IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.2.2021
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA
Writ Petition Nos.44202 & 44203 of 2002

The State of Tamil Nadu, rep.by
the Deputy Commissioner (CT),
Madurai Division, Madurai ...Petitioner in both WPs

Vs

1.Tvl.Parasakthi & Co., Theni ...R1 in WP.No. 44202 of 2002

2.Tvl.Eswar Finance Corporation,
Theni ...R1 in WP.No. 44203 of 2002

3.The Secretary, Tamil Nadu Sales
Tax Appellate Tribunal (AB), Madurai ...R2 in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the second respondent pertaining to the common order dated 02.12.1999 made respectively in M.T.A.Nos.818 and 819 of 1998 and quash the same as illegal.

For Petitioner in both WPs : Mr.Mohammed Shaffiq, SGP

For R1 in WP.No. 44202 of 2002 : Mr.R.Sivaraman

For R1 in WP.No. 44203 of 2002 : Mr.P.Rajkumar

R2 : Tribunal

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

These writ petitions have been filed by the State challenging the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Madurai.

2. We have heard Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the petitioner, Mr.R.Sivaraman and Mr.P.Rajkumar, learned counsel appearing for the respective first respondent in both the writ petitions.

3. The short question, which falls for consideration, is as to whether the the respective first respondent/dealers are entitled to the benefit of Section 5(3) of the Central Sales Tax Act, 1956 (for short, the Act).

4. Section 5 of the Act deals with sale or purchase of goods said to have taken place in the course of import or export. Sub-Section (3) of Section 5 of the Act states that not withstanding anything contained in Sub-Section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export.

5. The case of the State before us is that the respective dealers would not be entitled to the benefit of Section 5(3) of the Act because what were exported, were not those goods, which were purchased. The dealers purchased coffee seeds and the exporters exported instant coffee, soluble coffee, Indian spray dried coffee and Indian soluble coffee. The State would take a stand that the character of the goods had undergone a change, as, in the instant case, the goods exported were not the same as coffee seeds.

6. In order to demonstrate the difference between ground coffee and instant case, the learned Special Government Pleader has produced a literature. This is with a view to buttress his submission that both products are commercial commodities and in the instant case, coffee seeds underwent a process and that the same goods, which were purchased, were not exported.

7. The Tribunal considered the entire factual matrix, took note of the documents, which were filed, which established that the coffee seeds were purchased and what was exported was instant coffee. The Tribunal had to consider as to whether the goods purchased by the exporter were actually exported as such or as a different commodity. After taking note of all the features as well as documents, the Tribunal held that the dealers were entitled to exemption under Section 5(3) of the Act, as the coffee seeds supplied by the dealers were roasted, ground, extracted and spray dried, which did not alter the character of the goods supplied by the dealers.

8. The State seeks to place reliance on the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu rep.by the Deputy Commissioner, Madurai Division, Madurai Vs. M/s.Vijayalakshmi Leather Industries P. Ltd. [W.P. Nos.3987, 3997 and 3721 of 2003 dated 11.2.2020].

9. On perusal of the said decision of this Court, we find that the Hon'ble Division Bench, after noting the decision of the Constitution Bench of the Honble Supreme Court in the case of State of Karnataka Vs. M/s.Azad Coach Builders (P) Ltd. [reported in (2010) 36 VST 1], held that in the said case, there

was no link established between the sale or purchase of raw hides and skins by the assessee therein and the export of leather garments or dressed hides and skins. Furthermore, the Court found that there was no export order available on record nor the specifications of the purchase of raw hides and skins by the importer in foreign countries and thus, held that the decision of the Hon'ble Supreme Court in the case of M/s.Azad Coach Builders will not help the assessee therein.

10. The facts in the decision of the Hon'ble Division Bench of this Court in the case of M/s.Vijayalakshmi Leather Industries P. Ltd., are entirely different and the assessee was not able to establish the link as explained by the Hon'ble Supreme Court in the decision in the case of M/s.Azad Coach Builders, which is in the following terms :

> "We respectfully intend to underline that the exclusion of applicability of "same goods" theory by the Constitution Bench of the Hon'ble Supreme Court was propounded in view of the peculiar facts of the case before the Constitution Bench and the first ingredient to Section 5(3) of the Act being satisfied on facts that the local sale or purchase viz., sale of bus bodies was inextricably connected or linked to the actual sale occasioning the export of the said commodity viz., bus bodies by M/s.Tata Motors to the importers in Sri Lanka. Therefore, even though the 'chassis' and 'bus bodies' being not the same goods, the Hon'ble Supreme Court made a departure from the "same goods" theory and allowed the exemption in favour of the Assessee in view of the said inextricable link of sale immediately preceding the export by M/s.Tata Motors. We cannot agree with the contentions raised by the learned Counsel for the Assessee that the "same goods" theory has been completely done away with by the said judgment of the Hon'ble Supreme Court in the case of Azad Coach Builders (supra)."

11. As rightly pointed out by the learned Special Government Pleader, the 'same goods" theory cannot be used to widen the scope of Section 5(3) of the Act. In fact, this was noted by the Hon'ble Supreme Court in the decision in the case of M/s.Azad Coach Builders and it was observed that it all depends on the question as to whether the sale or purchase is inextricably connected with the export of goods and not a remote connection.

12. In the instant case, the transaction between the dealers and the exporter and the transaction between the

exporter and the foreign buyer are inextricably connected and this has been clearly brought out by the Tribunal after examining the documents, which were placed by the dealers before it. Therefore, in terms of the decision of the Hon'ble Supreme Court in the case of M/s.Azad Coch Builders, the 'same goods' theory would have no application to the case on hand.

13. That apart, the Tribunal already examined the 'same goods' theory and rightly took note of the decision of the Hon'ble Division Bench of this Court in the case of Ram Bhadur Takkur Takkur (P) Ltd. Vs. Coffee Board, Bangalore [reported in (1991) 80 STC 99] wherein the relevant portions read thus :

> "30. Again, on referring to Encyclopaedia Britannica, we find the following :
>
> 'Until coffee is roasted it has none of the flavour or taste generally associated with coffee. Roasting creates the brown colour and transforms the natural chemical constituents into others that give coffee its splendid aromatic qualities and pleasing taste.'
>
> 31. Thus, we hold that the very seeds purchased by the appellant for the purposes of fulfilling its obligations arising out of a contract with a buyer in Romania, were converted into powder and exported. As we have stated above, the very purpose of purchasing the seeds was for the purpose of export by the appellant, the appellant being a registered coffee exporter having been registered with the Coffee Board.
>
> 32. If the contention of the Board that the very seeds which were purchased ought to have been exported to claim exemption is accepted, then, certainly, the Parliament would not have failed to use the words goods "as such". However the words used are "those goods". In other words, so long as the identity of the goods is not lost, it would remain 'those goods'."

14. In the light of the above, we find that there is no error committed by the Tribunal warranting interference with the common impugned order.

15. In the result, the writ petitions fail and are accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai
+1 cc to Spl Government Pleader(Taxes) Sr.No. 6947
+1cc to Mr.P.Raj Kumar , Advocate SR.No. 6535

W.P.Nos.44202 & 44203 of 2002

A.SK(12.03.2021)