



WEB COPY

TC No. 24 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-07-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

and

THE HON'BLE MRS.JUSTICE N. MALA

TC No. 24 of 2018

The State of Tamilnadu
Represented by the Deputy Commissioner(CT)
Tirunelveli Division,
Tirunelveli 627002

..Petitioner(s)

Vs

Tvl. Aruppukottai Taluk
Handloom Cloth Merchants Association,
Aruppukottai.

..Respondent(s)

Tax Case Revision Petition presented to the Tamil Nadu Taxation
Special Tribunal, Chennai to revise the order of the Tamil Nadu Sales Tax
Appellate Tribunal (AB) Madurai dated 19.03.2002 passed in
M.T.A.No.728/2001.

For Petitioner(s): Mr.G.Dhana Madhri,
Government Advocate

For Respondent(s): Mr.A.Chandrasekaran



ORDER

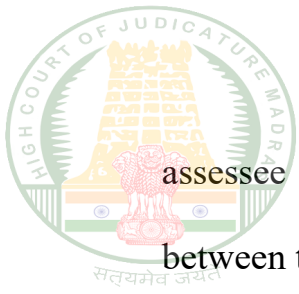
(Order of the Court was made by Dr.G.Jayachandran J.)

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The appeal is by the State, being aggrieved by the order of the Tribunal, which has entertained the appeal filed by the assessee and granted relief in respect of the sales turnover of goods which was distributed to the members of the Co-operative Society.

2.The brief facts of the case are as follows:

The Commercial, Tax Officer of Aruppukottai, in his original assessment orders for the year 1995-96, 1996-97, 1997-98 and 1998-99, revoked the exemption claimed by the assessee in respect of the value of the art silk yarn distributed to its members on receipt of monetary consideration and assessed the tax along with penalty. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner (CT), who, on hearing the case, deleted the penalty imposed. However, confirmed the assessment made on the turnover which the exemption was sought. Against the levy of tax, the assessee filed a further appeal before the Tribunal. The Tribunal taking note of the fact that the turnover, the subject matter of the disputed transaction satisfies all the conditions specified in explanation 2(iv) to Section 2(r) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 read with Rule 5-A(c) of the Tamil Nadu General Sales Tax (TNGST) Rules, 1959, held that the disputed transaction will not come under the purview of the taxable turnover. Thus, the



assessee was granted total relief from the payment of tax on the transaction between the assessee and its members in respect of distribution of art silk yarn.

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3. Against the order of the Tribunal, the present Tax Case has been filed, raising the following substantial question of law:

“i. Whether the doctrine of mutuality is still applicable to incorporated clubs or any club after the 46th amendment to Article 366(29A) of the Constitution of India?

ii. Whether the judgment of this Court in Young Men’s Indian Association (supra) still holds the field even after the 46th amendment of the Constitution of India; and whether the decisions in Cosmopolitan Club (supra) and Fateh Maiden Club (supra) which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law?

iii. Whether the 46th amendment to the Constitution, by deeming fiction provides that provision of foods and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?”

4. At the time of admission, it was brought to the notice of this Court by the learned Standing Counsel representing the Department, that Civil Appeal No.4184 of 2009, in the case of ***State of West Bengal and Others vs. Calcutta Club Limited***, was pending before the Hon’ble Supreme Court and had been

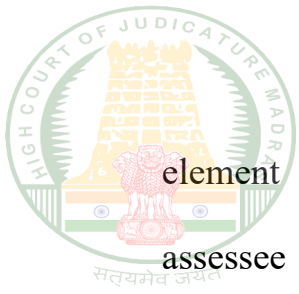


referred to a Larger Bench with specific questions of reference. Since the issue involved in this appeal had a direct bearing on the outcome of the *Calcutta Club* case, it was prayed that the matter be admitted and its adjudication deferred.

5. Accepting the plea of the learned Standing Counsel for the Department, this Court recorded the order of reference to the Larger Bench of the Hon'ble Supreme Court and admitted the case.

6. Today, when the matter is taken up for final disposal, the learned Government Advocate appearing for the petitioner/Department circulated the judgment of the Hon'ble Supreme Court rendered by a Three-Judge Bench in the case of *State of West Bengal & Ors. Versus Calcutta Club*, delivered on October 03, 2019. In the said judgment, the Hon'ble Supreme Court endorsed and upheld the view taken by the *Calcutta High Court* and the *High Court of Jharkhand* that, services rendered to the members of a Club or Society do not constitute a taxable service and the doctrine of mutuality continues to be applicable to both incorporated and unincorporated members' Clubs, even after amendment to the Constitution by insertion of Article 366.

7. In sum and substance, the Hon'ble Supreme Court has held that, any transaction or distribution of goods to the members of a society, as in this case, will not fall within the scope and ambit of the definition of 'Sale', if there is no



element of profit making. In the present case, the consistent stand of the assessee is that the silk yarn was distributed to the members of the Society without any profit margin and therefore, it does not amount to sale. Hence, the exclusion of the value of these goods from the total taxable turnover is legal. Since the doctrine of mutuality applies to the transaction under consideration, the levy of tax on the transactions between the assessee and its members is *ultra vires*.

Following the dictum laid down by the Hon'ble Supreme Court in the case of *State of West Bengal & Ors. and Calcutta Club*, this Tax Case is dismissed.

No costs.

(G.J.,J.) (N.M.,J.)
15-07-2026

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



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DR.G.JAYACHANDRAN J.
and
N.MALA J.

dsn

To
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Handloom Cloth Merchants Association,
Aruppukottai.

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