IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mrs.Justice BHAVANI SUBBAROYAN

W.A.No.244/2014, W.Ps.9685 to 9687, 23794 and 25501/2014 and M.P.No.1/2014 & 1/15 in W.A.No.244/2014 and M.P.Nos.1, 2 and 3/2014 in W.P.No.9685/2014, M.P.Nos.2&2/2014 in W.P.Nos.9686 and 9687/2014 & M.P.Nos.2 and 2 of 2014 in W.P.Nos.23794 and 25501/2014 and MP 3/14 in WP 9686/14

W.A.No.244 of 2014
O.Shinod

..Appellant in WA 244/14 & petitioner in W.P.23794/14

Vs.

1.Chief Secretary to Government of Puducherry,
Chief Secretariat,
Puducherry. ...1st Respondent in WA.244/14

2. Commissioner (C.T.),
Commercial Tax Department,
Puducherry. ...2nd Respondent in WA.244/14 are 1st Respondent in WP.23794/14

3.The Commercial Tax Officer,
Mahe, Puducherry. ...3rd Respondent in WA.244/14 ...2nd Respondent in WP.23794/14 & sole respondent in WP's 9685 to 9687/14 and WP.25501/14



W.P.9685 of 20147:-
Friends Chicken Rep. By its
Proprietor Vinod.C
Pandhakkal Mahe. ...Petitioner in W.P.9685 to 9687/14 and 25501/14

Prayer:- This Writ Appeal has been filed under Clause 15 of Letters Patent against the order passed by a Single Judge of this Court in W.P.No.28497/2013 dated 11.10.2013 on the file of this Court.

Prayer in W.P.No.28497 of 2013: Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorari to call for the records of the 1st Respondent with G.O.MS.No.68/F2/2011 dated 31.12.2011 of SL.No.81A and the consequential notices issued by the 3rd Respondent with TIN No.34230006981 /CTO / M / 2013-14 DATED 24.09.2013 and with TIN No.34230006981/ 2013-14 dated 4.10.2013 and to quash the same.

Prayer in W.P.9685 of 2014:-Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorari to call for the records on the files of the Respondent herein in Proceedings No. TIN.34210017274/2013-14 dated 20.01.2014 and quash the same.

Prayer in W.P.9686 of 2014 and W.P.9687 of 2014:-Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorari to Calling for the records on the files of the Respondent herein in the order dated 14.10.2013 for the period from April 2013 to July 2013 and to quash the same with a direction to re-do the assessment in accordance with the provisions of the Act after providing an opportunity of being heard.

Prayer in W.P.23794 of 2014:- Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorarified Mandamus to call for the records of the 1st respondent with No.529/CTD/HQ/ 2014/563 dated 30.4.2014 and of the 2nd respondent with No.34230006981/CTO(M)/ 2013-14/75 dated 20.1.2014 and to quash the same and consequently to direct the first respondent to restore the Registration Certificate and Licence to the petitioner so as to enable the petitioner to continue with his business.

Prayer in W.P.25501 of 2014:- Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorarito Call for the records of the files of the respondent herein in 34210017274/ CTO/(M)/ 2013-14/744 dated 8.8.2014 and quash the same.



For Appellant in WA 244/14
and Petitioner in WP.23794/14 : Mr.V.Ajaykumar

For petitioner in W.P.9685 to 9687/14 and in W.P.25501/14 :Mr.K.Venkatasubba Raju

For Respondents : Mr.T.P.Manokaran,
Senior Counsel
for Mr.K.R.Harish,
Addl. Govt. Pleader (Pondy)

## C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

The petitioner engaged in the business of purchase and sale of live chicken and also assessee, on the file of the Commercial Tax Officer, Mahe, has challenged G.O.Ms.No.68/F2/2011 dated 31.12.2011 by which, by inserting an entry, live chicken sold in Mahe, was sought to be taxed at the rate of 5% w.e.f. 01.01.2012. Contending inter alia that only in Mahe region, tax was sought to be levied at 5% and that the same is in violation of Article 14 of the Constitution of India, the Writ Petition No.28497/2013 has been filed.

2. Taking note of the geographical position of the Union Territory of Puducherry, prevailing rate of tax for live chicken in Kerala, decision of the Government of Puducherry to prevent smuggling and to reduce the disparity, in the rate of tax between the State of Kerala and Mahe region of Union Territory of Pondicherry, decision of the Hon'ble Supreme Court in Sri Srinivasa Theatre and Others., vs. Government of Tamil Nadu & Others, reported in 1993 STC 201 (SC), at Paragraph No.10, the writ court held as follows:

''10. The legal principle deducible from the decisions of the Hon'ble Supreme Court relied on is that a taxing statute though enjoins greater latitude, is not beyond the pale of challenge under Article 14 of the Constitution and if the legislation leads to any in quality, it may violate the equality clause. After referring to several decisions, the Hon'ble Supreme Court referred to Weaver's Constitution Law and observed that class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. It was further pointed out that a classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates.''

3. An appeal has been filed reiterating the regionwise discrimination and arguments advanced. Added further, Mr.V.Ajaykumar, learned Counsel for the appellants contended that the Writ Court fail to consider the aspect of fixing floor rate of Rs.73.50 per kg, to live chicken. Except the above, no other submission has been made.

4. Per contra, Mr.T.P.Manoharan, learned Senior Counsel appearing for the Government of Pondicherry submitted that when Puducherry Value Added Tax (Amendment) Act, 2012 (Act V/2012) was challenged by the proprietors of wholesale and retail distributors of Live Chickens and other livestocks in W.P.Nos.34105/2012 and 30480/2014, on the grounds inter alia that levy of tax, on a particular product in one region, namely, Mahe alone, as discriminatory and violative of Article 14 of the Constitution of India, a Hon'ble Division Bench of this Court, after considering the Constitutional provisions, upheld the validity of Puducherry Value Added Tax, 2012 (Act V/2012). He therefore submitted, the impugned Government Order No.68/F2/2011 dated 31.12.2011, by which the said Act, has been notified, has been rightly, upheld by a learned Single Judge.

5. On the contention that proprietors dealing in live chickens, would be burdened with tax liability, attention of this Court was drawn to the tax liability of, Rs.13,62,73,652/- by Royal Chickens and Keiniku Chickens, who had challenged the Act. He, therefore contended, petitioners and others, are not small traders.

6. Learned Senior Counsel appearing for the respondents contended that unless and until, the turnover is huge, tax liability is cannot be to the tune of Rs.13,62,73,652/-.

7. We have heard the Counsel for the respective parties and perused the material available on record.

8. Adjudicating the rival contentions on the grounds that Pondicherry Value Added Tax is discriminatory, and violative of Article 14 of the Constitution of India, and to the power of the Government in levying tax, classification and class legislation, rate of tax levied in the proximate State, namely, Kerala, a Hon'ble Division Bench of this Court, while upholding the validity of Puducherry Value Added Tax, 2012 (Act V/2012), at paragraph Nos.9 to 17 reasoned as follows:

''9. The challenge to the impugned amendment to the Puducherry Value Added Tax Act is primarily on the ground that the impugned enactment is discriminatory and violative of Article 14 of the Constitution of India. The petitioners are dealers in live chicken registered under the provisions of the Act and carrying on business in Mahe region of the Union Territory of Puducherry. In terms of Section 20 of the Act, goods specified in the First Schedule of the Act are not liable to tax. Entry 39 of the First Schedule includes live stock. It is not in dispute that the product dealt by the petitioners namely live chicken falls within the meaning of live stock. By virtue of the exemption, no tax is liable to be paid on the sale of live chicken by the petitioners. While so, a notification was issued by the Government of Puducherry, on 31.12.2011, bringing about an amendment to Entry 39 of the First Schedule. The Entry 39A included Meat, Fish, Prawn and other aquatic products when not cured or frozen and eggs. Entry 39-B included live stock other than chicken sold in Mahe region. An amendment was also brought about in Schedule 3 of the Act, by adding the new Entry, under Entry No.81 as Entry 81-A including live chicken sold in Mahe region. Thus, by virtue of the amendment, live chicken sold in Mahe region was liable to be payment of tax. The rate of tax was fixed at 5%, which the Government of Puducherry, states is reasonable in the facts and circumstances. It is common knowledge that Union Territory of Puducherry consists of four regions and its unique geographical location is in close proximity with three neighbouring States. Puducherry and Karaikal are adjoining the State of Tamil Nadu, Yanam adjoining the State of Andhra Pradesh and Mahe adjoining the State of Kerala. The amendment brought out by notification dated 31.12.2011, which was subsequently substituted by the impugned amendment to the Puducherry Value Added Tax Act, was brought into effect from 01.01.2012 thereby levying tax at the rate of 5% on the sale of live chicken only in Mahe region. The petitioners content that this is discriminatory and violative of Article 14 of the Constitution of India. It is the further submission that even a taxing statute has to satisfy the test of Article 14 of the Constitution of India. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Karimbil Kunhikoman & Ors., vs. State of Kerala reported in AIR 1962 SC 723, and Aashirwad Films vs. Union of India & Ors., reported in (2007) 5 MLJ 170 (SC).

10. The legal principle deducible from the decisions of the Hon'ble Supreme Court relied on is that a taxing statute though enjoins greater latitude, is not beyond the pale of challenge under Article 14 of the Constitution and if the legislation leads to any in quality, it may violate the equality clause. After referring to several decisions, the Hon'ble Supreme Court referred to Weaver's Constitution Law and observed that class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily

selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. It was further pointed out that a classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates.

11. In the case of Aashirwad Films vs. Union of India & Ors., reported in (2007) 5 MLJ 170 (SC), the classification was faulted as being only on the basis of language without anything more and therefore, having a different rate of tax was held to be exfacie arbitrary. In the case of Ayurveda Pharmacy & Anr., (supra) the Hon'ble Supreme Court held that the levy of higher rate of sales tax on Arishtams and Asavas is discriminatory, as they are also medicinal preparation and cannot be treated differently for the purpose of sales tax on the ground of their high alcoholic content. We may pointed out that the decision in the case of Aashirwad Films (supra), would not render any assistance to the case of the petitioners as the issue which arose therein was regarding the rate of tax in respect of a medicinal preparation and it was held that there was no rational basis for discrimination between one commodity and another for the purpose of imposing tax.

12. It is well settled legal principle that the State does not have to tax everything in order to tax something; it enjoys a wide discretion in the matters of taxation and enjoys more freedom for classifying the objects to be taxed and the rates of taxation and the burden for proving discrimination is heavier still when a taxing statute is under attack. Further, the State can validly pick and choose one commodity for taxation and the same is not open to attack under Article 14 (See Twyford Tea Co. Ltd., vs. State of Kerala reported in (1970) 1 SCC 189 and East India Tobacco Co., vs. State of A.P., reported in AIR 1962 SC 1733).

13. Thus, the burden is on the petitioners to show that the impugned amendment is discriminatory and offends Article 14 of the Constitution. In taxation, the legislature possess greater freedom in classification and the petitioners to succeed in

striking down the impugned amendment should be able to demonstrate that the impugned amendment makes an improper discrimination, it is arbitrary and amounts to class legislation.

14. The argument of the petitioners is that the live chicken sold in Mahe region alone cannot be subjected to payment of tax and it amounts to a class legislation as the same product is exempted from tax in other regions in the Union Territory of Puducherry. For the petitioners to succeed, it is not sufficient for the petitioners to state that it is a class legislation. What is required to be established is that such legislation makes an improper discrimination. Therefore, it has to be seen as to whether the Government of Puducherry was justified in making such a distinction and whether the same was reasonable and had a valid basis.

15. It is not in dispute that no tax is leviable in respect of sale of live chicken in the State of Tamil Nadu and State of Andhra Pradesh. The Puducherry Value Added Tax Act grants similar exemption to its dealers, who trade in the areas in the Union Territory of Puducherry adjoining the States of Tamil Nadu and Andhra Pradesh (i.e.,) Puducherry, Karaikal and Yanam. The only distinction sought to be made is for Mahe region for which tax has been imposed at the rate of 5%. The justification being, Mahe is adjoining the State of Kerala in which the sale of live chicken is taxable at 14.5% under the Kerala VAT Act. It came to the notice of the Government that the dealers like the petitioners, who deal in live Chicken in Mahe region were selling their products at the same rates as sold in Kerala State (border state), which is subjected to tax at 14.5% in that State. Thus, it was established that the dealers like the petitioners had availed the exemption and the benefit of the exemption was not passed on to the consumers. Therefore, the Government accepted the decision of the Empowered Committee and issued a notification with effect from 01.01.2012, which subsequently was made as an amendment to the Act (impugned Act).

16. From the counter affidavit it is seen that on account of making the transaction taxable at 5%, the Government of Puducherry has been able to generate an yearly revenue Rs.6.7 crores, which are to be utilised for other developmental activities. Therefore, the distinction sought to be made for making the transaction taxable for Mahe region alone cannot be termed to be an improper exercise nor arbitrary or an

artificial classification, but a reasonable one with a substantial distinction between two classes.

17. As pointed out by the Hon'ble Supreme Court, the State enjoys a vide discretion in the matters of taxation and classifying the objects to be taxed and the rates of taxation. As pointed out by the Hon'ble Supreme Court in the case of Khandige Sham Bhat vs. Agricultural ITO reported in AIR 1963 SC 591, the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the said doctrine and the power of the legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways.

9. Contention of the Writ Petitioner that the Writ Court has failed to take note of the floor rate of Rs.73.50 per kg. to live chicken, cannot be countenanced, as the Hon'ble Division Bench has taken note of the tenable grounds of challenge to the validity on an enactment. Decision of the Hon'ble Bench in W.P.Nos.34105/2012 (Royal Chickens Vs. Union of India, Union Territory of Puducherry rep. by its Chief Secretary to Government, Government of Puducherry, Puducherry) and 30480/2014 (Keiniku Chickens and others vs. Union of India, Union Territory of Puducherry rep. by its Chief Secretary to Government, Government of Puducherry, Puducherry) squarely applies to the case on hand. There are no valid grounds to interfere with the order of the learned Single Judge.

10. In the result, the Writ Appeals and the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III )

/true copy/



Sub Asst. Registrar

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To

1. Chief Secretary to Government of Puducherry,
Chief Secretariat,
Puducherry.

2.Commissioner (C.T.),
Commercial Tax Department,
Puducherry.

3.The Commercial Tax Officer,
Mahe.

+1cc to Mr.V.Ajaya kumar, Advocate Sr. 46473
+1cc to the Government Pleader Sr. 46718

W.A.No.244/14, and W.Ps. 9685 to 9687, 23794 & 25501/2014

KGK(CO)
VR(10/10/2017)