(2013) 08 MAD CK 0092

In the Madras High Court

Case No : Tax Case (Revision) No. 233 of 2011

M/s. Raj Granites APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b)

Citation : (2013) 08 MAD CK 0092

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Senniappan, for the Appellant; Adithya Reddy, Government Advocate (Taxes), for the Respondent

Judgement

Chitra Venkataraman, J.—The assessee is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment

year 1993-94 raising the following questions of law:-

1. Whether the Tribunal was justified in declaring the rough granite blocks and another for polished granites slabs are two different commodities

notwithstanding the principles laid down by the Honourable Supreme Court in the judgment reported in (2000) 6 SCC 141 (Rajasthan State

Electricity Board Vs. Associated Stone Industries)?

2. Whether the Tribunal was justified in confirming the penalty u/s 12(3)(b) of the TNGST Act contrary to the principles laid down by the

judgment reported in 125 STC 505? and

3. Whether the Tribunal was justified in confirming the penalty u/s 12(3)(b) of the TNGST Act contrary to the principles laid down by the

judgment reported in 18 VST 546?

We see from the order of the Tamil Nadu Sales Tax Appellate Tribunal that it rejected the assessee''s case holding that the assessee was not

entitled to claim exemption u/s 5(3) of the Central Sales Tax Act, 1958 (hereinafter called as the ""CST Act"") on the premise that rough granite

blocks and polished granite slabs are two different commodities.

2. On the question as to whether the manufacturer would be entitled to claim exemption u/s 5(3) of the CST Act on the sales of bus bodies for the

purpose of export came up for consideration before the Apex Court in the decision in the case of State of Karnataka Vs. Azad Coach Builders

Pvt. Ltd. and Another, wherein, the Supreme Court considered the phrase ''sale in the course of export'' and held that the test that would be

applied is, whether there is an inseverable link between the local sale or purchase for 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 u/s 5(3) is justified for the purpose of granting exemption. The Apex

Court further pointed out that if there is an integral connection between the sale to the local purchaser and the further movement to a foreign buyer,

on such movement of goods, the assessee would be exempted u/s 5(3) of the CST Act. Thus, on the sales of bus bodies, the assessee was held as

entitled to exemption as the penultimate sales in the course of export made to their customers, that the ''bus bodies'' and ''buses'' do not constitute

two different commodities. The Supreme Court held that the assessee would be entitled to claim exemption and no distinction could be made as

bus body as one item and the complete buses as another commodity.

3. Applying the analogy, we have no hesitation in applying the decision of the Apex Court in the case of State of Karnataka Vs. Azad Coach

Builders Pvt. Ltd. and Another, to the facts on hand on the exemption u/s 5(3) of the CST Act.

4. Learned counsel appearing for the Revenue submitted that there are no materials on the prior agreement that the exporter had to export the

polished granite to accept the case of the assessee to have the benefit of exemption u/s 5(3) of the CST Act.

5. When the said question was not raised by the Revenue before the Sales Tax Appellate Tribunal, we do not have any hesitation to reject such

plea of the Revenue in the present Tax Case Revision, preferred by the assessee.

In the light of the reasoning given by the Apex Court in the case

of State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. and Another, , we have no hesitation in setting aside the order of the Sales Tax

Appellate Tribunal. Accordingly, the Tax Case (Revision) stands allowed. The order of the Tamil Nadu Sales Tax Appellate Tribunal is set aside.

No costs.