IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.22767 of 2005

M/s.Natural Aroma Exports,
Rep. by its Proprietor,
Ashish Kapoor,
Near Kannauj City Railway Station,
Makarand Nagar,
Kannauj - 209726, Uttar Pradesh. ...Petitioner

Vs

1. The Branch Manager,
   Bank of India, Kannauj Branch,
   M.G.Road, Kannauj - 209725.Uttar Pradesh.

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

3. The Commercial Tax Officer,
   Salem Division,
   Salem. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd respondent having reference ROC.No.2459/03 dated 05.05.2005 and the 2nd respondent's proceedings having reference C.No.3120/03 S dated 11.06.2005 and quash the same and consequently forbear the 1st respondent from paying the amounts covered under the Bank Guarantee No.32/02 for Rs.4,80,592/- furnished by the petitioner to the 2nd respondent.

For Petitioner : M/s.C.Uma

For Respondents: No Appearance for R1

Mr.A.Zakir Hussain, GA for R2

Mr.V.Haribabu, AGP for R3

ORDER

The respondents herein have treated the purchase made by the petitioner herein through an auction sale as a local sale. The main ground raised by the petitioner is that such a sale can only be termed as a inter state sale and therefore, the respondents will not be justified in demanding Sales Tax along with the penalty.

2. The issue involved in the present writ petition has been a subject matter of various writ petitions, wherein this Court has held that the purchase of sandalwood at Tamil Nadu even though the purchaser is from outside the state, can only be treated as an inter state sales. In a recent decision of this Court passed in W.P.Nos.36194 & 36195 of 2003 dated 27.09.2018, this Court had held as follows:

> 6. In this context, the learned Additional Government Pleader relied upon a Division Bench Judgement of this Court in a batch of writ appeals in W.A.No.3195 of 2004 & others in the matter of Karnataka Soaps vs. The District Forest Officer, Sathyamangalam Division, Sathyamangalam & Others dated 07.02.2005 wherein, it has been held that, this kind of sale of sandalwood would be only considered as Inter-State sale and therefore, the purchaser has to pay tax under the Tamil Nadu Act and not under the Central Sales Tax Act.
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> 7. Following the said judgement of the Division Bench, number of cases had been decided. Two such decisions made by a learned Judges of this Court, has also been relied upon by the learned Additional Government Pleader. The case in W.P.No.21314 of 2005, in the matter of M/s. Deep Industries, rep. by its Managing Partner Vs. The Branch Manager, Bank of India, Calicut Branch, Calicut and others, dated 26.07.2018 and another one in W.P.No.19307 of 2002 in the matter of M/s. Tej Bahadur & Sons rep. by its Partner, Hyderabad vs. The Commercial Tax Officer, Salem and another, dated 06.07.2018.
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> 8. In view of these orders, learned Additional Government Pleader would submit that, the plea raised by the petitioner cannot be accepted and therefore, it has to be rejected.

9. I have heard the learned counsel appearing for the petitioner, who would fairly submit that in view of the canteena of decision of this court since the issue has already been decided in favour of the department, following the said judgements, suitable orders can be passed in these writ petitions also.

10. I have considered the said submissions made by both sides and also perused the orders passed by this Court.

11. Since the purchase of sandalwood at Tamil Nadu even though by the purchaser outside the State, the same was treated only as an inter state sales. In that view of the decision, the present issue raised by the writ petitioner in this case also can be decided only in favour of the department, as the purchase of sandalwood made by the petitioner by auction conducted by the first respondent on 09.09.1998 also would be considered only as a Inter-State sales. Therefore, the petitioner has to necessarily pay the tax as claimed or demanded by the respondent and under the provisions of the said Act. Since the petitioner has already given the bank guarantee for the purpose of said tax due and payable to the State Tax authorities, the said bank guarantee can be invoked by the respondent and can be credited to the taxation authorities to settle the tax due. Therefore, the prayer sought for by the petitioner in this writ petition cannot be granted.

3. The aforesaid decision is applicable to the facts of the present case also. In view of the same, the present impugned sales can only be treated as an inter state sales and therefore, the respondents may not be justified in demanding the respective tax sales penalty.

4. In the light of the above observations, the order of the 3rd respondent having reference ROC.No.2459/03 dated 05.05.2005 and the 2nd respondent's proceedings having reference C.No.3120/03 S dated 11.06.2005, are quashed. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk

To

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

2. The Commercial Tax Officer,
   Salem Division,
   Salem.

+1cc to M/s.C.Uma , Advocate SR.No. 48960
+1 cc to Government Pleader Sr.No. 50149
+1 cc to Spl Government Pleader Sr.No. 50035

W.P.No.22767 of 2005

A.SK(07/08/2019)