IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On | 11.11.2022 |
| Pronounced On | 09.01.2023 |

CORAM

THE HON'BLE **MR.JUSTICE S.VAIDYANATHAN**
AND
THE HON'BLE **MR.JUSTICE C.SARAVANAN**

**W.P.No.15892 of 2006**
**and**
**W.M.P.Nos.15683 & 15684 of 2006**

M/s.E.K.Hajee Mohamed Meera Sahib & Sons,
No.9, Tannery Street, B.P.Agraharam,
Erode - 638 005. ... Petitioner

Vs

1.The Commercial Tax Officer,
Peria Agraharam Assessment Circle,
Erode.

2.The Appellate Assistant Commissioner (CT),
Erode.

3.The Secretary,
T.N.Sales Tax Appellate Tribunal (AB)
Coimbatore,
Dr.Balasundaram Road, CT Buildings,
Coimbatore.

4.The Union of India, represented
by its Secretary,

Ministry Finance, Parliament Street,
New Delhi.

5.The State of Tamilnadu,
rep. by its Secretary,
Commercial Taxes Department,
Fort St.George,
Chennai 600 009. ... Respondents

Writ Petition filed under Article 266 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in TNGST.No.3075003/2002-03 dated 29.10.2004 along with demand in Form B3 and consequential order of the second respondent in A.P.No.4/2005 (confirming the order of first respondent), quash the impugned proceedings dated 29.10.2004 and 08.03.2006 in so far it relates to the tax on the last purchase of the raw hides and skins pursuant to the export order and further direct the first respondent not to impose any tax on the last purchase of the raw skins pursuant to the export order till the disposal of the Civil Appeal No.3773/2000 pending on the files of the Supreme Court and the reference made to the Constitutional Bench of the Apex Court in C.A.Nos.5616 & 5617 of 2000 reported in 145 STC 176 in relation to Section 5(3) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.V.Sundareswaran

For R1 to R3 & R5 : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

**O R D E R**

**S.VAIDYANATHAN, J.**
and
**C.SARAVANAN, J.**

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to:-

i. call for the records of the first respondent in TNGST.No.3075003/2002-2003 dated 29.10.2004 along with demand in form B3,
ii. call for the records of the consequential order dated 08.03.2006 of the second respondent in AP.No.04 of 2005confirming the order of first respondent dated 29.10.2004,
iii. quash the impugned proceedings dated 29.10.2004 and 08.03.2006 in so far it relates to the tax on the last purchase of the raw hides and skins pursuant to the export order, and
iv. direct the first respondent not to impose any tax on the last purchase of the raw skins pursuant to the export order till the disposal of the Civil Appeal No.3773/2000 pending on the files of the Supreme Court and the reference made to the Constitutional Bench of the Apex Court in C.A.Nos.5616 & 5617

of 2000 reported in 145 STC 176 in relation to Section 5(3) of the Central Sales Tax Act, 1956.

2. The petitioner is aggrieved by the first mentioned impugned Assessment Order dated 29.10.2004 passed by the first respondent Commercial Tax Officer for the Assessment Year 2002-2003, wherein, the total and taxable turnover were determined as against the total and taxable turnover reported by the petitioner in the return filed by it. Details of total and taxable turnover are given below:-

| *Turnover* | *Reported by the petitioner* | *Determined by the first respondent* |
|---|---|---|
| Total | Rs.4,68,46,396/- | Rs.5,59,31,898/- |
| Taxable | Rs.60,93,882/- | Rs.5,54,07,663/- |

3. By the second mentioned order dated 08.03.2006 in AP.No.04 of 2005, second respondent has partly set aside and partly confirmed the first mentioned impugned order dated 29.10.2004 of the first respondent and has remanded the case back to the first respondent in so far as the imposition of penalty under Section 12(5) of the TNGST. Instead of filing a statutory appeal, the petitioner has filed this Writ Petition.

4. The petitioner purchased raw hides and skin without sales tax. Therefore, the petitioner was subjected to call upon to pay purchase tax under Section 7A of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "*TNGST Act*"). The raw hides and skin purchased without tax were converted as dress hides using materials purchased at concessional rate of tax under Section 3(3) of the TNGST Act and were purportedly exported.

5. Considering the fact that the dressed hides was exported and not sold as such using material procured at concessional rate of tax, the petitioner was asked to pay a proportionate tax under Section 3(4) of the TNGST Act.

6. The petitioner has not disputed the amount confirmed against the petitioner under Section 3(4) of the TNGST Act. Though, not relevant, Sections 3(3) and 3(4) of the TNGST Act as it stood then are reproduced below for a proper perspective of the case and the dynamic surrounding it:-

| *TAMIL NADU GENERAL SALES TAX ACT, 1959* | |
|---|---|
| ***Section 3(3)*** | ***Section 3(4)*** |
| Notwithstanding anything contained in Sub-Section(2), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing materials and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labeling in connection with such manufacture inside the Sate, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate of only three percent on the turnover relating to such sale.<br><br>**Provided** that the provisions of this sub-section shall not apply to –<br>(a) any sale of goods falling under items 1 and 2 in Part F and item 2 in part I of the said schedule; and<br>(b) any sale, unless the dealer selling such goods furnishes to the assessing authority in | Where any dealer, after availing the concessional rate of tax under sub-section (3), does not sell the goods so manufactured, but despatches them 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, except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay, in addition to the concessional rate of tax already paid under sub-section (3), tax at one per cent on the value of the goods so purchased. |

| | |
|---|---|
| the prescribed manner and within the prescribed period, a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.<br><br>**Provided** further that any dealer who, after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the difference of tax payable on the turnover relating to sale of such goods at the rate prescribed and three per cent:<br><br>**Provided also** that the dealer purchasing the goods maintains a separate stock account for each of the goods purchased by him showing such particulars as may be prescribed. | |

7. By the first mentioned impugned Assessment Order dated 29.10.2004, the total and taxable turnover, tax, surcharge and penalty were determined as follows:-

Total Turnover - Rs.5,59,31,898/-

Taxable Turnover - Rs.5,54,07,663/-

| | |
|---|---|
| Tax | - Rs.19,53,881/- |
| Surcharge | - Rs. 9,635/- |
| | - Rs.19,63,516/- |

| | |
|---|---|
| Tax due | - Rs.19,63,516/- |
| Tax paid by the petitioner | - Rs. 2,56,400/- |
| Difference | - Rs.17,07,116/- or 87% |

Penalty @ 150% - Rs.25,60,674/-

8. Pursuant to the first mentioned impugned Assessment Order dated 29.10.2004, the petitioner was also issued with Form B-3 under Rules 16 & 18 of the Tamil Nadu General Sales Tax Rules, 1959 [hereinafter referred to as "*TNGST Rules*"].

9. As mentioned above, the second respondent *vide* second mentioned impugned order dated 08.03.2006, partly allowed and partly set aside the first mentioned impugned order and remanded the case back to the first respondent Assessing Officer in so far as the imposition of penalty under Section 12(5) of the TNGST Act, 1959.

10. In so far as, tax on purchase tax under Section 7A of the TNGST Act, the second respondent as the Appellate Authority has declined to interfere with the first mentioned impugned order of the first respondent. In the present Writ Petition, the petitioner seeks to assail the order impugned orders in so far as it seeks to uphold the purchase tax under Section 7A of the TNGST Act. The observation of the second respondent in the second mentioned impugned order in respect of purchase tax at 4% against the petitioner, reads as under: -

> "*Following the principles laid down in the case law referred to above, I find that the two commodities i.e., raw hides and skins and dressed hides and skins are different from each other and will not constitute a single commodity for the purpose of the ban in section 15 and hence, the dealer who purchased raw hides and skins after paying purchase tax will be liable to sales tax when he sells them after dressing. Recently in a similar issue the apex court in the case of ShafeeqShameel& Co., vs. Assistant Commissioner (CT) and others reported in 129 STC 1 has held as follows:*
>
> > "*that Section 5(3) of the Central Sales Tax 1956, was not applicable where the goods which were sold or purchased had undergone any transformation. Since the dressed hides and skins exported by the appellants were goods different from raw hides and skins purchased by it, the appellant was not entitled*

*to the benefit of exemption of the penultimate sale or purchase under Section 5(3)".*

*Following the principles laid down in the case laws referred to above to the facts of the case on hand, I see no valid reason to interfere with the assessment made on the turnover of Rs.4,02,28,278/- at 4% and accordingly, it is ordered to be sustained.*

11. Thus, only with reference to imposition of penalty under Section 12(3)(b) of the TNGST Act, the Assessment Order dated 29.10.2004 was set aside and the case was remitted back by the second respondent to the first respondent Assessing Officer applying the *ratio* of the decision of this Court in **Appollo Saline Pharmaceuticals** Vs. **Commercial Tax Officer (FAC) and others**, (2002) 125 STC 505 Mad.

12. In support of the present Writ Petition, the learned counsel for the petitioner submitted that when the second mentioned impugned order was passed by the second respondent Appellate Authority in A.P.No.4 of 2005 filed by the petitioner against the first mentioned impugned Assessment Order dated 29.10.2004, the decision of the Hon'ble Supreme Court in **State of Karnataka** Vs. **Azad Coach Builders**

**Private Limited**, (2010) 9 SCC 524, was not available. He therefore submits that the case can be referred back to the first respondent to pass a fresh order in the light of the decision of the Hon'ble Supreme Court in **Azad Coach Builders Private Limited** case referred to *supra*.

13. Per contra, the learned Government Advocate for the first to third and fifth respondents would submit that the Writ Petition is devoid of merits and is liable to be dismissed.

14. It is submitted that it was open for the petitioner to file a statutory appeal before the Appellate Tribunal against the second mentioned impugned order of the second respondent Appellate Assistant Commissioner dated 08.03.2006. Having failed to file a statutory appeal before the Appellate Tribunal, the present Writ Petition filed in the year 2006, challenging both the orders of the first respondent Assessing Officer and the second respondent Appellate Assistant Commissioner is liable to be dismissed.

15. In support of the stand of the Revenue, the learned Government Advocate for the first to third and the fifth respondents has placed reliance on the following decisions:-

i. **Shafeeq Shammel & Co.** Vs. **Assistant Commissioner, Commercial Taxes and Others**, (2003) 9 SCC 276;
ii. **All India Skin & Hide Tanners & Merchants Association Vs. State of Tamil Nadu and another**, 2016 SCC OnLine Mad 12070.

16. We have considered the arguments advanced by the learned counsel for the petitioner and the Government Advocate for the first to third and the fifth respondents.

17. We have perused the decision of the Hon'ble Supreme Court in **Azad Coach Builders Private Limited** case referred to *supra* and the previous decision of the Hon'ble Supreme Court in **K.A.K.Anwar and Co.** Vs. **State of Tamil Nadu**, 1998(1) SCC 437.

18. We are concerned with imposition of purchase tax on the

petitioner under Section 7-A of the TNGST, Act, 1959. Section 7-A of the TNGST, Act, 1959 as it stood during the period in dispute reads as under:-

> **Section 7-A.-Levy of purchase Tax.** –
> (1) Subject to the provisions of sub-section (1) of section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under sections 3 or 4, as the case may be, not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First, the Fifth, the Eleventh or the Second Schedule and either, –
>
> (a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or
> (b) disposes of such goods in any manner other than by way of sale in the State, or
> (c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,
>
> shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in sections 3 or 4, as the may be.

19. The point for consideration in the present Writ Petition is

"whether the exemption under Section 5(3) of the Centrals Sales Tax Act, 1956 r/w. Article 286 of the Constitution of India would inure to an exporter like the petitioner who purchased goods from a dealer without payment of sales tax, part of which was utilized for export?" In other words, "whether the petitioner can claim exemption from payment of purchase tax under Section 7-A of the TNGST Act, 1959?"

20. During the period in dispute, under Article 286 of the Constitution of India as it stood then, no law of a State can impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place either–

a. outside the State; or
b. in the course:-
   i. of the import of the goods into, or
   ii. of the export of the goods out of, the territory of India.

21. Article 286(1)(b) of the Constitution of India, as it stood then stated that no law of a State shall impose, or authorise the imposition of the sales tax on the sale or purchase of goods when such sale or purchase takes place in the course of export of goods. Article 286(1) of the

Constitution of India thus prohibited imposition of sales tax on import and export by the State Government.

22. The underlying principle for exempting a transaction of sale or purchase from sale tax when such sale takes place in the course of the export of goods out of the territory of India is to not to burden the export goods with tax to make them uncompetitive in the foreign market. Article 286(2) of the Constitution of India authorizes the Parliament to formulate the principles for determining when sale is in the course of import/export.

23. Article 286 of the Constitution of India was amended to pave the implementation of the Goods and Service Tax Act *vide* Constitution (One Hundred and First Amendment) Act, 2016. In this case, we are not concerned with the position after the amendment to the Constitution *vide* Constitution (One Hundred and First Amendment) Act, 2016.

24. As per Section 5(1) of the Central Sales Tax Act, 1956, a sale

or purchase of goods is deemed to take place in the course of the export of the goods out of the territory of India, if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. Such transaction is exempt from payment of tax in terms of Article 286 of the Constitution of India.

25. As per Section 5(2) of the Central Sales Tax Act, 1956, a sale or purchase of good shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

26. Section 5(1) and Section 5(2) of the Central Sales Tax Act, 1956 read as under:-

| ***Section 5(1) of the Central Sales Tax Act, 1956*** | ***Section 5(2) of the Central Sales Tax Act, 1956*** |
|---|---|
| | |

| | |
|---|---|
| **5. When is a sale or purchase of goods said to take place in the course of import or export:-**<br><br>(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. | **5. When is a sale or purchase of goods said to take place in the course of import or export:-**<br><br>(2) A sale or purchase of good shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. |

27. Section 5(3) of the Act contains a *non-obstante clause*. As per Section 5(3) of the Act, notwithstanding anything contained in Sub-Section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of goods out of the territory of India is 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.

28. Section 5(3) of the Central Sales Tax Act, 1956 is an exception to Section 5(1) of the Act. Under Section 5(4) of the Central Sales Tax

Act, 1956, a dealer effecting a local sale or an inter-State sale can claim exemption from payment of sales tax on such last sale to an exporter preceding such exporter, if the local dealer selling the goods furnishes to the sales tax authority in the prescribed manner a declaration duly filed and signed by an exporter to whom the goods were sold in a prescribed Form obtained from the prescribed authority.

29. Section 5(3) of the Centrals Sales Tax Act, 1956 applies to both sale and purchase. Since expression "**sale and purchase**" along with the expression "**of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India**" has been used in Section 5(3) of Central Sales Tax Act, 1956, both the seller who is otherwise liable to tax under Section 3 of the TNGST Act or liable to tax for effecting inter-state sale of goods for export is exempted from payment of tax under TNGST Act and Centrals Sales Tax Act, 1956 and the purchaser who is otherwise liable to tax is also exempted from payment of tax if such purchase is made for export.

30. Under Section 5(3) of the Central Sales Tax Act, 1956, the last sale or purchase preceding the export out of the territory of India to an

exporter is also deemed to be in the course of such export, provided such last mentioned sale or purchase was made in furtherance of a pre-existing commitment under an export agreement or export order on the exporter.

31. The seller or the purchaser, as the case may be, has to establish an inextricable link between the export order, sale/purchase i.e local sale/purchase and/or inter-state sale/purchase with the eventual export.

32. The seller or purchaser, as the case may be, is required to establish that a pre-existing export existed and the sale or purchase was made for the export of the goods. They have to establish an inextricable link between local/inter-state sale or purchase with a pre-existing export order and eventual link. For the sake of clarity, Sections 5(3) and 5(4) of the Central Sales Tax Act, 1956 are reproduced below:-

| ***Section 5(3) of the Act*** | ***Section 5(4) of the Act, 1956*** |
|---|---|
| Notwithstanding 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 | The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filed |

| | |
|---|---|
| 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. | and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority. |

33. To facilitate a selling dealer to avail exemption, the exporter has to obtain Form-H prescribed under Rule 12(10) of the Central Sales Tax Act (Registration and Turnover) Rules, 1957 and furnish it to the dealer who effected such penultimate sale to the exporter. Only such penultimate sale prior to the export is exempt from sales tax under the respective enactment when read in conjunction with Article 286 of the Constitution of India.

34. It is on the strength of Form H given by an exporter, the local dealer effecting a local sale or an inter-State sale can treat the sale as an exempted sale under Section 5(4) of the Central Sales Tax Act, 1956. This is the statutory mechanism prescribed for exempting a dealer effecting penultimate sale of goods to an exporter prior to export. As far as payment of purchase tax under Section 7A is concerned, there is no mechanism provided under the Act.

35. If the *ratio* of the Hon'ble Supreme Court in **Azad Coach Builders** case referred to *supra* is to be applied to the facts of the present case, the petitioner would be entitled to claim exemption provided the petitioner is able to establish an inextricable link between the purchase of raw hides and the export of goods viz., raw hides with the export order. There are no records to establish the same in the present case. Further, the petitioner also had local sales of dressed hides and skin.

36. The decision of the Hon'ble Supreme Court in **Azad Coach Builders (P) Ltd.** which was relied upon by the petitioner has to be applied with caution. The Hon'ble Supreme Court in **Azad Coach Builders (P) Ltd.** has neither jettisoned nor diluted the aforesaid test which was followed by it earlier. The Court held merely that "same goods theory" was not applicable in the facts of the case therein. The said theory is still relevant. In fact, in Paragraph 19, the Court held as under:-

> ***"To resist imposition of sales tax by a State, the assessee has to establish the identity of the goods sold to be exported out of the territory of India. In***

> ***order to fulfil an export obligation, if an exporter purchases goods and as a result of some processing the identity and character of the goods change, then it will not be a case of export of the same goods.".***

37. Thus, "same goods theory" is still relevant and cannot be said to be no longer applicable. The decision of the Full Bench of the Hon'ble Supreme Court in **Azad Coach Builders (P) Ltd.** case referred to *supra*, dealt with a situation where exporter Tata Engineering Locomotive Co. Ltd., the manufacturer of chassis had an export order for supply of bus to Lanka Ashok Leyland Ltd., Colombo. Therefore, Tata Engineering Locomotive Co. Ltd, supplied chassis to assessee Azad Coach Builders (P) Ltd. for bus building for export to Lanka Ashok Leyland Ltd., Colombo.

38. The assessee, M/s.Azad Coach Builders (P) Ltd., was requested to build bus bodies by the exporter, Tata Engineering Locomotive Co. Ltd. in accordance with the specifications provided by the foreign buyer, Lanka Ashok Leyland Ltd., Colombo.

39. The Court took cognisance of the specimen copy of the purchase order dated 11.07.1988 placed on the assessee M/s.Azad Coach Builders (P) Ltd., by the Tata Engineering Locomotive Co. Ltd. which revealed that the assessee M/s.Azad Coach Builders (P) Ltd., was asked to fabricate bus bodies on the chassis supplied by the exporter Tata Engineering Locomotive Co. Ltd in accordance with the specifications given by the foreign buyer.

40. In one of the communications received from the said foreign buyer, it was stipulated that the steel and aluminium panels of the bus bodies be built by the assessee M/s.Azad Coach Builders (P) Ltd., since the customers in Sri Lanka preferred them.

41. The assessee M/s.Azad Coach Builders (P) Ltd., thus manufactured the bus bodies, in accordance with the specifications stipulated by the foreign buyer and mounted the same on the chassis made available by the exporter Tata Engineering Locomotive Co. Ltd making it as a complete bus ready for export.

42. The assessee M/s.Azad Coach Builders (P) Ltd. thus claimed exemption on sale of bus bodies as penultimate sales in the course of export made to their customers like Telco, Bombay and others which was rejected by the assessing authority, treating the transactions as inter-State sales, on the ground that the "bus bodies" and "buses" are two different commodities and the bus bodies "as such" were not exported, but complete buses.

43. The Assessing Authority there held that the transactions could not amount to penultimate sale to be eligible for exemption under Sub-Section (3) of Section 5 of the CST Act. It was in the above background the Court allowed the case of assessee M/s.Azad Coach Builders (P) Ltd.

44. The Hon'ble Supreme Court in **Azad Coach Builders (P) Ltd.** referred to *supra* dealing with Article 286 of the Constitution of India and Section 5 of theCentral Sales Tax Act, 1956, in Paragraph 31 held as under:-

> ***"In the facts and circumstances of this case, we are satisfied that the assessee has succeeded in***

***satisfying those tests and hence, eligible for exemption under sub-section (3) of Section 5 of the CST Act".***

45. In Paragraph 26, the Hon'ble Supreme Court further observed as under:-

**26.** When we analyse all these decisions in the light of the Statement of Objects and Reasons of the amending Act 103 of 1976 and on the interpretation placed on Section 5(3) of the CST Act, the following principles emerge:-

- To constitute a sale in the course of export there must be an intention on the part of both the buyer and the seller to export.
- There must be obligation to export, and there must be an actual export.
- The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export.
- To occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it, without which a transaction sale cannot be called a sale in the course of export of goods out of the territory of India.

46. Ultimately, the test laid down by the Hon'ble Supreme Court in Paragraph 27 of the above case reads as under:-

> 27. ...... Therefore, the test to be applied is, whether there is an inseverable link between the local sale or purchase and export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim under Section 5(3) for exemption from State sales tax is justified, in which case, **the same goods theory has no application**.

47. Though, on a cursory reading of the decision of the Hon'ble Supreme Court, it may appear that there was an apparent contradiction between the law declared by it in Paragraph 19 and its conclusion in Paragraph 31. However, it must be borne in mind that what was sold by the assessee M/s.Azad Coach Builders (P) Limited to the exporter Tata Engineering Locomotive Co. Limited was bus body manufactured by it which was mounted on the chassis supplied by the exporter Tata Engineering Locomotive Co. Limited for export. Thus, sale of bus body was prior to the export and was a penultimate sale. It is in this background the Court held that "same goods theory" was not applicable to the facts of the case.

48. The facts of the present case are slightly different. The petitioner had purchased raw hides and skin without payment of tax.

Hence, the purchase tax under Section 7A of the TNGST Act was imposed on the petitioner.

49. The local dealer from whom the petitioner purchased raw hides would have been eligible for exemption from payment of tax if the petitioner exported them "as such" provided the petitioner had a prior export order for such raw hides for export and the petitioner procured Form H and gave it to the local dealer.

50. Admittedly, there was a change in the character of the goods purchased and goods exported by the petitioner. Therefore, the question of remitting the case back to the Assessing Officer based on the decision of the Hon'ble Supreme Court in **Azad Coach Builders (P) Ltd.** referred to *supra* on a selective reading of Paragraph 31 cannot be countenanced.

51. In the peculiar facts of the case, the Hon'ble Supreme Court held that "same goods theory" had no application to the facts of the case therein as the penultimate sale made was that of a bus body mounted on the chassis manufactured by the exporter namely, Tata Engineering

Locomotive Co. Ltd.

52. Therefore, the argument that the "same goods theory" was diluted by the Hon'ble Supreme Court and therefore it cannot be applied to the facts of the present case cannot be countenanced. The sequence of the transactions in the present case and the case in **Azad Coach Builders (P) Ltd.** referred to *supra* are totally different.

53. In the present case, the petitioner purchased the raw hides and converted it into dress hides and skins. Thus, there was a change in the character of the goods in the hands of the petitioner before the goods were exported by the petitioner. What was purchased by the petitioner was different and what was exported by the petitioner was different.

54. The petitioner is therefore not entitled to exemption under Sections 5(3) and 5(4) of the Central Sales Tax Act, 1956 in the light of the observations of the Hon'ble Supreme Court in Paragraph No.19 in **Azad Coach Builders (P) Ltd.** referred to *supra*, content of which has been extracted above in Paragraph 36 of this order.

55. Therefore, we do not find any merits in the present case. This Writ Petition deserves to be dismissed and is accordingly dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

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

09.01.2023

Internet : Yes/No
Index : Yes/No
Jen

To
1.The Commercial Tax Officer,
Peria Agraharam Assessment Circle,
Erode.

2.The Appellate Assistant Commissioner (CT),
Erode.

3.The Secretary,
T.N.Sales Tax Appellate Tribunal (AB) Coimbatore,
Dr.Balasundaram Road, CT Buildings,
Coimbatore.

4.The Secretary,
Ministry Finance, Parliament Street,
The Union of India,
New Delhi.

5.The Secretary,
Commercial Taxes Department,
The State of Tamilnadu,
Fort St.George,
Chennai 600 009.

**S.VAIDYANATHAN, J.**
and
**C.SARAVANAN, J.**

Jen

Pre-Delivery Order
in
W.P.No.15892 of 2006 and
W.M.P.Nos.15683 & 15684 of 2006

09.01.2023