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TC Nos. 52-55 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-06-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MRS.JUSTICE N. MALA

TC Nos. 52 TO 55 of 2013

Tvl.Tamil Nadu Air Products (P) Limited.

..Petitioner(s) in all
Cases

Vs

State of Tamil Nadu,
Rep. by The Deputy Commissioner[CT]
Chennai (Central) Division,
Chennai - 600 006.

..Respondent(s) in all
Cases

Petitions against the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, passed in S.T.A.Nos.675, 676, 677 and 678 of 2006.

For Petitioner(s) in all Mr.T.V.Lakshmanan
Cases :

For Respondent(s) in all Mr.R.Sethu Prabhakaran,
Cases : Govt. Advocate.



ORDER

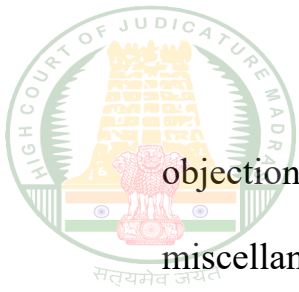
WEB COPY (Order of the Court was made by Dr.G.Jayachandran J.)

The common order of the Sales Tax Appellate Tribunal (Additional Bench), Chennai, passed in S.T.A.Nos.675 to 678 of 2006, is under challenge before this Court.

2. These cases cover four Assessment Years, commencing from 1999-2000 to 2002-2003.

3. The point involved in these cases is, whether the Miscellaneous Charges collected by the assessee from its customers towards specific and separate activities can be compendiously treated as sale of goods for levy of tax ?

4. The petitioner, involved in supply of industrial gas, has collected maintenance charges, empty collection charges, service charges, cooling and evaporation charges, testing, painting and second rentals, and second sales, for which the Department levied tax. The proposal of the Department was objected to by the trader, stating that the Gas Cylinder Rules,1981, cover the refilling of Oxygen and other permanent gases under high pressure in gas cylinders. Under the Rules, before refilling, the cylinder had to be tested to remove dust and other unwanted materials. Therefore, to ensure security and safety, certain measures were to be taken by the suppliers, for which miscellaneous charges were collected and the same could not be taken as part of the sale price. However, the



objection was overruled by the Assessing Officer, holding that the miscellaneous receipts by the trader were in connection with sale of gas only and, therefore, charges collected towards specific and separate activities from the customers were liable to be taxed.

5. As per explanation (2) to Clause (r) of Section 2 of the Tamil Nadu General Sales Tax Act, 1959, the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.

6. The order of the Assessing Officer was taken up on appeal before the Assistant Commissioner (CT). The Appellate Authority allowed the appeals in favour of the dealers with the following observations :

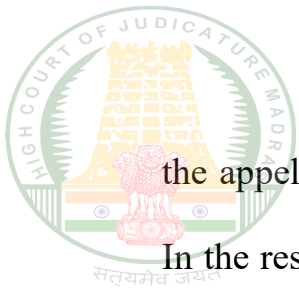
(1) As regards estimated sales turnover under form XVII, the buyers issued form XVII covering all the expenses, but the dealer collected tax at 3% on the value of gas sold. As the value in form XVII is more than the turnover reported by the dealer, the Assessing Officer taxed the same at 3%, but, at the same time, various charges were also subjected to tax at 16%. Therefore, the assessment at 3% on the difference in turnover of Rs.17,35,436/- amounts to double taxation and hence it cannot be sustained.

(2) The cylinder maintenance charges, cylinder testing charges, are not related to processes done to the gas before sale, therefore, these charges are not pre-sale charges and cannot form part of the taxable turnover. The empty collection charges are collected for cylinders only which is packing materials. Such charges are collected independent of sale of gas and this is not the charge



collected for something done to the goods i.e., gas sold. As per Rule 6 (c) (iii), if shown separately, the delivery charges are liable to be deducted from taxable turnover. In the cooling and evaporation charges, no sale is involved as there is no transfer of property is involved. Regarding rate of tax on sale of cylinders, as per entry 19-A of Part 'C' of first schedule, empty gas cylinders are taxable at 8%. The spindles are taxable at 11% as there is no specific entry for it. With respect to penalty levied under section 12 (3) (b) for the year 2002-03 as the entire disputed assessments were set aside and decided in favour of the dealer, the question of levy of penalty does not arise, as a result the penalty levied is set aside and deleted. With the above findings, the Appellate Assistant Commissioner (CT) has decided the entire disputes in favour of the dealer."

7. As against the order of the appellate authority, the Department went on appeal before the Tribunal. The Tribunal, after considering the facts, observed that under Form XVII , the buyers were charged for miscellaneous expenses under various heads along with cost of the goods. The tax at the rate of 16% levied by the Assessing Officer was also taken into consideration. It was also observed by the Tribunal that the sale was reflected in Form XVII and not in Form XVIII-A and, that, in any event, the difference would be around Rs.6,01,850/-. The difference being explained by the Assessing Officer, the Tribunal confirmed the order of the Assessment Officer, by reversing the finding of the appellate authority. As far as other miscellaneous charges are concerned, with regard to levy of tax in respect of sale of spindles, the order of



the appellate authority, classifying it under the residuary entry, was confirmed.

In the result, the Tribunal partly allowed the appeal filed by the Government as

below :

“In the affirmative, the orders of the Appellate Assistant Commissioner (CT) are,

(1) Set aside with respect to miscellaneous charges collected (1999-2000 to 2002-03)

(2) Confirmed with respect to estimated sales against form XVII (1999-2000)

(3) Partly confirmed (2000-01 & 2001-02) & partly remanded (2002-03) with respect to rate of tax dispute on cylinders

(4) Confirmed with respect to rate of tax dispute on spindles (2001-02)

(5) Set aside with respect to penalty for the confirmed assessments (2002-03)

In result, the STA in 677/06 – stands partly allowed, partly dismissed

STA in 675/06 – stands partly allowed, partly dismissed

STA in 676/06 – stands partly allowed, partly dismissed

STA in 678/06 – stands partly allowed, partly remanded.”

In respect of the portion of the order held against the assessee, the assessee has preferred these Tax Cases.

8. At the time of admission, considering the grounds of appeal, this Court framed the following substantial questions of law :

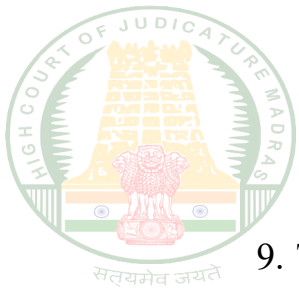


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(1) *Whether in the facts and circumstances of the case especially in case of gas cylinder with long life, being far costlier than gas and being re-usable and in view of Section 2 (n), charges on non-sale transactions like maintenance, servicing, loading and unloading, empty collection, charges for delay in returning and evaporation charges being amounts unrelated to transfer of property in goods, especially when the Tribunal did not make any finding of fact as to the nature and exigibility to sales tax in relation to specific non-sale activities with reference to the definitions of sale in 2(n) and turnover in 2(r) in the Tamil Nadu General Sales Tax Act, 1959 ?*

(2) *Whether, in the facts and circumstances of the case, especially in case of gas cylinder as a container with long life and being re-usable and any amount relating to a non-sale event relating to the container like gas cylinder and unconnected to the sale of goods like gas, and in view of Section 2(n) and 2(r) and other provisions of the Tamil Nadu General Sales Tax Act, the Tribunal misapplied the law with a perverse finding of fact in relation to empties collection charges, cooling and evaporation charges, maintenance charges and testing, painting and rental charges which represented either a totally post-sale, post-utilization activity or did not involve passing of properties or statutory obligation or second sales on the sole ground that charges were collected in the invoice ?*

(3) *Whether in the facts and circumstances of the case and the provisions of law, aspect of second sales is properly considered by the Tribunal ?*

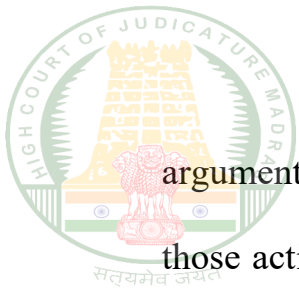


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9. The contention of the learned counsel for the petitioner is that the gas cylinder used for the purpose of industries is, at times, costlier than the gas, which is filled in it, and the cylinder being re-usable, it should be treated as a non-sale transaction and the charges like maintenance, servicing, loading and unloading, empty collection, charges for delay in returning and evaporation charges will fall outside the definition of sale transaction in view of Section 2 (n) of the Tamil Nadu General Sales Tax Act, 1959, and, therefore, those miscellaneous charges ought to have been exempted from the total turnover of the dealer.

10. Conversely, learned Government Advocate, appearing for the State, would submit that no doubt the cylinder is re-usable and, for the purpose of reusing, maintenance and servicing are required even as per the statute, but, however, when those charges are mulcted with the price of the gas and sold to the customer, the sale price, to be considered as a whole, includes other miscellaneous charges.

11. The contention of the petitioner to segregate the miscellaneous expenses is not sustainable, in view of the fact that the total sale turnover and the invoice as well as Form XVII reflect the composite value and the gas sale price. Hence, the charges collected cannot be considered as a non-sale transaction. In respect of the charges like cooling and evaporation charges, maintenance, testing and painting and second rental charges, identical



arguments were placed by the Department, impressing upon this Court that those activities were in the course of sale and required for the utilisation of the gas cylinder.

12. In almost similar factual circumstances, the Hon'ble Supreme Court, in *State of Orissa and Ors v. Asiatic Gases Ltd.*, MANU/SC//7709/2007, held that over-retention of gas cylinders will fall within the definition of sale under Section 2 (h) of the Orissa Sales Tax Act, 1947.

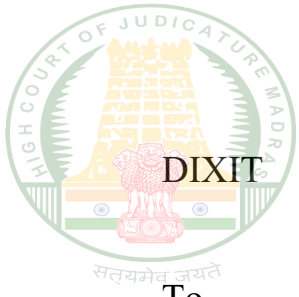
13. Learned counsel for the petitioners wanted to distinguish the dictum of the above said decision of the Hon'ble Supreme Court, in so far as collection of other miscellaneous charges, such as, maintenance charges, cooling and evaporation charges, testing, painting and second rentals.

14. However, we find not much difference in respect of collection of rent for extra-retention and the charges for maintenance, cooling and evaporation, painting etc., since all form part of the transaction of sale of gas in a cylinder and the miscellaneous charges are in connection with maintenance of cylinder as well as to ensure safety of transport and stocking of the gas.

15. In the said circumstances, we uphold the impugned order passed by the Tribunal and dismiss the Tax Cases. No costs. Consequently, the connected M.P.Nos.1 of 2013 are closed.

(G.J.,J.) (N.M.,J.)
29-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No



DIXIT

To

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Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Chennai.

State of Tamil Nadu,
Rep. by The Deputy Commissioner[CT]
Chennai (Central) Division,
Chennai - 600 006.

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**DR.G.JAYACHANDRAN J.
AND
N.MALA J.**

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