

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.38949 of 2005

M/s.Sharadha Terry Products Ltd.,
Rep.by its Director G.Vijaya Kumar
86, Arts College Road, Coimbatore District. Petitioner

-Vs-

- 1.Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Commercial Taxes
Buildings, Coimbatore-18.
- 2.The Commercial Tax Officer, Trichy Road
Circle, Commercial Taxes Buildings
Coimbatore-18. Respondents

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.A.N.R.Jaya Prathap,
Govt.Advocate (Taxes)-for R2

Prayer : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in its order in CTA No.126/04 dated 12.09.2005 and quash the same as illegal.

ORDER

(Order of the Court was made by DR.VINEET KOTHARI, J.)

The Assessee M/s.Sharadha Terry Products Ltd., had filed this writ petition aggrieved by the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore on 12.09.2005, dismissing the appeal of the Assessee, which is a 100% Export Oriented Unit (EOU). By the impugned order, the Assessee's claim of availing the benefit of concessional rate of tax on the raw materials viz., cotton purchased by it in the declaration in Form No.17 under the Notification in G.O.No.528 dated 21.11.1997 was denied for the reason that the explanatory note attached to the said Notification issued by the State is not part of the

Notification. Another issue of which the Assessee was denied the relief is on the ground that the export sale made by the Assessee of the fabric made out of the cotton purchased by it did not amount to a sale and therefore the condition of making a sale within the State was not satisfied by the Assessee.

2. The reasons assigned by the learned Tribunal in the impugned order are quoted below for ready reference.

"4. We have considered the arguments of both the sides and also verified the connected records. The first item of dispute relates to the turnover assessed under Section 3(4) of the Act. It is seen from the records that the Assessing Authority had estimated the turnover considering the export sales also made by the appellants. It is the contention of the appellants that the export sale, being a direct sale, is not liable to be considered for computing the turnover taxable u/s.3(4) of the Act. This issue is also considered by the TNTST, Chennai in the case of Elgi Equipments Coimbatore Vs. Assistant Commissioner (CT), Fast Track Assessment Circle, Coimbatore in OP No.544/01 and the Tamil Nadu Taxation Special Tribunal in its order dated 20.08.2001 held that,

"Section 3(4) of the Act clearly says that except in respect of inter-state Sale or purchase, if the goods are despatched to a place outside the State either by branch transfer or by transfer to an agent by whatever name called for sale or in any other manner, then purchase tax at 2% has to be paid in addition to the concessional rate of tax paid already u/s.3(3) of the Act. Therefore, when export sale has not been specifically excluded as in the case of inter-state sale while imposing purchase tax, there is absolutely no case to add words to the provisions of the Act. In this connection, it is relevant to quote the classic observations of Rewlatt, J. in Capt.Brandy Syndicate Vs. Commissioner of Inland Revenue (1921) 1 KB 64 at Page 71:

"In a taxing statute one has to look merely look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is to be read in, nothing is to be implied. One can only look fairly at the

languages used."

The above observation has been quoted with approval by a Bench of Three Judges of the Supreme Court in Commissioner of Income Tax Vs. Ajax Products Limited (1965) 55 ITR 741 (SC). Obviously, the reason to levy purchase tax u/s.3(4) of the Act is simply, namely that if the manufactured goods out of raw materials obtained against concessional rate are disposed of outside the State otherwise than by way of interstate sale either in the form of branch transfer or consignment sale or export sale, the State does not get any revenue and only to augment the revenue, the State has imposed the purchase tax. In Section 3(4) of the Act, the expression 'in any of the manner' would include sale by export also"

The Tamil Nadu Taxation Special Tribunal in another case in OP Nos.175 and 178/01 in which the petitioner Tvl.Chevro Leather Manufacturers, Chennai-31 raised the same issue, held in its order dated 14.03.2001, that:-

" I have already referred to the decisions of the Apex Court and when Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959 is considered in the light of the other decisions, it is very clear that the sale of manufactured goods within the State is for the purpose of revenue and when the dealer evades the conditions laid down in Sections 3(3) and 3(4) of the Act. Certainly he is bound to pay the difference in tax between the original rate and the concessional rate."

The next item of dispute is the assessment made on the last purchase of cotton. The two notifications governing the sales to 100% EOU are extracted as under:-

Notification No.II(1)/CTRE/100/97 dated 17.12.97:

In exercise of the powers conferred by Sub-Section(1) of Section 17 of the TNGST Act, 1959 (Tamil Nadu Act of 1959) the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable by any dealer on the sale of raw materials to the registered 100% Export Oriented Units in this State and units

located in the Chennai Processing Zone."

Notification No.II(1)/CTRE/100/97 dated
17.12.97:

In exercise of the powers conferred by Sub-Section(3) of Section 17 of the TNGST Act, 1959 (Tamil Nadu Act of 1959), the Governor of Tamil Nadu hereby makes the following variation to the CT & RE Notification No.II/(1)/CTRE/100/97 published at page 90 of Part-II Section 1 of the Tamil Nadu Government Gazette dated the 17th December 1997.

VARIATION :

In the said Notification for the expression "Raw Materials", the expression 'Raw Materials, Packing Materials and Consumable Goods' shall be substituted."

The Notification dated 17.12.97, clearly says that the exemption is available to a dealer who is effecting sales of raw material to 100% EOU and the notification dated 1.4.98, further extended this concession to sale of packing materials and consumable goods also. It could be therefore seen from the above notification that the exemption available only to the sellers of the raw materials or packing materials or consumable goods to explanatory note appended to the Notification dated 21.11.97 exhibits the intention of the Government to exempt the purchase of all raw materials by 100% EOU and that based on the same, the appellant is not liable to pay tax on the purchases. But the explanatory note cannot be considered as a valid notification issued u/s.17 of the Act. The notifications as already stated above, grant exemption from payment of tax by a dealer who sells raw material to 100% EOU only. The contention of the appellant is not acceptable, we find that the order of the first appellate authority in confirming the assessment on the last purchase of cotton is correct and accordingly we uphold the same.

In the result, the appeal stands dismissed."

3. Learned counsel for the Assessee Mr.Ramanathan submitted that both the issues decided against the Assessee by the learned Tribunal are now covered by the later decisions of this Court in the case of "U.S.R.Tyres and Tubes Pvt.Ltd., -Vs- The Commercial

Tax Officer, Trichy" decided on 05.04.2011 in W.P.No.1397 of 2008, in which the learned Single Judge of this Court decided the issue with regard to G.O.Ms.No.528, CT & RE dated 21.11.1997 in the following manner.

"8. According to the respondent, since the petitioners do not effect the sale of raw rubber to 100% Export Oriented Unit, they are not entitled to exemption under G.O.Ms.No.528 CT&RE dated 21.11.1997. The purport of the Government Order is that the petitioners being an 100% Export Oriented Unit, they are entitled to exemption, if they purchase raw materials for manufacture.

9. It is not disputed even by the respondent that the purchase was made for the manufacture. It is seen that the petitioners involved in the purchase of raw rubber for manufacturing activity. The petitioners are entitled to exemption being an Export Oriented Unit. It is not necessary that the petitioners should involve in the sale of raw material to another Export Oriented Unit to claim the benefit of exemption. They are entitled to exemption at the last purchase, being the manufacturer. Hence, the impugned order is liable to be quashed. Accordingly, the impugned order is quashed.

10. In the result, the Writ Petition is allowed and the respondent is directed to pass appropriate order relating to exemption under G.O.Ms.No.528 CT&RE dated 21.11.1997. Consequently, connected miscellaneous petition is closed. No costs."

4. The other issue raised by the learned counsel for the petitioner has been decided by the Division Bench of this Court in "Tube Investments of India Ltd Vs. State of Tamil Nadu" reported in [2010] 36 VST 67 (Mad), in which the Division Bench of this Court held that even 'exports sale satisfy the definition of 'Sale' under Section 2(n) read with Explanation to Section 3(a), 3(3) and (4) of the Central Sales Tax Act, and therefore the conditions of the Notification should be deemed to have been satisfied. The relevant portion from the head-note of the said judgment is quoted below for ready reference.

"Held allowing the petitions, that when, the State lacked the legislative competence by virtue of the Constitutional Embargo to levy any tax on export sale, the indirect creation of any tax liability on such "export sales" on the inputs purchased could not at all be countenanced. Further, the export sale was fully covered by the definition of "sale" under Section 2(n) read along with Explanation 3(a). It

could never be disputed that the goods manufactured by availing of the concessional rate of tax in respect of those materials purchased in the manufacture of such goods as provided under Section 3(3) by itself would make it unambiguous that such goods were within the State. When the stipulations to be satisfied as prescribed under Explanation 3 to Section 2(n) were fulfilled, certainly the export sale was also deemed to be a "sale" as defined under Section 2(n) of the Act for the purpose of the Act. The expression "any other manner" in Section 3(4) having been used following the expression "for sale" and applying the maxim ejusdem generis, it could only mean that any despatch to a place outside the State either by way of branch transfer or by transfer to an agent by whatever manner called, either for sale or for any other purpose, and it could not be attributed to an export sale. Therefore, the export sale was nothing but a sale for which an exigency of tax liability would not occur as provided under Section 3(4) of the Act."

5. Therefore, there is no dispute before us that both the issues decided by the Tribunal in the year 2005 have stood decided by this Court in the aforesaid two judgments. Accordingly, ex-facie we are satisfied that the order passed by the learned Tribunal is unsustainable and the writ petition deserves to be allowed. Accordingly, we allow the writ petition and set aside the impugned assessment order and the order of the learned Tribunal. No costs.

-s/d-

Assistant Registrar (CS-IV)

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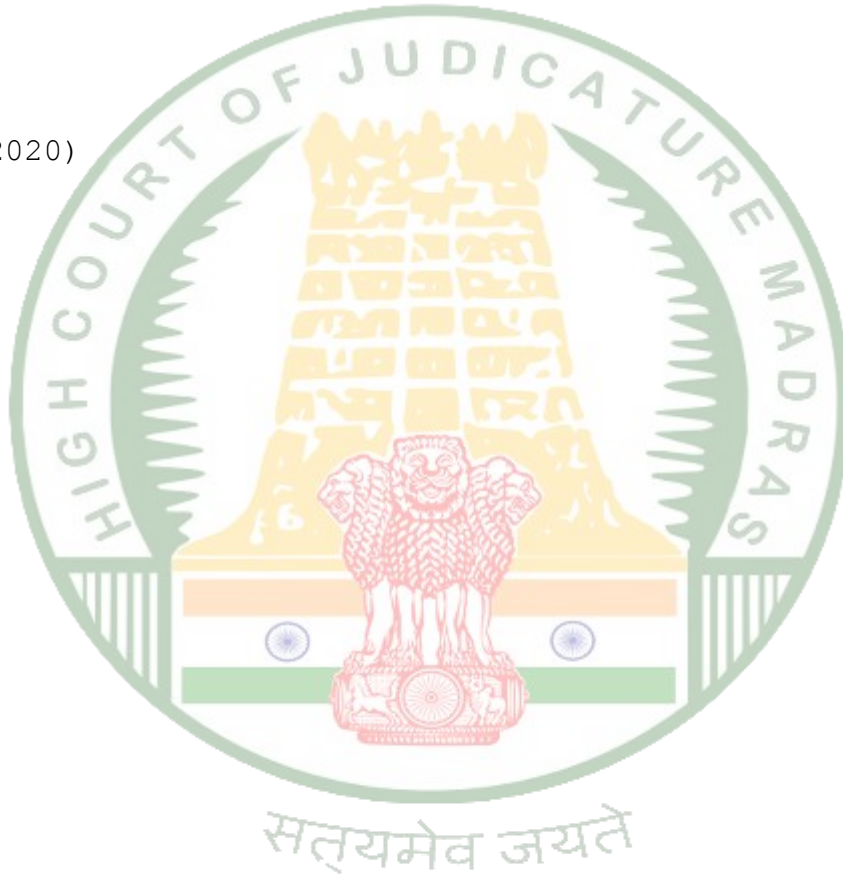
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The Section Officer
VR Section, High Court, Madras 104.

+1 CC to The Special Government Pleader sr 12597.
+1 CC to Mr.S.Ramanathan, Advocate sr 11154.

W.P.No.38949 of 2005

SSV(CO)
SP(11/03/2020)



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