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.61 of 2009

M/s.C.Shanmugam & 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 - 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.59 of 2007 dated 10.11.2008. against the order of the Appellant Assistant Commissioner (CT) III Kuralagam, Chennai -108 in AP.11/2005 dated 02.01.2007 against the order of the Commercial Tax Officer, periamet Assessment Circle, Chennai dated 24.11.2004 in TNGST 0420003/03-04.

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.59 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?

2. Whether the Appellate 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?

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 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,

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 No.1 is answered in favour of the assessee and against the Revenue, and question No.2, which is slightly differently worded than that of question No.3 raised in T.C.No.56 of 2009, which is now pending consideration before the Division Bench, it is left open for consideration. No costs.

Sd/-
Assistant Registrar(CS VI)

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

3. The Appellate Assistant Commissioner (CT) III,
 1st Floor, Kuralagam Annexe,
 Chennai-108.

4. The Commercial Tax Officer,
 Periamet Assessment Circle,
 Vepery, Chennai -07.

+1cc to Special Government Pleader(Taxes) SR.No.40227

T.C. No.61 of 2009

KGK(CO)
GN(29/08/2018)