(2014) 10 MAD CK 0084

In the Madras High Court

Case No : T.C. (R). No. 44 of 2014

The State of Tamil Nadu APPELLANT

Vs

W.S. Industries (India) Limited RESPONDENT

Date of Decision : 29-10-2014

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 : (2014) 10 MAD CK 0084

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. This revision is filed by the Department as against the order dated 22.5.2012 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, in T.A. No. 203 of 2008, raising the following substantial questions of law:

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 Supreme Court in the case of State of Karnataka Vs. B.M. Ashraf and Co., wherein 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 intrastate 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?

2. 1. The facts in a nutshell are as under: The respondent/assessee is engaged in the manufacture of electrical porcelain insulators. The total and taxable turnover of Rs. 10,25,58,024/- and Rs. 10,17,67,270/- respectively for the assessment year 2004-2005 was determined on 27.10.2006. The Assessing Officer arrived at the proportionate value of purchase made against Form XVII which were liable to tax under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959 at Rs. 10,08,60,743/- at 1%. This turnover includes the value of stock transfer.

2. 2. Challenging the assessment order, the assessee filed an appeal before the Appellate Assistant Commissioner (CT) IV, Chennai, who dismissed the appeal.

2. 3. On further appeal by the assessee, the Tribunal sustained the levy of tax under Section 3(4) of the Tamil Nadu General Sales Tax Act in respect of turnover relating to stock transfer and deleted the levy of tax under Section 3(4) of the Act on the sales to exporters and direct sale following the decision of this Court in Tube Investments of India Ltd. (Formerly known as TI Diamond Chain Ltd.) Vs. The State of Tamil Nadu and thereby allowed the appeal.

2. 4. Aggrieved by the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, the Department is before this Court.

3. The learned Special Government Pleader appearing for the petitioner submits that the assessee had shown the turnover in the return of income and, therefore, the Tribunal has no jurisdiction to delete the turnover. Hence, the order of the Tribunal has to be set aside.

4. Heard learned Special Government Pleader appearing for the petitioner and perused the materials placed before this Court.

5. It is not in dispute that the respondent/assessee claimed the benefit of lesser tax under Section 3(3) of the Tamil Nadu General Sales Tax Act on the purchase of goods under Form XVII, which was denied by the Original Authority as well as the First Appellate Authority, but was granted by the Tribunal.

6. The short issue involved in this case is whether the Tribunal was justified in deleting the turnover in terms of Section 3(4) of the Tamil Nadu General Sales Tax Act.

7. The issue involved in this revision is no longer res integra in view of the decision reported in M/s.Tube Investments of India Limited case, referred supra, wherein, this Court, after relying upon number of decisions, held as follows:

"32. When the underlining principles of the framers of the Constitution itself in respect of export sales was so very paramount, at the very outset, it should be held that the imposition of tax as provided under Section 3(4) to be applicable to such an export sale would run counter to such an intention of the Parliament, which cannot be countenanced. In other words, when the State lacks the legislative competence by virtue of the Constitutional embargo to levy any tax on export sale, the indirect creation of any tax liability on such ''export sales'' on the inputs purchased cannot at all be recognised. To put it differently, if the levy of 1% tax on the value of the goods purchased by the dealer who is dealing in manufacture of goods inside the State by availing concessional rate of 3% tax by using Form-XVII, under Section 3(3) of the Act would negate the very Constitutional restriction imposed under Article 286 as a ''deemed export'' as set out under Section 5(3) of the Central Sales Tax Act, the same cannot be countenanced. In this context, it will be worthwhile to refer to a Division Bench decision of this Court reported in N. Priyadarshini Vs. The Secretary to Government, Education Department and The Secretary, Selection Committee (M.B.B.S), . Para 27 of the said decision is relevant for our purpose, which reads as under:-

''.....27. In this connection, it may be mentioned that according to theory of the eminent jurist Kelsen (the pure theory of law) in every country there is a hierarchy of laws and the general principle is that a law in a higher layer of this hierarchy will prevail over the law in a lower layer of the hierarchy (see Kelsen''s "The General Theory of Law and State") In our country this hierarchy is as follows:-

(i) The Constitution of India

(ii) Statutory law (which may be either Parliamentary law or law made by the State legislature).

(iii) Delegated Legislation (which may be in the form of rules made under the statute, regulations made under the statute, etc)

(iv) Purely administrative or executive orders. ''

Applying the said principles to the facts of this case, as in the hierarchy of law, the Constitution provision will supersede any conflicting statutory provision, we hold that the interpretation sought to be laid on behalf of the State, to hold that Section 3(4) will apply to the export sale of the assesses will run counter to the well laid legal principles referred to above and the same cannot be countenanced.

33. On these grounds itself, it can be held that there would be no scope for invoking Section 3(4) in regard to the export sales of the goods manufactured. "

8. The decision of this Court in M/s.Tube Investments of India Limited case, referred supra, has been followed by this Court in the order dated 17.9.2014 made in T.C.(A)Nos. 38 and 39 of 2014.

9. We find that the argument made by the learned Special Government Pleader that the Tribunal has no jurisdiction to entertain the appeal is totally misplaced in view of the law laid down by this Court in the above-said decision.

10. In view of the law laid down by this Court in the decision cited supra, no tax can be collected without the authority of law. Therefore, following the above-said decision, we find no question of law, much less any substantial question of law, for consideration in this revision. Accordingly, this Tax Case (Revision) stands dismissed. No costs.

