

(2011) 07 MAD CK 0194

In the Madras High Court

Case No : T.C. (R) No"s. 717 of 2006, 1604, 1690 and 1866 of 2008

The State of Tamil Nadu

APPELLANT

Vs

Garware Wall Ropes
Garware Wall Ropes Vs The State
of Tamil Nadu

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37
Constitution of India, 1950 — Article 366
Customs Act, 1962 — Section 75
Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 2, 3, 7
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2), 2
Tamil Nadu General Sales Tax Rules, 1959 — Rule 6

Citation : (2011) 07 MAD CK 0194

Hon'ble Judges : M. Jaichandren, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader, for the Appellant; N. Prasad, for Assessee, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Assessee is on revision before this Court as against the order of the Tribunal in TC(R). Nos. 1604, 1690 and 1866 of 2008 and the Revenue is on revision in TC.(R). No. 717 of 2006. All these revisions arise for consideration out of the common order of the Sales Tax Appellate Tribunal dated 31.3.1997. The assessments in question relate to the assessment years 1987-88 to 1990-91. The Revenue's appeal relates to cancellation of levy of penalty.

2. The following substantial question of law arises for consideration in TC(R). No. 717 of 2006:

Whether, on the facts and in the circumstances of the case, the Tribunal is correct in deleting the entire penalty levied u/s 16(2) of the Tamil Nadu General Sales Tax Act?.

3. The following substantial question of law arises for consideration in TC(R). Nos. 1604, 1690 and 1866 of 2008:

Whether the Sales Tax Appellate Tribunal committed an error of law in including the drawback received by the Petitioners under Rule 3 of the Customs and Central Excise Duties Drawback Rules, 1971 from the Central Government as part of the turnover of the Petitioners u/s 2(r) of the Tamil Nadu General Sales Tax Act, 1959, having come to the factual conclusion that the Petitioners did not collect any amount representing duty from the buyers and when the drawback itself was received only as incentive from the Central Government?

4. The Assessee herein is a dealer in nylon ropes. The Enforcement Wing of the Commercial Taxes Department conducted an inspection in the place of business of the Assessee's firm on 30.8.1990. This led to the recovery of certain records. The seized records revealed that the Assessee was manufacturing ropes and twines at their factory at Pune and stock transferred the goods to various branches in India. The Assessee sold their products to the coastal ships as well as ships calling at Madras Harbour. Admittedly, the Assessee sold different types of ropes to coastal vessels and to the foreign going vessels. It is seen from the facts herein that the Assessee imported the raw materials, namely, the plastic granules and paid customs duty thereon. These raw materials were utilised in the manufacture of wire ropes and twines at the Pune Factory. Admittedly, the Assessee had also paid the necessary Central Excise Duty applicable thereon, on the intermediary products manufactured. It is stated that ropes falling under Sub Heading 56.07 is exempt from payment of excise duty, by reason of the notification in Notification No. 61/87 dated 01.03.1987. In the scheme of duty drawback framed as per Section 75 of the Customs Act, 1962 and in accordance with the Customs & Central Excise Duties Drawback Rules, 1971, in respect of ropes sold to the foreign going vessels treated as "export" within the meaning of the Duty Drawback Rules, the Assessee made the appropriate claim for duty drawback. Going by the definition of "export" as found in Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 1971, as the Assessee satisfied the conditions of the Section and the Rules on drawback, the Assessee got the necessary duty drawback from the Central Government. The Assessing Officer viewed that the duty drawback received by the Petitioner/Assessee formed part of the taxable turnover of the Petitioner and hence, the drawback receipts were liable to be included in the assessment relating to the above-said assessment years. The Assessing Officer pointed out that as the drawback is relatable to the sales to the foreign going ships, they are liable to be assessed as part of the taxable turnover under the provisions of the Tamil Nadu General Sales Tax Act. Rejecting the contention of the Assessee that the duty drawback received from the Central Government had nothing to do with the sale and hence, could not be included in the turnover, the assessment was finalised u/s 16 of the Tamil Nadu General Sales Tax Act. The Assessee was also charged with penalty at 150% of the tax due.

5. Aggrieved by the same, the Assessee went on appeal before the Appellate Assistant Commissioner, who, by a common order, agreed with the view of the Assessing Officer. The Appellate Authority pointed out that the definition of "sale price" as available under the Central Sales Tax Act would clearly show that the sale price would include the amount received, deferred payment and other valuable consideration. The Appellate Authority further pointed out that since the Assessee had sold the ropes to the foreign going ships and the Indian coastal region at different prices and that the Assessee had received the duty drawback, the said receipt would fall under the definition of sale price; hence, assessable under the provisions of the Act. Thus, while confirming the assessment, he also upheld the penalty levied.

6. Aggrieved by the said order, the Assessee went on appeal before the Sales Tax Appellate Tribunal. On a perusal of the invoices, the Tribunal pointed out that the sale price charged in respect of the foreign ship did not include Central Excise Duty element. Since the same formed part of the turnover, the Central Excise Duty leviable on the turnover relating to foreign going vessel necessarily had to be included in the taxable turnover. Since specific details were not available, the Tribunal held that the proportionate duty drawback given was to be deemed as the Excise Duty includable in the sales effected to the foreign going vessel. Thus, the Tribunal dismissed the appeals filed by the Assessee. Although the Tribunal's line of reasoning is different from the lower authorities, in the context of the includability of the duty drawback in the sales turnover, the Tribunal affirmed the view of the Assessing Officer as well as the Appellate Assistant Commissioner.

7. As regards penalty, the Tribunal pointed out that since the issue was an arguable one and there was No. lack of bona fides as regards the claim made by the Assessee, the Assessee was not liable to be visited with penalty. Consequently, the levy of penalty u/s 16(2) of the Act for the assessment years 1987-88 and 1989-90, and u/s 12(5)(iii) for the assessment year 1990-91, was set aside. The Revenue has preferred the Tax Case as against the cancellation of levy of penalty and the Assessee is on revision as against the quantum assessment.

8. Learned Counsel for the Assessee drew our attention to the provisions of the Customs Act, particularly to Section 75 of the Act as well as to the Customs and Central Excise Duties Drawback Rules, 1971, and in particular to the definition of "export" and Rule 7 of the Customs and Central Excise Duties Drawback Rules, 1971, under which the duty drawback was determined and granted. He submitted that contrary to the assertion of the authorities below, excise duty is payable only on the intermediary product and not on the final product. Given the fact that excise duty levy need not always be passed on to the buyer and it is always open to the manufacturer to meet the said liability on his own, the Tribunal committed a serious error in law in holding that the sale price should always include the excise duty element payable under the Central Excise Rules. He further pointed out that the duty drawback received by the Petitioner has

nothing to do with the sale. Going by the definition of "export" in the Customs and Central Excise Duties Drawback Rules, 1971, the Assessee had the benefit of duty drawback in respect of customs duty suffered on the imported raw materials used in the manufacture of goods exported. In the circumstances, placing reliance on the decisions reported in 124 STC 586 - NEYVELI LIGNITE CORPORATION LTD v. CTO, Indian Potash Limited Vs. Assistant Commissioner (CT) and Others, , 57 STC 277 - MCDOWELL and Company, LTD. v. COMMERCIAL TAX OFFICER, TISCO General Office Recreation Club Vs. State of Bihar and Others, , as well as 115 STC 161 - INDIAN ALUMINIUM CABLES LTD., v. COMMISSIONER of SALES TAX, affirmed by Apex Court in Commissioner of Sales Tax, U.P. Vs. India Aluminium Cables Ltd., , he submitted that going by the definition of "turnover" as available under the Tamil Nadu General Sales Tax Act, the price charged by the Assessee alone would constitute the turnover to attract the liability under the provisions of the Tamil Nadu General Sales Tax Act. The payment of duty drawback as per the scheme of the Central Government has nothing to do with the local sales, including the price paid by the buyer. He further pointed out that passing on of the liability under the Central Excise Act is a matter of contract between the parties and there is nothing on record to show that the Assessee had passed on the excise duty liability to the purchasers to have the same included in the sale price to form part of the turnover. He pointed out that the Department did not deny as a matter of fact that when the Assessee effected the sales, it did not pass on the excise duty liability on the goods to the purchaser. It is also not the case of the Revenue that the buyer had agreed to pay the Central Excise duty. Going by the definition of "turnover", the duty drawback received on the export effected is a post sale event and has nothing to do with the sale. Consequently, the same could not be brought within the meaning of "turnover" to attract the charging provisions of the Tamil Nadu General Sales Tax Act.

9. Per contra, learned Special Government Pleader (Taxes) appearing for the Revenue, supported the order of the Tribunal. He pointed out that when the duty drawback is directly relatable to the sale effected locally, rightly, the Tribunal held that the duty drawback was liable to be included in the turnover. He further pointed out that the Assessee charged different prices for the self same goods, one with reference to coastal vessel and the other one related to foreign going vessel. Thus, going by the said fact also, the excise duty payment received by way of duty drawback has to be treated as part of the turnover.

10. Heard the learned Counsel for the Assessee as well as the learned Special Government Pleader (Taxes) for the Revenue.

11. There is No. dispute as regards the facts, particularly as regards the duty drawback gained by the Assessee in respect of its export activity in terms of the Customs and Central Excise Duties Drawback Rules, 1971. Section 75 of the Customs Act states that where an Assessee uses the duty paid raw materials in the manufacture of goods and the same are exported, he would be entitled to

claim drawback on the customs duties chargeable on the imported raw materials. Section 75(2) enjoins on the Government to make Rules on the scheme of duty drawback. In consonance with the abovesaid provisions as well as Section 37 of the Central Excise and Salt Act, the Government of India formulated the Customs and Central Excise Duties Drawback Rules, 1971. The said Rules define "drawback" and "export" in Rule 2(a) and 2(c) of the said Rules respectively, which read as follows:

2(a) "drawback" in relation to any goods manufactured in India and exported means - the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India; 2(c) "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

12. Rule 3 specifies that subject to the provisions of (a) the Customs Act, 1962, (52 of 1962) and the Rules made thereunder, (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the Rules made thereunder, and (c) these Rules, a drawback may be allowed on the export of goods specified in the Schedule at such amount, or at such rates, as may be determined by the Central Government. The Rules provide for the manner of determination of the drawback.

13. Thus, the above Rules and Section 75 of the Customs Act, make it clear that the duty drawback claim rests on the fact of the export made of the goods manufactured from and out of the duty suffered imported raw materials. Going by the scheme given under the Rules and the provisions of the Act, the duty drawback has nothing to do with the local sales effected or has any relevance to be linked to the price charged on sales therein, or to the sale. On the other hand, the same is linked to "export" of the goods manufactured from out of the duty suffered imported raw materials.

14. The question as to whether the duty drawback received as per the provisions of the Excise and Customs Act and the Rules made thereunder could be treated as part of sale consideration to fall under "turnover" needs to be seen in the context of what the Tamil Nadu General Sales Tax Act proposes to deal with and the meaning given to the terms "turnover", "total turnover", "taxable turnover" and "sales" under the Tamil Nadu General Sales Tax Act. The preamble to the Tamil Nadu General Sales Tax Act states that the Act is essentially an Act relating to the levy of general tax on the sale or purchase of goods in the State of Tamil Nadu. As per the charging provision u/s 3, tax is levied on all taxable sale of goods by the dealer at the rate specified in the schedule, subject to certain exceptions given therein. Section 3 casts the liability for tax on all dealers whose total turnover for the financial year exceeds the limit specified therein. "turnover", "total turnover" and "taxable turnover" are defined under Sections 2(r), 2(q) and 2(p) respectively. "Turnover" is defined u/s 2(r) as the aggregate amount for which the goods are bought or sold or delivered or supplied by a dealer for cash or for deferred payment or valuable consideration. The definition

excludes certain receipts as well as sales with reference to certain goods. Thus, the sale price of agricultural produce, horticultural produce, other than tea and rubber grown into the State by the dealer himself or any land in which he has an interest in whatever capacity shall be excluded from the turnover. Explanation (1A) appended therein states that the tax charged by the dealer separately without including it in the price of the goods sold or bought, shall not be included in the turnover. Apart from this, Explanation 2 contains further exclusion from turnover, subject to certain conditions prescribed. Explanation 2(ii) requires that any amount charged by the dealer for anything done by him to the goods before their sale at the time of or before the delivery, shall be included in the turnover. Thus when the said explanation emphasizes amounts paid at the time of or before the delivery as forming part of the turnover, one gets the clue as to the non includability of amounts received post sale that any amount received not having any relevance to the sale cannot be treated as part of the "sale" so as to have the receipt included in the sale consideration. Thus while receipts having an inextricable connection to the sale of goods alone are includable in the turnover, amounts not having any connection with the sale, are not included in the turnover for the purpose of assessment. "Total turnover" is defined in Section 2(q) to cover all the sales of the dealer during the given period, irrespective of the liability of any portion of the turnover. "Taxable turnover" is defined to mean the turnover on which the dealer shall be liable to pay tax. Thus, taxable turnover is computed after making deduction from the total turnover in the manner as provided under the Act and the Rules. Apart from what is provided for in the Act as by way of deduction, Rule 6 of the Tamil Nadu General Sales Tax Rules also provides for deduction of turnover from the total turnover, to arrive at the taxable turnover. Section 2(n) defines "sale" as transfer of property in goods other than by way of mortgage, hypothecation, charge or pledge by one person to another for cash, deferred payment or other valuable consideration. "Sale price" is defined in the Central Sales Tax Act, 1956 u/s 2(h) in an inclusive way to mean as, consideration for sale of any goods inclusive of any sum charged for anything due in respect of the goods at the time of or before the delivery thereof. The Section recognises the exclusion of cost of freight or delivery or the cost of installation from the sale price, provided, such cost is separately charged. Thus on a reading of the definition of "sale price", "turnover", Explanation 2 to Section 2(r) and "sale" in Section 2(n), it is clear that sale being a bilateral transaction, all expenses incurred by the dealer to put the goods in a deliverable state alone form part and parcel of the selling price. Post sale expenses incurred like freight and cost of installation, separately charged for after the sale of the goods, are excluded from price. The levy of tax thus being on the sale of goods and the turnover being the aggregate amount for which goods are brought or sold, the Act seeks to take note of only such of those receipts received by the vendor from the purchasers in connection with the sale and nothing beyond. This means, any amount received by an Assessee from any other party, not connected with the sale, cannot be brought within the definition of "turnover" for assessing the same under the provisions of the Act. The question as to whether the payments

received by way of subsidy from the Government are liable to be included in the turnover came up for consideration before the Apex Court. In the decision reported in 124 STC 586 - NEYVELI LIGNITE CORPORATION LTD v. CTO,, Referring to the definition of "turnover" and "sale" under the Tamil Nadu General Sales Tax Act, the Apex Court pointed out:

It appears to us that it is that sale consideration, whether in cash or otherwise, which is receivable in respect of sales made by a dealer which can possibly form part of the turnover of a dealer. It is that sum which can be legitimately regarded as forming part of the aggregate amount for which the goods have been bought or sold. The sum has to be paid either by the purchaser or on his behalf by some other person.

....

.... The payment which is so made by the Government to a manufacturer cannot be regarded as a discharge of any liability or obligation by the Government towards the purchaser of fertiliser. The two payments received by the manufacturer, namely, the subsidy and the price fixed under the Fertiliser (Control) Order are independent of each other. Subsidy does not form part of the bargain between the manufacturer and the purchaser of fertiliser.

15. In so holding, the Apex Court distinguished the case in the decision of the Apex Court reported in 117 STC 457 - E.I.D. PARRY (I) LIMITED v. ASSISTANT COMMISSIONER of COMMERCIAL TAXES and pointed out that the decision reported in 117 STC 457 was concerned with the plantation subsidy paid by the Assessee as part of the sale consideration for the supply of sugarcane pursuant to the agreement between the Assessee, purchaser of sugarcane and the cane grower. In terms of the agreement between the vendor and the purchaser, the Apex Court held that the subsidy was a deferred payment to be included in the taxable turnover. Thus when the subsidy payment was pursuant to the agreement between the parties to the sale, the same was held as part of the sale consideration to be included in the taxable turnover. However, in the decision reported in 124 STC 586 - NEYVELI LIGNITE CORPORATION LTD v. CTO, the Apex Court pointed out that subsidy received from the Government did not form part of the bargain between the Assessee and the purchaser and it had nothing to do with the sale to the purchaser or with the purchaser in connection with the sale. Thus the Apex Court pointed out that the question as to whether a particular payment received by the dealer is part of sale consideration or not, has to be considered with reference to the terms of the contract between the parties, indicating how the parties to the contract treated the said payment.

16. In the decision reported in TISCO General Office Recreation Club Vs. State of Bihar and Others, , the Apex court once again considered the question of includability of subsidy in the turnover. Distinguishing the decision of cane subsidy reported in 117 STC 457 - E.I.D. PARRY (I) LIMITED v. ASSISTANT COMMISSIONER of COMMERCIAL TAXES, the Apex Court pointed out that when

the company gave subsidy to the staff canteen run for the benefit of officers and employees, the said subsidy given not directly relatable to sale of any item of food article, could not be included as part of the sale price in respect of sale or supply of goods. The Apex Court pointed out that the price fixed was No. doubt less than the cost price. Yet, there was No. statutory obligation on the part of the company to pay any amount to the dealer. Thus, the lumpsum subsidies made ex gratia could not be regarded as valuable consideration in respect of the sale or supply of goods and were not part of the sale price and consequently, did not form part of the gross turnover.

17. In the decision reported in *Indian Potash Limited Vs. Assistant Commissioner (CT) and Others*, , this Court applied the decision reported in *George Oakes (P.) Ltd. Vs. State of Madras*, , in considering the question as to whether the subsidy received from the Government under an administered scheme as concession under the scheme could be treated as forming part of the turnover. The facts therein related to an Assessee who was a manufacturer of fertilizer. Potash was not subject to Fertiliser (Control) order, 1985. The Assessee therein sold the goods in terms of an administered scheme framed by the Central Government, which provided for payment of an amount described as a "concession", subject to the manufacturer agreeing to sell the product as set out in the scheme. The Revenue sought to assess the receipt from the Government as part of the sale price. In considering the above question, this Court pointed out that even though the concept of sale was considerably widened in the definition of "sale" in Clause (29A) of Article 366 of the Constitution, there has been No. change in the concept of "consideration". "Consideration" is understood as only the amount paid or payable by the buyer which would also include the amounts payable by others on behalf of such buyer, but would exclude amounts receivable by the seller from others under a scheme to which the buyer is not a party.

18. In the decision reported in 115 STC 161 - *INDIAN ALUMINUM CABLES LTD v. COMMISSIONER of SALES TAX*, which was affirmed by the Apex Court in the decision reported in *Commissioner of Sales Tax, U.P. Vs. India Aluminium Cables Ltd.*, , the Allahabad High Court considered a similar situation as regards the excise duty refund under the Central Government Scheme. Referring to the decision in the case of *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, and *RAMCO CEMENT DISTRIBUTION Company, PVT. LTD v. STATE of TAMIL NADU* - 88 STC 151, the Allahabad High Court held that excise duty, which was the subject matter of refund, would not be included as part of taxable turnover. The Apex Court affirmed the view of the Allahabad High Court reported in *Commissioner of Sales Tax, U.P. Vs. India Aluminium Cables Ltd.*, , holding that where the excise duty was refunded to the manufacturer under a Central Government Scheme for granting assistance to exporters, the refund had No. causal relationship with the sale and hence, it was not to be included in the taxable turnover. Thus when the claim was not the result of any bargain between the Assessee and purchaser, the sum received by way of duty drawback from the Central Government cannot be regarded as an amount forming part of the sale

price to fall under the definition of "turnover".

19. Thus the decisions cited above clearly show that the question as to whether any amount received by an Assessee/dealer could be treated as forming part of the sale consideration, depended on the facts of the case indicating a causal connection to the sale transaction. Where the receipt is from any third party who has nothing to do with the sale and the payment has No. relevance or reference to the sale, the same could not form part of the sale transaction; hence, there is No. question of including the same under the head of "turnover".

20. In contrast to these cases decisions, in the decision reported in McDowell and Co. Ltd. Vs. Commercial Tax Officer, the Supreme Court held that out even though the liability to pay the excise duty rested on the manufacturer, yet, when excise duty liability of the dealer was met by the purchaser by reason of the Andhra Pradesh Distillery Rules, the payment by the purchaser was held as part of the turnover assessable under the provisions of the Andhra Pradesh General Sales Tax Act. Thus where by reason of an agreement between the parties or by a statutory compulsion any payment is made by the purchaser to meet the liability of the vendor, so long as the liability remained that of the dealer, the payment made by the purchaser was held as part of the sale consideration.

21. Thus when the purchaser remitted the excise duty obligation on behalf of the manufacturer under compulsions of law, the Apex Court pointed out:

... it would be part of the sale price because it forms a component of the consideration payable by the purchaser to the dealer. It is only as part of the consideration for the sale of the goods that the amount representing excise duty would be payable by the purchaser. There is No. other manner of liability, statutory or otherwise, under which the purchaser would be liable to pay the amount of excise duty to the dealer....

According to normal commercial practice, excise duty should have been reflected in the bill either as merged in price or being shown separately.

As a matter of fact, in the hands of the buyer the cost of liquor is what is charged by the Appellant under its bill together with excise duty which the buyer has directly paid on seller's account. The consideration for the sale is thus the total amount and not what is reflected in the bill. We are, therefore, clearly of the opinion that excise duty though paid by the purchaser to meet the liability of the Appellant, is a part of the consideration for the sale and is includible in the turnover of the Appellant. The purchaser has paid the tax because the law asks him to pay it on behalf of the manufacturer.

22. Thus the Apex Court held that the includability of any amount paid by a party on behalf of the Assessee liable to make the payment, depended on the agreement between the parties and the provisions of law relating thereto. Hence, when the purchaser agreed to pay the duty on behalf of the dealer, the price charged would include all such services, including the price which the customer

undertook to pay.

23. The law thus declared by the Apex Court clearly point out that the includability of any payment received by a dealer as part of the sale transaction depended on the fact as to whether the payment has any relevance to the contract of sale to treat the receipt as part of the sale consideration. If the receipt has No. relevance to the contract, and the same is made by a party who has nothing to do with the sale, then the same cannot form part of the turnover. As the definition of turnover, total turnover and sale go, it is only those payments made by the purchaser, including those liability of the seller that the purchaser undertakes to discharge on behalf of the vendor, can be treated as the amount for which goods are bought or sold or supplied. Further, payment received in connection with the sale upto the point of sale alone would form part of the sale consideration. As per the definition of "sale", post sale freight separately charged for in the bill would not form part of the turnover.

24. There is No. dispute from the Revenue that the excise duty element was only on the intermediary product and that there was No. duty on the final product falling under Sub Heading No. 56.07 in terms of Notification No. 61/87 - C.E. dated 01.03.1987. A reading of the order of assessment and that of the Appellate Assistant Commissioner show the reference to the definition of "sale price", as available under the Central Sales Tax Act, to hold that the sale price in respect of the goods at the time of or before the delivery of the goods, would form part of the turnover only to treat the duty drawback as part of the consideration, forgetting for a moment that the receipt had nothing to do with the sale at all. Thus even going by the above definition of sale price, on the facts available, when the receipt of duty drawback has nothing to do with the sale between the parties and has No. relevance to the sale transaction at the time of or before the delivery of the goods, we do not find any justification in the Revenue treating the duty drawback as forming part of the turnover. When the duty drawback was as per the scheme given under the Excise and Customs Rules and that there was No. agreement between the purchaser and the seller on the aspect of duty drawback and it never received any consideration and rightly so in the sale effected, the question of roping in those receipts from the Government of India long after the sale does not arise, to be included in the turnover for the purpose of assessment. In considering this issue, the difference in price charged by the Assessee in respect of sale to coastal vessels and to the foreign going vessels, has No. relevance at all and it is not the decisive factor in considering the question of taxability of the receipt. So long as the Assessee was able to show that the receipt was as per the provisions of Central Excise and Customs Act and the Rules made thereunder with reference to export of goods manufactured from out of duty suffered goods, and the transaction thus answer the definition of "export" as given under the Duty Drawback Rules, the State is not justified in taxing this receipt as part of the turnover.

25. In the light of the discussion above, we set aside the order of the Tribunal

and the revisions filed by the Assessee are allowed. As far as the penalty aspect is concerned, in the light of the order passed by us allowing the Assessee's case, the Tax Case Revision filed by the Revenue fails and the same is dismissed. No costs.