IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

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

Tax Case (Revision) No.2288 of 2008

Garware Wall Ropes,
No.3, Jaffer Sarang Street,
Chennai-600 001. ... Petitioner

-vs-

The State of Tamil Nadu,
Rep. by the Commercial Tax Officer,
Harbour I Assessment Circle, Chennai. ... Respondent

Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, against the common order of the Tamil Nadu Sales Tax Appellate Tribunal, (Main Bench), Chennai dated 31.03.1997 in T.A.Nos.769/1994, 770/1994, 673/1994 and 978/1994, against the proceedings of the Additional Appellate Assistant Commissioner (CT)I, Madras in A.P.100/93, dated 12.01.1994, preferred againstthe proceedings of the Commercial Tax Officer, Harbour-I, Assessment Circle Madras in TNGST 000222/90-91, dated 14.07.1992.

For Petitioner : Mr.N.Prasath

For Respondent : Mr.V.Haribabu, AGP (Taxes)

O R D E R

(Order of the Court was made by T.S.Sivagnanam, J.)

Heard Mr.N.Prasath, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent.

2. This tax case (revision) is filed against the common order dated 31.03.1997, passed by the Tamil Nadu Sales Tax Appellate Tribunal, (Main Bench), Chennai in T.A.Nos.769/1994, 770/1994, 673/1994 and 978/1994.

3. The other connected tax cases (revision) were heard and disposed of by the Hon'ble Division Bench of this Court wherein, the tax cases (revision) filed by the assessee were allowed and the tax cases (revision) filed by the Revenue were dismissed. The decision in State of Tamil Nadu v. Garware Wall Ropes is reported in [2011] 46 VST 470 (Madras). In the said decision, it was held that, when the receipt of duty drawback had nothing to do with the sale between the parties and had no relevance to the sale transaction at the time of or before the delivery of the goods, the duty drawback could not be treated as forming part of the turnover. When the duty drawback was under the scheme given under the Excise and Customs Rules and there was no agreement between the purchaser and the seller on the aspect of duty drawback and it never received any consideration in the sale effected, the question of roping in those receipts from the Government of India long after the sale, to be included in the turnover for the purpose of assessment, did not arise. The difference in price charged by the dealer in respect of sale to coastal vessels and to foreign going vessels, had no relevance at all. So long as the dealer was able to show that the receipt was as per the provisions of the Central Excise and Customs Act and the Rules made thereunder with reference to export of goods manufactured from and out of duty-suffered goods, and the transaction thus answered the definition of “export” as given under the Duty Drawback Rules, the Department was not justified in taxing this receipt as part of the turnover. The order levying sales tax on the duty drawback element were liable to be quashed and the orders cancelling the penalty upheld.

4. The learned Additional Government Pleader (Taxes) appearing for the respondent does not dispute the legal position.

5. Thus, the tax case (revision) is allowed, following the decision in the assessee's own case for the assessment years in the decision referred. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commercial Tax Officer,
The State of Tamil Nadu,
Harbour I Assessment Circle, Chennai.

2.Tamil Nadu Sales Tax Appellate Tribunal,
(Main Bench), Chennai-600 104.

3.Tamil Nadu Taxation Special Tribunal,
Madras.

4.The Additional Appellate Assistant Commissioner (CT)-I,
Madras.

5. The Commercial tax officer, Harbour -I,
Assessment Circle, Madras.

+1cc to Mr.N.INBARAJAN, Advocate, S.R.No.41092
+1cc to the Government Pleader, S.R.No.41587

T.C.(R) No.2288 of 2008

NRI(CO)
TR(20/07/2018)