IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.02.2016 and Pronounced on: 05.4.2016

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mr.Justice N.KIRUBAKARAN

W.P.Nos.37604 & 37605 of 2007, 8758 to 8762, 15024 to 15026, 24270, 24271, 24729 to 24731, 26643 of 2010, 9966, 9967, 10312, 10313, 10983, 10984 and 29139 of 2011, 8448, 27834, 27835, 30064 to 30066 of 2013, 5379 to 5381, 14845, 14846, 29849 & 29850 of 2014, 1339, 1457, 1458, 7420, 11160, 11161, 13213, 13214, 16298 to 16307, 30590 & 30591of 2015

M/S. SCHWING STETTER (INDIA) PVT
LTD F-71 SIPCOT INDUSTRIAL PARK
IRUNGATTUKOTTAI SRIPERUMBUDUR TALUK
KANCHEEPURAM DISTRIC 602 105
... PETITIONER in WP No.37604,37605 of 2007
8758,8759,8760, 8761,8762 of 2010

1 M/S.FLOW SERVE INDIA CONTROLS
(P) LTD. S.F.NOS.136/3 & 137 MYLERIPALAYAM
ROAD MULERIPALAYAM POST OTHAKKALMANDAPAM
COIMBATORE-641 032
... PETITIONER in WP No.15024,15025,15026
of 2010

1 M/S.GEEKAY MACHINE WORKS (P)
LTD REP BY ITS MG. DIRECTOR MRS. K.KAMALAM
31 LAWLEY ROAD COIMBATORE
... PETITIONER in WP No.24270,24271 of 2010

1 M/S.TITANIUM TANTALUM PRODUCTS
LTD 86/1 VENGAIVASAL MAIN ROAD
GOWRIVAKKAM CHENNAI-73.
... PETITIONER in WP No.24729,24730,24731 of 2010

1 M/S.AROMEN ENGINEERING
COMPANY (PVT. LTD.) 167 KALIYAPURAM ROAD
THIRUMALAYAPURAM POST COIMBATORE-641105
REP. BY ITS MANAGING DIRECTOR.
... PETITIONER in WP No.26643 of 2010

1 EAKCON SYSTEMS PVT LTD.
123 KOTHWALCHAVADI STREET SAIDAPET
CHENNAI-15.
... PETITIONER in WP No.9966,9967, 10983,10984, 29139 of 2011

1 M/S.HILTI INDIA PVT. LTD.
7 & 8 LINKS PLAZA DR. RADHAKRISHNAN NAGAR
POONAMALLEE HIGH ROAD ARUMBAKKAM CHENNAI- 106.
... PETITIONER in WP No.10312,10313 of 2011

1 PROTECK CIRCUIT AND SYSTEMS
(P) LTD. REP BY ITS MANAGER (ACCOUNTS AND
FINANCE) JUDE CHRISTOPHER NO. 15
MEDAVAKKAM ROAD SHOLLINGANALLUR CHENNAI 119
... PETITIONER in WP No.8448 of 2013

1 M/S.PULLYES CENTRE
REP BY ITS PROPRIETOR K. RANGANATHAN NO.239
DR. NANJAPPA ROAD COIMBATORE 641 018
... PETITIONER in WP No.27834,27835 of 2013

1 M/S.SCHWING STETTER (INDIA)
PVT. LTD REP. BY ITS DEPUTY MANAGER
ACCOUNTS F-71 SIPCOT INDUSTRIAL PARK
IRUNGATTUKOTTAI SRIPERUMBUDUR TALUK
KANCHEEPURAM DISTRICT-602 105.
... PETITIONER in WP No.30064,30065,30066 of 2013

1 M/S.SUJANA METAL PRODUCTS LTD.
REP.BY ITS MANAGER-G.JAYAN NO.6/9 DAMODARA
MUDALI STREET CHETPET CHENNAI-31
... PETITIONER in WP No.5379,5380.5381 of 2014

1 M/S.A.R.M. ENGINEERING COMPANY
REP. BY ITS PARTNER NO.15/150 TASS
INDUSTRIAL ESTATE (SIDCO) AMBATTUR CHENNAI-
600 098.
... PETITIONER in WP No.14845,14846 of 2014

1 M/S.SCIGENICS (INDIA) PRIVATE
LTD. REP. BY ITS DIRECTOR NO.1 AVVAI
NAGAR MAIN ROAD THIRUVANMIYUR
CHENNAI-600 041
... PETITIONER in WP No.29849,29850 of 2014

1 TVL.SRI VISVANAN SERVICES
REP. BY ITS PROPRIETOR T.VISVANAN AT NO.
115/11 SOORAN VIDUTHI PRESENTLY AT 4/398
THIRUPATHI NAGAR KALLALANGUDI ALANGUDI TK.
PUDUKOTTAI DT. ... PETITIONER in WP No.1339 of 2015

1 M/S.SUKUMAR ENGINEERING EXPORT
REP. BY ITS PROPRIETOR-S.SUKUMAR NO.168-A
KANGAYAM MAIN ROAD VELLINGIRI PUDUR
ARACHALUR ERODE DISTRICT.
... PETITIONER in WP No.1457,1458,7420 of 2015

1 M/S.SUKUMAR WELDING WORKS
REP. BY ITS PROPRIETOR - K.SAMINATHAN NO.92
KANGAYAM ROAD VELLINGIRI PUDUR ARACHALUR
ERODE 638 101
... PETITIONER in WP No.11160,11161 of 2015

1 M/S.MIGA TRONIC INDIA
PRIVATE LTD. REP. BY ITS HEAD-FINANCE &
COMMERCIALNO.22& 39/20-H SOWRI STREET
ALANDUR CHENNAI-16
... PETITIONER in WP No.13213,13214 of 2015

1 M/S.PACK O PRINT
REP BY ITS PARTNER K.P. BALAKRISHNAN NO.37
NERKUNDRAM PATHAI VADAPALANI CHENNAI 26
... PETITIONER in WP No.16298,16299,16300,
16301,16302,16303, 16304,16305, 16306,
16307 of 2015

1 ELGI EQUIPMENTS LTD.
REP. BY ITS HEAD INDIRECT TAXATION &
COMMERCIAL V.PARTHASARATHY TRICHY ROAD
SINGANALLUR COIMBATORE 641 005
... PETITIONER in WP No.30590,30591 of 2015

Vs.

1 THE COMMISSIONER OF COMMERCIAL
TAXES EZHILAGAM CHEPUAK CHENNAI 600005

2 THE COMMIERCIAL TAX OFFICER
SRIPERUMBUDUR ASSESSMENT CICLE
VARADHARAJAPURM 602 103

... RESPONDENTs 1&2 in WP No.37604,37605 of 2007

1 THE STATE OF TAMILNADU
REP.BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI

1 THE ASSISTANT COMMISSIONER (CT)
SRIPERUMBUDUR ASSESSMENT CIRCLE,
VARADHARAJAPURAM 602 103. .. RESPONDENTS 1&2 in WP 8758, 8759, 8760, 8761 & 8762 of 2010.

1 THE STATE OF TAMILNADU
REP.BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI

2 THE ASSISTANT COMMISSIONER (CT
AVINASHI ROAD CIRCLE COIMBATORE-641 018

... RESPONDENTS 1&2 in WP No.15024,15025, 15026 of 2010

1 STATE OF TAMILNADU ... RESPONDENT in WP No.24270 of 2010
REP BY ITS SECRETARY TO GOVERNMENT CT AND
RE DEPT. FORT ST.GEORGE CHENNAI 9

2 THE COMMERCIAL TAX OFFICER
METTUPALAYAM ROAD CIRCLE COMMERCIAL TAXES
BUILDINGS COIMBATORE ... RESPONDENTs 1&2 in WP No.27270 of 2010

1 THE COMMERCIAL TAX OFFICER
METTUPALAYAM ROAD CIRCLE COMMERCIAL TAXES
BUILDINGS COIMBATORE ... RESPONDENT in WP No.24271 of 2010

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI-9.

2 THE ASSISTANT COMMISSIONER(CT)
TAMBARAM-II ASSESSMENT CIRCLE NO.117
STATION ROAD CHROMEPET CHENNAI-44.

... RESPONDENTs 1&2 in WP No.24729, 24730, 24731 of 2010

1 STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT CT & RE
DEPARTMENT FORT ST. GEORGE CHENNAI-9.
.. Respondent in WP 20043 of 2010

2 THE ASSISTANT COMMISSIONER (CT)
PERUR ASSESSMENT CIRCLE COMMERCIAL
TAXES BUILDINGS COIMBATORE-18.

1 COMMERCIAL TAX OFFICER
SAIDAPET ASSESSMENT CIRCLE CHENNAI.

2 COMMISSIONER OF COMMERCIAL
TAXES EZHILAGAM CHEPAUK CHENNAI-5.

3 SECRETARY TO GOVERNMENT
COMMERCIAL TAXES FORT ST. GEORGE CHENNAI-9.
... RESPONDENT in WP No.9966,9967 of 2011

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2 THE ASST. COMMISSIONER (CT)
VADAPALANI I ASSESSMENT CIRCLE 10-C RAZACK
GARDEN MMDA COLONY ARUMBAKKAM CHENNAI-106.
... RESPONDENT in WP No.10312,10313 of 2011

1 COMMERCIAL TAX OFFICER
SAIDAPET ASSESSMENT CIRCLE CHENNAI.
... RESPONDENT in WP No.10983,10984 of 2011

1 SECRETARY TO GOVERNMENT
COMMERCIAL TAXES FORT ST.GEORGE
CHENNAI- 600 009. ... RESPONDENTs 1&2 in WP No.29139 of 2011

2 COMMERCIAL TAX OFFICER
SAIDAPET ASSESSMENT CIRCLE CHENNAI.

1 THE ASSISTANT COMMISSIONER
(CT) THIRUVANMIYUR ASSESSMENT CIRCLE
CHENNAI 90 ... RESPONDENT in WP No.8448 of 2013

2 THE STATE OF TAMILNADU
REP BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF COMMERCIAL TAXES AND
REGISTRATION FORT ST.GEORGE CHENNAI 9

1 THE STATE OF TAMILNADU
REP BY THE SECRETARY COMMERCIAL TAXES AND
REGISTRATION DEPARTMENT FORT ST. GEORGE
CHENNAI 9

2 THE ASSISTANT COMMISSIONER
(CT) DR. NANJAPPA ROAD CIRCLE COIMBATORE
... RESPONDENT in WP No.27834,27835 of 2013

1 THE ASSISTANT COMMISSIONER(CT)
SRIPERUMBUDUR ASSESSMENT CIRCLE
VARADHARAJAPURAM-602 103.
... RESPONDENT in WP No.30064,30065 30066 of 2013

1 THE STATE OF TAMILNADU
REP.BY THE SECRETARY COMMERCIAL TAXES AND
REGISTRATION DEPARTMENT FORT ST. GEORGE
CHENNAI-9

2 THE ASSISTANT COMMISSIONER
(CT) EGMORE-II ASSESSMENT CIRCLE CHENNAI
... RESPONDENT in WP No.5379,5380,5381 of 2014

1 ASSISTANT COMMISSIONER (CT)
EGMORE -I ASSESSMENT CIRCLE CHENNAI.
... RESPONDENT in WP No.14845,14846, of 2014

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI-9

2 THE ASSISTANT COMMISSIONER
(CT) THIRUVANMIYUR ASSESSMENT CIRCLE CHENNAI
... RESPONDENT in WP No.29849,29850 of 2014

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI-9
... RESPONDENTs 1&2 in WP No.1339 of 2015

2 THE COMMERCIAL TAX OFFICER
(MAIN) FAC PUDUKKOTTAI -II ASSESSMENT
CIRCLE WEST MAIN STREET PUDUKKOTTAI

1 THE STATE OF TAMILNADU
REP. BY THE SECRETARY COMMERCIAL TAXES AND
REGISTRATION DEPARTMENT FORT ST. GEORGE
CHENNAI-600 009.

2 THE ASSISTANT COMMISSIONER(CT)
ERODE RURAL ASSESSMENT CIRCLE ERODE.
... RESPONDENT in WP No.1457,1458,7420,
11160,11161 of 2015

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI-9

2 THE COMMERCIAL TAX OFFICER
ALANDUR ASSESMENT CIRCLE 12 VEDAGIRI
STREET ALANDUR CHENNAI-16
... RESPONDENT in WP No.13213,13214,
of 2015

1 THE STATE OF TAMIL NADU
REP BY ITS SECRETARY TO GOVERNMENT CT & RE
DEPARTMENT FORT ST. GEORGE CHENNAI 9

2 THE ASSISTANT COMMISSIONER
(CT) VADAPALANI ASSESSMENT CIRCLE NO.1
GREAMS ROAD CHENNAI 6
... RESPONDENT 1&2 in WP No.16298,16299,
16300,16301,16302 of 2015

1 THE ASSISTANT COMMISSIONER
(CT) VADAPALANI ASSESSMENT CIRCLE NO.1
GREAMS ROAD CHENNAI 6
... RESPONDENT in WP No.16303,16304,16305,
16306,16307 of 2015

1 THE DEPUTY COMMISSIONER
(CT) FAST TRACK ASSESSMENT CIRCLE 1
COMMERCIAL TAX OFFICE COIMBATORE 641 018
... RESPONDENT in WP No.30590,30591 of 2015

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the first respondent in Lr.No.VAT cell/7473/2007(VCC

No.312) and quash the clarification dated 11.4.2007 issued therein and further direct the respondents to treat the concrete mixing (batching) plant sold by the petitioner as capital goods under Section 2(11) of the TNVAT Act, 2006.

WP No.37604 of 2007
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, call for the records of the ist respondent in Lr.NO. VAT cell/7473/2007 (VCC No 312 and quash the clarification dt 11.04.2007 issued therein and further direct the respondents to treat the concrete mixing (batching) plant sold by the petitioner as capital goods u./s 2 (11) of the TNVAT Act 2006.

WP No.37605 of 2007
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Lr.No.VAT cell/7473/2007 (VCC No.312) and quash the clarification dt 11.4.2007 issued therein and further direct the respondents to treat the concrete mixing (batching)plant sold by the petitioner as capital goods u/s.2 (11) of the TNVAT Act, 2006.

WP No.8758 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, to declare Sec. 2 (11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII ofthe Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.8759 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified to call for the records of the 2nd respondent in CST 733138/2006-07 and quash the proceedings dt 29.3.2010 issued therein.

WP No.8760 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd respondent in CST 733138/2007-08 and quash the proceedings dt 29.3.2010 issued therein.

WP No.8761 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent in CST 733138/2008-09 and quash the proceedings dt 29.3.2010 issued therein.

WP No.8762 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent in CST 733138/2009-10 and quash the proceedings dt 29.3.2010 issued therein.

WP No.15024 of 2010
Petition under Article 226 of the Constitution of India, praying for the issuance of Writ of Declaration, to declare Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and Ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postualtes the condition of capital goods being used in the State for the purpose of levy of tax @4%.

WP No.15025 of 2010
Petition under Article 226 of the Constitution of India, praying the Writ of Certiorari to call for the records of the 2nd respondent in CST.268755/2007-08 and quash the proceedings dated 27.5.2010 issued therein.

WP No.15026 of 2010
Petition under Article 226 of the Constitution of India, praying the Writ of Certiorari to call for the records of the 2nd respondent in CST.No.268755/2008-09 and quash the proceedings dated 27.5.2010 issued therein.

WP No.24270 of 2010
Petition under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.24271 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 591916/07-08 dt 20.9.2010 and quash the same as illegal.

WP No.24729 of 2010
Petition under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles

14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.24730 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the second respondent abovenamed in CST No.51551/2008-09 on his files, quash the proceedings dt.11.3.2010 issued therein.

WP No.24731 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the second respondent abovenamed in CST No.51551/2009-10 on his files, quash the proceedings dt.11.3.2010 issued therein.

WP No.26643 of 2010
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Declaration to declare Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the constitution of India and violates Article 14, 301, 303 and 304 of Part XIII of the constitution of India, in so far as it postulates the condition of capital goods being used in the state of the purpose of levy of Tax @ 4%.

WP No.9966 of 2011
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorarified mandamus Calling for the records of the Respondent and quash the assessment proceedings in CST No.770751/2009-10 dated 10.03.2011 issued therein and direct the First Respondent to pass fresh orders assessing capital goods at 4% for the year 2009-10 under CST Act.

WP No.9967 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of certiorarified mandamus Calling for the records of the Respondent and quash the assessment proceedings in CST No.770751/2008-09 dated 26.02.2011 issued therein and direct the First Respondent to pass fresh orders assessing capital goods at 4% for the year 2008-09 under CST Act.

WP No.10312 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the Second Respondent in CST: 772820/2009-10 quash the impugned proceedings of the 2nd Respondent dated 20.12.2010 as illegal arbitrary and unreasonable and against the provisions of the Central Sales Tax Act, 1956.

WP No.10313 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of Declaration to Declare the words in so far it relates to used in the State in the definition of capital goods under Section Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 read with Section 8 of the Central Sales Tax Act, 1956 as illegal arbitrary, unreasonable, discriminatory and ultravires the Constitution of India being violative of Articles 14, 19(1)(g), 301, 303 and 304 of Part XIII of the Constitution of India.

WP No.10983 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the respondent in his proceedings in TIN No.33346222212/ 2009-10 dt.28.3.2011 and quash the Notice dt.28.3.2011 isssued therein.

WP No.10984 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the respondent in his proceedings in TIN No.33346222212/ 2008-09 dt.7.3.2011 and quash the Notice dt.7.3.2011 isssued therein.

WP No.29139 of 2011
Petition under Article 226 of the Constitution of India, praying to issue Writ of Declaration Declaring the words used under section 2(11) of TNVAT Act 2006 as used in the State are unconstitutional and violative of Article 19(1)(g) 301 and 304 that same is inconsistent with the charging Section 9(2) of the CST Act.

WP No.8448 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare the words in so far as it relates to used in the State in the definition of capital goods under Section 2 (11) of the TNVAT Act, 2006 read with Section 8 of the CST Act, 1956 as illegal, arbitrary, unreasonable, discriminatory and ultra wires the Constitution of India which violates of Article 14, 19 (l)(g), 301 and 304 of the Constitution of India.

WP No.27834 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Section 2 (11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles

14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.27835 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari Calling for the records of the 2nd respondent in his proceeding made in TIN 33102141651/12-13 dt 29.8.2013 quash the same.

WP No.30064 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the respondent in TIN 33741662410/ 2008-09 and quash the proceedings dated 3.6.2013 issued therein in so far as it proposes to assess the sales of concrete mixing (batching) plant effected by the petitioner @ 12.5%.

WP No.30065 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the respondent in TIN 33741662410/ 2009-10 and quash the proceedings dated 3.6.2013 issued therein in so far as it proposes to assess the sales of concrete mixing (batching) plant effected by the petitioner @ 12.5%.

WP No.30066 of 2013
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the respondent in TIN 33741662410/ 2010-11 and quash the proceedings dated 3.6.2013 issued therein in so far as it proposes to assess the sales of concrete mixing (batching) plant effected by the petitioner @ 12.5%.

WP No.5379 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Section 2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levey of Tax @ 4%.

WP No.5380 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari calling for the records of the 2nd respondent in its impugned proceedings made in TIN 33841502596/ 2008-09 dated 10.1.2014 in so far as the 2nd

respondent herein seeks to reverse Input Tax Credit (ITC) on the inter state sale of capital goods quash the same.

WP No.5381 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari calling for the records of the 2nd respondent in its impugned proceedings made in TIN 33841502596/ 2009-10 dated 10.1.2014 in so far as reversal of Input Tax Credit (ITC) on capital goods quash the same .

WP No.14845 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorarified mandamus to call for the records of the respondent and quash the assessment proceedings in CST No.652695/2009-10 dated 16.5.2014 and direct the respondent to pass fresh orders after considering the representation dated 12.05.2014 and providing an opportunity of personal hearing in this case.

WP No.14846 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorarified mandamus to call for the records of the respondent and quash the assessment proceedings in CST No.652695/2010-11 dated 16.5.2014 and direct the respondent to pass fresh orders after considering the representation dated 12.05.2014 and providing an opportunity of personal hearing in this case.

WP No.29849 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec.2 (11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.29850 of 2014
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari to call for the records of the 2nd respondent in CST/ 842434/2007-08 and quash the order dated 30.10.2014 passed therein.

WP No.1339 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 enacted by the 1st respondent as discriminatory and ultra vires the constitution of

India and violative of Article 14, 301, 303 and 304 of part XIII of the constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax at 4%.

WP No.1457 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Section 2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.1458 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorari calling for the records on the file of the 2nd respondent in its impugned proceedings made in CST 883084/12-13 dated 04.12.2014 quash the same.

WP No.7420 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records on the file of the 2nd Respondent in its impugned proceedings made in CST 883084/13-14 dated 05.02.2015, quash the same.

WP No.11160 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Section 2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of tax @ 4%.

WP No.11161 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records on the file of the 2nd respondent in its impugned proceedings made in CST 883087/11-12 dated 6.3.29015 quash the same.

WP No.13213 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec.2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the constitution of India, in so far as it postulates the condition of capital goods being

used in the State for the purpose of levy of tax @ 5% .

WP No.13214 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the records of the 2nd respondent in CST.732023/2013-14 and quash the order dated 23.3.2015 passed therein.

WP No.16298 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration to declare Sec. 2 (11) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of Tax @ 4%.

WP No.16299 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec. 2 (11) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of Tax @ 4%.

WP No.16300 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec. 2 (11) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of Tax @ 4% .

WP No.16301 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec. 2 (11) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of Tax 5%.

WP No.16302 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration to declare Sec. 2 (11) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used in the State for the purpose of levy of Tax 5% .

WP No.16303 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 799467/2007-08 dt 26.3.2015 and quash the same as illegal.

WP No.16304 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of certiorai Calling for the records of the respondent in his proceedings in CST No. 799467/2009-10 dt 26.3.2015 and quash the same as illegal.

WP No.16305 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 799467/2010-11 dt 26.3.2015 and quash the same as illegal.

WP No.16306 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 799467/2011-12 dt 26.3.2015 and quash the same as illegal.

WP No.16307 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 799467/2012-13 dt 23.3.2015 and quash the same as illegal.

WP No.30590 of 2015
Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records on the files of the Respondent herein in CST No.299456/2012-13 dated 12.8.2015 as revised by the respondent in CST No.299456/2012-13 dated 27.8.2015 quash the same in so far as it relates to the levy of tax at a rate in excess of 5% on a turnover of Rs.5,61,76,215/-.

WP No.30591 of 2015

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus calling for the records on the files of the Respondent herein in CST No.299456/2012-13 dated 15.9.2015 quashing the same while directing the respondent herein to re-dispose the application dated 8.9.2015 filed by the petitioners under Section 84 of the TNVAT Act, 2006.

For Petitioners in WP No.37604 & 37605/07 24731/10	:	Mr.R.L.Ramani, S.C. For Mr.K.J.Chandran
WP Nos.29849 & 29850/14, 15024 to 15026, 8758 to 8762, 24729 & 24730/10, 30064 to 30066/13	:	Mr.B.Raveendran
WP Nos.10983, 10984, 9966 & 9967/11 & 14845 & 14846/14	:	Mr.C.Baktha Sironmani
WP Nos.24270 & 24271/10	:	Mr.S.Ramanathan
WP No.29139/11	:	Ms.Aparna Nandakumar
WP Nos.13213 & 13214/15	:	Mr.L.Muralaikrishnan
WP Nos.27834, 27835/13, 1457, 1458, 11160, 11161 & 7420/15 & 5379 to 5381/14	:	Mrs.R.Hemalatha
WP No.8448/13	:	Mr.N.Inbarajan
WP Nos.10312 & 10313/11	:	Mr.V.Sundareswaran
WP No.1339/15	:	Mr.K.Soundararajan
WP Nos.16298 to 16307/15	:	Mr.P.R.Kumar
WP Nos.30590 & 30591/15	:	Mr.N.Prasad for Mr.N.Inbarajan
WP No. 26643/10	:	Mr.S.Raveekumar
For Respondents	:	Dr.Anita Sumanth, Spl.G.P. (T) Assisted by Mr.Manoharan Sundaram, AGP Mr.Cibi Vishnu, AGP

COMMON ORDER

The petitioners in these writ petitions, have come up with a prayer either for the issue of a writ of declaration to declare a particular phrase in Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006 as ultra vires the Constitution or for quashing the Orders of Assessment or Orders of recovery of a higher rate of tax. Since the challenge to the Orders of Assessment or Orders of recovery are only consequential to the challenge to the vires of Section 2(11) or part thereof, all these writ petitions have been clubbed together and were taken up for disposal.

2. We have heard Mr.R.L.Ramani, learned Senior Counsel, M/s. B.Raveendran, Mrs.R.Hemalatha, N.Prasad, L.Muralikrishnan, Ms.Aparna Nandakumar, C.Baktha Sironmani, S.Ramanathan, K.Soundararajan, V.Sundareswaran and S.Raveekumar, learned counsel appearing for the writ petitioners and Dr.Anita Sumanth, learned Special Government Pleader(Tax), assisted by Mr.Manoharan Sundaram, Additional Government Pleader(Tax), and Mr.Cibi Vishnu, Additional Government Pleader (Tax), appearing for the State.

3. Under Section 8(1) of the Central Sales Tax Act, a dealer who sells goods of the description referred to in Sub-Section (3) in the course of inter-State trade or commerce, is liable to pay tax at a concessional rate. But if the sale is of the goods not falling within Sub-Section (1), the tax payable will be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State.

4. The petitioners in these cases are dealers within the meaning of the said expression in Section 2(b) of the Central Sales Tax Act, 1956. The petitioners claim to be selling goods of the description referred to in Sub-Section (3) of Section 8 of the Central Sales Tax Act, 1956. The petitioners are also selling those goods in the course of inter-State trade or commerce.

5. Unfortunately, all the petitioners in these writ petitions are selling the aforesaid goods in the course of inter-State trade or commerce, either to unregistered dealers or to Government Departments of other States or Government Corporations or undertakings in other States. As a consequence, the petitioners herein do not enjoy the concessional rate of tax under Section 8(1) of the Central Sales Tax Act, 1956.

6. Under Part-B of the First Schedule of the Tamil Nadu Value Added Tax Act, 2006, capital goods as described in Section

2(11) of the Act, are included in serial number 25 and as a consequence, they attract tax at the rate of 5%. Since serial number 25 of Part-B is specifically confined to capital goods as described in Section 2(11) of the Act, other capital goods which may not satisfy the description contained in Section 2(11), despite really being capital goods, may fall under serial number 69 of Part-C of the First Schedule, attracting tax at the rate of 14.5%.

7. At this stage, it will be appropriate and useful to extract Section 2(11) of the Act. It reads as follows:-

> "capital goods" means-
> (a) plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;
> (b) pollution control, quality control, laboratory and cold storage equipments;
> (c) components, spare parts and accessories of the goods specified in (a) and (b) above;
> (d) moulds, dies, jigs and fixtures;
> (e) refractors and refractory materials
> (f) storage tanks; and
> (g) tubes, pipes and fittings thereof
> used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government;"

8. As can be seen from the above definition, only such of those goods which satisfy the following criteria, will fall within the definition of Section 2(11):-
(i) the goods must be of the description contained in Clauses (a) to (g);
(ii) the goods must be used in the State;
(iii) they must be used for the purpose of manufacture, processing, packing or storing of goods;
(iv) such an activity should take place in the course of business; and
(vi) the same should not be civil structures or such goods as may be notified by the Government.

9. One set of dealers who claim that they are selling goods that satisfy all the above criteria except what is mentioned in serial number (ii) above, have come up with writ petitions, objecting to the presence of the phrase "in the State" appearing in Section 2(11). Another set of dealers whose goods are not

even treated as falling within the description contained in Clauses (a) to (g) have come up with a set of writ petitions contending that what they sell are also capital goods that will fall within the description contained in Clauses (a) to (g).

10. In other words, two categories of persons have come up with the above writ petitions. One set of persons are those who admittedly manufacture the goods of the description contained in Clauses (a) to (g), but whose goods are used not "in the State" but outside the State, as a consequence of which their goods are not treated as falling within Section 2(11). Another set of persons are those whose goods, even if used "in the State", are not treated as satisfying the description contained in Clauses (a) to (g), resulting in their goods not at all being treated as capital goods, even if sold within the State. Therefore, the cases filed by these two categories of dealers may have to be dealt with separately. We do so accordingly.

Objections to the expression "in the State" appearing in Section 2(11):

11. The objections to the employment of the phrase "in the State" in Section 2(11), are as follows:-

(i) goods which are treated as capital goods, when used in the State, cannot become other goods, when used outside the State;

(ii) treating the dealers of one and the same goods differently, depending upon their place of use, offends Article 14;

(iii) a sale in the course of inter-State trade or commerce, to a person other than a registered dealer, is covered by Section 8 (2) of the Central Sales Tax Act, 1956 and hence, the prescription contained in Section 2(11) is an encroachment by a State law into a field occupied by a Central Legislation;

(iv) the prescription contained in Section 2(11) is violative of Article 286(1)(a) of the Constitution; and

(v) the prescription contained in Section 2(11) is violative of Article 303 of the Constitution.

Response of the State

12. The overall response of the State of Tamil Nadu, to the challenge to Section 2(11), as projected by Dr.Anita Sumanth, learned Special Government Pleader (Taxes), is that the entire thrust of Sales Tax Law, is to encourage transactions between two registered dealers. The dealers who have come up with a challenge to Section 2(11) are only those who sell goods in the course of inter-State trade or commerce, to unregistered dealers. If the first category of writ petitioners, who object to the language employed in Section 2(11), happen to sell goods only to registered dealers in the course of inter-state trade or commerce, they may be paying a rate of tax as per Section 8(1) of the CST Act, 1956, which is actually lesser than what is prescribed in serial number 25 of Part-B of the First Schedule to the TNVAT Act, 2006. In such an event, these dealers will not

even have a cause to complain. Moreover, Sub-Sections (3) and (5) of Section 3 of the Tamil Nadu General Sales Tax Act, 1959, also contained similar expressions. But they were not challenged. Therefore, the challenge to a particular expression contained in Section 2(11), especially after the deletion of Section 8(2-A) of the CST Act, 1956, simultaneously with the introduction of the TNVAT Act, 2006, has no substance.

13. We have carefully considered the rival contentions. We shall take up the grounds of challenge one by one.

First ground of challenge:

14. The first ground of challenge to Section 2(11) is that the nature of the goods cannot change, merely on the basis of the location in which they are used. According to the petitioners, if certain goods are admittedly capital goods, their nature will not change merely because they were sold in the course of inter-state trade or commerce, to persons outside the State.

15. But this argument of the petitioners is based merely upon logic and common sense. Unfortunately, law, much less tax law, is not founded upon logic and common sense. The petitioners have forgotten for a moment that they are challenging the vires of a legislation. The law validly enacted by a State Legislature, cannot be challenged on the ground that it defies logic and common sense. In Namit Sharma v. Union of India [(2013) 1 SCC 745], the Supreme Court, after referring to D.D.Basu in the " Shorter Constitution of India" indicated that a law may be challenged as unconstitutional on the following grounds namely: (1) contravention of any of the fundamental rights (2) Legislating on a subject not assigned to the relevant Legislature by the distribution of powers made by the VII Schedule read with the connected Articles (3) contravention any of the mandatory provisions of the Constitution which impose limitations upon the powers of a Legislature (4) the operation of the law (in the case of a State Law), beyond the boundaries of the State and (5) the abdication, by the Legislature, of its essential Legislative function or the excessive delegation of that power to some other body.

16. The grounds on which a law cannot be invalidated, are also listed out in para 11 of the Judgment in Namita Sharma. It is pointed out therein that a law cannot be invalidated on the ground that the law making body did not apply its mind or that it was prompted by improper motive. A law cannot even be challenged on the ground that it contravened any of the directives contained in Part-IV of the Constitution. Even the wisdom of the Legislature in making such a law, cannot be a matter of consideration. The manner in which such a law is administered or capable of being administered cannot also be a ground of challenge.

17. Mrs.R.Hemalatha, learned counsel appearing for some of the petitioners submitted (i) that if the State wanted to give liberal treatment to the goods used within the State, they could have resorted to the power of exemption under Section 30; (ii) that the nature of the goods cannot depend upon the situs of use, so as to run contrary to Section 8(2); (iii) that the definition of the expression "capital goods" in the statutes of all other States except Delhi does not contain a similar expression as contained in Section 2(11) of the Tamil Nadu enactment; and (iv) that the State will not lose any revenue, even if the contention of the petitioners are upheld, since there is no input credit on these items.

18. We do not know how the availability of a power of exemption under Section 30 can take away the power of the State legislature to define a particular expression used in the statute. The power to examine is generally conferred by statute upon the executive. Therefore, it could be exercised only subject to the provisions of the statute. Once the statute defines an expression, the fact that the same object could have been achieved even by exercising the power of exemption, cannot be an answer.

19. The second contention of Mrs.R.Hemalatha, that the nature of the goods cannot depend upon the situs of the use, is wholly unsustainable. What are capital goods and what are not, may vary from statute to statute. Every State legislature is entitled to adopt its own definition, depending upon the exigencies. What are capital goods for those who use them in the production of other products, may not be capital goods for the person who manufactures those very goods.

20. The fact that all other States except Delhi have adopted a particular definition for the expression "capital goods", is an argument to be advanced on the floor of the Assembly or in the public domain. The vires of a provision of law cannot be tested on the basis of what the other States have done or have not done.

21. That the State does not stand to lose by treating the expression "used in the State" appearing in Section 2(11) as redundant, in view of the non-availability of input credit, is also no ground to hold the provision as unconstitutional. We have stated elsewhere the parameters on which the validity of a law could be tested. The fact that the State may not suffer loss or may not stand to gain, is not one of the parameters on which the vires could be tested.

22. Relying upon the circulars issued by the Department, to the effect that even without a 'C' Form, the benefit of reduced rate of tax can be claimed upon the sale of capital goods in the course of inter-state trade or commerce, it is contended by Mr.N.Prasad, learned counsel for some of the petitioners that these circulars will have a binding effect upon the Department.

In this connection, he placed heavy reliance upon the decision of the Supreme Court in Paper Products Ltd., Vs. Commissioner of Central Excise [1999 (112) ELT 765(SC)] and the decision of this Court in Mohan Breweries and Distilleries Limited Vs. Commercial Tax Officer [(2005) 139 STC 477].

23. There are two difficulties about the above submissions. The first is that the main challenge in these writ petitions is to the validity of Section 2(11). On the basis of a circular or clarification issued by the Department the vires of a statutory provision cannot be tested. The second is that the circulars do not decide what are capital goods that are entitled to a reduced rate of tax. Hence, the above contention is liable to be rejected.

24. A similar contention was advanced by Mr.C.Baktha Sironmoni, learned counsel for one of the petitioners, on the basis of a letter dated 25.9.2007 issued by the Commissioner of Commercial Taxes in favour of one company. The said letter merely clarifies in respect of that company that the capital goods sold to other States without declaration are taxable at 4%. We do not think that it is of general application.

25. A number of letters issued by the Commissioner of Commercial Taxes in favour of several assessees, on 25.4.2007, 12.7.2007, 09.8.2007, 11.9.2007 and 20.9.2008 to the same effect are brought to our notice. But, as we have stated earlier, these letters addressed to individual assessees, cannot be assigned the status of circulars.

26. Keeping the above fundamental principles in mind, if we have a look at the first ground of attack, it can be seen easily that the same cannot be sustained. The State Legislature is entitled to treat a particular item or good as a capital good, when used within the State. It may not even be a capital good in common parlance. Similarly, a particular good which is treated as capital good in all other States, may be treated differently by one State, provided the law making it so, passes the tests indicated above.

27. As rightly pointed out by Dr.Anita Sumanth, learned Special Government Pleader (Taxes), Sub-section (3) of Section 3 of the TNGST Act, 1959, used the expression "inside the State" and Sub-Section (5) of the very same Section used the expression "use in his factory site situate within the State". The relevant parts of Sub-sections (3) and (5) of The TNGST ACT, 1959 read as follows:-

> "(3) Notwithstanding anything contained in sub-section(2),(2-A) or (2- C), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing materials and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and

assembling, packing or labeling in connection with such manufacture inside the State, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate of only three percent on the turnover relating to such sale.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any of the goods mentioned in the Eighth Schedule to any other dealer for installation of, and use in his factory site situate within the State for the manufacture of any goods shall be at the rate of three per cent on the turnover relating to such sale;

28. As rightly pointed out by Dr.Anita Sumanth, learned Special Government Pleader (Taxes), it is not open to this Court to treat any word or expression used in any statute as redundant or superfluous. The reliance placed by the learned Special Government Pleader in this regard on the decision of the Supreme Court in Grasim Industries Ltd. v. Collector of Customs [128 STC 350], is well founded. Paragraph 9 of the said decision which clinches the issue in this regard, may be usefully extracted as follows:

"9. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the Legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the Legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the Legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner [(1846) 6 Moore PC 1]" we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well-settled and reference to few decisions of this Court would suffice. [See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat and Anr. (AIR 1990 SC 1747), Union of India and Anr. v. Deoki Nandan Aggarwal (AIR 1992 SC 96), Institute of Chartered Accountants of India v. Price Waterhouse and Anr. (1997 (6) SCC 312) and Harbhajan Singh v. Press Council of India and Ors. (JT 2002 (3) SC 21)]."

Therefore, the contention of the petitioners that the words "used in the State" appearing in Section 2(11) have to be ignored or treated as redundant or superfluous is completely contrary to the law laid down by the Supreme Court.

29. Relying upon the decision of the Supreme Court in CCE, Coimbatore v. Bashir Mills Ltd. [(2011) 97 SCR 541], it is contended by Ms.Aparna Nandakumar, learned counsel for one of the petitioners that the expression "capital goods" has to be given a very wide connotation and that there cannot be an artificial restriction. But, we are unable to accept the said submission. In Bashir Mills, the Supreme Court was concerned with Rule 57-Q of the Central Excise Rules, 1944, which contain the definition of the expression "capital goods" under the Explanation to the Rule. It was made clear therein that the said definition was for the purposes of that Rule. The definition clauses in every rule or statute has to be construed only with reference to that rule or statute and cannot be imported to any other rule or statute.

30. Therefore, the issue is not as to how the very same goods become capital goods when used in the State, but become different goods when used outside the State. The Sales Tax Law of the past and the Value Added Tax Law of the present seek to

treat goods of a particular description differently, for the purpose of determining the incidence of tax. This is not prohibited by law and hence, the first ground of challenge has to fail.

Second ground of challenge:

31. The second ground of challenge is that the treatment of dealers of one and the same goods differently, depending upon the place of use of the goods, offends Article 14.

32. But this ground of challenge cannot be sustained at least for two reasons. The first is that even the Central Sales Tax Act, 1956, treats the dealers of one and the same goods differently, depending upon whether the goods are sold in the course of inter-state trade or commerce to a registered dealer or to an unregistered dealer. If the sale is to a registered dealer, the tax leviable is under Section 8(1) of the Central Sales Tax Act. If the sale is to an unregistered dealer, the tax leviable is under Section 8(2) and it is at a different and higher rate than the one prescribed under Section 8(1). Therefore, the very scheme of sub-sections (1) and (2) of Section 8, treats the same goods of the same dealer differently, liable to be taxed at different rates, depending upon whether the sale is to a registered dealer or not. When such a discrimination is inherent in the scheme of Section 8 of the Central Sales Act, 1956, the adoption of the same or similar principle to the definition of the expression "capital goods" under the State Act, cannot be assailed as discriminatory, offending Article 14 of the Constitution.

33. For assailing the impugned provision, as being violative of Article 14, Mr.S.Ravee Kumar, learned counsel places strong reliance upon the decision of the Constitution Bench of the Supreme Court in Subramanian Swamy v. CBI [(2014) 8 SCC 682].

34. But, as pointed out by the Supreme Court in the said decision, a person challenging a legislation as ultra vires and violative of Article 14 should satisfy two fundamental requirements, namely (a) that the legislation permits discrimination based on an impermissible or invalid classification, and (b) that the impugned legislation permits excessive delegation of powers and conferment of uncanalised and unguided powers on the executive. But, both these requirements are not satisfied in the case on hand. Section 8 of the Central Sales Tax Act, 1956, itself creates a classification based upon the registration of the dealers. Such classification is permissible in view of the object sought to be achieved, namely to encourage transactions between two registered dealers, as propounded in Section 8(5). Section 2(11) simply adopts the very

same classification and hence, the same cannot be assailed as being discriminatory. Similarly, there is also no excessive delegation or conferment of uncanalised or unguided powers on the executive. Therefore, the second requirement to hold a legislation as violative of Article 14 is also not satisfied.

35. The second reason as to why this ground of challenge cannot be accepted is that what is contained in Section 2(11) is only a description of the goods that will be treated as capital goods for the purposes of TNVAT Act, 2006. What are capital goods for one person may not be capital goods for another person. A huge plant and machinery may be capital goods for some one who manufactures certain items by employing the plant and machinery. But for a person who manufactures such plant and machinery, the same may not be capital goods. Therefore, the Legislature is entitled to treat different items differently and it is also entitled to treat the same item differently for different purposes. Hence, the second ground of challenge cannot be sustained.

Third ground of challenge:

36. The third ground of challenge is that the sale in the course of inter-state trade or commerce to a person other than a registered dealer, is covered by Section 8(2) of the Central Sales Tax Act, 1956 and that therefore, the prescription contained in Section 2(11) is an encroachment by a State law into a field occupied by a Central Legislation.

37. In order to understand the scope of this contention, it is necessary to take note of the provisions of Section 8(2) of the Central Sales Act, 1956, which reads as follows:-

> "8(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State. Explanation:- For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law: (3) The goods referred to in 2 sub-section (1):--- (a) (Deleted from 1st April 1963); (b) are goods of the class or classes specified in the Certificate of Registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any

Rules made by the Central Government in this behalf, for use by him in the manufacture of processing of goods for sale or 3 [in the telecommunications network or] in mining or in the generation or distribution of electricity or any other form of power."

38. A careful look at Section 8(2) would show that the Rule contained therein would apply to the sale of goods in the course of inter-State trade or commerce, not falling within sub-Section (1). In other words, if two conditions are satisfied namely (a) that the goods are of the description referred to in sub-Section (3), and (b) that the sale is to a registered dealer, then the sale would be covered by Section 8(1). Even if any one of the two conditions is absent, the sale would fall under Section 8(2).

39. If a sale falls within Section 8(1), it will attract tax at the rate of 3% (now 2%) or at the rate applicable under the Sales Tax Law of that State, whichever is lower. If the sale falls under Section 8(2), the tax payable would be as per the local Sales Tax Law of that State.

40. For driving home the contention regarding repugnancy, Mr.S.Ravee Kumar, learned counsel placed strong reliance upon the decision of a Constitution Bench of the Supreme Court in State of Kerala v. Mar Appraem Kuri Co. Ltd. wherein the Constitution Bench crystallised the principles of law emerging from Part 11 of the Constitution in detail. Briefly stated the principles that could be culled out from paragraph 16 of the decision of the Constitution Bench of the Supreme Court are as follows:

(i) Article 245 deals with conferment of legislative powers and extent of laws, whereas Article 246 provides for distribution of legislative powers;

(ii) Since Article 246(1) begins with non-obstante clause, the Union powers as enumerated in List I shall prevail over the State powers as enumerated in Lists II and III and in case of overlapping between Lists III and II, the former shall prevail.

41. Having laid down the above principles, the Supreme Court made it very clear that the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an irreconcilable conflict between the entries in Union and State Lists and that the said conflict has also to be a real conflict (not an imaginary one).

42. In this case, we do not see any irreconcilable conflict between Section 2(11) of the TNVAT 2006 and Section 8(2) of the

Central Sales Tax Act, 1956. Section 2(11) merely makes certain capital goods as capital goods, if they are used in the State. If they are not used in the State, those goods merely go out of the purview of capital goods under Section 2(11). This does not mean that the State sought to tax inter-state trade or commerce, which falls exclusively within the domain of the Parliament.

43. Assuming without admitting that there is some element of encroachment, the same would tantamount only to incidental trenching, which is permissible in law, as held by the Supreme Court in State of Bihar v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. [(2005) 2 SCC 762]. In paragraph 25 of the said decision, the Supreme Court held that any incidental trenching does not amount to encroaching upon the field reserved for Parliament, though the extent of trenching beyond the competence of the legislating body may be an element in determining whether the legislation is colourable or not.

44. Drawing our attention to the decision of the Bombay High Court in Bashir Oil Mills v. Maharashtra Sales Tax Tribunal [(1993) 90 STC 195 (Bom.)], it is contended by Mr.R.L.Ramani, learned senior counsel appearing for some of the petitioners that the use of the words "used in the State" in Section 2(11) of TNVAT Act, 2006, was obviously redundant and superfluous, as the State is not competent to levy any tax on the sale of goods in the course of inter-state trade or commerce.

45. But, in Bashir Oil Mills, the Bombay High Court was concerned with an exemption notification issued under Section 41 of the Bombay Sales Tax Act. The notification exempted all sales of oil cakes, including oil cakes for the purpose of cattle feed within the State of Maharashtra. The controversy arose about the use of the words "within the State of Maharashtra". The Bombay High Court construed the exemption notification to be an exemption from tax generally made within the purview of Section 8(2A). As a consequence, the Bombay High Court held that the expression "within the State of Maharashtra" cannot be said to be a condition to the exemption. But, the effect of the expression "generally" used in Section 8(2A) has already been expounded by the Supreme Court in Pine Chemicals. We have considered the effect of Pine Chemicals also elsewhere.

46. Moreover, we are not concerned in these cases with an exemption, nor we are concerned with a charging provision. We are concerned with a definition clause. Therefore, the ratio in Bashir Oil Mills has no application.

47. Even the decision of the Supreme Court in Gwalior Rayon

Silk Manufacturing (Weaving) Co. Ltd. v. Assistant Commissioner of Sales Tax [33 STC 219 (SC)], relied upon by Ms.Aparna Nandakumar, learned counsel is not of any assistance to the case of the petitioners. As seen from paragraph 4 of the said decision, the question that arose in that case was whether the action of the parliamentary language not fixing the rate of tax by itself under Section 8(2) of the CST Act, 1956, but in adopting the rate applicable to the sale or purchase of goods inside the appropriate State amounted to an abdication of the legislative function. The said question was answered in the negative by the Supreme Court in Gwalior Rayons by pointing out that the Parliament, while making such a law under Section 8(2) did not indulge in self-effacement. We do not know how Gwalior Rayons is of any assistance to the petitioners. The cases on hand do not represent a converse of the position that was argued in Gwalior Rayons.

48. In other words, Section 8 deals with the Sales Tax payable on the sale of goods in the course of inter-State trade or commerce. The Central Sales Tax Act, 1956, itself is a law that deals with sale of goods in the course of inter-State trade or commerce. No law of a State is entitled to impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State. Therefore, what is prohibited is the imposition of a tax on the sale or purchase that takes place outside the State.

49. But Section 2(11) does not impose a tax on the sale or purchase of goods that takes place outside the State. It merely qualifies the expression "capital goods" to mean certain goods that are used in the State. Unfortunately, the petitioners seek to project the restricted meaning given to the expression "capital goods" under Section 2(11) as the imposition by a State Law, of a tax upon the inter-State sale of goods. The fallacy of the argument of the petitioners lies in treating the definition clause as a charging provision. Therefore the third ground of challenge is fallacious and is rejected.

Fourth ground of challenge:

50. The fourth ground of challenge is that the prescription contained in Section 2(11) is violative of Article 286(1)(a) of the Constitution. Article 286(1)(a) reads as follows:-

> "286. Restrictions as to imposition of tax on the sale or purchase of goods.--
> (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place
> (a) outside the State; "

51. The above Article merely mandates that no law of a State

shall impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State. We do not know how Article 286(1)(a) stands violated by a mere definition clause. Section 2(11) merely defines what capital goods are. Those capital goods are charged to a particular rate of tax under Entry 25 of Part-B of the First Schedule. Therefore all that Section 2(11) seeks to do is to impose a tax at the rate of 5%, upon certain types of goods that are used in the State for the purpose of manufacture, processing, packing or storing of goods. The goods which do not satisfy the definition under Section 2(11), consequently fall under another Entry 69 in Part-C of the First Schedule. Merely because the goods that fall outside the definition of Section 2 (11), would attract tax at 14.5% by virtue of Entry 69 in Part-C, it cannot be said that the State is attempting to tax the sale or purchase of goods that take place outside the State so as to offend Article 286(1)(a).

52. As a matter of fact, persons who sell capital goods which satisfy all other parameters contained in Section 2(11), but do not satisfy the requirement of "used in the State", may attract tax at the rate of 2% under Section 8(1) of the Central Sales Tax Act, 1956. This rate is lesser than the rate prescribed for the goods falling within the definition of Section 2(11) read with Entry 25 of Part-B of the First Schedule. Therefore, as a matter of fact, it is possible for persons whose goods fall within the definition of Section 2(11) to contend that despite their goods being capital goods, they are paying tax at 5% while dealers of the very same goods sold in the course of inter-State trade and commerce satisfying the prescription contained in Section 8(1) are paying tax only at 2%. Therefore, the fourth contention is also liable to be rejected.

Last ground of challenge:

53. The last ground of challenge is that the restriction imposed in Section 2(11) is violative of Article 303 of the Constitution.

54. Article 303 of the Constitution reads as follows:-

> "303. Restriction on the legislative powers of the Union and of the States with regard to trade and commerce.--
>
> (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to

> trade and commerce in any of the Lists in the Seventh Schedule.
>
> (2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. "

55. We do not know how the definition of the expression "capital goods" is violative of Article 303 of the Constitution. Clause (1) of Article 303 of the Constitution prohibits the Parliament and the Legislature of a State from making any law that would confer a preferential treatment to one State over the other or from discriminating one State from another. As far as we understand the purport of the said Article, what is prohibited by the same is only the making of a law that would treat the goods purchased from or sold to a dealer in one State, more or less favourable than the goods purchased from or sold to a dealer in other States. Even the provisions of this Article do not prevent a State from making a law that would provide a special treatment to certain types of goods or certain types of dealers or certain types of transactions. Therefore, the contention that the adoption of a restricted meaning to a particular word contained in the statute tantamounts to a violation of Article 303, can hardly be accepted.

56. In Atiabari Tea Co. Ltd. v. State of Assam [AIR 1961 SC 232], the Constitutional validity of Assam Taxation (on goods carried by roads or inland water ways) Act, 1954 was under challenge. The challenge was on the ground that the Act was repugnant to the provisions of Article 301, as the tax on carriage of tea through the State of Assam had the effect of interfering with the freedom of trade, commerce and intercourse and that it was also discriminatory offending Article 14.

57. While considering the challenge made on the basis of Article 301, the Supreme Court recalled in para 33 of its decision, the political and Constitutional background as follows:-

> "33. Let us first recall the political and constitutional background of Part XIII. It is a matter of common knowledge that, before the Constitution was adopted, nearly two thirds of the territory of India was subject to British Rule and was then known as British India, while the remaining part of the territory of India was

> governed by Indian princes and it consisted of several Indian States. A large number of these States claimed sovereign rights within the limitations imposed by the paramount power that behalf, an duty purported to exercise their legislative power of imposing taxes in respect of trade and commerce which inevitably led to the erection of customs barriers between themselves and the rest of India. In the matter of such barriers British India was governed by the provisions of s. 297 of the Constitution Act, 1935. To the provisions of this section we will have occasion later to refer during the course of this judgment. Thus, prior to 1950 the flow of trade an commerce was impeded at several points which constituted the boundaries of Indian States. After India attained political freedom in 1947 and before the Constitution was adopted the process of the merger and integration of the several Indian states with the rest of the country was speedily accomplished with the result that when the Constitution was first passed the territories of India can State of Part A States which broadly stated represented the provinces in British India, and Part B states which were made up of Indian States. This merger or integration of Indian States with the Union of India was preceded by the merger and consolidation of some of the States interests between themselves. It is with the knowledge of the trade barriers which had been raised by the Indian States in exercise of their legislative powers that the Constitution-makers framed the Articles in Part XIII. The main object of Art. 301 obviously was to allow the free flow of the stream of trade, commerce and intercourse throughout the territory of India."

58. Thereafter, the Supreme Court pointed out that the provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude or the expression of a pious hope of a declaratory character. Article 301, it was pointed out by the Supreme Court, embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. However, the Court ultimately held that restrictions, freedom from which is guaranteed by Article 301 would be such restrictions as directly and

immediately restrict or impede the very flow or movement of trade. The Court also pointed out that taxes may amount to restrictions, but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. The Court also clarified that despite Article 301, the State Legislatures can impose restrictions, after satisfying the requirements of Article 304(b).

59. The reliance placed by Mr.S.Ravee Kumar, learned counsel on the decision of Calcutta High Court in Tata Steels Ltd. v. State of West Bengal [decided on 24.6.2013 in W.P.No.11407 of 2012 batch cases], in our considered view, is not well founded. The challenge in that case was to the validity of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012. Therefore, the Court was concerned in that case with only two issues, namely (a) whether the levy was confiscatory or compensatory in nature, and (b) whether Presidential assent had been obtained or not.

60. The question that arose in that case was whether the West Bengal law was violative of Article 301 of the Constitution or not. We do not think that the said decision is of any assistance to the petitioners.

61. On the challenge of the petitioners to the impugned provision as being violative of Articles 301 and 303(1) of the Constitution, the answer lies in the decision of the Constitution Bench of the Supreme Court in the State of Tamil Nadu v. N.K.Nataraja Mudaliar. This decision actually took note of the earlier Bench decision in Atiabari Tea Co. and Automobile Transport. Eventually, the Court, by a majority, laid down the following principles:

> "(i) It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and subject to the other provisions of the Constitution they may be regarded as void.
>
> (ii) It must be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so.
>
> ....
>
> (v) An Act which is merely enacted for the purpose of imposing tax which is to be collected and to be retained by the State does not amount to a law giving or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, merely because varying rates of tax prevail in different States.

(vi) The flow of trade does not necessarily depend upon the rates of sales tax, it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. It is where differentiation is based on considerations not dependent upon natural or business factors which operate with more or less force in different localities that Parliament is prohibited from making a discrimination. Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another."

62. Relying upon the decision in Weston Electronics v. State of Gujarat [(1988) 70 STC 52 (SC)], it is contended by Mrs.R.Hemalatha, learned counsel appearing for some of the petitioners that even the adoption of a higher rate of tax can be taken to be a restriction on trade and commerce. But, the said contention is wholly misconceived. As we have pointed out earlier, the State is not seeking to impose differential rates of duties on goods used within the State and those used outside the State. Section 2(11) merely defines what capital goods are for the purpose of the Act. Merely because those who sell the very same goods in the course of inter-state trade or commerce to unregistered dealers, are made to pay higher rate of tax, it cannot be said that there is an infringement of Article 301. As a matter of fact, if the sale is of capital goods in the course of inter-state trade of commerce to a registered dealer, the rate is actually lesser that what is stipulated for goods covered by Section 2(11). It is only those who sell goods in the course of inter-state trade or commerce to unregistered dealers, who are made to pay a higher rate of tax and that too not by virtue of the impugned provision, but by virtue of the different rates prescribed for different types of goods. Hence, this contention is also liable to be rejected.

63. The fallacy of the contention based upon Article 301 can be understood easily, if we realize that four scenarios emerge out of Section 2(11). They are as follows:

(i) If an article, which falls strictly within the definition of the expression "capital goods" under Section 2(11), is sold, it will attract tax at the rate of 5%.

(ii) If such a sale falls within the purview of Section 8(1) of the Central Sales Tax Act, 1956, it will attract tax only at the rate of 2%.

(iii) Goods, which are otherwise capital goods, but which do not satisfy the definition contained in Section 2(11), will also attract tax only at the rate of 2% under Section 8(1) of the CST Act, 1956, if the sale of such goods takes place in the course of inter-State trade or commerce in favour of a registered dealer.

(iv) It is only those capital goods, which do not satisfy the requirements of Section 2(11) and which are sold in the course of inter-State trade or commerce, but which do not fall under Section 8(1) of the CST Act, 1956 that a higher rate of tax at 14.5% under Entry 69 of Part-C of the First Schedule is attracted.

64. In other words, there are two categories of persons, who may sell, in the course of inter-State trade or commerce, goods which are capital goods within the meaning of Section 2(11). They are (i) those who sell them to a registered dealer, attracting Section 8(1) of the CST Act and (ii) those who sell them to any other person attracting Section 8(2) of the CST Act.

65. The requirement of Section 2(11), does not affect the first category of persons. It only affects the second category of persons. As rightly pointed out by Dr.Anita Sumanth, the very thrust of the Sales Tax Law is to encourage transactions between two registered dealers. Therefore, the decisions cited do not advance the cause of the petitioners.

66. Contending that it may not be possible to expect every part of the definition contained in Section 2(11) to be satisfied, for the purpose of claiming the benefit of a lesser rate of tax, Mr.N.Prasad, learned counsel for some of the petitioners argued that a definition cannot contain a pre-condition to be satisfied. In this regard the learned counsel drew our attention to the difference in the language employed between old Section 8(2) and new Section 8(2) and argued that the Supreme Court had already indicated in The State of Mysore vs. Yaddalam Lakshminarasimhiah [16 STC 231], as to how to read Section 8(2) of the Central Sales Tax Act, 1956.

67. In Yaddalam Lakshminarasimhiah, the Supreme Court was concerned with a case where an assessee claimed that its turnover consisting of sales of textiles manufactured by means of power looms in the course of inter-State trade is liable to be taxed at the same rate and exactly in the same manner as they would have been taxed if they had been intra-State transactions. The High Court accepted that Section 8(2) of the Central Sales Tax Act as it stood at that time, enabled the application of any exemption given by a State Sales Tax Act, to assessments under the Central Act. This reasoning of the High Court was accepted by the Supreme Court by a majority in Yaddalam Lakshminarasimhiah.

68. But we do not know how the decision in Yaddalam is of any assistance to the petitioners. Sub-Section (2) of Section 8, as it stood at that time merely stipulated the manner in which the tax payable by a dealer in a case not falling under Section

8(1) has to be calculated. But the present Section 8(2) not just deals with the method of calculation of tax, but constitutes a charging section, in so far as inter-State sales that do not fall within Section 8(1) are concerned. The Explanation under Sub-Section (2) of Section 8, steered clear of any confusion that the dealers may entertain on the basis of Yaddalam Lakshminarasimhiah.

69. As a matter of fact, Sub-Section (2-A) was inserted in Section 8, actually to take care of the contingency that arose in Yaddalam Lakshminarasimhiah. But Sub-Section (2-A) was omitted under Finance Act 20 of 2002.

70. The purport of Sub-Section (2-A) was explained by the Supreme Court in Commissioner of Sales Tax vs. Pine Chemicals Limited [96 STC 355]. It was pointed out therein that the idea behind Sub-Section (2-A) was to exempt the sale or purchase of goods from the Central Sales Tax where the sale or purchase of such goods is exempt generally under the State Sales Tax Law. Due to the use of expression "generally" in Sub-Section (2-A), the Court held that unless the exemption is a general exemption and not an exemption operative in specified circumstances or specified conditions, Sub-section (2-A) will not operate.

71. But neither the decision in Yaddalam Narasimhiah nor the decision in Pine Chemicals, will be of any assistance to the petitioners. We cannot overlook the fact that we are dealing with the validity of a definition clause. A charging section or a provision relating to exemption can be scrutinized to see if what is provided therein is a condition precedent or a requirement to be satisfied before or after. But there is no such scope while dealing with a definition clause. If a statutory provision, particularly one relating to taxation, defines an animal as a living creature, with four legs, two horns and a tail, it is not open to the court either to go by the general perception of what an animal is or by a forensic examination of whether the prescription of four legs etc., are conditions precedent or mere general indicators. Therefore, the last ground of challenge is also liable to be rejected.

72. As pointed out in paragraph 15 above, a statutory provision can be challenged only on very limited grounds, namely (a) the infringement of any of the fundamental rights, (b) the lack of competence on the part of the relevant legislature, due to the distribution of powers, (c) contravention of any of the mandatory provisions of the Constitution that impose certain limitations upon the powers of the State legislature, (d) the operation of the impugned law beyond the borders of the State, and (e) the abdication of the essential legislative function. The petitioners in these writ petitions could not establish the existence of any of these grounds, for holding the phrase "in the State" appearing in Section 2(11) of the Tamil Nadu VAT Act, 2006. Therefore, the challenge to the statutory prescription

made in these writ petitions has to be failed.

Individual grievances

73. Apart from the challenge to the validity of Section 2 (11), some of the petitioners have also projected certain individual grievances. These individual grievances can be grouped together under the following categories:

(i) those whose products are not treated as capital goods at all, despite the fact that they are used in the manufacture of other products, and

(ii) those who sell goods to the Governments or Government undertakings or Government companies of other States, who would not hold a registration as a dealer under the Central Sales Tax Act, 1956.

74. Insofar as the first category of cases are concerned, we are of the considered view that Section 2(11) cannot be read in isolation. We have already extracted the provision. It is no doubt an exhaustive definition and it contains two distinctive parts. Clause (a) of Section 2(11) is one part. Clauses (b) to (g) comprise the other part. If the good in question falls under any one of the categories mentioned in Clause (a), such as plant, machinery, equipment, apparatus, tools, appliances or electrical installation, it would be treated as capital good, provided it is used for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products. If the good in question falls under any one of the categories mentioned in Clauses (b) to (g), it should be used for the purpose of manufacture, processing, packing or storing of goods in the course of business. But, civil structures and such goods as may be notified by the Government are excluded.

75. Though many of the other expressions used in Section 2 (11) are not further defined in the Act, the expression "manufacture" is defined in Section 2(27) as follows:

> "manufacture" with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes any process of goods which brings into existence a commercially different and distinct commodity but does not include any activity as may be notified by the Government."

76. Therefore, any equipment, appliance, or apparatus, which is used for producing, making, altering, assembling, or processing of any goods, will be a capital good, as it would satisfy the definition under Section 2(27). Any process of goods which brings into existence, a commercially different and distinct commodity, is also manufacture and hence any equipment that is used to process goods, so as to bring into existence a

commercially distinct and different commodity, would be a capital good. That such a good should also be used in the State, so as to satisfy the requirements of Section 2(11), is altogether different.

77. Once the above tests are applied, it would be clear that concrete mixtures, fermenters, paper cup machinery, coir and curling machine, welding machinery parts, printing machinery parts, cold storage equipment etc., which the petitioners in some of the writ petitions are dealing in, would certainly be capital goods, provided they also satisfy the requirement of 'used in the State' found in Section 2(11). The assessing authorities shall take note of this and apply their mind while passing orders of assessment.

78. In so far as the second category of cases is concerned, their grievance is that they are selling goods which fall within clauses (a) to (g) of Section 2(11). But, they are selling those goods to Governments, Government Undertakings, or Government Companies of other States, which do not hold a certificate of registration under the CST Act 1956. Therefore, they are not able to get 'C' Form Declarations, so as to get the benefit of a concessional rate of tax under Section 8(1) of the CST Act. They are also not able to get a concessional rate as prescribed in Entry 25 of Part B of the First Schedule to the TNVAT Act, 2006, since the goods are not used "in the State" so as to satisfy the requirement of Section 2(11). Therefore, the grievance of those belonging to the second category is that they are made to lose on both ends.

79. But, we do not think that we can lend our helping hand to the second category of persons. The problem that they have about the inability of the Governments of other States to produce 'C' Form declaration, cannot be addressed in this batch of cases. That is a problem that they have learnt to live with. Moreover, cases which are not covered by Section 8(1) of the CST Act are covered by Section 8(2). As a consequence, they may have to pay tax at the rate as applicable under the local Sales Tax Law of the State, in which the purchaser is located. Normally, the local Sales Tax Laws of the respective States, exempt from local sales tax, any sale made to the local Government. Therefore, we do not know how far the petitioners belonging to the second category of cases are correct in their submission. We think the difficulty expressed by the second category of persons is perhaps projected theoretically for the purpose of attacking Section 2(11).

80. One last issue that remains to be dealt with, is the reliance placed by some of the petitioners on an order passed by the Authority for Advance Ruling and clarification issued under Section 48A.

81. But we do not think that any ruling or clarification issued by such an Authority can go contrary to the Statutory

provisions. Under Sub-section (1) of Section 48A, the said Authority is entitled only to clarify any point concerning the rate of tax. The dispute on hand is not with respect to the rate of tax. It is with respect to the validity of the expression 'in the State' appearing in Section 2(11), on account of which, the expression 'capital goods' gets circumscribed. Therefore, the reliance placed upon the ruling is not of any assistance to the petitioners.

CONCLUSION:

82. Therefore in fine, all the writ petitions are disposed of to the following effect:

(i) The challenge to the validity of Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006, is rejected and the prayer of the writ petitioners for declaration that Section 2(11) is ultra vires and unconstitutional, is dismissed.

(ii) Since many of the writ petitions challenge not only the validity of Section 2(11), but also the individual orders of assessment, we give a time limit of 30 days for the assessees to file statutory appeals. The period of 30 days shall commence from the date of issue of a copy of this order.

(iii) Until the expiration of a period of 30 days from the date of issue of a copy of this order, the respondents shall not take coercive steps.

(iv) In respect of petitioners who deal with capital goods used in the State, but who are not extended the benefit of the concessional rate of tax, on account of a lack of proper understanding of the definition of the expression 'manufacture' appearing in Section 2(27), the appellate authority shall take note of the observations that we have made in paragraphs 74 to 77, while deciding their appeals.

(v) While dealing with the appeals of the petitioners, the Appellate Authorities shall note of the second proviso to Section 42(3).

All the writ petitions are disposed of to the above effect. There shall be no order as to costs. Consequently, all connected M.Ps. are closed.

After we pronounced orders, it was mentioned by Mrs.R.Hemalatha, learned counsel for the petitioners that some writ petitions also arise out revision notices.

2. In so far those dealers are concerned, they are given a time limit of 15 days from the date of issue of a copy of this order to submit their objections. Thereafter, the Assessing Officers shall follow the procedure prescribed by law and pass orders of assessment.

Sd/-

gr/kpl Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To:

1 THE COMMISSIONER OF COMMERCIAL
TAXES EZHILAGAM CHEPUAK CHENNAI 600005

2 THE COMMIERCIAL TAX OFFICER
SRIPERUMBUDUR ASSESSMENT CICLE
VARADHARAJAPURM 602 103

3 THE STATE OF TAMILNADU
REP.BY ITS SECRETARY CT & RE DEPARTMENT
FORT ST. GEORGE CHENNAI

4 THE ASSISTANT COMMISSIONER (CT)
SRIPERUMBUDUR ASSESSMENT CIRCLE,
VARADHARAJAPURAM 602 103.

5 THE ASSISTANT COMMISSIONER (CT
AVINASHI ROAD CIRCLE COIMBATORE-641 018

6 THE COMMERCIAL TAX OFFICER
METTUPALAYAM ROAD CIRCLE COMMERCIAL TAXES
BUILDINGS COIMBATORE

7 THE ASSISTANT COMMISSIONER(CT)
TAMBARAM-II ASSESSMENT CIRCLE NO.117
STATION ROAD CHROMEPET CHENNAI-44.

8 THE ASSISTANT COMMISSIONER (CT)
PERUR ASSESSMENT CIRCLE COMMERCIAL
TAXES BUILDINGS COIMBATORE-18.

9 COMMERCIAL TAX OFFICER SAIDAPET ASSESSMENT CIRCLE CHENNAI.

10 SECRETARY TO GOVERNMENT
COMMERCIAL TAXES FORT ST. GEORGE CHENNAI-9.

11 THE ASST. COMMISSIONER (CT)
VADAPALANI I ASSESSMENT CIRCLE 10-C RAZACK
GARDEN MMDA COLONY ARUMBAKKAM CHENNAI-106.

12 THE ASSISTANT COMMISSIONER
(CT) THIRUVANMIYUR ASSESSMENT CIRCLE CHENNAI 90

13 THE STATE OF TAMILNADU
REP BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF COMMERCIAL TAXES AND
REGISTRATION FORT ST.GEORGE CHENNAI 9

14 THE ASSISTANT COMMISSIONER (CT)
DR. NANJAPPA ROAD CIRCLE COIMBATORE

15 THE ASSISTANT COMMISSIONER
(CT) EGMORE-II ASSESSMENT CIRCLE CHENNAI

16 ASSISTANT COMMISSIONER (CT)
EGMORE -I ASSESSMENT CIRCLE CHENNAI.

17 THE ASSISTANT COMMISSIONER(CT)
THIRUVANMIYUR ASSESSMENT CIRCLE CHENNAI

18 THE COMMERCIAL TAX OFFICER
(MAIN) FAC PUDUKKOTTAI -II ASSESSMENT
CIRCLE WEST MAIN STREET PUDUKKOTTAI

19 THE ASSISTANT COMMISSIONER(CT)
ERODE RURAL ASSESSMENT CIRCLE ERODE.

20 THE COMMERCIAL TAX OFFICER
ALANDUR ASSESMENT CIRCLE 12 VEDAGIRI
STREET ALANDUR CHENNAI-16

21 THE ASSISTANT COMMISSIONER
(CT) VADAPALANI ASSESSMENT CIRCLE NO.1
GREAMS ROAD CHENNAI 6

22 THE DEPUTY COMMISSIONER
(CT) FAST TRACK ASSESSMENT CIRCLE 1
COMMERCIAL TAX OFFICE COIMBATORE 641 018

3 ccs to M/s.R.Hemalatha, Advocate, sr.22198
2 ccs to Mr.N.Inbarajan, Advocate, sr.21351, 21352
1 cc to Special Government Pleader,(Taxes), sr.21671
3 ccs to Mr.Chandran, Advocate, sr.21733
1 cc to Mr.K.Soundararajan, Advocate, sr.21794
1 cc to Mr.S.Ramanathan, Advocate, sr.2316 (29.06.2016)
2 ccs to Mr.C.Bakthasiromoni, Advocate, sr.21732(29.06.2016)

W.P.Nos.37604 & 37605 of 2007
etc. batch cases.

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kra 09.06.2016