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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.02.2021
Pronounced On	27.05.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.10270 of 2014

(Through Video Conferencing)

M/s.Shyam Trading Co.,
Rep. by Authorised Signatory,
No.299/5, 6th Cross, Jayanagar,
1st Block, Bangalore - 560 011.

... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 009.
2. The Secretary,
Environment and Forest Departments,
Fort St.George, Chennai - 600 009.
3. The District Forest Officer,
Salem Division, Salem.
4. The Assistant Commissioner (CT),
Salem (North) Division, Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the third respondent to refund the taxes collected during the auction sales of sandal wood in view of Section 5(3) of the CST Act read with Section 16(2) of the TNVAT Act and also as per the judicial decisions of the Madras High Court relating to this issue reported in 13 VST 103 and also in 145 STC 442.

For Petitioner : Mr.C.Baktha Siromoni

For R1 & R4 : Mr.G.Dhanamadhri, G.A.

For R2 & R3 : Mr.Prabhu, A.G.P.



O R D E R

The petitioner has filed this Writ Petition for a mandamus to direct the respondent to refund the taxes collected during auction of the sandalwood on 10.01.2013 and on 23.02.2013.

2. It is the case of the petitioner that the third respondent had wrongly collected Value Added Tax from the petitioner even though the transaction was exempt from payment of tax under Section 5(3) of the Central Sales Tax Act, 1956. It is submitted that the Value Added Tax that was collected from the petitioner despite Clarification dated 16.09.1998 of the Commercial tax Department was to be refunded.

3. It is the case of the petitioner that the auctioned sandalwood were processed into smaller sandalwood pieces and exported against Form H and therefore as per the decision of this court in M/s. Lavanya Enterprises Vs. State Secretary to Government of Tamil Nadu, [2016] 145 STC 442, the petitioner was entitled for refund of the Tax borne at the time of the auction purchase.

4. The learned counsel for the petitioner relied on the following decisions of the Hon'ble Supreme Court and that of this court in support of the present Writ Petition:-

- i. Consolidated Coffee Limited Vs. Coffee Board, Bangalore, (1980) 46 STC 164 : AIR 1980 Sc 1468.
- ii. M/s. C.T. Limited and Another Vs. Commercial Tax Officer and Others, (1997) 104 STC 94 (SC).
- iii. State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. and Another, 2010 (9) SCC 524.
- iv. Gupta Enterprises Vs. Commercial Tax Officer, (2018) 48 GSTR 252.
- v. M/s. The Tiruppur Exporters Association Vs. The State of Tamil Nadu and Others, 2003-04 (9) TNCTJ 213.

5. Defending the stand of the Commercial Tax Department, the learned Government Advocate for the first and fourth respondents Commercial Tax Department submits that the sale had taken place within the state of Tamil Nadu and there was no case made out for exempting the transaction under the provisions of the Central Sales Tax Act, 1956 as was contended.



6. The learned Additional Government Pleader appearing for the second and third respondents Forest Department submits that there are no documents to substantiate that the purchase was in furtherance of export at the time of auction and therefore the question of refund the amount collected towards value added tax at the time of auction does not arise.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first and fourth respondents Commercial Tax Department and the learned Additional Government Pleader for the second and third respondents Forest Department.

8. The petitioner is a registered dealer from the State of Karnataka. The petitioner appears to have regular transactions from buyers abroad for export of sandalwood products. It participated in auctions conducted on the two dates viz 10.01.2013 and on 23.02.2013 as mentioned above and paid the tax that was demanded at the time of auction by the third respondent Forest Department.

9. It is not in dispute that the third respondent Forest Department which conducted the auction was a dealer within the meaning of the provisions of the Tamil Nadu Value Added Tax Act, 2006. It has collected and remitted tax with the Commercial Tax Department. Though the petitioner has filed copies of purchase orders received to demonstrate that the purchase during auction was in furtherance of export orders received by the petitioner, it is not possible for this Court to decide as to whether the copies of purchase order filed subsequently at the time of hearing correspond with the auction purchase on 10.01.2013 and on 23.02.2013.

10. Copy of the Form H bearing serial No.KA-HA 4945815 dated 07.08.2013 issued by the Commercial Tax Department of Karnataka at page 36-37 of the typed set of papers filed along with this Writ Petition indicates the purchase order dated 25.04.2013 for export of 800 kg of sandalwood D Cubes. The said purchase order is dated 25.04.2013 and is much after the auction purchase on 10.01.2013 and on 23.02.2013. Therefore, there is no causal link between the auction purchase in Tamil Nadu and the subsequent export by the petitioner based on the said purchase order dated 25.04.2013. Therefore, there is no basis to hold that the petitioner is entitled to refund.

11. Another copy of Form H bearing serial No. KA-HA 4945814 also dated 07.08.2013 issued by the Commercial Tax Department of Karnataka is incomplete. Therefore, based on such incomplete documents also, there is no case made out for granting any relief to the petitioner.



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12. Under these circumstances, this Writ Petition is liable to be dismissed and is accordingly dismissed. No cost.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Commercial Taxes,
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Chennai - 600 009.
2. The Secretary,
Environment and Forest Departments,
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+lcc to the Special Government Pleader, S.R.No. 27309

W.P.No.10270 of 2014

SRA(CO)
BE(20/07/2021)