IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.19307 of 2002

M/s Tej Bahadur & Sons,
Hyderabad rep by its
Partner
No.19-2-422, Chandulal Baradari Colony,
Hyderabad ... Petitioner

Vs

1. The Commercial Tax Officer,
   Salem

2. The District Forest Officer,
   Salem Division,
   Salem ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorified Mandamus to call for the records on the file of the Second Respondent in C.No.5322/2002 S dated 14.05.2002 and quash the same in so far as it relates to levy of Sales Tax at 12% on the Sale value amounting to Rs.24,60,420/- as illegal and consequently direct the Second Respondent to release the entire goods without collecting the tax.

For Petitioner : Ms.Anu Ganesan for
M/s Rajnish Pathiyil

For R.1 : Ms.G. Dhanamadhri
Govt. Advocate (Taxes)

For R.2 : Mr.Santhanaraman
AGP (Forests)

ORDER

The Petitioner has filed the Writ Petition seeking to issue a Writ of Certiorified Mandamus to call for the records on the file of the Second Respondent in C.No.5322/2002 S dated 14.05.2002 and quash the same in so far as it relates to levy of Sales Tax at 12% on the Sale value amounting to Rs.24,60,420/- as illegal and consequently direct the Second Respondent to release the entire goods without collecting the tax.

2. Mr.Santhanaraman, learned Additional Government Pleader (Forests) appearing for the Second Respondent submits that the issue involved in this Writ Petition, viz., whether the purchase of the sandalwood by the Petitioner in public auction from the Forest Department of the Government of Tamil Nadu would amount to an inter-state sale without any liability for taxation under the provisions of the Tamil Nadu General Sales Tax Act, 1959, has already been decided by the Division Bench of this Court by order dated 07.02.2005 in W.A.No.3195 of 2004 (Karnataka Soaps and Detergents Ltd vs The District Forest Officer) in which it has been held as follows:-

> " 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 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 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.

12. ....

13. In the present case, there is no conceivable legal think between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the opinion of the Petitioner and not under any legal obligation.

The aforesaid decision squarely applies to present case and hence, he cannot be granted the relief sought in this Writ Petition.

3. Learned counsel for the Petitioner submits that pursuant to the interim orders passed by this Court, the Petitioner had paid a sum of Rs.8,20,140/- (Rupees Eight lakhs twenty thousand one hundred forty only) by way of demand draft and furnished Bank Guarantee for the remaining sum of Rs.16,40,280/-(Rupees Sixteen lakhs forty thousand two hundred eighty only) in favour of the District Forest Officer. In response to the said submission, learned counsel for the First Respondent has filed a Memo stating that since the aforesaid Bank Guarantee furnished by the Petitioner was expiring on 12.12.2014, the Petitioner was required to renew the same, but as he failed to do so, the said Bank Guarantee had been encashed on 11.02.2015 and the amount has been deposited in a Fixed Deposit in Indian Bank, Salem in the name of the District Forest Officer, Salem.

4. The aforesaid payments received by the Second Respondent from the Petitioner shall be appropriated towards sales tax payable by the Petitioner to the First Respondent on or before 31.07.3018 and the First Respondent on receipt of such payment shall issue necessary communication to the authorities concerned as well as the Petitioner on or before 10.08.2018.

5. The Writ Petition is dismissed with the aforesaid observations. No costs.

sr

Sd/-
Assistant Registrar(cs VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Commercial Tax Officer,
   Salem

2. The District Forest Officer,
   Salem Division,
   Salem

+1 CC TO M/S RAJNISH PATHIYIL ADVOCATE SR.NO.43997

+2 CC TO SPECIAL GOVERNMENT PLEADER SR.NO. 42892 & 43933

W.P.No.19307 of 2002

GJ(CO)
ASK(30/07/2018)