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W.P. No.4382 of 2008 a...
M.P. No.1 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. No.4382 of 2008
and M.P. No.1 of 2008

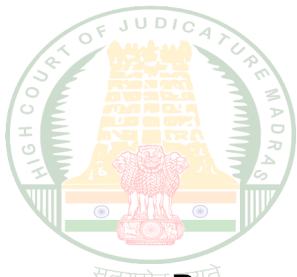
Azam Laminators (P) Limited
represented by its Managing Director
A.R.Safiullah
9609, Rajagopalapuram
Pudukottai

.. Petitioner

Vs.

- 1.The Commercial Tax Officer (FAC)
Pudukottai I
- 2.The Appellate Assistant
Commissioner (CT)
Thanjavur
- 3.The State of Tamil Nadu
represented by the Deputy Commissioner (CT)
Trichy Division
- 4.The Sales Tax Appellate Tribunal
(Main Bench)
Represented by the Secretary
City Civil Court Buildings
High Court Complex
Chennai - 600 104

.. Respondents



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* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the fourth respondent herein in S.T.A. No.430 of 2003 dated 5.12.2007 and quash the same.

* * *

For Appellant : Mr.R.Vasumithran
for Mr.N.Inbarajan

For Respondents : Mr.V.Prashanth Kiran,
Govt. Advocate (Taxes)

O R D E R

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

This writ petition has been filed against the impugned order dated 05.12.2007 passed by the Sales Tax Appellate Tribunal in S.T.A. No.430 of 2003. By the impugned order, the Tribunal allowed Commercial Tax Department's appeal against order dated 21.04.2003 of the Appellate Assistant Commissioner (CT), Thanjavur in C.S.T Appeal No.2 of 2003. The petitioner herein had claimed exemption under Section 5(3) of the Central Sales Tax Act, 1956 on a sale made to the merchant exporter.

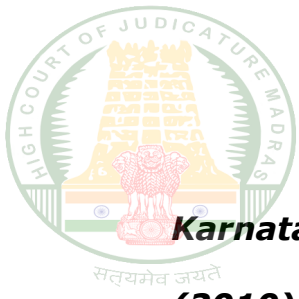
2. The specific case of the petitioner is that the returns filed by the petitioner was also accepted by the Assistant Commissioner (CT) by



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his order dated 20.06.2002 and thereafter, by invoking Section 16(1) of the TNGST Act, 1951 r/w Section 9(2) of the CST Act, 1956, the assessment was sought to be reviewed and the original authority revised the assessment by an order dated 03.02.2003 whereby, the exemption claimed by the petitioner was disallowed. The appeal filed by the petitioner was, thereafter, allowed by the Appellate Commissioner by his order daed 21.04.2003, which now stands reversed by the impugned order of the Appellate Tribunal. The specific case of the petitioner is that the petitioner had effected sale of M.G. Plain Kraft Paper to a merchant exporter, who, in turn had received a purchase order from a buyer from Kuala Lumpur, Malaysia for Parcel Leaf Size and that the merchant exporter also exported the goods to the overseas buyer from Malaysia and the merchant exporter, therefore issued Form 'H' to the petitioner.

3. The specific case of the petitioner is that the impugned order passed by the Appellate Tribunal is erroneous inasmuch as it has not considered the fact that M.G. Plain Kraft Paper supplied by the petitioner to the merchant exporter, which was converted as Parcel Leaf did not undergo any change and therefore, what was sold by the petitioner to the merchant exporter was exported by the petitioner. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Apex Court in **State of**



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Karnataka v. Azad Coach Builders Pvt Ltd & Another reported in **(2010) 36 VST 1 (SC)**, which decision has been followed by this court

in the following cases:

(i) **Ziptex Fasteners Pvt Ltd v. Commercial Tax Officer, Ponneri & Others** reported in **(2010) 30 VST 273 (MAD)**;

(ii) **Zip Industries Ltd v. Commercial Tax Officer, Chennai** reported in **(2018) 18 GSTL 585 (MAD)**; and

(iii) **The State of Tamil Nadu, rep. by the Deputy Commissioner (CT) vs. Tvl.Parasakthi & Co., Theni and others** in **W.P. Nos.44202 & 44203 of 2002 dated 05.02.2021**.

4. It is further submitted that the merchant exporter has also issued Form 'H' to substantiate that the goods sold by the petitioner, namely Kraft Paper, has been exported by the merchant exporter and therefore, there is an error committed by the Tribunal in allowing the appeal filed by the Commercial Tax Authority.

5. The impugned order is defended by the learned Government Advocate (Taxes) for the respondents/Commercial Department stating that it is a well reasoned order and the same does not require any interference. It is further submitted that a review under Article 226 of



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the Constitution of India is confined to the decision making process and not the decision *per se* and therefore, on this count also, the writ petition is liable to be dismissed. On facts, it is further submitted that the dispute pertains to the Assessment Year 2001-2002 whereas, Form 'H', which has been filed by the petitioner itself shows that Form 'H' was valid initially up to 31.03.1998 and was re-validated up to 31.03.2001. Therefore, it would not pertain to the transaction in question. That apart, it is submitted that there is a total change in the commercial identity of the product sold by the petitioner and the product that has been exported by the merchant exporter and therefore, it is submitted by the learned Government Advocate (Taxes) that the order passed by the Appellate Tribunal deserves to be upheld and the present writ petition is liable to be dismissed.

6. We have heard the arguments of the learned counsel appearing for the petitioner and the learned Government Advocate (Taxes) appearing for the Commercial Tax Department and perused the materials available on record.

7. The Law on the subject is settled in terms of the decision of the Hon'ble Supreme Court in ***State of Karnataka v. Azad Coach Builders Pvt Ltd & Another*** reported in ***(2010) 36 VST 1 (SC)***, which has been also followed by this court in three decisions, referred supra.

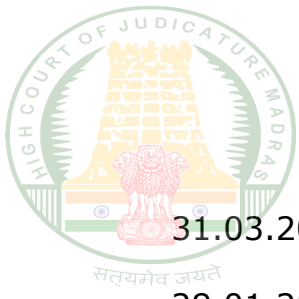


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Further, on perusing the records, particularly the commercial invoice raised by the petitioner on the merchant exporter and the purchase order of the foreign buyer from Kualalampur, Malaysia on the merchant exporter and the commercial invoice raised by the merchant exporter on the foreign buyer indicate that, what has been sold by the petitioner is not what has been exported by the petitioner. The commercial invoice of the petitioner indicates the price of M.G. Plain Kraft Paper as at Rs.16/- per Kg and that the petitioner had sold 69.278.0 Kg M.G.Plain Kraft Paper to the merchant exporter. What the merchant exporter has exported is Poly coated with LDPE Kraft Paper in Parcel Leaf size. There is no value addition in the price declared in the commercial invoice of the merchant exporter. On the other hand, what has been exported by the merchant exporter is, much below the cost on which the petitioner has sold, as detailed below:

DESCRIPTION OF GOODS	QUANTITY IN PKTS	RATE CIF INR PER PKT	AMOUT CIF INR
POLY COATED WITH LDPE KRAFT PAPER (ONE SIDE POLY COATED)			
1) PARCEL LEAF SIZE 11¼ x 12¼ in 100 Leaves Packet	60,000 PKTS	11.79	7,07,400.00
2) Parcel Leaf Size 14" x 14" in 100 Leaves Packet	42,000	17.85	7,49,700.00

8. That apart, Form 'H' which has been filed by the petitioner also indicates that it was valid up to 31.03.1998 and was re-validated up to



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31.03.2001. The commercial invoice of the petitioner is dated 28.01.2002 which comes in the next Assessment Year. Therefore, we are of the view that the writ petition is liable to be dismissed.

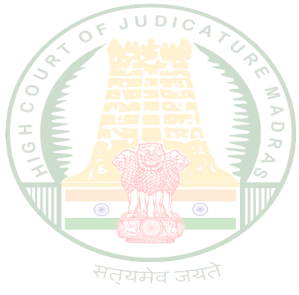
9. Accordingly, the writ petition is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

[S.V.N., J.] [C.S.N., J.]
15.09.2022

Asr

To

- 1.The Commercial Tax Officer (FAC)
Pudukottai I
- 2.The Appellate Assistant
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- 3.The State of Tamil Nadu
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- 5.The Government Pleader
High Court, Madras



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