IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM

THE HON'BLE MR .JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 47809 to 47811 of 2006

India Cements Limited,
rep. by its General Manager (Legal),
Rajan Ramani
827, Anna Salai,
Chennai – 600 002. ..Petitioner

Vs.

1. The Assistant Commissioner(CT),
Central Assessment Circle – II,
Greams Road, Chennai – 600 006.

2. The Deputy Commissioner (CT)(Appeals),
Third Floor, Wavoo Complex,
191, NSC Bose Road,
Chennai – 600 001.

3. Tamil Nadu Sales Tax Appellate
Tribunal (Main Bench),
represented by its Secretary,
City Civil Court Buildings,
High Court Complex,
Chennai – 600 104. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the 3rd respondent herein in T.A. No. 76/2001, 458/2001 & 75/2001 respectively dated 21.12.2005 confirming the proceedings of the first respondent in T/072653/92-93 dated 28.11.1997, T/072653/95-96 dated 29.01.1999, T/072653/93-94 dated 24.04.1998 respectively and quash the order dated 21.12.2005 as illegal insofar as it related to a turnover of Rs.53,20,386/- taxed at 8% and Rs.19,77,250/- taxed at 12% and penalty of Rs.4,72,389/-; turnover of Rs.91,81,569/- taxed at 8% and turnover of Rs.67,03,240/- taxed at 8% and Rs.13,80,000/- taxed at 12% respectively.

For Petitioner in
all WPs :: Mr.K.A. Parthasarathy

For Respondents in
all WPs :: Mr.C. Harsharaj,
Govt. Advocate (T)

COMMON ORDER

S. VAIDYANATHAN,J.
AND
C. SARAVANAN,J.

By this common order, all these writ petitions filed by the petitioner are being disposed of.

2. Yesterday, a batch of writ petitions filed by the petitioner in W.P. Nos. 30725 to 30727 & 47420 to 47423 of 2006 were partly answered in favour of the Revenue and partly in favour of the petitioner. As far as imposition of purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST' Act) is concerned, the issue has been answered against the petitioner in own case in ***India Cements Ltd. V. State of Tamil Nadu reported in [2012] 51 VST 286 (Mad).*** As far as imposition of penalty under Section (5)(iii) of TNGST Act is concerned, the issue has been answered in favour of the petitioner by a Division Bench of this Court in the petitioner's own case in Tax Case

(Revision) No.1721 of 2008 and accordingly, the writ petition in W.P. No. 47420 of 2006 was partly allowed in favour of the petitioner.

3. These writ petitions which are listed today before us, same issue arise for consideration apart from the issue under Section 5(3) of Central Sales Tax Act, 1956 in resepct of sales made to National Building Construction Company. As far as the issue arising out of Section 5(3) of Central Sales Tax Act, 1956 is concerned, the issue is again covered by the decision of the Division Bench of this Court in petitioner's own case in the above cited Tax Case (Revision) No. 1721 of 2008 in favour of the petitioner. Relevant portion from the said order is extracted hereunder for reference:

> *"17. Applying the said principle of law to the facts herein, even though the execution of the works contract, is outside the country, neveretheless the contract that NBCC had on the execution of the works contract being a deemed sale, and going by the agreement that Government of India had with Government of Maldives, which had assigned the work to NBCC for execution and contract having been executed, we*

have no hesitation in accepting the plea of the assessee that it is entitled to claim exemption under Section 5(3) of the Central Sales Tax Act. We may point out herein that what is applicable to an interstate works contract as the deemed sale has to be come for its application to an execution of an overseas works contract.

18. In the light of the above, when the Revenue does not dispute the fact that based on the sub contract alone and subsequent thereto alone the assessee had sold cement to NBCC, who exported the same to Male for use in the execution of works contract, we allow the TaxCase (Revision) in respect of question Nos. 1 and 2. In the circumstances, we hold that the assessee is entitled to Section 5(3) exemption on the penultimate sale of cement leading to its export."

4. In the light of the above discussion, these writ petitions are disposed of as follows:

(i) Insofar as imposition of purchase tax under Section 7-A of TNGST Act is concenred, the writ petitions are dismissed.

(ii) Insofar as disallowance of exemption/non-liability claimed under Section 5(3) CST Act, 1956 is concerned, it is answered in favour of the petitioner.

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

nv

> (iii) Insofar as imposition of penalty under Section 12(5)(iii) of TNGST Act is concerned, it is answered in favour of the petitioner."

No costs.

(S.V.N.J.) (C.S.N.J.)

nv 22.09.2022

To

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W.P. Nos. 47809 to 47811 of 2006