

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.02.2020

Pronounced on : 19.05.2020

CORAM:

THE Hon'ble MR.JUSTICE C.SARAVANAN

W.P.Nos.21982 to 21987 of 2016

and

W.M.P.(MD) Nos.18801 to 18805 of 2016

W.P.No.21982 of 2016

Sunrise Foods Private Limited
represented by its Director
Anoop Prakash Sharma
89/75, Kandasamy Street,
A.P.A.Building,
Erode – 638 003.

..Petitioner

Versus

The Assistant Commissioner (CT) (FAC)
Park Road Assessment Circle,
Erode.

..Respondents

Prayer in W.P.No.21982 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the respondent herein to accept the revised returns filed by the petitioners along with application dated 24.05.2016 as reiterated on 09.06.2016 and extend Input Tax Credit under the provisions of Section 12(2) of the Tamil Nadu

Value Added Tax Act, 2006.

For Petitioner : Mr.N.Prasad
For Respondents : Mr. Mohammed Shaffiq

COMMON ORDER

By this common order all the 6 writ petitions are being disposed. In W.P.Nos. 21983-87 of 2016, the petitioner has challenged the respective assessment orders dated 29.1.2016 passed by the respondent for the assessment years 2010-11 to 2014-15.

2.In W.P.No. 21982 of 2016, the petitioner has prayed for an alternate relief for a writ of mandamus to direct the respondent to accept the revised return filed by the petitioner to allow input tax credit on the purchase tax payable by the petitioner under Section 12 (2) of the Tamil Nadu Value Added Tax, 2006.

3.By the impugned assessment orders, the respondent has confirmed the demand on the petitioner under Section 12(1) of the Tamil Nadu Value Added Tax,2006 for the respective assessment years.

4.The impugned order has also imposed with penalty under Section 27(3)(c) of the Tamil Nadu Value Added Tax Act, 2006 on the petitioner.

5.The petitioner, a dealer of turmeric had locally purchased turmeric from various registered/unregistered dealers without payment of tax as their turnover were reportedly below Rs.300 crores during the respective assessment year and were therefore exempted under Section 15 read with Item 18, Part B, 4th Schedule of the of the Tamil Nadu Value Added Tax Act, 2006.

6. The purchased stock were transferred stock by the petitioner to its branches outside the State of Tamil Nadu for branding, packing and labelling and other activities and were purportedly sold from there on payment of tax.

7.Regular assessments for the respective assessment years were completed earlier. Thereafter, assessment orders were reopened under Section 22 of the Tamil Nadu Value Added Tax Act, 2006 pursuant to an

investigation by the Commercial Tax Department on the ground that the petitioner had failed to pay purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006. These proceedings culminated in the impugned order of the respondent wherein the petitioner has been asked to pay the purchase tax and penalty.

8. Since demand was confirmed, the petitioner sent representations to the respondent to accept revised returns to allow input tax credit under Section 12(2) of the Tamil Nadu Value Added Tax Act, 2006. Though the impugned orders confirm the demand on other issues also, the challenge in the impugned order is confined to imposition of purchase tax alone.

9. It is the contention of the petitioner that turmeric purchased by the petitioner from dealers, who were exempted from payment of tax in terms of Section 15 read with Item 18, Part B of the 4th Schedule of the Tamil Nadu Value Added Tax Act, 2006 were also exempted in the hands of the petitioner and therefore the petitioner cannot be saddled with tax liability under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006.

10. It is also the case of the petitioner that levy under Section 12(1) is attracted only if the turmeric purchased by the petitioner were liable to tax but were purchased without payment of tax under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

11. According to the petitioner, since the selling dealers were exempt from payment of tax in terms of Section 15 read with Item 18, Part B of the 4th Schedule of the Tamil Nadu Value Added Tax Act, 2006, question of imposing purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 cannot be countenanced. In other words, it is submitted that since the sale was exempted, the levy under Section 12(1) of the Act was without justification.

12. In the affidavit filed in support of these writ petitions, the writ petitioner has primarily relied on the decision of this court in the following 2 cases:-

i.**Hotel Shri Kannan versus State of Tamil Nadu**
[2007] 8 VST 97;

ii.**Ruchi Soya Industries Ltd versus Commercial Tax Officer** [2008] 12 VST 546.

13.Strong reliance was also placed on a clarification of the Government of Tamil Nadu dated 24.12.1999 bearing D.Dis. Acts Cell II/75893/99 as amended 4.10.2000 bearing reference D.Dis.Act Cell II/52300.

14.It is submitted that in **Hotel Shri Kannan versus State of Tamil Nadu** [2007] 8 VST 97, the Division Bench of this Court had set aside the assessment and permitted all the assets is to file their objections supported with material objections.

15.Alternatively, it was contended that the tax payable under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 was available by way of Input Tax Credit under Section 12(2) read with Section 19(3)(c) of the Act.

16.It is therefore contended that since input tax credit is available

under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 read with Tamil Nadu Value Added Tax Rules, 2007 and since the petitioner is in a peculiar situation and is unable to utilise such Input Tax Credit in absence of local sales, it should be granted refund. It is therefore submitted that the issue being revenue neutral, the petitioner was entitled to the relief in W.P.No.21982 of 2016. The petitioner relied on the decision of this court and that of the Hon'ble Supreme Court in the following cases:-

- i. **KG Denim Ltd versus CESTAT** 2017 (7) GSTL 442;
- ii. **CCE versus Coca-Cola India Private Limited** 2017 (213) ELT 490 (SC);and
- iii. **Commissioner of Customs and Central Excise versus Textile Corporation Marathwada** 2008 (231) ELT 195 (SC).

17. In this connection reliance was also placed on the decision of the Hon'ble Supreme Court in **Formica India Division versus Collector of Central Excise** 1995 (77) ELT 501 wherein benefit of all exemption and deduction was allowed to the assessee as tax was held payable.

18. It is further submitted that the issue being revenue neutral,

question of imposition of penalty also cannot be countenanced and in this context the lands was placed on the following decisions:-

i.**R.E.M. Ramakutty Nadar vs The State Of Madras 1973** (31) STC 44 (Mad);

ii.**The Deputy Commissioner (C.T.) vs V.S.R. Ramaswami Chettiar**1976 (38) STC 382 (Mad); and

iii.**Deputy Commissioner of Commercial Taxes vs Adam And Company** 1979 (43) STC 508 (Mad);

19.The learned counsel for the petitioner further submitted that the decision of the Hon'ble Supreme Court in **The State of Tamilnadu Vs M.K.Kandaswami**(1975)4 SCC 745 cannot be read in the manner in which the respondent seeks to rely upon to uphold the demand.

20.In this connection reference was also made to the decision of the Supreme Court in **Commissioner of Income Tax versus Sun Engineering Works (P) Ltd** (1992) 4 SCC 363 when it was held that a judgement must be read as a whole and the observation from the judgement have to be considered in the light of the questions which were before the court.

21.It was further submitted that a decision of the court takes its colour from the question involved in the case in which it was rendered and while applying the said decision to later case, the court must carefully try to ascertain the true principal laid down by the decision of the court and should not pick out words and sentences from the judgement divorced from the context of the question under consideration.

22.A further reference was made to the decision of the Hon'ble Supreme Court in **S J. Pande versus P.K Balakrishnan** (1993) 3 SCC 297 in this context.

23.The learned counsel for the petitioner also referred to the decision of the Supreme Court in **Govind Saran Gunga Saran Vs Commissioner of Sales Tax** 1985 (Suppl) SCC 205 wherein the Court identified the components which are factored while taxing namely:-

- (i)the character of the imposition known by its nature which prescribes the taxable event attracting the levy;
- (ii)a clear indication of the person on whom the levy is

- imposed and who is obliged to pay the tax,
(iii) the 3rd the rate at which the tax which is imposed, and
(iv) the 4th the measure of value to which the rate will be applied for computing the tax liability.

24. Learned Counsel submitted that if those components are not clear and definitely ascertainable, it is difficult to say that the levy exist in point of law.

25. It is submitted that any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

26. It was submitted that levy of purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 was vague and therefore the demand was not sustainable.

27. He further submits that tax administration is a complex objects and consists of several aspects. The government is therefore required to strike a balance while imposing tax for collection of revenue with a business

friendly approach. It is submitted that interpretation of a tax entry being a quasi-judicial function, the Government invariably works through its senior officers in the matter of difficulties which the business may face, particularly in matters of tax administration.

28.Learned Counsel therefore drew attention to the decision of the Hon'ble Supreme Court in **State of Kerala Versus Kurian Abraham Private Limited and Another** (2008) 3 SCC 582 which recognised the role of the Board of Revenue.

29.The learned Counsel for the Petitioner therefore submits that the Government of Tamil Nadu vide its clarification dated 24.12.1999 of as modified by clarification dated 04.10.2000 has clarified the position under Section 7A of the TNGST Act, 1959 and therefore submits that the said if the said clarification was applied to the facts of the case, the impugned orders were liable to be set aside.

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30.As for as rate of tax is concerned, a reference was made to paragraph 11 of the Decision of the Hon'ble Supreme Court in **Thermax**

Private Ltd. Versus Collector of Customs (1992) 4 SCC 440.

31.Learned counsel for the petitioner drew a comparison between the provisions of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985 for the purpose of payment of additional duty of customs equivalent to central excise duty with Section 3 and 12 of the Tamil Nadu Value Added Tax Act, 2006.

32.He submits that the Hon'ble Supreme Court observed that for determining the rate of additional duty of Customs equivalent to central Excise duty, the Hon'ble Supreme Court had held that one has to forget that the goods are imported and imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay.

33.Thus, if a person using the goods is entitled to the remission, the importer will also be liable to pay additional duty of customs such concessional rate of duty and will be entitled to ask for refund, if he had

paid more.

34.The learned counsel for the petitioner submits that same analogy can be adopted in the context of payment of purchase tax and the appropriate rate of tax would be under Item 18, Part B, IV Schedule and not under Item 52 , Part B to the I Schedule of the Tamil Nadu Value Added Tax Act, 2006.

35.He submits that if the rate prescribed in the Item 18, Part B of the IV Schedule to the Tamil Nadu Value Added Tax Act, 2006 is applied, the petitioner cannot be saddled with purchase tax liability under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006.

36.He further referred to the decision of the Hon'ble Supreme Court in **Bharat Forge And Press Industries Private Limited Versus Collector of Central Excise** (1990) 1 SCC 532.

37.He submits that unless department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff entry, resort cannot be had to residuary item.

38.The respondent has filed a separate counter in W.P No. 21982 of 2016 and a common counter in W.P.No.21983 to 87 of 2016. It is submitted that these writ petitions were without merit and were therefore liable to be dismissed.

39.It is submitted that the place of business of the petitioner was inspected on 6.3.2015 and on the basis of inspection materials, revision notices were issued to the petitioner which culminated in the impugned order.

40.It is submitted that charge under Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 remains untouched by charge under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 and exemption upto Rs. 3 crore available to a local dealer effecting local sale cannot be extended to the petitioner as the two levies i.e under Section 3 and Section 12 of the Act are different levies and therefore cannot be confused with each

other.

41.It is further submitted that the decision of this court in **Ruchi Soya** referred to *supra* by the learned counsel for the petitioner does not in any manner further the case of the petitioner.

42.The learned counsel for the respondents relied on the following decisions of the various courts:-

i.**Britania Industries Limited Vs. State of Tamil Nadu** (2012) 48 VST 241.

ii.**India cements Ltd Vs. The State of Tamil Nadu** [2012] 51 VST 286,

iii.**Hotel Balaji and Others Vs State of AP and Others** 1993 Supp (4) SCC 536;

v. **Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh** – (1969) 24 STC 343 (SC);

vi.**Malabar Fruit Products Company Vs. Sales Tax Officer, Palani** – (1972) 30 STC 537 (Ker.)

viii.**State of Tamil Nadu Vs. M.K.Kandaswami** – (1975) 36 STC 191;

ix.**Devi Dass Gopal Krishnan Pvt. Ltd. Vs. State of Punjab** – (1994) 95 STC 170 (SC);

x.**Jagatjit Sugar Mills Vs. State of Punjab** – (1995) 96 STC 344 (SC);

xi.Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Sire Industries – (2008) 13 SCC 1.

43.Finally it was also submitted that petitioner has an alternate remedy under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 and therefore even otherwise the writ petition was liable to be dismissed on account presence of efficacious and alternate remedy.

44.I have considered the arguments advanced on behalf of the petitioner and the respondents. I have also perused the impugned orders and the case laws cited on behalf of the petitioner and respondent and the Government circular relied on behalf of the petitioner.

45.There are no direct precedents under the Tamil Nadu Value Added Tax Act, 2006 on the subject except under the provisions of the TNGST Act, 1959 in the case of **Hotel Shri Kannan versus State of Tamil Nadu** [2007] 8 VST 97 and **Ruchi Soya Industries Ltd versus Commercial Tax Officer** [2008] 12 VST 546. Both are decisions of a Division Bench of this

Court

46.The Division Bench of this Court in **Ruchi Soya Industries Ltd.** case referred to *supra* had an occasion to deal with Section 7A of the TNGST Act, 1959. Case dealt with a somewhat similar situation where the dealer had purchased edible oil from various registered dealers inside the State of Tamil Nadu.

47.The dealers therein who sold edible oil to the petitioner therein were exempted from payment of tax. The petitioner therein (also a dealer) was therefore called upon to pay purchase tax under Section 7A of the TNGST Act, 1959.

48.There, it was argued that Section 7A of the TNGST Act, 1959 can operate only in cases where there is no liability. It was also submitted that Section 7A of the TNGST Act, 1959 was introduced as an anti-tax evasion measure. It was argued that an exempted sale by no logic carries with it the stamping of evasion of tax to fit in with the purpose for which the aforesaid provision was introduced and hence invocation of Section 7A would nullify the exercise of power given under Section 17 of the TNGST Act, 1959.

49.The Division Bench of this court in **Ruchi Soya Industries Ltd.** did not accept the above argument. It observed that Section 7A does not give any room for such course of interpretation. Section 3,4 and 7A of the Section 7A of the TNGST Act, 1959 were held to be independent charging Sections.

50.It was further held that Section 7A of TNGST,1959 comes into play where the purchase of goods is liable to tax but does not suffer tax in the circumstances and are dealt with in the manner stated. It was further held that since 2nd sale was exempted from sales tax under the provisions of the TNGST Act, 1959 and such a dealer may sell the goods inside the State again or sell the same as inter-state sale or dispatch them to outside the State as consignment or branch transfer. Any manner of dealing with tax suffered sales as prescribed under Section 7A like disposal of the goods otherwise than by way of sale or using them in the manufacture, or dispatch does not attract the provisions of the act.

51.The court further observed that the reason being that goods which have normally been taxed at some point do not get taxed again. The policy of law was to tax every transaction of sale either at the point of sale or at the point of purchase. Exemption granted either partially or up or absolute and where the seller is not taxed, the purchaser is taxed.

52.The court there relied on a number of decision of the Hon'ble Supreme Court and the decision of the Hon'ble Supreme Court in **Hotel Balaji versus State of Andhra Pradesh** [1993] 88 STC 98 (SC) wherein it was held that the postponement does not convert what is avowedly a purchase tax to a consignment tax or tax on consumption.

53.Ultimately, after referring to several decisions of the Hon'ble Supreme Court, the Division Bench of this court in **Ruchi Soya Industries Ltd.** held that charge under Section 7A need not be necessary to check exemption but certainly it is pointing at the loophole caused by the circumstances stated under Section 7A. If the goods are not available in the

State for subsequent taxation by reason of the circumstances mentioned in Section 7A (1) (a), (b), (c), then the purchaser is made liable to tax.

54. In the context of Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, the Tamil Nadu Government has also issued a clarification dated 24.12.1999 bearing reference D.Dis.Acts Cell I/75893/99. The text of the clarification reads as under:-

“TURMERIC IN THE FORM OF BALLS, FINGER AND POWDER

The stock transfer of turmeric to other States is liable to purchase tax under Section 7-A if it is purchased from unregistered dealers within the State. **The purchase tax under Section 7-A is leviable only if the total turnover of the dealer under the TNGST Act exceeds Rs. One hundred crores in a year.** The exemption granted in the 3rd schedule is not a general exemption but conditional. The sale of turmeric by a dealer whose turnover exceeds Rs.100 crores per year does not fall under 3rd schedule. **Since there is no other entry in the schedule, such dealers are liable to pay tax at 11% under entry 67 of part D of the 1st schedule.**

Turmeric in any form such as balls, fingers and powder continue to be the same commodity if tax was paid in one stage, the subsequent change in form will not attract sales tax since it is only of the tax suffered commodity.”

55.The above circular was further modified by another clarification dated 4.10.2009 bearing reference No. 91/2000 D.Dis.Acts Cell II/52300.

Relevant portion of it read as under:-

Turmeric finger/powder with no ingredients, chilly whole/powder with no ingredients, cumin seeds/powder with no ingredients, fennel seeds/powder with no ingredients, black pepper/whole/powder with no ingredients-

The sale of the above 5 items by a dealer whose total turnover in a year is less than Rs.300 crore is not liable to tax under Item 16 in Part B of the 3rd Schedule to the T.N.G.S.T Act, 1959 is eligible for exemption from tax. (to check)

56.As mentioned above, the above clarifications of the Government of Tamil Nadu was considered by a Division Bench of this court in **Hotel Shri Kannan versus State of Tamil Nadu** [2007] 8 VST 97 (Madras).

57.The Division Bench of this court there had set aside the assessment orders impugned therein as the orders were passed without reference to the above clarification.

58.The above clarification was issued under Section 28A of the TNGST Act, 1959. When the above rulings was given, as per decision of the Hon'ble Supreme Court, the clarifications of the Government were binding on the Revenue and as long as such clarifications of the Revenue were in force, it was held that the Revenue cannot plead or be heard to take a stand contrary to the same.

59.However, the position is now slightly different in the light of the decision of the Hon'ble Supreme Court in **Commissioner of Central Excise versus Ratan Melting and Wire Industries** (2008) 13 SCC 1. Clarifications of the Boards are not binding on the Courts though the revenue cannot take a stand contrary to such clarifications.

60.Further, a provision similar to Section 28A of the TNGST Act, 1959 is conspicuously absent in the Tamil Nadu Value Added Tax Act, 2006. Under the latter enactment, a dealer could approach only before the State-Level Authority for a clarification under Section 48A of the Act for such clarification. Such clarification is not only binding on the assessee's

but also on the Commercial Tax Department. Therefore, the 1999 Government Clarification as amended in 2000 cannot be relied upon starightaway.

61.That apart, the above clarification was issued in the context of TNGST Act, 1959 whereas the dispute in the present case is under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

62.Though under Section 88(3)(i) of the Tamil Nadu Value Added Tax Act, 2006, clarification issued under the provisions of the TNGST Act, 1959 continue to be force unless are cancelled or are inconsistent with the provisions of the Act. Therefore, the impugned orders cannot be set aside and the case be remanded back to the original authority merely because under an identical situation the Division Bench had earlier relegated the parties to alternate remdey with few observations.

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63.A solitary view taken by a single judge of this Court in a Batch of W.P(MD).No.11425 of 2016 vide common order on 6.12.2018 in the

case of **M/s. NVR & Co. Vs The Asst. Commissioner (CT) Virudhnagar and others** in the context of Section 12 of the Tamil Nadu Value Added Tax Act, 2006 upholding the demand under similar circumstances has also been set aside by a Division Bench of the Madurai High Court in W.A (MD) No.557 of 2019 in its order dated 31.10.2019. A similar order passed in W.A (MD) No.558 of 2019 8.11.2019 arising out of the common order of the learned single judge.

64. The learned single judge was influenced by the decision of the Hon'ble Division Bench in the case of **Ruchi Soya Industries** and the decision of the Hon'ble Supreme Court in **K.N.Kandaswami case** (2015)15S CC 98 and accepted the views of the commercial tax department that there was a larger object behind incorporation of Section 12 of the Tamil Nadu Value Added Tax Act, 2006 to ensure that the State will not lose its revenue atleast at one stage.

65. The Hon'ble Division Bench however set aside the said order on

the existence of alternate remedy by asking the petitioner to file an appeal taking note of the observation made in order passed in W.A (MD) No. 557 of 2019. In W.A (MD) No. 557 of 2019 though in paragraph 17 of the said order it was observed that “.....**In any event we have held that the writ petitions were premature, we have to necessarily vacate the findings rendered by the learned single judge on the taxable issue leaving it open to the Assessing Officer to consider the individual case of the dealers individually and independently**”. There appears to be some inconsistency between the above observation in para 17 and the ultimate direction to the petitioner therein to file an appeal before the appellate authority in those cases. Thus, the Hon’ble Division Bench has also not answered the question of law.

66. Therefore, I am inclined to dispose these writ petitions on merits as I do not see any point in remitting the case back without any observation. as considerable time has lapsed since these writ petitions were admitted in 2016.

67.I am further of the view that there is no point in directing the petitioner to either approach the appellate authority or to relegate the petitioner to the original authority by simply setting aside the impugned orders without discussing the law on the subject in absence of a clear precedent on the law. A mere remand without any obseravtion also would servcie no purpose but would only result in further delay in resolution of dispute and lead to another rounds of litigation and would serve no purpose.

68.Both Section 7-A of the TNGST Act 1959 and Section 12 of the Tamil Nadu Value Added Tax Act, 2006 are the charging Sections for levy and collection of purchase tax under the respective enactments. They read almost identically. For a better appreciation of the dispute, both the provisions are reproduced below:-

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| Section 7-A of the Tamil Nadu General Sales Tax Act, 1959. | Section 12 of the Tamil Nadu Value Added Tax Act, 2006. |
|--|---|
| <p>Levy of Purchase Tax.</p> <p>1 . Subject to the provisions of subSection (1) of Section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which [no tax is payable under Section s 3 or 4, as the case may be, [not being a circumstance in which goods liable to tax under sub-Section (2) of Section 3 or Section 4, were purchased at a point other than the taxable point specified in the First, or the Second Schedule and either, –</p> <p>(a) [consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or]</p> <p>(b)disposes of such goods in any manner other than by way of sale in the State, or</p> <p>(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,</p> <p>shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in [Section s 3 or 4], as the may be.</p> | <p>Levy of Purchase Tax.</p> <p>(1) Subject to the provisions of sub-Section (1) of Section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act, and either–</p> <p>(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or</p> <p>(b) disposes of such goods in any manner other than by way of sale in the State; or</p> <p>(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce or in the course of export of the territory of India; or</p> <p>(d) installs and uses such goods in the factory for the manufacture of any goods,</p> <p>shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to this Act.</p> <p>(2)Notwithstanding anything contained in clause (24) of Section 2, the dealer who pays tax under sub-Section (1) shall be entitled to input tax credit on the goods specified in the First Schedule.</p> |

69. While under Section 7A of the TNGST Act,1959, tax was payable at the rate mentioned in Section 3 or 4 as the case may be of the Act. However, under Section 12(1) of the Tamil Nadu Value Added Tax Act,2006, tax is payable at the rate specified in the Schedules to this Act.

70. Both Section 8 of the TNGST Act, 1959 and Section 15 of the Tamil Nadu Value Added Tax Act, 2006 provide for exemption. They exempted a dealer from payment of tax whose turnover in respect of items mentioned does not exceed Rs. 300 crores in a year.

71. Merely because they read identically, the interpretation given by the Courts earlier for levy of purchase tax under Section 7A of the TNGST Act, 1959 and exemption cannot be straight away imported for levy of purchase tax under Section 12 of the Tamil Nadu Value Added Tax Act,2006 in view of few differences in the language in Item 16,III Schedule to the TNGST Act, 1959, and Item 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006.

72.Item 16,III Schedule to the TNGST Act, 1959 was to be read along with Section 8 of the TNGST Act, 1959. Similarly, Item 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006 has to be read along with and Section 15 of the said Act, 2006. Though they gave to dealers of the goods enumerated therein exemption from payment of tax upto Rs 300 Crores, yet the consequence under the respective enactments are different as far as levy of purchase tax are concerned. Both the Items are reproduced below for comparison:-.

| ITEM: 16,III Schedule to the TNGST Act, 1959 | ITEM: 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006. |
|--|--|
| Chilies, tamarind, coriander and turmeric and shikakai sold by any dealer whose turnover in respect of these items does not exceed Rs. 300 crores in a year* . | Chillies and chilly powder, coriander and coriander powder, turmeric and turmeric powder , shikakai and shikakai powder, tamarind and asafetida (Hing) sold by any dealer whose total turnover in respect of those item does not exceed rupees 300 crores in a year. |

*(Shikakai powder was exempt from tax in terms of entry/item No 49)

73.There are few but very important differences in the Tamil Nadu

Value Added Tax Act, 2006 which distinguishes the levy under Section 12 of the Act from levy under Section 7A of the TNGST Act, 1959. Though the levy under Section 7A of the TNGST Act, 1959 and 12 of the Tamil Nadu Value Added Tax Act, 2006 get attracted under similar circumstances, the rate of tax are different.

74. Under Section 7A of the TNGST Act, 1959 tax is payable at the rate prescribed in Section 3 and 4 of the said Act. Where as, under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 tax is payable at the rate specified in the Schedules to the Act. Therefore, the Petitioner would be liable to pay tax only at the rate specified in the Schedules to the Tamil Nadu Value Added Tax Act, 2006.

75. Normally, a dealer is liable to pay tax on the sale and pass on the incidence of such tax to the dealer/consumer who purchases such goods. If the goods are purchased by registered dealer within the State, such dealer would be entitled to input tax credit under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 10 of the Tamil Nadu Value

Added Tax Rules, 2007.

76.If the taxable goods do not suffer tax at the time of purchase for the reasons stated in Section 12 of the Tamil Nadu Value Added Tax Act, 2006, the dealer who purchases such goods is liable to pay tax on the turnover relating to the aforesaid purchase at the rate specified in the schedule to the Act.

77.Purchase tax paid by such dealer under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is available by way of input tax credit under sub-Section (2) to Section 12 read with Section 19(3)(c) of the said Act.

78.Further, under the Tamil Nadu Value Added Tax Act, 2006 a dealer who installs and uses such goods in the factory for the manufacture of any goods is also liable to pay purchase tax. This was not there under the Section 7-A of the TNGST Act,1959.

79. Further, tax under TNGST Act, 1959 was by and large at first point of sale. Whereas, under Tamil Nadu Value Added Tax Act, 2006, the tax is payable at every point of sale within the State. Under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006, tax is payable at multiple point of sale within the State with provision for input tax credit and such tax is payable is at the rate specified in the Schedule to the Act.

80. Thus, there was a paradigms shift from TNGST Act, 1959 when Tamil Nadu Value Added Tax Act, 2006 was enacted. The tax regime was altered to levy tax on value addition at every point of sale within the State with a corresponding provision for input tax credit for being set off. It not only rationalised the rate of tax but also rendered tax paid at every point of sale within the State to be set off as input tax credit.

81. Thus, the reasons given in **Ruchi Soya Industries Case** in the context of Section 7A of the TNGST Act, 1959 to uphold the levy of purchase tax is not applicable to levy under Section 12 of the Tamil Nadu Value Added Tax Act, 2006.

82.I am therefore of the view, that under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006, petitioner who is also a dealer is liable to pay purchase tax at the rate specified in the Schedules.

83.To the extent the petitioner had purchased turmeric from dealers who were eligible for exemption under Section 15 Read with Item 18, Part B, IV to the Tamil Nadu Value Added Tax Act, 2006, levy under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is attracted at rates specified in the “**Schedules**” to the Act.

84. To the extent the petitioner had purchased turmeric from dealers who were otherwise liable to tax in terms of Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 but were exempted from payment of tax under Section 15 of the Tamil Nadu Value Added Tax Act, 2006, the levy under Section 12 of the Tamil Nadu Value added Tax Act, 2006 is not attracted if the petitioner's turn over was also below Rs 300 Crores during the ear. This would require verification.

85. Further, Section 12(1) is subject to Section 3(1) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, to the extent the petitioner had purchased turmeric from a dealer whose total turnover for the year was less than Rs.5lakhs, purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is not attracted as such purchase will be outside the purview of purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006.

86. In my view, the phrase “**rates specified in the Schedules to this Act**” in Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 would include the rates in both the entries namely **Item 52, Part B, I Schedule** and **Item 18, Part B, IV Schedule** to the Tamil Nadu Value Added Tax Act, 2006.

87. If the total turnover of the petitioner during the relevant year did not exceed Rs. 300 crores as per Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 the Tax payable by the petitioner would be at the

rates specified in the “**Schedules to this Act**”which would mean the rate specified in **Entry 18, Part B, IV Schedule** to the Tamil Nadu Value Added Tax Act, 2006.

88.If however on the other hand, the turnover of the petitioner had exceeded Rs.300 crores, the petitioner would be liable to pay tax at the rate prescribed in **Item 52, Part B, I Schedule** to the Tamil Nadu Value Added Tax Act, 2006 as that would be the rates specified in the “**Schedules to this Act**”. This is a factual matter which would require a proper determination by the respondent.

89.Since the impugned orders also deal with other issues. I am therefore inclined to quash the impugned orders and remit the case back to the respondent with the direction to the respondent to pass a speaking order within a period of 3 months from date of receipt of this order in terms of the above observation as far as levy of purchase tax under Section 12 (1) of the Tamil Nadu Value Added Tax Act, 2006 is concerned.

90. Accordingly, the impugned orders are quashed. The respondent is therefore directed to pass a fresh order on merits after giving the petitioner an opportunity of hearing either in person or through video-conference in view of the risk on account of the threat of Covid19 pandemic. The remand proceeding shall be confined to purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 alone. The demand confirmed on other issues are not disturbed.

91. Petitioner is therefore directed to furnish necessary information to facilitate hearing of the case in the de-novo proceeding through video-conference to the respondent within a period of 2 weeks from date of receipt of this order, if the situations so warrant on account of continuance of Covid19 pandemic. The respondent shall thereafter take the case and pass orders in the light of the above observations.

92. These writ petitions stand disposed with the above observation. Connected miscellaneous applications are closed. No cost.

19.05.2020

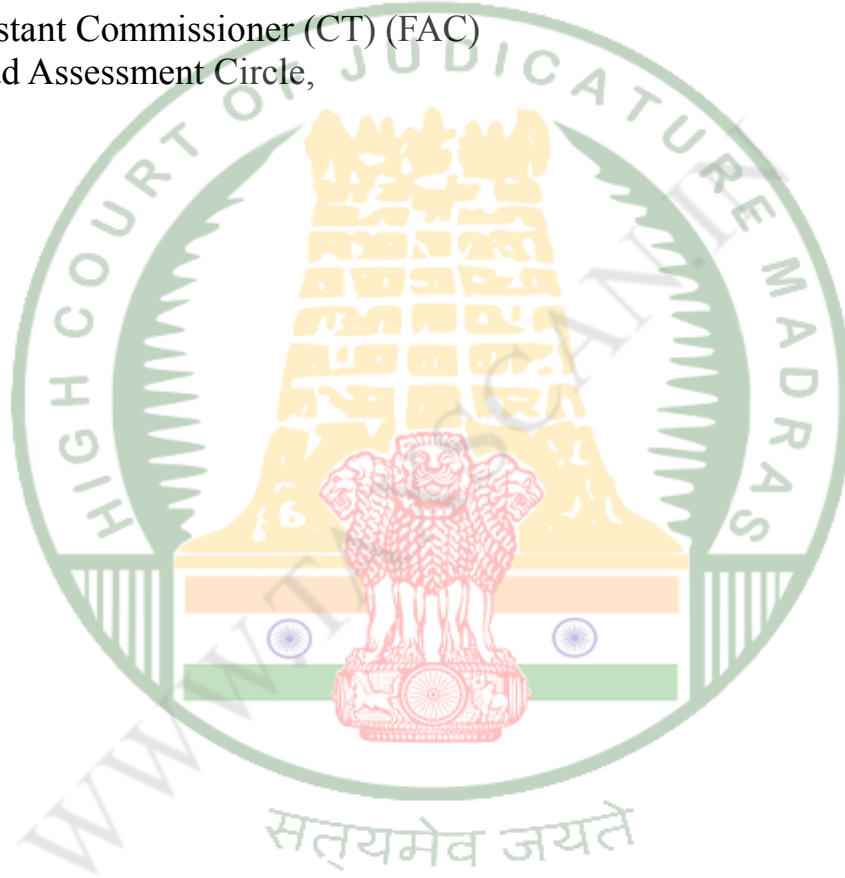
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Index :Yes/No

Internet: Yes/No

To

The Assistant Commissioner (CT) (FAC)
Park Road Assessment Circle,
Erode.



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C.SARAVANAN.J.

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19.05.2020



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