(2014) 08 MAD CK 0042

In the Madras High Court

Case No : T.C. (R) Nos. 30 and 31 of 2014

State of Tamil Nadu APPELLANT

Vs

Essar Inc. and Others RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(3) — Constitution of India, 1950 - Article 286 — Tamil Nadu General Sales Tax Act, 1959 - Section 2(n), 3, 3(3), 3(4)

Citation : (2015) 79 VST 588

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J.

Bench : Division Bench

Advocate : Kanmani Annamalai, Additional Government Pleader, for the Appellant

Judgement

R. Sudhakar, J.?The above tax revisions are preferred by the Department aggrieved against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in T.A. Nos. 4 of 2003 and 99 of 2006.

T.C. (R) No. 30 of 2014:

The respondent-assessee in this case is a dealer in rubber automobile spares and the assessment order relatable to the present case is for the period 1996-97. The assessing officer noticed that the assessee had purchased raw materials at concessional rate of tax against form XVII declaration and used the same for manufacture of goods for the purpose of export out of the country. Since the manufactured goods had not been sold either locally or outside the State as a result of direct inter-State sale, the assessing authority levied tax on the purchase turnover of goods under section 3(4) of the Tamil Nadu General Sales Tax Act. Against the said assessment, the assessee preferred an appeal to the Appellate Assistant Commissioner, who dismissed the appeal against which the assessee preferred further appeal to the Tribunal. The Tribunal, following the judgment of this court in T.C. No. 39 of 2009 dated October 8, 2010 (Tube Investments of India Ltd. v. State of Tamil Nadu [2010] 36 VST 67 (Mad)), allowed the appeal and held as follows:

"13. Hence, we have no hesitation to hold, by respectfully following the ratio held by the Division Bench of the honourable Madras High Court of Madras in Tax Case No. 39 of 2009 and in a batch of cases dated October 8, 2010, that export is also a sale as contemplated in the first part of section 3(4) of the TNGST Act, 1959 and we answer this point in favour of the appellant."

T.C. (R) No. 31 of 2014:

2. The respondent-assessee is dealer in dairy and telephone books. The assessee had purchased raw materials availing of concessional rate of tax under section 3(3) of the Tamil Nadu General Sales Tax Act by issue of form XVII declaration and used them in the manufacture of goods and effected export sales. However, the assessing authority rejected the claim of the assessee that the purchase turnover under section 3(3) corresponding to export turnover could not be assessed to tax under section 3(4) of the Act and accordingly levied tax on the turnover. Against the said assessment, the assessee preferred an appeal to the Appellate Deputy Commissioner, who dismissed the appeal against which the assessee preferred further appeal to the Tribunal. The Tribunal, following the judgment of this court in Tube Investments of India Ltd. v. State of Tamil Nadu [2010] 36 VST 67 (Mad), allowed the appeal and held as follows:

"(1) Liability under section 3(4) of the TNGST Act:

The appellant has purchased raw materials against form XVII declarations, utilised in manufacture and exported the finished goods. Section 3(3) of the TNGST Act entitles a dealer to purchase raw materials at concessional rate against form XVII for manufacturing and sale. But if the finished goods is disposed of other than by way of sale, the concessional rate is not available consequently the differential rate of tax is attracted under section 3(4) of the TNGST Act, 1959. In this case, the appellant has exported goods manufactured out of raw materials purchased against form XVII declarations. The export is not considered as a sale both by the assessing officer and the Appellate Assistant Commissioner. But as rightly argued by the Authorised Representative, the honourable High Court of Madras in the case of Tube Investments of India Ltd. (Formerly known as TI Diamond Chain Ltd.) Vs. The State of Tamil Nadu--> has held that export is also a sale. Therefore, the goods manufactured and exported cannot be construed as disposed of other than by way of sale. As a result, the order of the Appellate Assistant Commissioner is not acceptable and it needs interference by this Tribunal. Accordingly it is set aside and deleted. Tribunal appeal to this extent is allowed."

3. The Department, aggrieved against the abovesaid orders of the Tribunal, passed in the respective appeal, is before this court by filing the present appeals.

4. In both the appeals, the following substantial questions of law have been framed for consideration:

"(i) Whether the order of the Appellate Tribunal is correct in interpreting the expression does not sell the goods so manufactured'' occurring in sub-section (4) of section 3 of the Tamil Nadu General Sales Tax Act, 1959 as including not only intra-State but also export sale?

(ii) Whether the Appellate Tribunal is correct in invoking the principle of situs as envisaged in Explanation 3(a) to section 2(n) of the Tamil Nadu General Sales Tax Act, 1959 for the purpose of interpretation of the expression ''does not sell the goods so manufactured'' as contained in sub-section (4) of section 3 of the Act so as to bring it within the ambit of the said Explanation?

(iii) Whether the Appellate Tribunal is legally correct in distinguishing the judgment of the honourable Supreme Court in the case of State of Karnataka v. B.M. Ashraf & Co. reported in [1997] 107 STC 571 (SC) where it was held that a sale deemed to be in the course of export under section 5(3) of the Central Sales Tax Act, 1956, cannot be regarded as an intra-State sale?

(iv) Whether the Appellate Tribunal is correct in construing that the levy of tax attracted under section 3(4) of the Act in the event of export sale of the manufactured goods as being a direct levy on the export sale itself and thus contravening article 286 of the Constitution?

(v) Whether the Appellate Tribunal is correct in placing a construction on expression ''in any other manner'' occurring under sub-section (4) of section 3 of the Tamil Nadu General Sales Tax Act, 1959, would not include export sale within its ambit?

(vi) Whether the Appellate Tribunal has failed to appreciate that sections 3(3) and 3(4) of the Tamil Nadu General Sales Tax Act, 1959 are not designed as charging provisions as evident from the non-obstante clause occurring at the beginning of section 3(3) of the said Act?

(vii) Whether the Appellate Tribunal has totally failed to consider that the Tamil Nadu General Sales Tax Act, 1959, was enacted to levy tax on sales or purchases within the State of Tamil Nadu alone as evident from the prefatory Explanation to the said Act?"

5. Though very many questions of law have been raised, as above, for consideration, in both the appeals, the main ground raised in the appeals is only in relation to the liability to tax in terms of sub-section (4) of section 3 of the Tamil Nadu General Sales Tax Act.

6. However, at the time of admission of the matters, learned Additional Government Pleader (Taxes) fairly concedes that the issue for consideration as to whether the export sale in question would come within the purview of section 3(4) of the Tamil Nadu General Sales Tax Act has already been considered by this court in a batch of cases in Tube Investments of India Ltd. (Formerly known as TI Diamond Chain Ltd.) Vs. The State of Tamil Nadu--> and submits that the cases on hand are squarely covered by the decision in Tube Investments'' case [2010]

36 VST 67 (Mad).

7. In view of the said statement made by the learned Additional Government Pleader (Taxes) that the ratio laid down in Tube Investments'' case [2010] 36 VST 67 (Mad), is equally applicable to the cases on hand, following the said ratio, these tax case revisions are also liable to be dismissed. Accordingly, no question of law, much less substantial question of law arises for consideration in these revisions and, these revisions are, therefore, dismissed.

