

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Tax Case (Revision) No.38 of 2017
C.M.P.No.16997 of 2017

M/s.Linen Word,
Rep., by its Proprietor,
Tmt.S.Vadivukarasi

... Petitioner

Vs

1. The Deputy Commercial Tax Officer-II,
Commercial Taxes Department,
Puducherry.
2. The Appellate Assistant Commissioner (CT),
Commercial Taxes Department,
Puducherry.

... Respondent

Prayer: Tax Case Revision filed under Section 51(2) of the PVAT Act, 2007, to revise the order of the Appellate Tribunal, Puducherry, dated 28.06.2017 passed in Tax Appeal No.15 of 2015.

For Petitioner : Mr.P.Suresh

For Respondents : Mr.C.T.Ramesh,
Government Advocate (Pondicherry)

ORDER

(Common order of the Court was made by S.MANIKUMAR, J.)

Tax Case Revision is filed against the order, dated 28.06.2017, made in Tax Appeal No.15 of 2015., by the Pondicherry Value Added Tax Appellate Tribunal, Puducherry.

2. Tax Case Revision Petition has been filed, on the following substantial questions of law,

"1. Whether un-constituted Tribunal i.e., Pondicherry Sales Tax Appellate can admit the Tax Appeal in respect of Puducherry Value Added Tax Act, 2007. The said Act came into force on the 1st of July' 2007. Whether is it sustainable in Law?

2. Whether the Assessing Officer has got power to file the Tax Appeal before the Tribunal under Section 49(1) of the Pondicherry Value Added Tax, 2007 and is it sustainable in Law?

3. Whether non-issuing of notification has been issued by the Government for constitution of Pondicherry Value Added Tax Appellate Tribunal and non - appointing of a Judicial Officer to exercise the function conformed under the new Act is sustainable in Law?

4. Whether the Assessing Officer has got power to levy the higher rate of tax by overlooking the Government order and is it sustainable in Law?"

3. Short facts leading to the revision are that the petitioner, engaging in the business of cotton fabrics, registered under the PVAT Act, 2007 and under the CST Act, 1956, with effect from 25.3.2009. M/s.Gas World at No.177, Thiruvalluvar Salai, Pillaithottam, Puducherry-605 013, is trading in Liquefied Petroleum Gas (LPG) registered, as a branch of the petitioner, with effect from 19.1.2010.

4. According to the petitioner, cotton fabrics is exempted under the Pondicherry Value Added Tax Act, 2007 (hereinafter referred to as "PVAT Act"). LPG is taxable under the PVAT Act, 2007. In the returns, the petitioner reported the sale of LPG for domestic purpose, taxable at 1% and for commercial use, taxable at 12.5%, for the assessment year 2011-12. They purchased LPG from M/s.SHV Energy Pvt. Ltd., Sriperumbathur, Chennai. Limited, Sriperumbathur, Chennai. Entries in the Schedule/G.Os, that governed the purchase of LPG for domestic use and commercial for the period 2011-2012, stated in the

impugned order, are extracted hereunder:

Sl.No.	Period	LPG for domestic use (Tax rate and the related entry)	LPG for commercial use (Tax rate and the related entry)
1	01.07.2007 to 31.12.2011	1st vide entry at Sl.(a) of G.O.Ms.No.27/F2/2007, dated 1st July, 2007. The G.O. reduces the rate of tax of various goods and the entry at Sl.No.(a) reads as: "(a) Liquefied Petroleum Gas (LPG) from 4% to 1%.	12.5% vide entry at Sl.No.1 of Part A of the Fourth Schedule to the PVAT Act, 2007 (Residuary entry)

5. The Deputy Commercial Tax Officer-II, Commercial Tax Department, Puducherry, 1st respondent herein, directed the petitioner, to produce the books of accounts, for the year 2011-12, for scrutiny by summons dated 22.2.2013, 10.9.2013 and 19.9.2013, respectively. Further opportunity has been granted by summons, dated 29.9.2013. Time was extended, at the request of the husband of the proprietrix of the petitioner and further time was granted on 30.9.2013. A written statement was filed stating that M/s.Gas World was selling small cylinders, weighing 12 kgs for domestic use and big cylinders weighing 17 kgs for commercial use. To verify the returns of the petitioner, the 1st respondent issued a letter to the seller, M/s.SHV Energy Privated Limited, Sriperumbathur, Chennai. The seller furnished the quantity of sales of 12 kgs and 17 kgs of cylinders, sold to the petitioner, which

revealed that the petitioner purchased larger quantities of 17 kgs cylinder, meant for commercial use, taxable at 12.5%, compared to 12 kgs of cylinders meant for domestic use. However, in the report, the petitioner showed the converse. They showed purchase of 12 kgs of LPG cylinders, at a higher quantity than 17 kgs of LPG cylinders. Consequently, a best judgment assessment order, under Section 24(2) of the PVAT Act 2007 was proposed, by notice, dated 24.10.2014. Subsequently, objections were invited. Since documents were not produced, the Deputy Commercial Tax Officer-II, Commercial Taxes Department, Pondicherry, 1st respondent, confirmed the best judgment assessment, proposed in the notice, dated 24.10.2014, and determined the tax liability, vide order, dated 19.12.2014, for the year 2011-2012. Similar proceedings were issued for the assessment year 2012-13 and orders were passed on 26.4.2012.

6. Being aggrieved, the petitioner filed an appeal before the Appellate Assistant Commissioner (CT), Commercial Tax Department, Puducherry, 2nd respondent herein, and after hearing both sides, the 2nd respondent passed an order, dated 27.8.2015, setting aside the

assessment order, dated 19.12.2014, passed by the 1st respondent, for the Assessment Year 2011-2012.

7. Aggrieved by the same, the Deputy Commercial Tax Officer-II, Commercial Taxes Department, Pondicherry, the 1st respondent herein, filed Tax Appeal No.15 of 2015, to the Pondicherry Value Added Tax Appellate Tribunal and upon consideration of the materials on record, the Appellate Tribunal discussed the case, as follows:

"10. The 1st respondent (petitioner), who is doing business in cotton fabrics and is a registered dealer, was also associated with M/s.Gas World, who dealt with Liquefied Petroleum Gas, selling gas cylinders of 12 kgs for domestic use and of 17 kgs for commercial use. It is seen that for the period 1.7.2007 to 31.12.2007, the tax rate and the related entry for the LPG for domestic use is 1%, vide entry at Sl.(a) of G.O.Ms.No.27/F2/2007, dated 1st July, 2007. The said G.O. reduces the rate of tax of various goods and the entry at Sl.No.(a) reads as: (a) Liquefied Petroleum Gas (LPG) from 4% to 1% and the tax rate and the related entry for commercial use is 12.5% vide entry at Sl.No.1 of Part A of the Fourth Schedule to the PVAT Act, 2007 (Residuary entry).

11. The Government of India has amended the Central Sales Tax Act, 1956, with a view to include the LPG for domestic use in the list of declared goods so as to keep

the tax rates on the same at reasonable level hence the legislative intention is very clear that the LPG sold for domestic use alone are to be taxed at 4% and in view of the restrictions placed upon the States by Section 15 of the CST Act, 1956, the commodity viz. LPG for domestic use has been kept at the rate of 4% by virtue of Section 15 of the CST Act, 1956 by inserting an entry viz., entry No.45 of Part-A of the Third Schedule of the PVAT Act, 2007 by way of legislation by incorporation for local sale and this particular commodity was sought to be taxed at fixed rate the UT of Puducherry, by virtue of Section 14 of the PVAT, Act, 2007. The Government has specifically reduced the rate of tax for this commodity which is intended for sale within the UT from 4% to 1% and not for any other goods taxable under other entries falling within the scope of other schedule. Further it is clear, the rate of 4% of LPG for domestic use in the declared goods alone was reduced from 4% to 1% and as such there is no. ambiguity arise in respect of rate of tax. It is further seen that the reduction of tax for LPG for domestic use is effected by virtue of G.O.Ms.No.27/F2/2007, dated 1.7.2007 and according the 1st respondent (petitioner), had also filed returns for LPG for domestic at the rate of 1% and LPG for commercial use at the rate of 12.5% and therefore the contention of the 1st respondent (petitioner) that the appellant (1st respondent) had erred in noting the fact that

the demand was raised only on, the basis of the said GO. However, the appellant (1st respondent) had contended that the GO reduces the rate of tax of LPG for domestic use and not for LPG for commercial use and as such he has to pay tax at the rate of 12.5% for commercial cylinders and not 1% uniformly for both LPG for domestic and LPG for commercial use.

12. The books of accounts of the 1st respondent (petitioner) were summoned and there was no response and consequently details were collected from selling agency namely, M/s.SHV Energy Private Limited, Sriperumbathur, Chennai and more than sufficient opportunity was granted. It was only after verifying the sales turn over reported by the 1st respondent (petitioner) and the details received from the selling agency, discrepancy regarding quantities of LPG for commercial use and LPG for domestic use were found out. It was found that the 1st respondent (petitioner) had reported higher taxable turn over of LPG of domestic use taxable at 1% than the LPG for commercial use taxable at 12.5% and the 1st respondent (petitioner) had misclassified and reported the sale turn over of goods at higher rate of tax as if they were goods liable for tax at lower rate of tax.

13. It is seen from the records that the 1st respondent (petitioner) relied on the Judgment in W.P.No.21718/2012 in commonly known as Murugan and Company of the Hon'ble

High Court of Madras. In that case, the petitioner had filed returns before the Assessing Authority and collected 1% of tax alone for LPG for both domestic and commercial use and also paid 1% tax alone. In this case, the 1st respondent (petitioner) had collected tax at the rate of 12.5% from the consumers for sale of LPG of commercial use but remitted only 1% to the Government and consequently the order of the 2nd respondent has to necessarily fail and the ratio as laid in W.P.No.21718/2012 is distinguishable on facts to the present case. It is therefore seen that the 2nd respondent had failed to observe that the concession granted for LPG, vide G.O.Ms.No.27/F2/2007, dated 1.7.2007, is general and the 2nd respondent had not properly appreciated that tax was reduced from 4% to 1% for LPG only for domestic use and not for commercial purpose."

8. Pondicherry Value Added Tax Appellate Tribunal, Puducherry, vide order, dated 28.06.2016, in Tax Appeal No.15 of 2015, held as follows:

"14. A careful perusal of the Order under appeal further shows that the 2nd respondent had not actually appreciated the facts of the case and in fact had not even considered the aspect of misclassification made by the 1st respondent (petitioner), when filed the returns before the

Assessing Authority.

15. In this connection, the fact finding authority, namely, Assessing Authority had found as follows:

"The proposal made out in the notice dated 24.10.2014 and reproduced above was based on the invoice wise details of 12 kg and 17 kg cylinders sold to M/s.Gas World, Puducherry, furnished vide letter dated 28.10.2013 by M/s.SHV Energy Privated Limited, Chennai, the seller. The dealer's had signed and issued 12 C-Forms bearing No.PYC 11 178373, PYC 11 178387, PYC 11 178397, PYC 11 251951, PYC 12 284309, PYC 11 251976, PYC 12 299624, PYC 12 299168, PYC 12 299662, PYC 12 409337, PYC 12 409555, PYC 12 417997 (copy of the C-Forms with Annexure enclosed with the notice, dated 24.10.2014) invariably for all/ the invoices figuring in the invoice wise sales details for 2011-12 furnished by M/s.SHV Energy Private Limited, Chennai along with their letter dated 28.10.2013. Therefore the quantitative details of 12 kg and 17 kg cylinders relied upon in the proposal contained in the (notice dated 24.10.2014 was based on the dealers own document namely C form. The best judgment proposal in the said notice relied on the policy prevalent in LPG trade that 12 kg cylinders are meant for domestic use and 17 kg cylinders are meant for commercial use. Thiru.A.Selvakumar, Manager of M/s.Linen World in his statement dated 30.09.2013 given 'before the

OCTO-II has confirmed the Gas World is selling 12 kg LPG cylinder for domestic use and 17 kg LPG cylinder for commercial purpose."

16. It is therefore seen that the tax to be paid has been worked as follows:

Sl.No.	Description	(In Rs.)
1	Total turnover proposed	1,51,51,450/-
2	Total taxable turn over proposed	1,10,95,809/-
3	Total exempted turn over proposed (turn over of cotton fabric reported)	40,55,641/-
4	Total Tax due on taxable T.O. Proposed	13,43,210/-
5	Less tax paid	3,46,790/-
6	Balance tax to be paid	9,96,420/-

17. In so far as this appeal is concerned, the appellant challenged the order of the 2nd respondent, dated 27.8.2015 relating to the assessment year 2011-2012 (i.e. for the period 1.7.2011 to 31.12.2011). The 2nd respondent held without giving any concrete reasons as follows:

"16. In respect of the appellant's assessment against the branch business for 2011-2012, it is to be mentioned that as to whether the rate of 1% VAT was charged on the disputed turnover has to be checked and found out for the said year and whether the tax so charged was paid over to the Government."

The 2nd respondent had not disputed the facts found by the Assessing Authority regarding the sales by M/s.Gas World from M/s.SHV Energy Private Ltd. Consequently the

order of the 2nd respondent has to be set aside and the order of the Assessing Authority has to be upheld.

This court holds that the Order of the 2nd respondent in Appeal No.51/PVAT/2014-15/AAC, dated 27.8.2015 is necessarily to be set aside. The Point is answered accordingly.

19. In the result, the appeal is allowed and the Order passed by the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry in Proceedings in Appeal No.51/PVAT/2014-15/AAC, dated 27.8.2015 in Assessment Order of the Commercial Tax Officer-II, Puducherry dated 19.12.2014 is hereby set aside."

9. Being aggrieved by the same, the present Tax Case (Revision) petition has been filed by the assessee, on the following grounds,

"(i) The Tribunal has failed to consider the order passed by the Appellate Authority (Appellate Assistant Commissioner (CT), who had discussed the issue elaborately, and arrived at the conclusions.

(ii) The Tribunal did not consider the core ingredients of rate of Tax, applicable in respect of sale of Liquefied Petroleum Gas (LPG), for domestic and other than domestic.

(iii) The Tribunal has misunderstood the facts and appeal filed by the 1st respondent was allowed, without

looking into the merits and Government Notifications, in the matter of applicability of rate of Tax, for sale of LPG domestic use upto 31.03.2011.

(iv) The Tribunal has failed to appreciate the orders of the appellate authority, dated 27.08.2015, wherein, he has passed an order, in respect of 2011-2012 that LPG is taxable at 1% irrespective of the usage of Liquefied Petroleum Gas (LPG) for domestic use or commercial use.

(v) G.O.Ms.No.68, dated 31.12.2011 has clearly spelt out that the rate of Tax for sale of LPG irrespective of the use is 1% upto 31.12.2011, and from 01.01.2012, the said rate of Tax, is only for domestic use. Thereafter, sale of Liquefied Petroleum Gas for domestic use is 1% only with effect from 01.01.2012. But the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry, second respondent has imposed rate of Tax for sale of Liquefied Petroleum Gas for domestic use is 1%, other than domestic is 12.5%, with effect from 01.04.2011 to 31.12.2011 and 14.5% with effect from 01.12.2012, without any authority /notification. The second respondent has no power to impose the higher rate of Tax on his own Whims and Fancies and the order of the 2nd respondent has been confirmed by the Appellate Tribunal, without going into the merits and factual matrix."

10. In support of the substantial questions of law and inviting the attention of this Court to Section 44(2) of the Pondicherry Value Added Tax Act, 2007, Mr.P.Suresh, learned counsel for the petitioner submitted that no notification has been issued by Government of Pondicherry, appointing a Presiding Officer to Pondicherry Value Added Tax Appellate Tribunal and therefore, the entire proceedings are vitiated.

11. Drawing the distinction between Section 49 of the Pondicherry Value Added Tax Act, 2007 and Section 48 of the Tamil Nadu Value Added Tax Act, 2006, learned counsel for the petitioner submitted that when the latter Act, empowered the Government to appoint any Officer, for the purpose of performing the functions, conferred on him, by or under Section 48 of the Tamil Nadu Value Added Tax Act, 2006, the Former Act, viz., Pondicherry Value Added Tax Act, 2007, only enables, "Any person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 47 or an order passed under the proviso to sub-section (4) of section 77, to prefer an appeal to the Tribunal, within a period of sixty days from the date on which the order was served on him, in the manner prescribed.

12. According to the learned counsel for the petitioner, in PVAT Act, 2007, the words, "any person" used in Section 49 of the PVAT Act, refers only to an assessee, and not an officer, and therefore, the appeal filed by the Deputy Commercial Tax Officer-II, Commercial Taxes Department, Puducherry, first respondent to the Tribunal itself, is not maintainable. On the merits of rate of tax imposed, he reiterated the grounds extracted.

13. Per contra, Mr.C.T.Ramesh, learned Government Advocate (Pondicherry), submitted that notification had already been issued by the Government of Puducherry, entrusting the duties of the Appellate Tribunal to the Principal District and Sessions Judge, Puducherry. Inviting the attention of this Court to the proviso to Section 44 of the PVAT Act, 2007, he submitted that the Government may entrust the duties of the Appellate Tribunal to the Principal District and Sessions Judge, Puducherry, which has been done. Inviting the attention of this Court to sub-Section (8) of Section 81 of the Pondicherry Value Added Tax Act,

2007, notification issued already, is saved, and no fresh notification is required, under the New Act, PVAT Act, 2007.

14. He further submitted that being aggrieved by any order, involving loss of revenue, in the case on hand, the Deputy Commercial Tax Officer-II, Commercial Taxes Department, Puducherry, first respondent herein, is competent to file an appeal to the Appellate Tribunal and the words, "any person" in PVAT Act, 2007, should not be narrowed down only to an assessee.

15. On the merits of the case, imposing tax, at different rates for commercial and domestic use for the periods in question, learned Government Advocate appearing for the respondents submitted that after considering the material on record, the Tribunal has recorded a categorical finding of misclassification and thus, confirmed imposition of tax, which finding does not fall any interference. For the abovesaid reasons, he prayed for dismissal of the Civil Miscellaneous Appeal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

16. Let us have a cursory look at the relevant provisions for the purpose of adverting to the rival contentions. Section 44 of the PVAT Act, 2007, deals with appeal and revision and the same is extracted hereunder:

"(1) The Government shall appoint a Judicial Officer who is otherwise qualified to be appointed as a District and Sessions Judge to be the Appellate Tribunal and to exercise the functions conferred under the Act:

Provided that the Government may entrust the duties of the Appellate Tribunal to the Principal District and Sessions Judge, Puducherry.

(2) The Appellate Tribunal shall, with the previous sanction of the Government, make, by notification, regulations consistent with the provisions of this Act and the rules made thereunder for regulating the procedure and the disposal of its business."

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17. It is the submission of the learned Government Advocate (Pondicherry), appearing for the respondents that way back in 1968, under the erstwhile Pondicherry General Sales Tax Act, 1967,

Government of Puducherry had already notified that the Principal District and Sessions Judge, would be the Appellate Tribunal and that duties of the Appellate Tribunal were entrusted to the Principal District and Sessions Judge, Puducherry. Section 44(2) of the PVAT, 2007, which speaks about the power of the Appellate Tribunal, with the previous sanction of the Government, to make, by notification, regulations consistent with the provisions of this Act and the rules made thereunder for regulating the procedure and disposal of its business. Though Section 44(2) of the PVAT Act, 2007, is pressed into service, by the learned counsel for the petitioner, in support of the substantial questions of law, the same would not lend support to the case of the petitioner, for the reason that it speaks about the power of the Appellate Tribunal, to regulate the procedure and disposal of its business. Order, issued in 1968, extracted hereunder, indicates appointment of a District Judge, as the appellate Tribunal,

GOVERNMENT OF PONDICHERRY
FINANCE DEPARTMENT
(G.O.Ms.No.59, dated the 7th March, 1968)
NOTIFICATION

S.O.35. In exercise of the powers conferred by subsection (1) of section 33 of the Pondicherry General Sales Tax Act, 1967 (Act No.6 of 1967), the Lieutenant Governor,

Pondicherry hereby appoints Shri.S.Maharajan, President, Tribunal Superieur d' Appel and Chief of the Judicial Department, Pondicherry, as a single member Sales Tax Appellate Tribunal for the entire Union territory of Pondicherry to exercise the functions conferred under the said Act.

(By Order of the Lieutenant Governor)

P.N.SUBRAMANIAM,
Secretary to Government.

Thus, in exercise of the powers in Section 33 of the erstwhile Pondicherry General Sales Tax Act, appointment has been made and since then, the Appellate Tribunal is functioning.

18. Section 81 of the PVAT Act, 2007, deals with repeal and savings and the same is extracted hereunder:

"(1) The Pondicherry General Sales Tax Act, 1967 is hereby repealed. सत्यमेव जयते

(2) Any action or proceedings already initiated under the repealed Act shall continue to be valid till the final disposal.

(3) The provisions of this Act shall not affect any right, title, obligation or liability already acquired, accrued or incurred under the repealed Act, and subject thereto,

anything done or any action taken including any appointment, notice, order, in exercise of any power conferred by that Act, shall be valid till specifically rescinded or withdrawn.

(4) Any person liable to pay any tax, fee, penalty, interest or other amount under the repealed Act for any period before the commencement of this Act, shall continue to be liable and such tax, fee, penalty, interest or other amount shall be collected under the provisions of this Act.

(5) All arrears of tax, interest, penalty, fee or other amount due at the commencement of this Act, whether assessed or levied before such commencement or assessed or levied after such commencement, may be recovered as if such tax, penalty, interest, fee or other amount is assessed or levied under the provisions of this Act and all methods of recovery including levy of interest, penalty or prosecution provided under this Act shall apply to such arrears as if such amounts are assessed, levied and demanded in accordance with the provisions of the repealed Act.

(6) Notwithstanding anything contained in sub-sections (1) and (2),—

(a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the repealed Act and pending at the commencement of this Act shall continue to be heard and disposed by the

said officer or authority subject to the same terms and conditions prescribed for this purpose under the repealed Act until such officer is appointed or such authority is constituted under this Act;

(b) any application, appeal, revision or other proceedings arising out of the repealed Act after the commencement of this Act will also continue to be heard and disposed by the officer appointed or authority constituted under the repealed Act subject to the same terms and conditions prescribed for this purpose under the repealed Act until such officer is appointed or such authority is constituted under this Act;

(c) any application, appeal, revision or other proceedings arising under this Act will also be heard and disposed by the officer appointed or authority constituted under the repealed Act subject to the terms and conditions prescribed for this purpose under this Act until such officer is appointed or such authority is constituted under this Act; and

(d) as soon as the officer appointed or the authority constituted under this Act who have jurisdiction to entertain such application, appeal, revision or other proceedings under this Act assumes charge, then all the applications, appeal, revision or other proceedings pending both under the repealed Act and under this Act shall respectively be

transferred to them and disposed by them under this Act: Provided that where such applications, appeal, revision or other proceedings made or preferred to any officer or any authority which have arisen under the repealed Act and transferred under this clause shall continue to be regulated subject to the terms and conditions prescribed for this purpose under the repealed Act until it is finally disposed.

(7) Any order delegating any power under the repealed Act or rules framed thereunder to any person appointed, by any designation, immediately before the commencement of this Act shall continue in force until that order is amended, varied or rescinded.

(8) Any rule, regulations, notifications or orders made or issued under the repealed Act and continuing in force on the day immediately before the commencement of this Act, shall continue to be in force on or after the commencement of this Act in so far as they are not inconsistent with the provisions of this Act.

(9) Notwithstanding anything contained in sub-section (1), the industrial unit existing prior to the commencement of this Act and are exempted from payment of tax due under the repealed Act would continue to be exempt from payment of tax under this Act till the expiry of the period of exemption as prescribed under that Act. Such dealer will not be eligible for the input tax credit until the period of

exemption expires. However the input tax credit will be allowed if such dealer opts to pay tax due under this Act. The dealer may exercise this option by submitting in writing before the assessing officer within one month of the commencement of this Act and the option once exercised cannot be revoked."

19. Thus, as rightly contended by the learned Government Advocate (Pondicherry), when notification had already been issued, under the erstwhile Pondicherry General Sales Tax Act, 1967, then the saving clause, is attracted. Section 33 of the Erstwhile Pondicherry General Sales Tax, 1967, is extracted,

"(1) The Government shall appoint a Judicial Officer who is otherwise qualified to be appointed as a District and Sessions Judge to be the Appellate Tribunal and to exercise the functions conferred under the Act:

Provided that the Government may entrust the duties of the Appellate Tribunal to the Principal District and Sessions Judge, Pondicherry.

(2) The Appellate Tribunal shall, with the previous sanction of the Government, make, by notification, regulations consistent with the provisions of this Act and the rules made thereunder for

regulating the procedure and the disposal of its business."

20. In the light of the above discussion, substantial questions of law Nos.1 and 3, raised in the instant Tax Case Revision, are answered in the negative, as against the petitioner.

21. Question, as to whether, Section 49 of the PVAT Act, 2007, enables the Deputy Commercial Tax Officer-II, Commercial Tax Department, Puducherry, 1st respondent herein, to prefer any appeal, to the Appellate Tribunal and the distinction drawn by the respondents, the relevant provisions from the two Acts, viz., Pondicherry Value Added Tax Act, 2007 and Tamil Nadu Value Added Tax Act, 2006, are extracted, as hereunder:

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
(1) Any person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 47 or an order passed under the proviso to sub-section (4) of section 77 may, within a period of sixty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Tribunal:	(1) Any officer prescribed by the Government or any person objecting to an order passed by the Appellate Deputy Commissioner under sub-section (3) of section 51, or by the Appellate Joint Commissioner under sub-section (3) of section 52, or by the Joint Commissioner under sub-section (1) of section 53, may,-- (a) within a period of one hundred and twenty days, in the case of an officer so prescribed by Government.

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period of sixty days, but within a further period of sixty days, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the period of sixty days: Provided further that no appeal filed by any person objecting to an order passed under sub-section (3) of section 47 shall be entertained unless it is accompanied by satisfactory proof of the payment of tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five percent of difference of the tax as ordered by the Appellate Assistant Commissioner and the tax admitted by the appellant: Provided also that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing and subject to furnishing of such security as the Appellate Tribunal may deem fit, admit an appeal against the order of the Appellate Assistant Commissioner with part payment or without any payment of tax as ordered by the Appellate Assistant Commissioner required under this sub-section with a view to mitigate undue hardship which is likely to be	(b) within a period of sixty days, in the case of any other person, from the date on which the order was served, appeal against such order to the Appellate Tribunal: Provided that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period: Provided further that no appeal filed by any person objecting to an order passed,-- (a) under sub-section (3) of section 51 or under sub-section (3) of section 52 shall be entertained unless it is accompanied by satisfactory proof of the payment of the tax as ordered by the Appellate Deputy Commissioner or by the Appellate Joint Commissioner, as the case may be; (b) under sub-section (1) of section 53, unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax ordered by the Joint Commissioner under section 53 and the tax admitted by the appellant: Provided also that no appeal shall be admitted against an order, passed by the Appellate Deputy Commissioner under section 51 or by the Appellate Joint Commissioner under section 52, as the case may be, setting aside the assessment and directing

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
caused to the person if the payment of such amount is insisted on. (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed. (3) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard, (a) in the case of an order of assessment, (i) confirm, reduce, enhance or annul the assessment or penalty or both; or (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or (iii) pass such other orders as it may think fit; and (b) in the case of any other order, confirm, cancel or vary such order: Provided that at the hearing of any appeal against an order of the Appellate Assistant Commissioner, the assessing authority shall have the right to be heard either in person or by a representative. (4) Where as a result of the appeal any change becomes	the assessing authority to make a fresh assessment. (2) The officer empowered under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1) by the other party, may file within sixty days of the receipt of the notice, a memorandum of cross objections and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1): Provided that the Appellate Tribunal may, within a further period of thirty days, admit a memorandum of cross-objections filed after the expiration of the first mentioned period of sixty days, if it is satisfied that the officer empowered under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, had sufficient cause for not filing the memorandum within the first mentioned period. (3) The appeal and the memorandum of cross-objections shall be in the prescribed form and shall be verified in the prescribed manner and the appeal shall be accompanied by such fee as may be prescribed: Provided that no fee shall be payable by the officer empowered under sub-section (1). (4) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard, and for sufficient reasons to be recorded in writing - (a) in the case of an order of assessment - (i) confirm, reduce, enhance, restore fully or partially, as the case may be, or annul the

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
necessary in the order appealed against, the Appellate Tribunal may authorise the assessing authority to amend such order accordingly and on such amendment being made, any amount overpaid by the appellant shall be refunded to him without interest, or the further amount of tax, if any, due from him shall be collected in accordance with provisions of this Ordinance, as the case may be. (5) Notwithstanding that an appeal has been preferred under sub-section (1) the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred: Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed: Provided further that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1), the Appellate Tribunal shall dispose of the appeal within a period of ninety days from the date of such order:	assessment or the penalty or both; or (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or (iii) pass such other orders as it may think fit; or (b) in the case of any other order, confirm, cancel or vary such order: Provided that at the hearing of any appeal against an order of the Appellate Deputy Commissioner or the Appellate Joint Commissioner or the Joint Commissioner, the Government shall have the right to be heard by a representative: Provided further that if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an appeal to the Supreme Court against the order of the High Court is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of. (5) Within a period of sixty days from the date of receipt of notice that an appeal against the order passed by the Appellate Deputy Commissioner under sub-section (3) of section 51 or an order passed by the Appellate Joint Commissioner under sub-section (3) of section 52 or by the Joint Commissioner under sub-section (1) of section 53 has been filed, any assessing authority or his representative appearing before the Appellate Tribunal may file an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, in the prescribed form and in the prescribed manner against the order of the Appellate Deputy Commissioner or the Appellate Joint Commissioner

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
Provided also that if such appeal is not disposed of within the period specified in the above proviso, the stay order shall, on the expiry of that period, stand vacated and no further stay shall be granted. (6) (a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made: Provided that no such application shall be preferred more than once in respect of the same order. (b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and where the application is preferred by any party other than a departmental authority it shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed. (7) Except as provided in the rules made under this Ordinance, the Appellate Tribunal shall not	or the Joint Commissioner, as the case may be. The Appellate Tribunal may, after giving a reasonable opportunity to the appellant and assessing authority or the representative of the assessing authority of being heard, pass such orders on the petition, as it thinks fit: Provided that the Appellate Tribunal may admit an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, presented after the expiration of the said period, if it is satisfied that the assessing authority or his representative had sufficient cause for not filing such petition within such period. (6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred: Provided that, in the case of an appeal against an order passed by the Joint Commissioner under sub-section (1) of section 53, the Appellate Tribunal may, in its discretion, give such direction as it thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed. (7)(a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made: Provided that no such application shall be preferred more than once in respect of the same order.

Section 49 of the Pondicherry Value Added Tax Act, 2007	Section 58 of the Tamil Nadu Value Added Tax Act, 2006
have power to award costs to either of the parties to the appeal or review. (8) Every order passed by the Appellate Tribunal under the third proviso to sub-section (1), sub-section (3), proviso to sub-section (5) and sub-section (6) shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred, the Commissioner if he is not such authority, and the Secretary. (9) Every order passed by the Appellate Tribunal under sub-section (3) shall, subject to the provisions of sub-section (6) and section 51 be final.	(b) The application for review shall be preferred in the prescribed manner and within one year from the date of which a copy of the order to which the application relates was served on the applicant in the manner prescribed and where the application is preferred by any party other than a departmental authority, it shall be accompanied by such fee as may be prescribed. (8) Except as provided in the rules made under this Act, the Appellate Tribunal shall not have power to award costs to either of the parties to the appeal or review. (9) Every order passed by the Appellate Tribunal under sub-section (4) or (7) shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred, the Deputy Commissioner if he is not such authority, and the Commissioner. (10) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of sub-section (7) and section 60, be final.

22. Object of the then Pondicherry General Sales Tax Act, 1967, is to levy general tax on sale or purchase of goods in the Union territory of Pondicherry and to validate the levy and collection of such tax under certain Act of Pondicherry. Pondicherry Value Added Tax Act, 2007 is enacted to provide for the levy and collection of value added tax on the sale or purchase of goods in the Union territory of Puducherry and for

matters connected therewith or incidental thereto.

23. Object of the Tamil Nadu Value Added Tax Act, 2006, is extracted hereunder:

"An Act to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods in the State of Tamil Nadu."

24. Under Article 265 of the Constitution of India, Government is empowered to levy tax. Tax is paid to the Government and it is the duties and functions of the authorities in the Commercial Taxes Department, to implement the taxing laws. Ultimately, it is the revenue, which is collected by the Government, by way of tax. As regards intra-state sale, there are provisions, both in the PVAT Act, 2007 or TNVAT, 2006, as the case may be.

25. Though usage of the words, "any person", in the opening sentence of Section 49 of the PVAT Act, at the first blush, in comparison to Section 58 of the TNVAT Act, appear to be ambiguous, that it has not enabled any authority or the Officer of the Commercial Taxes Department, Pondicherry, to prefer a appeal to the Appellate Tribunal,

we deem it fit to consider few decisions, as to how, interpretation has been made, to achieve the object of any enactment.

(i) In the words of Tindal, C.J., in **Sussex Peerage** case [(1844) 11 Cl & F 85], wherein, he said thus, “If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver.

(ii) In **Nairin v. University of St. Andrews** reported in 1909 AC 147, the Hon'ble Apex Court held that, “Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.”

(iii) In **Ram Rattan v. Parma Nand** reported in AIR 1946 PC 51, the

Hon'ble Mr.S.R.Das, held as follows:

“The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction.”

(iv) In **Poppatlal Shah v. State of Madras** reported in AIR 1953 SC 274, the Hon'ble Supreme Court held that,

“It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself.”

(v) In **Kanai Lal Sur v. Paramnidhi Sadhukhan** reported in AIR

1957 SC 907, the Hon'ble Supreme Court held that,

“it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct.”

(vi) In **State of W.B., v. Union of India** reported in **AIR 1963 SC 1241**, the Hon'ble Apex Court held that, "in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety."

(vii) In **State of Uttar Pradesh v. Dr. Vijay Anand Maharaj** reported in **AIR 1963 SC 946**, the Hon'ble Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on 'Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the

contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature.”

(viii) In *Commissioner of Sales Tax v. M/s. Mangal Sen Shyamlal* reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Hon'ble Apex Court held that,

"A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is not to resile. It has to abide by the maxim, "*ut res magis valiat quam pereat*", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(ix) In **Philips India Ltd., v. Labour Court** reported in **1985 (3)**

SCC 103, the Hon'ble Apex Court, at Paragraph 15, held as follows:

“(15) No cannon of statutory construction is more firmly, established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See **Attorney General v. Bastow [(1957) 1 All.ER 497]**) and as a 'settled rule' (See **Poppatlal Shall v. State of - Madras [1953 SCR 667 : AIR 1953 SC 274]**). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expreseth meaning of the makers' (Quoted with approval in **Punjab Breverages Pvt. Ltd. v. Suresh Chand [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165]**).”

(x) In **Nyadar Singh v. Union of India** reported in **AIR 1988 SC**

1979, the Hon'ble Supreme Court observed that ambiguity need not

necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xi) In **Nasiruddin v. Sita Ram Agarwal** reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

“35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used.But the intention of the legislature must be found out from the scheme of the Act.”

(xii) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that, "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as

found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected.”

(xiii) In **State of Jharkhand v. Govind Singh** reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held that,

“12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the “language” is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after

enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by “an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so”. (See Frankfurter: “*Some Reflections on the Reading of Statutes*” in *Essays on Jurisprudence*, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529)] (All ER at p. 542c-d):

“It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.”

(xiv) In *A.N.Roy Commissioner of Police v. Suresh Sham Singh*

reported in AIR 2006 SC 2677, the Hon'ble Apex Court held that,

“It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.”

(xv) In *State of Haryana v. Suresh* reported in 2007 (3) KLT 213, the Hon'ble Supreme Court held that, “One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified,

extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.”

(xvi) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

“52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.”

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(xvii) In *Satheedevi v. Prasanna* reported in (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

“12. Before proceeding further, we may notice

two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise—*Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678]”

26. Sum and substance of the argument of the learned counsel for the petitioner, is that in the event of an order, passed by the Appellate Assistant Commissioner, even adverse to the interest of the Government, orders passed by the abovesaid authority, is final and cannot be challenged by the Government or any other authorised authority, by way of an appeal to the Appellate Tribunal. If the said contention of the learned counsel for the petitioner is admitted, then the consequences would be, finality of orders, against the Government, at the first appellate stage, at the instance of an assessee, ie., before the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry, 2nd respondent herein and the same cannot be questioned by the Government and that no officer, would not be in a position to challenge the correctness of the the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry, 2nd respondent herein, even if there is an incorrect approach, either on facts or law. In a lis, involving tax, it is the Government and assessee, who are the parties and the assessing officer, is only an officer, implementing the taxing laws, on behalf of the Government.

27. If the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry, 2nd respondent herein, has committed an error, on facts or law or both, as the case may be, certainly the Government or any authorised officer, to levy tax, on behalf of the Government, can always maintain an appeal to the Appellate Tribunal, testing the correctness of the order.

28. As per sub-Section (6) of Section 81 of the Act, notwithstanding anything contained in sub-sections (1) and (2), which deal with repealing and validation of the Act, 1967,

(a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the repealed Act and pending at the commencement of this Act shall continue to be heard and disposed by the said officer or authority subject to the same terms and conditions prescribed for this purpose under the repealed Act until such officer is appointed or such authority is constituted under this Act;

(b) any application, appeal, revision or other proceedings arising out of the repealed Act after the commencement of this Act will also continue to be heard and disposed by the officer appointed or authority constituted

under the repealed Act subject to the same terms and conditions prescribed for this purpose under the repealed Act until such officer is appointed or such authority is constituted under this Act;

(c) any application, appeal, revision or other proceedings arising under this Act will also be heard and disposed by the officer appointed or authority constituted under the repealed Act subject to the terms and conditions prescribed for this purpose under this Act until such officer is appointed or such authority is constituted under this Act; and

29. When the statutory provisions specifically state that the appeals, revisions or other proceedings, will continue to be heard and disposed of, by the Officer appointed or authority constituted under the Act, then by virtue of the notification already issued, there is no need for any fresh notification.

30. Having regard to the decisions of the Hon'ble Apex Court, as to how, a provision has to be interpreted, to achieve the object of the statute, we are of the view that the Legislature has used the words, "any person", in the opening sentence of Section 49 of the PVAT Act, 2007, to

mean, "any person", be an assessee or any officer, authorised by the Government.

31. Literal construction of the words, "any person", confining only to an assessee and not to any officer to file an appeal, against the order of the appellate authority, to the Tribunal, would result in absurdity and the same would not serve the purpose and object of the Act. Hypothetical construction of the words, "any person", to mean only the assessee, would be inconsistent with the object and policy of the Act. It would defeat or impair the policy of the Act. Object, aim and scope of the Act, should be kept in mind and meaning should be collected from the expressed intention of the legislature.

32. In the light of the above decisions and discussion, substantial questions of law No.2 is answered in the negative, against the petitioner.

33. On the substantial question of law No.4, as to whether the Assessing Officer has got power to levy higher rate of tax by overlooking the Government order and whether is it sustainable in Law?, perusal of

the material on record shows that the Appellate Tribunal has analysed the evidence and recorded a categorical finding of misclassification of Liquefied Petroleum Gas (LPG) and filing of returns, to gain benefit of lesser tax. The Tribunal has properly applied the Government Orders, applicable to the period in question. There is no perversity. Hence, the Substantial Question of Law No.4, is answered in the negative, against the assessee. Considering the material on record, we are of the view that the petitioner has not made out a case for interference, with the order of the Appellate Tribunal, Puducherry, dated 28.06.2017 passed in Tax Appeal No.15 of 2015.

34. After the dismissal of the writ petition, Mr.P.Suresh, learned counsel for the petitioner submitted that business of Distribution of LPG case was closed, during December' 2013 and that therefore, the petitioner has to mobilise and pay tax to the Government.

35. Considering the hardship in generating sources, consequent to the dismissal of the writ petition, learned counsel for the petitioner sought for three months time for payment. Tax has to be paid in time, if not done, interest is chargeable. In the case on hand, tax due and

payable was for the assessment year 2011-12. Six years have elapsed. Though the learned counsel has sought for three months' time, we are inclined to grant only two months' time, from today.

S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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28. In view of the above, Tax Case Revision is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (R.S.K., J.)
27.10.2017

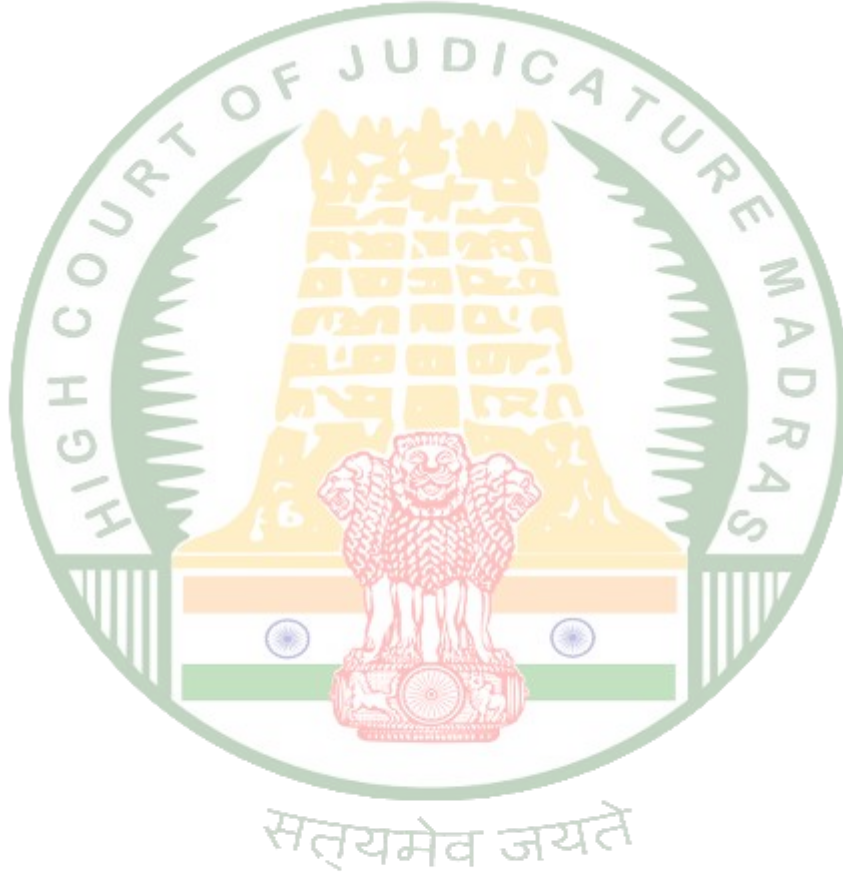
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To

The Pondicherry Value Added Tax
Appellate Tribunal, Puducherry.

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Tax Case (Revision) No.38 of 2017



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