

In the High Court of Judicature at Madras

Reserved on: 14.8.2015 and Pronounced on: 16-9-2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian
and
The Hon'ble Mr.Justice T.Mathivanan

Tax Case (Revision) No.92 of 2014

HSI Automotives Limited,
Chennai-32.

...Petitioner
Vs

The State of Tamil Nadu, rep.by
the Commercial Tax Officer,
Guindy Assessment Circle,
Chennai-28.

...Respondent

TAX CASE REVISION under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order dated 12.9.2013 made in T.A.No.82 of 2008 on the file of the Sales Tax Appellate Tribunal (Main Bench), Chennai-104.

For Petitioner : Mr.K.A.Parthasarathi
for Mr.N.Inbarajan

For Respondent : Dr.Anita Sumanth, SGP (CT)
assisted by
Mr.S.Manohar Sundaram, AGP(T)

ORDER

V.RAMASUBRAMANIAN, J

This tax case revision, filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, arises out of the inclusion of the exempted

sales made by the petitioner, for arriving at the taxable turnover for the purpose of calculating the threshold limit for determining the applicability of the Tamil Nadu Additional Sales Tax Act, 1970.

2. We have heard Mr.K.A.Parthasarathi, learned counsel appearing for the petitioner and Dr.Anita Sumanth, learned Special Government Pleader (Commercial Taxes) for the respondent.

3. During the assessment year 2004-2005, the petitioner effected sales of rubber/PVC profiles, rubber hoses, etc., to two companies namely Hyundai Motors India Limited and Ford India (P) Limited. The sales to Hyundai Motors were exempted under G.O.Ms.No.16 dated 12.1.1998 and the sales to Ford India were exempted under G.O.Ms.No.381 dated 15.9.1997.

4. Though exemptions were allowed as claimed, the Assessing Officer added the sales turnover made to both these companies, to the taxable turnover of the petitioner, for the purpose of seeing as to whether the petitioner crosses the threshold limit for the applicability of Additional Sales Tax Act or not. Once it was found that the taxable turnover so arrived at, exceeded the threshold limit, the Assessing Officer imposed additional sales tax by an order dated 26.6.2006. Further, a penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act was also imposed.

5. The petitioner preferred a first appeal before the Appellate Assistant Commissioner in A.P.No.144 of 2006. The First Appellate Authority held, by an order dated 20.11.2007, that for the purpose of computation of additional

sales tax liability, the sales effected to Ford India cannot be included within the taxable turnover due to the specific exemption available under the Tamil Nadu Additional Sales Tax Act itself with respect to any sales made to Ford India. The Appellate Authority failed to take note of the availability of a similar exemption in respect of Hyundai Motors and held that if the sales turnover made to Hyundai Motors was included in the taxable turnover, the petitioner crossed the threshold limit for the applicability of the additional sales tax liability. On this basis, the First Appellate Authority confirmed the order of the Assessing Officer.

6. Thereafter, the petitioner filed a second appeal before the Tamilnadu Sales Tax Appellate Tribunal. The Tribunal dismissed the appeal by an order dated 12.9.2013. It is against the said order that the petitioner has come up with the above revision petition on the following questions of law :

"i. Whether the Hon'ble Tribunal has committed an error of law in treating the exempted sales effected by the petitioners to M/s.Hyundai Motors India Limited, as part of the 'taxable turnover' of the petitioner ? and

ii. Whether the Hon'ble Tribunal has committed an error of law in confirming the levy of penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 ?"

Question No.1 :

7. On the first question of law, the contention of the learned counsel for the petitioner is three fold namely

(a) that once the taxable turnover determined for the purposes of Tamil Nadu General Sales Tax Act, 1959, is at a particular amount, the taxable turnover determined for the purposes of the Tamil Nadu Additional Sales Tax Act, 1970 (as amended by the Presidential Act No.2 of 1976), cannot be different

(b) that once the sale of certain goods made to a certain buyer is exempt from the levy of both sales tax and additional sales tax, such sale may be included in the total turnover, but not in the taxable turnover, as otherwise, the purpose of exemption would be lost and

(c) that the distinction sought to be made by the Tribunal as though Rule 6(b) permits deduction only for goods oriented exemption and not dealer oriented exemption, was uncalled for.

8. In support of his above contentions, the learned counsel for the petitioner relied upon the following decisions :

(i) ***Ashok Service Centre Vs. State of Orissa [(1983) 53 STC 1]***

(ii) ***K.M.Mohamed Abdul Khader Firm Vs. The State of Tamil Nadu [(1985) 58 STC 12]***

(iii) ***Commissioner of Wealth Tax Vs. E.W.Gymkhana [JT 1997 (8) SC 585]***

(iv) ***South India Corporation Limited Vs Commercial Tax Officer [(2001) 124 STC 654]*** and

(v) ***State of Tamil Nadu Vs. Vaikundam Rubber Co. [(2008-09) 14 TNCTJ 195]***

9. As we have pointed out earlier, the first contention of the learned counsel for the petitioner is that there cannot be two different taxable turnovers, one for the purpose of the Tamil Nadu General Sales Tax Act, 1959 and another for the purpose of the Tamil Nadu Additional Sales Tax Act, 1970. According to the learned counsel for the petitioner, the Tamil Nadu Additional Sales Tax Act, 1970, though an independent statute, is part of the General Sales Tax Law of the State and that therefore, they have to be read together. In support of the above contention, the learned counsel for the petitioner relies upon the decision of the Supreme Court in *Ashok Service Centre*.

10. However, Dr.Anita Sumanth, learned Special Government Pleader contended that the decision of the Supreme Court in *Ashok Service Centre* arose out of the Orissa Additional Sales Tax Act, 1975, which contained a provision in Section 2(b), that made the words and expressions used therein, to have the same meaning as assigned to them in the Orissa Sales Tax Act, 1947. However, there is no such provision in the Tamil Nadu Additional Sales Tax Act, 1970, to make the words and expressions contained therein, to have the same meaning as assigned to them in the Tamil Nadu General Sales Tax Act, 1959. Therefore, it is her contention that the expression 'taxable turnover' contained in the Tamil Nadu Additional Sales Tax Act need not have the same meaning as assigned to the expression 'taxable turnover' in the 1959 Act.

11. In support of her above contention, Dr.Anita Sumanth, learned

Special Government Pleader relied upon the decision of a Division Bench of this Court in ***Sumangalam Steels Private Limited Vs. State of Tamil Nadu [(2003) 129 STC 82]***. In the said case, a Division Bench of this Court held that the Tamil Nadu Additional Sales Tax Act is an independent piece of legislation.

12. However, the decision in *Sumangalam Steels* is sought to be distinguished by Mr.K.A.Parthasarathy, learned counsel for the petitioner on the ground that this Court was concerned in *Sumangalam Steels* with a case where the assessee merely had the benefit of a reduction in the rate of tax or a concessional rate of tax and not an exemption relating to the sales of certain items to certain dealers.

13. We have carefully considered the rival contentions.

14. Dr.Anita Sumanth, learned Special Government Pleader is right in her submission that the decision of the Supreme Court in *Ashok Service Centre* arose out of the provisions of the Orissa Additional Sales Tax Act, 1975, which contained a specific provision in Section 2(b) that borrowed the definitions contained in the Parent Act. But, there is no provision in the Tamil Nadu Additional Sales Tax Act, 1970, which is similar to Section 2(b) of the Orissa Additional Sales Tax Act, 1975.

15. But at the same time, the learned Special Government Pleader may not be completely right in relying upon the decision of this Court in *Sumangalam Steels*, for the simple reason that this Court was concerned in that case, with an assessee, who did not enjoy any exemption in relation to a

sales turnover, but who merely enjoyed a reduction in the rate of duty. ***If what is granted under an exemption notification under Section 17 of the Tamil Nadu General Sales Tax Act, 1959 is only a reduction in the rate of tax payable on the sale of a particular material, the turnover does not get excluded from the total turnover or taxable turnover.*** Therefore, the observations contained in *Sumangalam Steels* to the effect that the 1970 Act is an independent piece of legislation, has to be understood only in the context in which it was made. ***In Sumangalam Steels, this Court did not analyse the provisions of the Tamil Nadu Additional Sales Tax Act, 1970, to see whether it could operate independently of the 1959 Act or whether it required a pair of crutches from the 1959 Act to walk.***

16. Therefore, it would be better to have a careful look at the 1970 Act in an historical perspective, since the Act underwent a complete metamorphosis from 1970 to 2002.

17. The State of Tamil Nadu enacted the Tamil Nadu Additional Sales Tax Act, 1970, providing for the levy of an additional tax on the sale or purchase of goods. The scheme of Section 2 of the Act, as it stood at the time of enactment in 1970, was to levy an additional tax by the process of increasing the tax payable under the Tamil Nadu General Sales Tax Act, 1959, by 10%, the said increase representing the quantum of the additional tax. The validity of this 1970 Act was upheld by a Constitution Bench of the Supreme Court in ***Kodar Vs. State of Kerala [(1974) 34 STC 73]***.

18. In the year 1971, a further levy in the form of surcharge at the rate of 5% of the tax payable under the 1959 Act, was imposed under the Tamil Nadu Sales Tax (Surcharge) Act, 1971. Thereafter, the Tamil Nadu Act 2 of 1976 was enacted, amending the 1970 Act, with the purported object of rationalisation. By this amendment, the original Section 2(1) was substituted with a new Section 2(1). The original Section 2 made a dealer whose total turnover for a year exceeded ten lakhs of rupees, liable to pay additional sales tax at the rate of 5% of the tax payable for that year. But, this liability could not be passed on by the dealer to the consumer.

19. By the new Section 2(1) inserted under the 1976 Amendment Act, only such a dealer, whose taxable turnover for a year exceeded three lakhs of rupees, was brought within the network of additional sales tax. The liability to pay additional sales tax was imposed under the new Section 2, on a slab rate, increasing progressively in proportion to the taxable turnover.

20. In other words, there were two primary distinctions between the 1970 Act and the 1976 Amendment Act. ***The first distinction was that while the 1970 Act spoke about total turnover, the 1976 Amendment Act spoke about taxable turnover.*** The second distinction was that under the 1970 Act, the rate of additional tax was at a fixed percentage, while under the 1976 Act, it was made on a slab rate increasing progressively in proportion to the taxable turnover.

21. The Constitutional validity of the Tamil Nadu Additional Sales Tax Amendment Act, 1976 was challenged in a batch of writ petitions filed under

Article 32, mainly on the grounds inter alia that there was already a levy of sales tax as well as surcharge and that the prescription of different rates of additional sales tax for different dealers on the basis of their taxable turnovers, was a violation of Article 14. But, the Act was upheld by the Supreme Court, in *K.M.Mohamed Abdul Khader Firm*. While doing so, the Supreme Court pointed out that the imposition of a heavier tax burden upon a large dealer could not be termed as arbitrary discrimination, as such a dealer occupies a position of economic superiority by reason of his volume of business.

22. Therefore, while testing the correctness of the contentions raised on behalf of the petitioner, we have to keep in mind (i) the distinction between the 1970 Act and the 1976 Amendment Act and (ii) the object of levy of additional tax.

23. The Tamil Nadu Additional Sales Tax Act, 1970, as it was originally enacted, contained only four provisions, from Sections 1 to 4. Section 1 gave the short title and commencement. Section 2, which was the charging section, imposed a levy of additional tax in the case of certain dealers, whose **total turnover** for a year exceeded a particular limit. Section 3 imposed the levy of additional tax upon an importer or whole sale dealer under the Tamil Nadu Sales of Motor Spirit Taxation Act, 1939. Section 4 empowered the Government to make rules.

24. By Amendment Act 2 of 1976, Section 2(1) of the 1970 Act was substituted with a new Sub-Section, containing Clauses (a) and (b) and a

proviso under Clause (a). Section 2(1) of the Act, as it was originally enacted under the 1970 Act and what it became after the 1976 Amendment, can be best appreciated, if presented in a tabular form as follows :

Section 2(1) under the 1970 Act	Section 2(1) under the 1976 Amendment Act
<i>The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act) shall, in the case of a dealer, whose total turnover for a year exceeds ten lakhs of rupees, be increased by an additional tax at the rate of five percent of the tax payable by that dealer for that year and the provisions of the said Act shall apply in relation to the said additional tax they apply in relation to the tax payable under the said Act :</i> <i>Provided that where in respect of declared goods as defined in Clause (h) of Section 2 of the Act, the tax payable by such dealer under the said Act together with the additional tax payable under this Sub-Section, exceeds three percent, of the sale or purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed three percent, of the sale or purchase price of such goods.</i>	<i>2(1)(a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act), shall, in the case of a dealer, whose taxable turnover for a year exceeds three lakhs of rupees, be increased by an additional tax calculated at the following rates, namely:-</i> <i>Rate of tax</i> <i>(i) Where the taxable turnover exceeds three lakhs of rupees, but does not exceed five lakhs of rupees : 0.4 percent of the taxable turnover</i> <i>(ii) Where the taxable turnover exceeds five lakhs of rupees, but does not exceed seven lakhs of rupees : 0.5 percent of the taxable turnover</i> <i>(iii) Where the taxable turnover exceeds seven lakhs of rupees, but does not exceed ten lakhs of rupees : 0.6 percent of the taxable turnover</i> <i>(iv) Where the taxable turnover exceeds ten lakhs of rupees : 0.7 percent of the taxable turnover</i> <i>Provided that where in respect of declared goods as defined in Clause (h) of Section 2 of the said Act, the tax payable by such dealer under the said Act, together with the additional tax payable under this sub-section, exceeds four percent of the sale or</i>

purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed four percent of the sale or purchase price of such goods.

(b) The provisions of the said Act shall apply in relation to the additional tax payable under Clause (a) as they apply in relation to the tax payable under the said Act.

25. But later, Section 2(1)(aa) was inserted and Section 2(1)(a) was omitted by the Tamil Nadu Amendment Act 37 of 1999. Section 2(1)(aa) reproduced the very language of Section 2(1)(a) inserted under the 1976 Amendment Act, but with two modifications. One related to the quantum of taxable turnover that became the threshold limit and the rate of tax. The other related to the inclusion within the purview of Section 2(1), even a principal, selling or buying goods through agents.

26. In other words, after the Amendment Act 37 of 1999, the scope of Section 2(1) was enlarged to include even a principal, selling or buying goods through agents, within the ambit of the charging section. At this juncture, two explanations namely Explanation I and Explanation II were also inserted under Section 2(1)(aa). Subsequently, three more explanations namely Explanations III, IV and V were inserted under Amendment Act 23 of 2002.

27. After the Amendment Acts 37 of 1999 and 23 of 2002, the charging section namely Section 2(1)(aa), together with five explanations thereto, became as under :

"Section 2(1)(aa) : The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act), shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover for a year exceeds ten crores of rupees, be increased by an additional tax, calculated at the following rates, namely :-

Rate of tax

(i) Where the taxable turnover exceeds ten crores of rupees, but does not exceed twenty five crores of rupees : 1% of the taxable turnover (i-a) Where the taxable turnover exceeds twenty five crores of rupees, but does not exceed fifty crores of rupees : 1.5 percent of the taxable turnover

(ii) Where the taxable turnover exceeds fifty crores of rupees, but does not exceed one hundred crores of rupees : 2 percent of the taxable turnover

(iii) Where the taxable turnover exceeds one hundred crores of rupees, but does not exceed three hundred crores of rupees : 2.5 percent of the taxable turnover

(iv) Where the taxable turnover exceeds three hundred crores of rupees : 3 percent of the taxable turnover

Explanation I : 'Taxable Turnover' for the purpose of this clause in respect of a principal selling or buying goods [...] through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State.

Explanation II : Notwithstanding anything contained in the said Act, for the purpose of this clause, 'turnover' in respect of sugarcane excluding sugarcane setts shall be arrived at by multiplying the total metric tonnes of sugarcane excluding sugarcane setts purchased during the year, by the minimum price fixed under Clause 3 and the additional price determined under Clause 5-A, of the Sugarcane (Control) Order, 1966 and such turnover shall be included in the total turnover of the dealer and the taxable turnover shall be arrived at accordingly for the purpose of this clause.

Explanation III : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 3-G of the said Act shall be the total turnover.

Explanation IV : 'Taxable turnover' for the purpose of this clause does not include the turnover of resale, taxable under Section 3-H of the said Act.

Explanation V : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 7-C of the said Act for the financial years commencing on the 1st day of April 1993, shall be the total value referred to in the said section."

28. Despite the fact that the 1970 Act underwent substantial amendments in 1976, 1980, 1999 and 2002, the Legislature did not introduce a section exclusively providing for definitions of words and expressions. It is true that the Tamil Nadu Additional Sales Tax Act, 1970 did not contain a provision that expressly stipulated that the words and

expressions contained therein would have the same meaning as assigned to them in the Tamil Nadu General Sales Tax Act, 1959. ***It must be remembered that the charging Section 2 as it was originally enacted in 1970, spoke only about total turnover. It was only in 1976 that the expression 'total turnover' was changed to 'taxable turnover'.*** But, neither of these expressions have been defined in the 1970 Act.

29. Until the amendment under Act 37 of 1999, the Tamil Nadu Additional Sales Tax Act, 1970 did not give a clue as to what would constitute a taxable turnover. By the Amendment Act 37 of 1999, Explanations I and II were inserted. By the Amendment Act 23 of 2002, three more Explanations were inserted.

30. The stipulations contained in these five explanations can be summarised as follows :

(i) Explanation I dealt with the taxable turnover in respect of a principal selling or buying goods through agents.

(ii) Explanation II spoke about the 'turnover', 'total turnover' and 'taxable turnover' in respect of sugarcane alone.

(iii) Explanations III to V related specifically to the method of computation of 'taxable turnover', with specific reference, respectively to Sections 3-G, 3-H and 7-C of the Tamil Nadu General Sales Tax Act, 1959.

(iv) In respect of a dealer liable to pay tax at compounded rate under Section 3-G, Explanation III directed the total turnover itself to be taken as the taxable turnover. Under Explanation IV, the turnover of resale taxable

under Section 3-H was directed to be excluded from the taxable turnover.

31. ***But, the absence of a separate provision for definitions, was more than compensated in the form of Clause (b) of Sub-Section (1) of Section 2.*** We have already pointed out that Section 2 of the 1970 Act, as it was originally enacted in 1970, contained three sub-sections and a proviso under Sub-Section (1). But, Sub-Section (1) in entirety was replaced by Amendment Act 2 of 1976. After a series of amendments, Sub-Section (1) has two clauses namely Clauses (aa) and (b) with a proviso under Clause (a). Clause (b) of Sub-Section (1) states :

'The provisions of the said Act shall apply in relation to the additional tax payable under Clause (a) as they apply in relation to the tax payable under the said Act.'

32. It can be seen from Section 2(1)(aa) that the Tamil Nadu General Sales Tax Act, 1959 is what is referred to as 'the said Act', in the Tamil Nadu Additional Sales Tax Act, 1970. ***Therefore, the effect of Section 2(1)(b), which we have extracted above, is that the provisions of the Tamil Nadu General Sales Tax Act would apply in entirety, in relation to the additional sales tax payable under the 1970 Act, as they apply in relation to the tax payable under the 1959 Act. If they would apply in entirety, they would naturally apply along with that part of the 1959 Act, which contains definitions.***

33. ***Once it is seen that the Tamil Nadu Additional Sales Tax***

Act, 1970 does not contain a provision for definitions, once it is seen that under Section 2(1)(b) of the Tamil Nadu Additional Sales Tax Act, 1970, the provisions of the 1959 Act are made applicable to the additional sales tax payable under the 1970 Act and once it is seen that even for the purposes of assessment, levy of penalty, appeals and revisions, the assessees as well as the Department may have to take recourse only to the 1959 Act, it follows as a corollary that the Tamil Nadu Additional Sales Tax Act, 1970 does not have independent legs to stand on its own.

34. Therefore, ***we are of the considered view that the Tamil Nadu Additional Sales Tax Act, 1970, is, in a way, a parasitical piece of legislation, that would have to depend upon the provisions of the Tamil Nadu General Sales Tax Act, 1959, (i) for the purposes of definitions of words and expressions (ii) for the purposes of assessment and levy (iii) for the purposes of collection and (iv) for the purposes of statutory remedies such as appeals, revisions, etc.***

35. Therefore, in the absence of a definition of the expression 'taxable turnover' in the Tamil Nadu Additional Sales Tax Act, 1970, there is no other alternative except to rely upon the definition of the same expression available in Section 2(p) of the Tamil Nadu General Sales Tax Act, 1959. This is permissible both on account of Section 2(1)(b) of the 1970 Act and also on fundamental principles of statutory interpretation.

36. The expression 'taxable turnover' is defined in Section 2(p) of the

1959 Act to mean the turnover on which a dealer shall be liable to pay tax as determined, after making such deductions from his total turnover and in such manner as may be prescribed. In this case, the total turnover of the petitioner was determined as Rs.93,11,29,403/- and the taxable turnover was determined at Rs.7,07,87,826/-, for the purposes of the Tamil Nadu General Sales Tax Act, 1959. The balance actually represented the exempted turnover.

37. It appears that under G.O.Ms.No.16 dated 12.1.1998, issued in exercise of the powers conferred by Section 17(1) of the 1959 Act, an exemption was granted in respect of the tax payable by any registered dealer under the 1959 Act on the sale of any goods including consumable packing materials and labels (other than high speed diesel oil, etc.), but excluding plant and machinery, to Hyundai Motor India Limited. This exemption was subject to the condition that if Hyundai Motor India Limited failed to make use of the goods so purchased, for the purpose specified in the declaration, but disposed of the same in any other manner, they shall become liable to pay tax. By another notification issued in G.O.Ms.No.16 dated 12.1.1998, the sale of any goods to Hyundai, by any registered dealer, for use in the manufacture and in the assembling, packing or labelling in connection with the manufacture of passenger cars and components in its factory situated Irungattukottai, Kanchipuram District, was also granted exemption from payment of additional sales tax under the Tamil Nadu Act 14 of 1970.

38. A comparison between the two notifications would reveal something interesting. While the notification for exemption in respect of tax payable under the Tamil Nadu General Sales Tax Act, 1959 was issued in exercise of the powers conferred by Section 17(1) of the 1959 Act, the notification for exemption in respect of additional sales tax payable under the 1970 Act was also issued in exercise of the powers conferred by Section 17(1) of the 1959 Act read with Section 2(1)(b) of the 1970 Act. This is in view of the fact that the Tamil Nadu Additional Sales Tax Act, 1970 does not contain a separate provision for grant of exemption. Therefore, ***even the notification for exemption from payment of additional sales tax under the 1970 Act had to be issued only under Section 17(1) of the 1959 Act. The Government was able to invoke Section 17(1) of the 1959 Act, only by virtue of Section 2(1)(b) of the 1970 Act.***

39. Therefore, when the Legislature has enacted the 1970 Act in such a manner that it had to depend for its working, only upon the 1959 Act, the expression 'taxable turnover' appearing in the 1970 Act would also have to be understood only in the same sense in which it is used in the 1959 Act, both in view of the fact that the 1970 Act does not define any expression and also in view of the fact that the provisions of the 1959 Act (including the definition part) are made applicable to the 1970 Act by virtue of Section 2(1)(b) of the 1970 Act. This is perhaps the reason why the First Appellate Authority excluded the sales made by the petitioner to Ford, which also enjoyed similar exemption notifications under the 1959 Act as well as the

1970 Act. Though we are making this observation incidentally, we have not gone on the basis of the understanding or perhaps the misunderstanding of the law by the First Appellate Authority, but have independently gone into the question of law.

40. Therefore, on the first question of law, we are of the considered view that the Tribunal committed an error of law in treating the exempted sales effected by the petitioners to M/s.Hyundai Motors India Limited, as part of the 'taxable turnover' of the petitioner for the purposes of Tamil Nadu Additional Sales Tax Act, 1970. Consequently, the levy of penalty was wrong and the second question has also to be answered in favour of the petitioner.

41. In view of the above, the questions of law are answered in favour of the assessee, the revision is allowed and the order of the Tribunal is set aside. No costs.

(V.R.S.J.) (T.M.J.)
16-9-2015

Index : Yes
Internet : Yes

RS/kpl

To

- 1.The Commercial Tax Officer, Guindy Assessment Circle, Chennai-28.
- 2.The Sales Tax Appellate Tribunal (Main Bench), Chennai-104.

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

RS/kpl

ORDER IN
T.C.(R) No.92 of 2014

16-9-2015