor and Compounding order v. State of Madras reported in 15 STC 719 and in the case of State of Tamil Nadu v. Mahi Traders & Others reported in 73 STC 228, admittedly cited on behalf of the Revenue in para 6 of the impugned judgment ?

9. Whether the order of Tribunal is perverse in its factual finding that process involved in the conversion of wet blue leather (also known as tanned leather or semi finished leather) into finished leather amount to manufacture by overlooking the factual findings regarding the process underwent in the conversion of raw hides and skins into dressed hides and skins as approved in the case of Hajee Abdul Shukoor v. State of Madras reported in 15 STC 719 and in the case of State of Tamil Nadu v. Mahi Traders and Others reported in 73 STC 228 ?

10. Whether the Tribunal has corrected appreciated and applied the principles laid down by Supreme Court in the decisions relied upon in the impugned judgment to the facts of the present case inasmuch as wet blue leather does not admittedly constitute a raw material for manufacture of finished leather ?

11. Whether the order of the Tribunal is perverse inasmuch as the processes which the wet blue leather is subjected to would not alter but retain the essential characteristics as leather despite undergoing mere physical or chemical changes not amounting to transformation into a new and distinct commercial commodity?

12. Whether in the facts and circumstances of the case, the Appellate Tribunal is correct in not following the decision of its coordinate Bench in STA No.269/2004 dated 11.11.2011 in so far as it relates to appeal filed by the State wherein the very same tribunal sustained the actual suppression and equal addition?

13. Whether in the facts and circumstances of the case, the Appellate Tribunal is correct in modifying the penalty levied by the Assessing Authority under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

11. On the above substantial questions of law, Mr.V.Haribabu, learned Additional Government Pleader (Taxes) made submissions.

12. 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.

13. Similarly, following the decision of this Court in **Golden Leathers v. Secretary, TNSTAT,** reported in **(2010) 35 VST 216 (Mad),** vide order dated 20.11.2017, we dismissed Tax Case Revision No.49 of 2017, filed by the State, at the admission stage itself.

14. As the instant Tax Case (Revision) is similar, on facts and law, following the decisions in **Tube Investment of India Ltd., v. State of Tamil Nadu,** reported in **[2010] 36 VST 67 (Mad.),** and **Golden Leathers v. Secretary, TNSTAT,** reported in **(2010) 35 VST 216 (Mad),** the same is dismissed. Substantial questions of law are answered against the Revenue. No Costs.

(S.M.K., J.) (V.B.S., J.)

05.04.2018

Index: No.

Internet: Yes

Speaking/Non speaking

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S.MANIKUMAR, J.

AND

V.BHAVANI SUBBAROYAN, J.

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