IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

T.C.No.56 of 2009

M/s.C.Kalyanam & Co.,
No.16, Muthugramani Street
Periamet, Chennai – 600 003. .. Petitioner

Vs

The State of Tamil Nadu,
Rep by the Joint Commissioner of
Commercial Taxes, Chennai,
PAPJM Building, Greams Road
Chennai-06 .. Respondent

Prayer : Tax Case Revision filed under Section 38 of the TNGST Act, 1959 and Rule 30 of the TNGST Rules, 1959, to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, passed in T.A.No.254 of 2006 dated 10.11.2008.

TA.NO.254 of 2006 has been filed against the proceedings of the Appellate Assistant Commissioner(CT) VII, Chennai-108 made in Appeal No.and year: AP.169/2004, date of order 22.03.2006.

AP.169/2004 has been filed against the proceedings of the Commerial Tax Officer, Periamet Assessment Circle Vepery, Chennai made in TNGST.NO.0420001/2002-2003 date of order 31.12.2003.

For Petitioner : Mr.B.Raveendran
For Respondent : Mr.V.Haribabu
Additional Govt. Pleader (Taxes)

ORDER

[Order of the Court delivered by T.S.SIVAGNANAM,J.]

This tax case revision filed by the assessee is directed against the order passed by the Tamil Nadu Sales Tax Appellate

Tribunal (Additional Bench), Chennai, in T.A.No.254 of 2006 dated 10.11.2008.

2. This tax case revision has been admitted on the following substantial questions of law :

1. Whether under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, when the end product is sold in the course of export, liability to pay tax on the raw materials purchased against concessional levy, used in the manufacture of such end goods exported, can be fastened?

2. On the facts and in the circumstances of the case and having regard to the language used in the charging section viz., section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, whether liability under section 3(4) of the Act can be imposed on the petitioner?

3. Whether the Appellate Tribunal is right in relying on the decision in the case of All India Skins & Hides Tanners and Merchants Association Vs. CTO, (2002) 127 STC 491, as the Supreme Court of India, subsequently, set aside the said decision and remanded the matter to the authorities to go into the question of relationship between the Association and its Members?

3. Heard Mr.B.Raveendran, the learned counsel appearing for the assessee and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent.

4. In so far as question Nos.1 & 2 is concerned, the learned counsel for the assessee has brought to the notice of the Court that a dealer or a owner of a company after purchase of raw materials, consumables and packing materials at concessional rate, using XVII declaration, and exporting the finished goods manufactured out of it, outside India through seaport as well as airport under export sale, would not be entitled to any liability as provided under Section 3(4) of the General Sales Tax, 1959. In support of his submission, he placed reliance on the decision of the Division Bench of this Court in Tube Investments of India Ltd., Vs. State of Tamil Nadu reported in [(2010) 36 VST 67 (Mad)] wherein it is held that "Export Sale" is nothing but a sale for which an exigency of tax liability would not occur as provided under Section 3(4) of the Act. Therefore, the petitioner in the present case who is similarly placed, cannot be fastened with liability as provided under Section 3(4) of the General Sales Tax Act, 1959.

5. Mr.V.Haribabu, learned Additional Government Pleader, also agreed to the submissions made by the learned counsel for the petitioner.

6. Since, the learned counsel for the assessee as well as the learned counsel for the respondent submitted that the questions of law No.1 & 2 framed for consideration in this case is squarely covered by the decision of the Division Bench in Tube Investments of India Ltd., Vs. State of Tamil Nadu reported in [(2010) 36 VST 67 (Mad)], accordingly the questions of law 1 & 2 are answered in favour of the assesse and against the Revenue,

4. With regard to question No.3 is concerned, the learned counsel for the assessee submitted that in yet another case, an identical issue as framed in question No.3 was dealt with before this Court and the matter stood remanded to the Sales Tax Appellate Tribunal to decide the theory of mutuality. Since, the Tribunal held against the assessee in the said issue, the assessee therein had preferred a revision before this Court, and the same is pending before the Division Bench of this Court for consideration.

5. Thus, as the question of law No.3 framed is pending consideration before the Division Bench of this Court, we are not in a position to answer question No.3 and the same is left open for consideration.

7. In the result, this tax case revision is partially allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TO:

1.The Joint Commissioner of
Commercial Taxes, Chennai,
PAPJM Building, Greams Road
Chennai.

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

3.The Appellate Assistant Commissioner(CT) VII,
Chennai-108

4.The Commercial Tax Officer,
Periamet Assessment Circle,
Vepery,
Chennai.

5.The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.B.Raveendran, Advocate sr.no.40547
+1cc to Special Government Pleader(Taxes), sr.no.40236

T.C. No.56 of 2009

svn(co)
nr 12/07/2018