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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.58 of 2009

M/s.C.Kalyanam & Co., No.16,
Muthugramani Street, Periamet, Chennai-600003.

.. Petitioner

Vs

The State of Tamil Nadu,
Rep by the Joint Commissioner of
Commercial Taxes, Chennai,
PAPJM Building, Greams Road
Chennai - 600 006.

.. 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.60 of 2007 dated 10.11.2008. against the order of the Appellate Assistant Commissioner(CT)III Passed in Appeal No.AP.12/05, dated 02.01.2007 and against the Assessment order of the Commercial Tax Officer, Periamet Assessment Circle made in Assessment number TNGST No.0420001/03-04, dated 26.11.2004

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 has been filed by the assessee questioning the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in T.A.No.60 of 2007 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 TNGST 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?



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2. On the facts and circumstances of the case and having regard to the language used in the charging section viz., Section 3(4) of the TNGST Act, 1959, whether liability under Section 3(4) of the TNGST Act, 1959 can be imposed on the petitioner?
3. Whether the Appellate Tribunal is right in relying on (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?
4. Whether the Appellant Tribunal is right in proceeding as if distribution of wattle extract by the Association to its members constitutes sale, without going into the question of the nature of the relationship between the Association and its Members inter se?
5. Whether common salt is liable to sales tax merely because of the user theory on the ground that it is used by the Leather Industry in processing leather?

3. The learned counsel appearing for the assessee as well as the learned Additional Government Pleader (Taxes), would submit that the decision of this Court in T.C.No.56 of 2009, would squarely cover the case on hand. Though the questions of law in this appeal is not similarly worded as that of T.C.No.56 of 2009, the questions raised are identical and therefore, the decision in T.C.No.56 of 2009, dated 25.06.2018, is squarely applicable to the case on hand.

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

5. It would relevant to extract the operative portion of the order dated 25.06.2018, passed by this Court in T.C.No.56 of 2009, and the same reads as under :

"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



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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 assessee and against the Revenue,

7. 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 on 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.

8. 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.



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

6. In the result, the tax case revision is partly allowed. Question Nos.1 & 2 are answered in favour of the assessee and against the Revenue. However the issues in question Nos.3 to 5, are similar to the one in question No.3 raised in T.C.No.56 of 2009, which is now pending consideration before the Division Bench, hence, question Nos.3 to 6 are left open unattended by this Court. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Joint Commissioner of
Commercial Taxes, Chennai,
PAPJM Building, Greams Road
Chennai.
2. The Assistant Commissioner(CT)III,
1st Floor, Kuralagam Annexure, Chennai-108.
3. The Commercial Tax Officer,
Periamet Assessment Circle,
No.3, Ritherdon Avenue, Vepery, Chennai-600 007.

+1cc to the Government Pleader, S.R.No.40225

T.C. No.58 of 2009

CP(Co)
CS/30/08/18