

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

| Date of Reserving the Order | Date of Pronouncing the Order |
|-----------------------------|-------------------------------|
| 20.06.2016                  | 22.06.2016                    |

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.40283 to 40288 of 2015

Tvl.Nokia Solutions and Networks  
India Private Limited,  
Rep., by its Authorised Signatory,  
Mr.Satendra Singh,  
Plot No.OZ-08, SIPCOT Industrial  
Area (Hi-Tech SEZ),  
Panruti Village, Oragadam,  
Sriperumbudur Taluk,  
Kanchipuram District - 603 109. ..Petitioner in all W.Ps.,

Vs

1.The Commissioner of Commercial Taxes,  
Ezhilagam,  
Chepauk, Chennai - 600005.

2.The Joint Commissioner of  
Commercial Taxes,  
Large Taxpayers Unit,  
No.34, Marshalls Road,  
5<sup>th</sup> Floor, Dugar Tower,  
Egmore, Chennai - 600 008.

3.Deputy Commissioner of  
Commercial Taxes-II (FAC)  
Large Taxpayers Unit,  
No.34, Marshalls Road,  
5<sup>th</sup> Floor, Dugar Tower,  
Egmore, Chennai - 600 008.

... Respondents in all W.Ps.,

Common Prayer :- Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records comprised in impugned order in TIN: 33440461618/2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16

dated 30.10.2015, on the file of the respondent No.3, quash the same.

For petitioners .. Mr.Aravind P.Datar Senior counsel for  
Mr.K.Magesh

For Respondents .. Mr.V.Haribabu AGP for Respondents

#### C O M M O N O R D E R

In these Writ Petitions, the petitioner have challenged the assessment orders passed by the third respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act), for the assessment years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, dated 30.10.2015. Since the issue involved in all these Writ Petitions are identical, they were heard together and with the consent on either side, are disposed of by this common order.

2. The petitioner is a private limited company incorporated under the Companies Act, 1956 in 2007 and engaged in the business of supplying Base Transmission Modules and its related IT Telecommunication equipment for use by various telecom service providers both within and outside India. The petitioner is a registered dealer on the file of the second respondent under the provisions of the TNVAT Act. For all the six years, which are subject matter of these Writ Petitions, the second respondent issued notices to the petitioners dated 31.08.2015, stating that they have purchased goods without payment of tax on the ground that they are located in a Special Economic Zone and furnishing the details of purchase value based on the Commodity and the rate of tax, it was stated that as per provision of Section 12 of the TNVAT Act, every dealer who purchases any goods from a registered dealer or from any other person the goods purchased without payment of tax for any reason, though these purchases are liable to tax under the TNVAT Act, are liable to pay tax on the turnover relating to the purchase at the rates specified in the schedule appended to the TNVAT Act. It was further stated that the goods mentioned were purchased by the petitioner with payment of tax by virtue of being located in SEZ warrants levy of purchase tax under Section 12 of the TNVAT Act. Therefore, the respondent proposed to levy tax under Section 12(1)(a) of the TNVAT Act and granted an opportunity to the petitioner to file their objections. The petitioners submitted their reply, dated 13.10.2015, additional written statement dated 19.10.2015 and reply dated 21.10.2015.

3. It was contended that the proposal to levy purchase tax under Section 12 of the TNVAT Act on the turnover of goods sold to the dealer located in a SEZ is directly in conflict with the express mandate of the Tamil Nadu Special Economic Zones

(Special Provisions) Act, 2005, (hereinafter referred to as 'TNSEZ Act'). After referring to Section 12(1) of the TNVAT Act and Section 12(1)(a) of the TNSEZ Act, it was stated that under Section 12(1)(a) of the TNSEZ Act, reference has been made to the Tamil Nadu General Sales Tax Act, 1958, (TNGST Act), however, as per Section 87 of the TNVAT Act, any reference to TNGST Act is construed to be a reference to TNVAT Act and as per Section 12(1)(a) of the TNSEZ Act, there shall be no levy of tax under TNVAT Act on sale or purchase of goods, which are meant to carry on authorised operations. Therefore, it was contended that they are exempted from payment of tax under TNVAT Act on goods meant to carry on authorised operations. Further, it was pointed out that nowhere in the notice it is alleged, that the petitioner is not a developer/entrepreneur under TNSEZ Act engaged in authorised operations on the basis of letter of approval granted to it. Further, it was pointed out that there is no dispute that the goods purchased on which purchase tax is sought to be levied, were being used/consumed for any activity other than the authorised activities mentioned in the letter of approval. Reliance was also placed on the decision of the Gujarat High Court in the case of Torrent Energy Limited vs. State of Gujarat, reported in 2014 17 VST 582. Thus, by claiming exemption from payment of purchase tax, the petitioner also contended that the basis for computation is erroneous and prayed for dropping all further proceedings and an opportunity of personal hearing before taking any adverse decision. The respondent afforded an opportunity of personal hearing and rejected the petitioner's contention that Section 12(1) of the TNSEZ Act provide exemption from levy of tax on sale or purchase of goods under TNGST Act which enactment was repealed with effect from 01.01.2007 and thereafter, the levy of tax on the sale or purchase of goods is governed by the TNVAT Act. Therefore, unless the legislature had amended the TNSEZ Act by replacing "TNGST Act" with the phrase "TNVAT Act" in Section 12 (1), concession cannot be granted and the concession granted ceases to exist the moment the TNGST Act was repealed. Further, the second respondent proceeded to make certain observations as regards the effect of the decision in the case of Torrent Energy Limited (supra).

4. These Writ Petitions were admitted and interim orders were granted and the respondents were directed to file counter affidavit. From the perusal of the counter affidavit, it is seen that the stand taken therein is by replicating the stand taken in the impugned order. When the matter was heard on the previous occasions, it was brought to the notice of the Court that the Government of Tamil Nadu had issued a notification in G.O.Ms.No.75, Commercial Taxes Department, dated 28.06.2005, in exercise of its powers under Section 17(1) of the TNGST Act read with Section 2(1)(b) of the Tamil Nadu Additional Sales Tax Act, 1970, granting exemption in respect of sales tax, surcharge,



resale tax and additional sales tax payable by any dealer on the sale of any goods made by such dealer to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in Madras Special Economic Zone, Tambaram, Chennai and other Special Economic Zones in the State of Tamil Nadu notified by the Government of India or for development, operation and maintenance of Special Economic Zone by the developer of the Special Economic Zone, if such registered dealer has been authorised to establish such unit or such other establishments within the Special Economic Zone or to develop, operate and maintain such Special Economic Zone by the authority specified by the Central Government, subject to the following conditions, namely:-

(a) the dealer obtains and furnishes a certificate in the form appended below duly countersigned by the Special Economic Zone Authority; and

(b) the goods purchased are used only for the aforesaid purposes.

5. This notification came to be issued in the light of the fact that the State of Tamil Nadu enacted a separate legislation for Special Economic Zones namely, TNSEZ Act, 2006. After the repeal of the TNGST Act and coming into force of the TNVAT Act, 2006, the Government passed an order with regard to the effect of the exemption notifications, which were issued, when TNGST Act was in force and by referring to Section 88 of the TNVAT Act, it was stated that notification granting exemption already issued under TNGST shall continue in force under the TNVAT Act. It appears that the Court adjourned the matter to enable the respondents to report as regards the effect of the said notification. However, there is nothing reported before this Court, when the matter was heard.

6. Be that as it may, it is contended that de hors the order passed by the Government, in terms of Section 87 read with Section 88 of the TNVAT Act, whatever exemptions, which were prevailing under the tax regime under the TNGST Act would continue.

7. I have heard Mr.Aravind P.Datar, learned Senior counsel for the petitioner, Mr.V.Haribabu, learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

8. As noticed above, the Government had issued a notification granting exemption as far back as 28.06.2005, making an exemption in respect of sales tax, surcharge, resale tax and additional sales tax payable by any dealer on the sale

of any goods made by such dealer to a registered dealer for the purpose of setting up, operation, maintenance, manufacture etc., in a unit located in the Madras Special Economic Zones and other SEZ in the State of Tamil Nadu notified by the Government of India or for development, operation and maintenance of SEZ by the developer of the SEZ, if such dealer has been authorised to establish the unit within the SEZ or develop or operate, maintain such SEZ subject to two conditions namely, they have to furnish a certificate in the form appended in the notification duly countersigned by the SEZ authority and the goods purchased are used only for the above mentioned purpose. This amendment came to be notified in exercise of the powers under Section 17 (1), as the Government had enacted the Tamil Nadu SEZ Act, Tamil Nadu Act 18 of 2005, which came into force on 08.08.2005. The only reason assigned by the respondent, Assessing Officer is by referring to Section 12(1)(a) of the TNSEZ Act, which reads as follows:-

12(1) Subject to the provisions of subsection (2), every Developer or entrepreneur shall be entitled to the following exemptions, namely:-

(a) exemption from the levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales Tax Act, 1959, if such goods are meant to carry on the authorised operations by the Developer or entrepreneur;

(b) ....

9. In terms of the above provision, every developer or entrepreneur shall be entitled to exemptions from levy of taxes on the sale or purchase of goods under TNGST Act, if such goods are meant to carry on the authorised operations by the developer or entrepreneur. The respondent does not dispute the fact that the petitioner is a developer or an entrepreneur nor does it dispute the fact that the purchase of goods are meant to carry on authorised operations. The only reason based on which they seek to deny the benefit of exemption is by stating that after the repeal of TNGST Act unless the legislature had amended Section 12(1)(a) of the TNSEZ Act and substituted the words with TNVAT Act, the exemption will not enure in favour of the petitioner. In my view, the stand taken by the respondents is wholly untenable and has been rendered without taking note of Sections 87 and 88(1) of the TNVAT Act. The said provisions read as follows:-

Section 87. Construction of reference to Tamil Nadu General Sales Tax Act:- Reference to "Tamil Nadu General Sales Tax Act" or "Tamil Nadu Additional Sales Tax Act" in any Act, or in any Rule, Notification, proceedings, order, or other instrument made or issued under that Act, shall be construed as reference to "Tamil Nadu Value Added Tax Act."

Section 88. Repeal and Saving:- (1) The Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970) (hereafter in this section referred to "the said Act or 1970 Act") are hereby repealed.

Provided that such repeal shall not affect the previous operation of the said Act or 1970 Act, as the case may be, or any right, privilege, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, anything done or any action taken including any appointment made, any notification, notice or order issued, any rule or regulation framed or forms prescribed and any certificate, licence or permit granted in exercise of any power conferred by or under the said Act or 1970 Act, as the case may be, shall be valid and always as deemed to have been valid, during the period the said Act or 1970 Act, as the case may be was in force notwithstanding the repeal of the said Act or 1970 Act as the case may be.

10. By virtue of Section 87 of the Act, wherever there is any reference to TNGST Act i.e., in any Act, Rule, Notification proceedings, order or other instrument made or issued under TNGST Act shall be construed as reference to TNVAT Act. In terms of the proviso under Section 88(1), the repeal of the TNGST Act, shall not affect the previous operation of the said Act, as the case may be or any right, privilege, obligation or liability accrued or incurred thereunder. Further, in terms of Section 88(3)(i), all rules, regulations, notifications, clarifications or orders made or issued under any of the provisions of TNGST Act, or the additional sales tax act and continuing to be in force on the date immediately before the commencement of the TNVAT Act shall continue in force on or after such date insofar as they are not inconsistent with the provisions of the TNVAT Act or the Rules made thereunder until they are repealed or amended.

11. Admittedly, the notification granting exemption issued by the Government of Tamil Nadu vide G.O.Ms.No.75, dated 28.06.2005, continued to be in force on the date immediately before the commencement of the TNVAT Act and therefore, it shall continue to be in force. Unless, it is stated that the notification is inconsistent with the provision of the TNVAT or the Rules framed thereunder and even in such cases, it shall continue in force till, it is repealed or amended. There is nothing on record to show that the said notification in G.O.Ms.No.75, stood amended or rescinded. In fact, this legal position was rightly construed and the Secretary to the



Commercial Taxes and Registration Department issued a Government letter, dated 29.12.2006, to the first respondent stating that by virtue of Section 88(3)(i), the notification, granting exemption already issued under TNGST shall continue to be in force under TNVAT Act.

12. In the light of the above discussion and taking into consideration of Sections 87, 88(1), 88(3)(i), coupled with the notifications, issued by the Government in G.O.Ms.No.75, read along with the Government letter dated 29.12.2006, it has to be necessarily held that the interpretation given by the second respondent to deny the benefit of exemption granted to the petitioner by virtue of Section 12(1)(a) of the TNSEZ Act is held to be unsustainable.

13. In the result, the Writ Petitions are allowed and the impugned orders of assessment are quashed and the matter is remitted back to the Assessing Authority, second respondent to redo the assessment by extending the benefit of exemption. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Commercial Taxes,  
Ezhilagam,  
Chepauk, Chennai - 600005.
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Large Taxpayers Unit,  
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Egmore, Chennai - 600 008.

+6ccs to Mr. K. Magesh, Advocate, S.R.No.34556

SKS(CO)

EU(01/07/2016)

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