IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM :

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.33625 of 2007
and
M.P.No.1 of 2007

M/s.Dubey Perfumary
Rep by its Partner Nisheeth Dubey
19-2-422, Chandulal Baradari Colony
Hyderabad - 500 026 ... Petitioner

Vs.

1. The District Forest Officer
   Salem Division, Salem - 7.

2. The Commercial Tax Officer
   Salem Town, North Salem, Salem.

3. The Branch Manager
   State Bank of India
   Chandulal Baradari Branch
   Road No.1, Baradaripuram
   Hyderabad - 500 060. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in proceedings No.5/9008/94 dated 08.09.2007 and quash the same and consequently release the Bank Guarantee furnished by the petitioner through the third respondent herein.

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For Petitioner : M/s.Rajnish Pathiyil

For Respondents: Mr.K.K.Ramesh
Government Advocate (Taxes)[For R1]
Mr.Master Ganesh
Government Advocate (Taxes)[For R2]
No appearance [For R3]

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O R D E R

The proceedings of the first respondent dated 08.09.2007 is sought to be quashed in this writ petition and further direction is sought for to release the bank guarantee furnished by the writ petitioner through the third respondent.

2.On perusal of the impugned order, it is stated that M/s.Dubey Perfumary, Hyderabad, has participated in the sandalwood sale held in the Salem division on 06.07.1994 and purchased 6.100 M/Ts of sandalwood for Rs.16,36,100/-. The purchaser was instructed to pay 8% sales tax of Rs.1,30,888/- and 15 surcharge on sales tax on the value of sandalwood purchased as per the office of the first respondent confirmation order in Proc.No.5/9008/94 dated 08.09.2007.

3.The learned Additional Government Pleader brought to the notice of this Court that such a tax imposed after purchase and transported the same is permissible and the same was confirmed by the Hon'ble Division Bench of this Court in the case of Karnataka Soaps and Detergents Ltd. Vs. District Forest Officer, Sathyamangalam and others reported in (2005) 140 STC 112. Citing the above Hon'ble Division Bench Judgment, High Court of Madras also passed on order dated 21.11.2012 in W.P.Nos.568 to 570 of 2011 and paragraph no.13 is relevant and extracted hereunder:-

> "13. A similar issue was decided by a Division Bench of this Court in Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam and others, (2005) 140 STC 112, wherein it was held as under:
>
> > "11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders who wanted to

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purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P or some other State, or remains within Tamil Nadu. Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale."

4.The present writ petition is also similar to that of the writ petition decided and cited supra. In view of the principles laid down in the above cited judgements, no further adjudication needs to be entertained in respect of the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The District Forest Officer
   Salem Division, Salem - 7.

2. The Commercial Tax Officer
   Salem Town, North Salem, Salem.

3. The Branch Manager
   State Bank of India
   Chandulal Baradari Branch
   Road No.1, Baradaripuram
   Hyderabad - 500 060.

+ 1 cc to M/s.Rajnish Pathiyil Advocate,SR.4491
+ 1 cc to The Special Govt.Pleader(Taxes), SR.4936
+ 1 cc to The Govt.Pleader(Forest), SR.5118
+ 1 cc to The Govt.Pleader, SR.9037

W.P.No.33625 of 2007

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