

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
05.12.2017	13.12.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.17722, 16368, 16369, 18309 TO 18312,
19330, 19504, 19682, 19683, 21358, 22061 TO 22063,
24549 TO 24557, 27877, OF 2017

AND

W.M.P.NOS.19217, 19218, 17678, 17679,
19873 TO 19880, 20840, 20841, 21056, 21057,
21236, 21237, 21238, 21239, 22289, 22290, 23115
TO 23117, 25901 TO 25908, 29893, 29894 OF 2017

1. M/s.Aakavi Spining Mills
Pvt.Ltd. Rep.by its Director R.Selvaraj 2A
Pichankadu B.P. Agraharam Erode 638 005
Erode Dist .. Petitioner in WP.17722 of 2017
1. M/s.Sri Muni Pachaiyappan
Textiles Pvt Ltd rep by Managing Director A.
M.Munusamy Mudaliar A Wing 7th Floor
Parsn Manere Gemini Complex 602
Anna Salai Chennai-02
.. Petitioner in WP.16368, 16389, 19504 of 2017
1. M/s.Rineile Micro Fabrics Pvt Ltd
rep by Director-V.N.Vijayakumar S.F.
No.118 Valliyarachal Village
Vellakovil - 638 111 Tirupur District
.. Petitioner in WP.18309, 18310, 18311,
18312 of 2017
1. M/s.GVS Spinners P.Ltd.
Rep. by its Managing Director-V.N.
Vijayakumar No.201 S.G.Valasu
Veerappanchatram Erode 638 004
Erode District.
.. Petitioner in WP.No.19330 of 2017

1. M/s.K.P.N.Textiles Mills Ltd.
Rep. by its Director- P.C.Murugesan No.212
R.S.Road Pallipalayam Tiruchengode Taluk
638 006 Namakkal District.
.. Petitioner in WP.No.19682 of 2017
1. M/s.Sri Hari Prasath Textiles P.Ltd.
Rep. by its Director K.Karthik
No.27 6th Cross Street Gandhipuram
Pallipalayam Erode 638 006
Namakkal District.
.. Petitioner in WP.No.19683 of 2017
1. M/s.Sri Santhanalakshmi
Spinners Pvt. Ltd. rep. by its Director S.
Sivasubramaniam SF No.464 465 Patharai, near veppadai
Sowthapuram (Po) Pallipalyam Erode
Namakkal Dt. .. Petitioner in WP.No.21358 of 2017
1. Tvl.Shree Hari Vallabi
Spinners Pvt Ltd rep by Managing Director
Sri S.Raju S.F. No.3/225 Sankari Main Rd
Vediyarasampalayam Pallipalayam
Agraharam Po Erode- 638 008
.. Petitioner in WP.No.22061 of 2017
1. Tvl.Mouli Spinners P ltd
rep by Managing Director Sri S.Panneer
Selavam S.F. No.1/14 Sankari Main Rd
Vediyarasampalayam Pallipalayam
Agraharam Po Erode- 638 008
.. Petitioner in WP.No.22062 of 2017
1. Tvl.Sri Vinayaga Spinning
Mills P Ltd rep by Director Sri K.
Madeswaran S.F. No.144/2 Kumarapalayam
Main Road Veppadai Elanthakuttai Po
Erode- 638 008 .. Petitioner in WP.No.22063 of 2017
1. Tvl.Chola Spinning Mills Pvt
Ltd SF.No.189/1 Kumarapalayam Main Road
Elanthakuttal Po Veppadai Kumarapalayam
Taluk Namakkal- 638 008 rep by its Director
S.Venkatachalam
.. Petitioner in WP.No.24549 to 24557 of 2017

1. M/s.Cheran Spinner Pvt. Ltd.
rep. by its Director A.S.Palanisamy S.F.No.
4771/1 Patharai Sowthapuram Po.
Erode 638 006 Namakkal District
.. Petitioner in WP.No.27877 of 2017

Vs.

- 1 The Authority for
Clarification & Advance Ruling
Rep.by its Commissioner of Commerical Taxes
Ezhilagam Chepauk Chennai 600 005
- 2 The Assistant Commissioner
(CT) Periya Agraharam Assessment Circle
Erode Erode Dist
.. Respondents in WP.17722 of 2017
- 1 The Authority for
Clarification and Advance Ruling rep by
Commissioner of Commercial Taxes Ezhilagam
Chepauk Chennai-05
- 2 The Commercial Tax Officer
Arakkonam Vellore District
.. Respondents in WP.16368, 16389, 19504 of 2017
- 1 The Authority for
Clarification and Advance Ruling rep by
Commissioner of Commercial Taxes Ezhilagam
Chepauk, Chennai-05
- 2 The Assistant Commissioner
(CT) Kangeyam Assessment Circle Kangeyam
Erode District
.. Respondents in WP.18309, 18310, 18311,
18312 of 2017
- 1 The Authority For
Clarification and Advance Ruling
Rep. by its Commissioner of Commercial Taxes
Ezhilagam Chepauk Chennai 600 005

- 2 The Assistant Commissioner
(CT) (FAC) Chithode Circle, Erode
Erode District. .. Respondents in WP.No.19330 of 2017
- 1 The Authority For
Clarification and Advance Ruling
Rep. by its Commissioner of Commercial Taxes
Ezhilagam Chepauk Chennai 600 005
- 2 The Assistant Commissioner
(CT) Tiruchengode Rural Circle
Tiruchengode Namakkal District
.. Respondents in WP.No.19682, 19683, 21358 of 2017
- 1 The Authority for
Clarification and Advance Ruling (U/s.48A
of the TNVAT Act 2006) Office of the
Principal Commr. & Commr. of Commercial
Taxes Chepauk Ch-05
- 2 The Assistant Commissioner
(CT) (FAC) Tiruchengode (Rural) Circle
Tiruchengode Namakkal District
.. Respondents in WP.No.22061, 22062, 22063 of 2017
- 1 Assistant Commissioner (CT)
Tiruchengode Rural Assessment Circle
Tiruchengode
- 2 Authority for Clarification
and Advance Ruling Commercial Tax Department
Government of Tamil Nadu
.. Respondents in WP.No.24549 to 24556 of 2017
- 1 Assistant Commissioner (CT)
Tiruchengode Rural Assessment Circle,
Tiruchengode
- 2 Commercial Tax Officer,
Authority for clarification and advance
Ruling Commercial Tax Department
Government of Tamil Nadu
.. Respondent in WP.No.24557 of 2017

- 1 The Authority for
Clarification and Advance Ruling rep. by
its Commissioner of commercial Taxes
Ezhilagam Chepauk Chennai 600 005
- 2 The Assistant Commissioner
(CT) (FAC) Tiruchengode Rural Circle
Tiruchengode Namakkal District

.. Respondents in WP.No.27877 of 2017

Prayer:

Petitions filed under Article 226 of the Constitution of India, to issue Writs of (1) certiorari (a) calling for the records on the file of the 1st respondent in its impugned proceeding made in Review of ACAAR.No.22/2012-13 (Acts Cell-II/18794/2016) dated 29.06.2017 quash the same (in WP.17722, WP.19330, 19504, 19682, 19683, 21358 & 27877 of 2017)

(b). calling for the records on the file of the 2nd respondent in its impugned Notice issued in TIN.33103083230/2013-14 dated 18.05.2017 and quash the same (in WP.18309 of 2017)

(c). calling for the records on the file of the 2nd respondent in its impugned Notice issued in TIN.33103083230/2014-15 dated 18.05.2017 and quash the same (in WP.18310 of 2017)

(d). calling for the records on the file of the 2nd respondent in its impugned Notice issued in TIN.33103083230/2015-16 dated 19.05.2017 and quash the same (in WP.18311 of 2017)

(e). calling for the records on the file of the 2nd respondent in its impugned Notice issued in TIN.33103083230/2016-17 dated 19.05.2017 and quash the same (in WP.18312 of 2017)

(f). calling for the records on the files of the 1st respondent in ACAAR.22/ 2012-13 (Acts.Cell/ 18794/ 2016) dated 29.06.2017 and quash the same as being without jurisdiction and authority of law (in WP.NOs.22061 To 22063 of 2017)

(g). calling for the records relating to Notice in S.T.33613201241/2015-16 dated 29.05.2017 in regard to the Petitioner for the Assessment Year 2014- 15 issued by the 1st Respondent quash the same (in WP.24549 of 2017)

(h). calling for the records relating to Notice in S.T.33613201241/2008-09 dated 28.07.2017 in regard to the Petitioner for the Assessment Year 2008- 09 issued by the 1st Respondent quash the same (in WP.24550 of 2017)

(i). calling for the records relating to Notice in S.T.33613201241/2012-13 dated 09.06.2017 in regard to the Petitioner for the Assessment Year 2012- 13 issued by the 1st Respondent quash the same (in WP.24551 of 2017)

(j). calling for the records relating to Notice in S.T.33613201241/2013-14 dated 29.05.2017 in regard to the Petitioner for the Assessment Year 2013- 14 issued by the 1st Respondent quash the same (in WP.24552 of 2017)

(k). calling for the records relating to Notice in CST.429003/ 2011-12 dated 29.05.2017 in regard to the Petitioner for the Assessment Year 2011- 12 issued by the 1st Respondent quash the same (in WP.24553 of 2017)

(l). calling for the records relating to Notice in S.T.33613201241/2007-08 dated 28.07.2017 in regard to the Petitioner for the Assessment Year 2007- 08 issued by the 1st Respondent quash the same (in WP.24554 of 2017)

(m). calling for the records relating to Notice in C.S.T.429003/ 2012-13 dated 29.05.2017 in regard to the Petitioner for the Assessment Year 2012- 13 issued by the 1st Respondent quash the same (in WP.24555 of 2017)

(n). calling for the records relating to Notice in C.S.T.429003/ 2013-14 dated 29.05.2017 in regard to the Petitioner for the Assessment Year 2013-14 issued by the 1st Respondent quash the same (in WP.24556 of 2017)

(o). calling for the records relating to the order passed by the 2nd respondent dated 29.6.2017 in Review of ACAAR No.22/2012-13 (Acts Cell II/16921/2017) and quash the same and consequently forbear the 1st respondent from levying tax on Hank Yarn (VSF Hank Yarn) (in WP.24557 of 2017); and

(2) Mandamus (a) forbearing the 2nd Respondent from in any way proceeding further in pursuance of the impugned proceedings TIN.No.33581740583/2010-11, dated 31.5.2017 pending disposal of the Review Petition filed by similarly placed petitioners / dealers under section 48A (4) of TNVAT Act 2006 before the 1st Respondent (in WP.16368 of 2017) and

(b) forbearing the 2nd Respondent from in any way proceeding further in pursuance of the impugned proceedings TIN No.33581740583/2012-13 dated 06.06.2017 pending disposal of the Review Petition filed by similarly placed petitioners / dealers under section 48A (4) of TNVAT Act, 2006 before the 1st Respondent (in WP.16369 of 2017) respectively.

For Petitioners in W.P.Nos.16368,
16369, 21358, 19330, 19504 19682, 19683, } Mrs.R.Hemalatha
18309 to 18312, 17722 & 27877/2017

For Petitioners in W.P.Nos.22061 } Mr.R.Senniappan
to 22063/2017

For Petitioners in W.P.Nos.24549 } Mr.Niranjan Rajagopalan
for }
to 24586 of 2017 M/s. G.R. Associates

} Mr.N.Inbarajan,
Assisted the Court

For Respondents in all W.Ps. : Mrs.S.Narmadha Sampath
Special Government Pleader

WEB COPY COMMON ORDER

Since common issue arises in all these Writ Petitions, they were heard together and disposed of by this common order.

2. In all these Writ Petitions, the petitioners, who are Spinning Mills, most of whom are manufacturers of staple fiber hank yarn, cotton yarn, and registered as dealers on the file of the respective Assessing Officers under the provisions

of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') have challenged the proceedings of the Authority for Clarification and Advance Ruling, the first respondent, dated 29.06.2017.

3. The effect of the impugned clarification is that, 100% viscose staple fibre (VSF) hank yarn sold by the dealers/petitioners is taxable at 5%, under Entry No.3 (a) of Part B of the first schedule to the TNVAT Act.

4. With consent of the learned counsel appearing for the parties, Writ Petition No.17722 of 2017, is taken as a lead case, and it would suffice to note the facts stated thereunder :-

4.1) The petitioner is a registered dealer on the file of the second respondent/Assistant Commissioner (CT), Periya Agraharam Assessment Circle, Erode, and would state that, they were under the belief that the commodity dealt with by them, viz., staple fibre hank yarn, is exempt from taxation under Entry 44 of Part-B of the fourth schedule to the TNVAT Act, as they were informed that, some of the dealers had approached the Commissioner of Commercial Taxes during 2007, and sought for a clarification regarding the taxability of the commodity, called 'hank yarn', and to one such dealer, viz., Southern India Mills Association, Coimbatore, the Commissioner, by clarification, dated 29.03.2007, informed that, the term 'hank yarn', includes hemp yarn, which are manufactured using the raw materials other than cotton yarn also and exempted from tax under Entry 44 of Part-B of the fourth schedule to the TNVAT Act with effect from 01.01.2007. Whereas, when the other dealer, in their individual capacity, approached the Commissioner for similar clarification with regard to the taxability of the commodities, viz., polyester yarn, viscose staple fibre yarn and blended yarn, the Commissioner, by clarification dated 19.09.2007, informed that, polyester yarn and viscose staple fibre yarn are not used by handloom Industries, hence, they are liable to be taxed at 4%, under Entry No.3 (a) of Part B of the first schedule to the TNVAT Act with effect from 01.01.2007.

4.2) It is submitted that, to give a statutory backing to such clarification, Section 48-A was introduced in the TNVAT Act, by amendment Act 26 of 2011 with effect from 27.09.2011. By virtue of the said provision, the first respondent was empowered to clarify the rate of tax, that shall be applicable to the commodity, for which, clarification is sought for, and shall be applicable to the dealers, who deal with the said commodity and on all Officers working under the control of Commissioner of Commercial Taxes (CCT).

4.3) Whiles, a dealer, by name M/s. Rajaguru Spinning Mills approached the first respondent, seeking for a clarification of the rate of tax on 100% VSF hank yarn. The first respondent, vide proceeding, dated 14.02.2013, clarified that the said commodity is taxable at 5% under Entry No.3 (a) of Part B of the first schedule to the TNVAT Act. Based on the said clarification, all the Assessing Officers, through out the State, issued notices to the dealers of the said commodity, proposing to revise the assessment, and proposed to assess the rate of tax of hank yarn at 5%. Aggrieved by such proposal, the petitioner and the few other dealers approached this Court, by way of filing Writ Petitions, and two such Writ Petitions filed by the petitioner, were W.P.Nos.37368 and 37369 of 2015. In the said Writ Petitions, the clarification, dated 14.02.2013 was challenged, contending that the commodity, hank yarn, is exempted goods, and no VAT is required to be collected on the sale of hank yarn. The said Writ Petitions were disposed of, by order, dated 24.11.2015, by directing the petitioner to submit their objections to the show cause notice and the Assessing Officer was directed to take a decision on the matter.

4.4) Parallely, the petitioner and few other dealers filed Petitions before the first respondent to review the clarification, dated 14.02.2013. These Petitions were rejected, by the impugned orders/clarification, dated 29.06.2017, and the earlier clarification given vide proceeding, dated 14.02.2013 was reiterated. Aggrieved by the same, the petitioner and some of the dealers, who are petitioners in other Writ Petitions are before this Court.

5. Mrs. R. Hemalatha, the learned counsel appearing for the petitioners in some of the Writ Petitions submitted that, the petitioners have challenged the impugned clarification on the following grounds :-

5.1) Entry 44 of Part-B of the fourth schedule to the TNVAT Act mentions only hank yarn, and there is no distinction or specification to the texture of the yarn, and therefore, all categories of yarn, in hank form, are exempted from payment of VAT. Clause 3(a) of Part-B of the first schedule covers all types of yarn, except hank yarn, and are taxable at 5%. Thus, clause 3 (a) specifically excludes hank yarn, which is an exempted commodity.

5.2) The power conferred on the first respondent under Section 48-A of the TNVAT Act is to clarify the rate of tax on a particular commodity, and the first respondent has no power to interpret an entry in the schedules to the Act, which fixes the rate of tax for a particular commodity. Under the provisions

of the Tamil Nadu General Sales Tax Act, 1959, a notification, prescribing the rate of tax, dated 07.10.1998 was issued, which specifically states the rate of tax at 2 % on the sale of cotton hank yarn and plain reel, and under the TNVAT Act 2006, there is no specification of cotton hank yarn, and the word used in the said notification is only 'hank yarn', and therefore, it would cover all types of yarn sold in hank form.

5.3) An identical issue was raised in an Appeal filed by the State against the order passed by the Assistant Commissioner (CT) before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai (henceforth, referred to as 'STAT') in the case of a dealer, viz., M/s. Mass Textiles, pertaining to an assessment under the TNGST Act, 1959 for the year, 2002-03. The said dealer was assessed to higher rate of tax on the ground that, he has sold polyester hank yarn. The question, which was framed for consideration before the STAT was, whether the Appellate Assistant Commissioner (CT) Madurai (North) was right in re-fixing the levy of tax on the turnover at 2% instead of 4%, relating to the polyester hank yarn. The STAT held that, when there is no specific word, 'polyester', or 'cotton', in the notification, the reduction of rate to tax to 2% is applicable to cotton hank yarn and polyester hank yarn, and accordingly, by order, dated 03.03.2011, dismissed the Appeal filed by the State.

5.4) It is submitted that, the said Appeal, having attained finality, it would bind the Revenue, and the first respondent cannot issue any clarification, that is contrary to the judgment of the STAT. It is submitted that the first respondent, while issuing the impugned clarification, has relied on another Central enactment to justify their order, and TNVAT Act, being a complete code by itself, no reference would have been made to other enactment.

5.5) The respondents rely upon the Budget Speech given by the then Hon'ble Minister of Finance, Government of Tamil Nadu, on 22.07.2006, and even in the said Budget Speech, there is reference only to hank yarn, and there is no distinction drawn between the cotton hank yarn and VSF hank yarn.

5.6) It is submitted that the petitioners are also suppliers of hank yarn to the hand loom weavers and hand loom weavers also uses fibres such as polyester fibre, viscose fibre, blended fibre, etc., and it is incorrect to state that, hand loom products are made only with cotton hank yarn. In support of such contention, reliance was placed on the Circular issued by the Chairman of the Hand Loom Export Promotion Council, Ministry of Textiles, Government of India, dated 16.03.2013. As

per the said Circular, the first respondent has no jurisdiction to invoke his power under Section 48 -A of the TNVAT Act, as there is no ambiguity in the Entry to the schedules under the TNVAT Act, and no clarification is required.

5.7) It is further submitted that the clarification issued, even assuming to be valid, can have only prospective effect. In support of such contention, reliance was placed on the decisions of this Court, in the case of i) Mohan Breweries and Distilleries Ltd., Vs. C.T.O. Porur Assessment Circle, Chennai and others, reported in [(2005) 139 STC 477 (Madras)] and ii) P.A.S. Industries Vs. Commissioner of Commercial Taxes, Chennai and another, reported in [(2007) 6 VST 671 (Madras)].

5.8) It is further submitted that, the special entry, (viz., Entry 44) will exclude general entry, and therefore, the petitioners are justified in stating that, any yarn, packed in hank form, is liable to be exempted from VAT. In support of such contention, reliance was placed on the decision of the Division Bench of this Court, in the case of Bimetal Bearings Ltd. Vs. State of Tamil Nadu reported in 80 STC 167.

5.9) It is further submitted that, the end product is not a criteria to determine the classification of goods, and in the instant cases, the end product is Fabric, which is fully exempt from VAT. Therefore, the impugned clarification is not sustainable. In support of such contention, reliance was placed on the decision of Porritts & Spencer (Asia) Ltd., Vs. State of Haryana reported in [(1979) AIR 300].

5.10) The notification issued by the Chairman of the Handloom Export Promotion Council, Ministry of Textiles, Government of India, dated 16.03.2013 with regard to hank yarn obligation is not applicable to the cases on hand, as it is under different enactment, and the same cannot be relied upon to decide the rate of tax under the provisions of the TNVAT Act. In support of such contention, reliance was placed on the decision of this Court, in the case of Sundek India Ltd., Chennai Vs. CCT, Chennai and another reported in [(2009) 4 CTC 858], which was confirmed by the Division Bench.

6. Mr. R. Senniappan, the learned counsel for some of the petitioners submitted that, in terms of Section 48-A (2) (i) of the TNVAT Act, no application shall be entertained by the first respondent, if the issue is pending before the Appellate Authority, or Revisional Authority of the Department, or the Appellate Tribunal, or any other Court of law, and, in the instant case, the STAT has taken a decision on 03.03.2011, in the Appeal filed by the State against the order passed by the Assistant Commissioner (CT), in the case of M/s. Mass Textiles,

and the said order has attained finality, and no application for clarification is maintainable.

6.1) Relying upon the decision of the Hon'ble Supreme Court, in the case of Mauri Yeast India Pvt. Ltd. Vs. State of U.P. and another) reported in [(2008) 14 VST 259 (SC)], the learned counsel submitted that, when a commodity has been accepted to be of a particular nature by the Assessing Officer for a long time, it should remain to be classified as such without any change, and the common parlance test, or user test, cannot be said to be decisive in such a situation, and the onus would be on the Department to show, as to why, a different interpretation should be resorted to, when there is no change in the statutory provision, and if two views are possible, then, one, which is favorable to the assessee has to be adopted.

6.2) Further, it is submitted that, no opportunity of personal hearing was granted to the petitioners before the clarification, dated 14.02.2013 was issued, and in such situation, orders were set aside and the matters were heard afresh, in the case of Supreme Industries Ltd., Vs. Authority for Clarification and Advance Rulings, Chennai and another reported in [(2014) 68 VST 494 (Madras)].

6.3) Referring to Entry 77 of Part-A of the fourth schedule to the TNVAT Act, it is submitted that, all categories of fabrics are exempted from tax. Thus, the end product has been exempted, and this is a clear indicator that all types of yarn, packed in hank form, are exempted. The entries seek to clarify the exemption, which has been specifically mentioned, and to illustrate the same, the learned counsel referred to Entry 22, which exempts cycle rickshaw without motor. However, there is no such clarification with regard to hand yarn, and therefore, all types of hank yarn are exempted.

7. Mr. Niranjan Rajagopalan, the learned counsel appearing for some of the petitioners submitted that the grounds raised before the first respondent were considered, and the reasons given are independent of the grounds raised by the petitioners, and this is a good ground to set aside the impugned orders. Further, in para No.7.8 of the impugned order, the first respondent has observed that, there is possibility of misuse, and this cannot be a basis for imposing tax at a higher rate, as it is the official machinery, which has to prevent misuse. It is further submitted that, the reason given in the impugned orders is beyond the legislative intents.

8. Mr. N. Inbarajan, the learned counsel appearing for some of the petitioners submitted that, Entry 44 of Part-B of the fourth schedule to the TNVAT Act speaks of only hank yarn

and nothing more or nothing less, and expression has to be read as such, and no words can be incorporated into the said entry. Even in the Budget Speech given by the then Hon'ble Minister of Finance, no such distinction has been drawn and there is reference only to hank yarn. Therefore, the first respondent erred in adding the words into the entry, which are not found. In this regard, the learned counsel referred to Section 14 of Central Sales Tax Act 1956 (CST Act) and submitted that, the cotton yarn is referred to as 'declared goods', and in the second schedule, there are two categories under Entry 3. However, there is no such distinction insofar as the tax payable under the provisions of the TNVAT Act is concerned. To further buttress the said contention, the learned counsel has drawn the attention of this Court to Entry 37 of Part- B of the first schedule to the TNVAT Act, and pointed out that, when the legislation intends to clarify the exemptions based on the commodity, it specifically does so.

8.1) It is submitted that, a perusal of the Entry 3 (a) of Part-B of the first schedule to the TNVAT Act shows that, all types of yarns other than hank yarn is taxable at 5%. Therefore, the word 'hank yarn' cannot be given a restrictive meaning. Further, it is submitted that, under the provisions of CST Act and TNVAT Act, there is no power to interpret the Entries, and the impugned clarification is beyond the powers conferred on the first respondent.

8.2) The learned counsel, in order to define the meaning of 'hank yarn', placed reliance on the decision of the Hon'ble Supreme Court, in the case of Cannanore Spinning and Weaving Mills Ltd., Vs. Collector of Customs and Central Excise Cochin and others, [(1979) 2 SCR 830].

9. Mrs. S. Narmadha Sampath, the learned Special Government Pleader appearing for the respondents submitted that, Section 48-A empowers the first respondent to clarify any point, concerning the rate of tax on an application by a registered dealer, and the impugned clarification concerns the rate of tax, which would include the powers to consider as to whether the exemption claimed from the payment of tax is justified nor not. Therefore, the first respondent was fully competent to decide whether the commodity is exempt from tax or not.

9.1) Referring to the Budget Speech given by the then Hon'ble Minister of Finance, Government of Tamil Nadu on 22.07.2006, it is submitted that the Government was aware that, there is going to be a revenue loss of Rs.56 crore per annum, but decided to grant benefit, as it would benefit the lakhs of poor hand loom weavers, and the commodity, hank yarn, being the chief raw material for the manufacture of hand loom goods, such

exemption was granted, and, it was never the intention of the Government to exempt VSF hank yarn or any other yarn from tax, but only with regard to cotton hank yarn, packed in hank form used by handloom industries, the benefit was granted. Therefore, it is submitted that, intention behind the grant of such benefit has to be extended, or the loss, which will occur to the Government, will exceed Rs.56 crore and that, this was never the intention of the Government.

9.2) Further, the learned Special Government Pleader referred to Hank Yarn Packing Notification, dated 17.04.2003, issued by the Ministry of Textiles, Government of India, and submitted that the notification was issued with a view to protect the handloom Industries. It is further submitted that viscose stable fibre is not cotton product, but a fibre, and the same cannot be used by the handloom weavers, but can be used only in the powerloom industries.

9.3) By referring to the impugned order, it is submitted that the first respondent has assigned elaborate reasons, and clarified the rate of tax on the commodity in question, and there are no grounds made out by the petitioners to set aside the impugned orders, which have been passed independently analyzing the factual and legal position. Therefore, it is submitted that, what was exempted is only cotton hank yarn and not all types of yarn, packed in hank form. If the common parlance test is taken, VSF will not fall under the handloom sector and the benefit of exemption is only for cotton hank yarn.

9.4) The learned Special Government Pleader referred to the averments set out in the counter affidavit filed by the Additional Chief Secretary, Commissioner of Commercial Taxes, Chennai, in support of her submission. To explain as to what is the meaning of word 'cotton yarn', reliance was placed on the decision of the Hon'ble High Court of Calcutta, in the case of India Jute Co. Ltd., Vs. Assistant Collector of Central Excise and others reported in [(1988) 34 ELT 452 (Cal)].

9.5) It is submitted that the onus to show that the impugned clarification is unsustainable or unreasonable, is on the petitioners/dealers, which, they have failed to discharge in the present litigation. To support such a stand, reliance was placed on the decision of the Hon'ble Supreme Court, in the case of Khyerbari Tea Co. Ltd. and another Vs. State of Assam and others reported in AIR (1964) S.C. 925.

9.6) It is submitted that, the petitioners cannot plead any equity in the matter of taxation, and equitable consideration are not relevant in interpreting the provisions of a taxing

statute. In support of such contention, reliance was placed on the decisions of the Hon'ble Supreme Court, in the case of The Commissioner of Income Tax, Calcutta Vs. Central India Industries Ltd. reported in [(1972) AIR SC 397] and M/s. Murarilal Mahabir Prasad and others Vs. Shri .B. R. Vad and another reported in [(1975) 2 SCC 736].

9.7) It is further submitted that, the object of the Government to grant exemption is to benefit the handloom industries and the Government had full knowledge of the revenue loss, which will occur due to the grant of such exemption, and in such situation, strict interpretation should be given to such exemption notification, and there is no room for any liberal interpretation to such exemption notification. In support of such plea, reliance was placed on the decision of the Hon'ble Supreme Court, in the case of (Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad) reported in [(1994) supp (3) SCC 606]. On the above submissions, prayed for dismissal of the Writ Petitions.

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

11. The impugned orders are proceedings issued by the Authority for Clarification and Advance Ruling/CCT, under the provisions of the TNVAT Act. Section 48-A was inserted by amendment Act 26 of 2011 with effect from 27.09.2011. Under Section 48-A (1), power was conferred on the Government to constitute a State Level Authority for Clarification and Advance Ruling, comprising of the Commissioner of Commercial Tax and two additional Commissioners to clarify any point, concerning the rate of tax on an application filed a registered dealer. Section 48-A (2) (i) states the circumstances, when such application cannot be entertained and they being, when an Appeal or Revision is pending on the said issue, or when it relates to an issue, which is designed apparently for avoidance of tax. Proviso to Section 48-A (2) provides that, no application shall be rejected under the said sub-section without giving the applicant a reasonable opportunity of being heard. In terms of Section 48-A (3) (i) to (iii), such order of the Authority binds the applicant, who sought for the clarification or advance ruling in respect of the goods, in relation to which, the clarification or advance ruling was sought, and on all Officers working under the control of the CCT. The Authority under Section 48-A (4), has been given power to review/amend/revoke its clarification or advance ruling at any point of time for good and sufficient cause after giving an opportunity of being heard to the affected parties. In terms of the Section 48-A (5), the order giving effect to such review or amendment or revocation shall not be subject to the period of limitation.

12. During 2013, one of the Spinning Mills, viz M/s. Rajaguru Spinning Mills, the dealer in hank yarn, approached the first respondent and sought clarification with regard to rate of tax on 100% VSF hank yarn. The first respondent, by proceeding, dated 14.02.2013, clarified that the rate of tax as 5% under Entry No.3 (a) of Part B of the first schedule to the TNVAT Act. In terms of Section 48- A 3 (ii) & (iii), such clarification or advance ruling is binding in respect of the goods, in relation to which, the clarification or advance ruling was sought for, and on all Officers working under the control of the CCT. As a result of the binding nature of the clarification, dated 14.02.2013, the respective Assessing Officers of the petitioners issued notices for re-opening the assessments, which were completed by treating the transactions as an exempted transactions under Entry 44 of Part-B of the fourth schedule to the TNVAT Act. Challenging the same, some of the dealers had filed Writ Petitions before this Court, and ultimately, Review Petitions were filed by the petitioners and other dealers before the first respondent to review the clarification, dated 14.02.2013. The first respondent, by clarification, dated 29.06.2017 has taken decision on those Review Petitions, and reiterated the stand taken in the earlier clarification, dated 14.02.2013. This has been questioned in the present Writ Petitions.

13. The foremost contention raised by the petitioners is that, under Section 48 -A of the TNVAT Act, the first respondent has no power to interpret Entry in the schedules to the Act, and is entitled only to clarify regarding the rate of tax. As pointed out earlier, Section 48-A (1) empowers the Government to constitute a State Level Authority to clarify any point, concerning the rate of tax. Thus, when an application is made by the dealer, requesting for clarification as to the rate of tax on the commodity dealt with by him, essentially, the first respondent has to examine what is the type of commodity, under which, Entry it would fall and then, proceed to determine the rate of tax of that particular commodity. Therefore, while issuing such clarification, the first respondent is empowered to clarify any point, concerning the rate of tax, and therefore, to state that the first respondent has no power to interpret the Entry in the schedule to the Act, is not tenable.

14. The next contention, which was advanced by the petitioners is by comparing various entries in the schedule to the Act. Firstly, it was pointed out that Entry 44 of Part-B of the fourth schedule to the TNVAT Act deals with the commodities, which are exempted from payment of tax and the commodity that fall under Sl.No.44 is hank yarn with commodity code ''744''. Any yarn, packed in hank form, is exempted from payment of tax. To support such contention, reference was made to the entry in

Sl.No.3 of Part-B of the first schedule, where, the goods are taxable at 5% and it is submitted that, under the said entry in Sl.No.3, there are three categories, of which, category 3 (a) includes all types of yarns other than those specified in the fourth schedule.

15. Therefore, it is the submission of the learned counsel for the petitioners that all types of yarn, that are packed in hank form are taxable at 5% and the statute does not make a further distinction regarding what is the type of hank yarn, that should be exempted but the exemption shall enure to hank yarn of all kind. The correctness of the submission cannot be decided merely based upon the description of the commodity, as found in the various schedules to the Act, because, such exemption came into vogue only in the year, 2006.

16. Next, it has to be seen as to what was the purpose, for which, the Government brought out amendment Act 26 of 2011 in the TNVAT Act, by including the hank yarn as a commodity. The reason is explicit on a perusal of the budget speech given by the then Hon'ble Minister of Finance, Government of Tamil Nadu on 22.07.2006, which would clearly show that, the intent of the Government is to encourage the hand loom Industries in the State and to benefit lakhs of hand loom weavers. The Government was conscious of the fact that this exemption will result in substantial financial loss to its exchequer, which was then, quantified at Rs.56 crore per annum. Thus, it has to be seen as to what are the category of persons, which weighed in the minds of the Government to extend the benefit of exemption to the handloom Industries.

17. The budget speech given by the then Hon'ble Minister of Finance, mentions about the commodity hank yarn as the chief raw material for handloom goods. Three important things have to be borne in mind, which formed the basis for granting such exemption. One is that, hank yarn is the chief raw material for the manufacture of hand loom goods. Secondly, the Government wanted to encourage lakhs of hand loom Industries, and third intention being that, the Government wanted the benefit to reach the hand loom weavers. Thus, the term 'hank yarn' used in the budget speech cannot be read in isolation, but has to be read conjointly, which would mean yarn, which is the chief raw material for hand loom goods. If the afore mentioned three factors were the intention of the Government, can it be stated that the VSF yarn, which is man-made yarn, predominantly used by the powerloom industries would also be covered under an exempted goods.

18. The first respondent has referred to certain collateral proceedings and statutes, and held that the hank

yarn, which is referable to Sl.No.44 of Part-B of the fourth schedule to the TNVAT Act, shall be only cotton hank yarn. The assessee would contend that, the provisions of the TNVAT Act is a complete code by itself, and no reference should be made to other statute. In support of such contention, reliance was placed on the decision of Sundek India Ltd., Chennai (supra). The reasons assigned by the first respondent, in the impugned proceedings does not seek to interpret the scope of Entry 44, but to the words 'hank yarn'. Therefore, the procedure adopted by the first respondent cannot be flawed by stating that, it is an interpretation of the provisions to the another Central Act to determine the rate of tax, and this would be the proper interpretation that should be given. If that is so, no error can be attributed to the first respondent to refer to the notification issued by the Ministry of Textiles, Government of India, dated 17.04.2003, termed as 'Hank Yarn Packing Notification'. This statutory notification has been issued, in exercise of the powers conferred under the Textiles (Development and Regulations) Order, 2001 and Section 3 of the Essential Commodities Act, 1955.

19. The Hank Yarn Packing Notification has been issued by the Government of India for protecting the handloom Industry, a rural based Industry, by way of ensuring that yarn in hank form is available in adequate quantity at reasonable prices to the hand loom Industry, and for that purpose, to make statutory provisions and for securing compliance to the said statutory provision by all concerned. Further, the preamble of the notification states that, hand loom Industry, which caters to the employment and earning capacity of lakhs of power hand loom weavers, and their family members need to be provided with adequate quantity of yarn in the hank form, (its raw material) at reasonable prices and on an assured basis. With this objective, the statutory notification has been issued by the Textile Commissioner. Section 4 of the Hank Yarn Packing Notification defines the term 'Yarn' for the purpose of H.Y.N. 2003, to mean yarn made/spun wholly out of cotton or its waste but does not include a) hosiery yarn, sewing thread, industrial yarns, like tyre cord, multiple yarn, mixed yarn of various counts reeled off from cop bottoms and yarn comprising single count yarn reeled off from cop bottoms having loose ends or knots at short lengths.

20. Thus, the Hank Yarn Packing Notification issued by the Government of India pertains to yarn made out of the cotton. Hence, the term 'hank yarn' used in the Budget Speech shall be referable to only cotton yarn packed in hank form. The intent of the Central Government as well as the State Government is to protect the handloom Industries. Both the Central and the State Governments were concerned about the plight of the poor hand

loom weavers, and their family members, and they need to be provided with adequate quantity of yarn in hank form, so that, they can earn their livelihood by operating the hand loom.

21. Therefore, to state that Entry 44 of Part-B of the fourth schedule to the TNVAT Act should be interpreted to mean any type of yarn, packed in hank form, is a plea, which would be unacceptable, and not the intention of the Government to grant exemption. Admittedly, the Government inserted hank yarn in Sl.No.44 only during 2006-07, and as rightly pointed out by the learned Special Government Pleader, this being an exemption clause, strict interpretation has to be given to such exemption clause, and there is no room for any liberal interpretation with regard to such exemption.

22. Therefore, the contention raised by the petitioners that, by drawing a comparison between various entries in the schedules to the Act and to state that, hank yarn, as mentioned in S.No.44 of Part-B of the fourth schedule to the TNVAT does not draw any distinction or specification to the texture of the yarn, is an incorrect manner, in which, such entry should be interpreted. This is clear from the Budget Speech given by the then Minister of Finance. It was to benefit particular sect of the Society, viz., the poor handloom weavers, such exemption was granted.

23. Useful reference can also be drawn from the Hank Yarn Packing Notification issued by the Textile Commissioner, Government of India, which was also concerned about the steady supply of raw materials to the hand loom weavers, it being hank yarn. The notification defines 'Yarn' as yarn made/spun wholly out of cotton. Therefore, to state that, all categories of yarn would be covered in Entry 44 of Part-B of the fourth schedule, is a submission that has to be rejected. Comparison based on the notification issued under erstwhile TNGST regime does not, in any manner, advance the case of the dealers.

24. It was argued that STAT has decided the issue in favour of the assessee, i.e. in the case of M/s Mass Textiles, and therefore, the first respondent has no jurisdiction to issue any clarification contrary to the judgment of the STAT. The first respondent did not suo motto issue the clarification, but, it was on an application filed by the M/s. Rajaguru Spinning Mills, one of the dealers in hank yarn. Therefore, for the petitioners to state that the first respondent has no jurisdiction is a plea, which has to be outrightly rejected, and even assuming such plea was available to the petitioner, they have deemed to have waived such a plea.

25. That apart, the decision in the case of M/s. Mass Textiles is referable to a particular assessee, whereas, the clarification issued by the first respondent has wider impact binding the applicant, who sought for the clarification, the commodity, in relation to which, the clarification or advance ruling was sought, and on all officers working under the CCT. Therefore, the decision of the STAT cannot act as a fetter for exercise of power by the first respondent. Furthermore, the embargo under Section 48-A (2) (i) is only with regard to pending Appeals/Revisions, but not cases, which have been disposed of. Thus, the petitioners, having voluntarily gone before the first respondent and sought for reviewing the earlier clarification, dated 14.02.2013 are estopped from now contending that the first respondent lacks jurisdiction to decide the matter.

26. It was argued by some of the counsel for the petitioners that the clarification issued under Section 48-A can have only prospective effect, and to support such contention, reliance was placed on the decisions of Mohan Breweries and Distilleries Ltd. (supra) and ii) P.A.S. Industries (supra). Though, at the first blush, it appears that the clarification is sought to be used for, to re-open past assessments. It is not a typical case, where, clarification obtained by the some of the dealers or a third party dealer is used against other dealers to reopen their assessments. By virtue of the clarification, what the Assessing Officer proposed to do is only to issue notice, proposing to re-open the assessment for the period when the hank yarn was included in Entry 44 of Part-B of the fourth schedule to the TNVAT Act as an exempted commodity.

27. Thus, it is not a classical case of reopening the past assessments for this Court to apply the decision in the case of Mohan Breweries and Distilleries Ltd., (supra) to hold that the impugned clarification would operate only prospectively. In any event, the clarification is to the effect, whether the commodity is exempt from payment of tax or not. Thus, if by a wrong interpretation, exemption has been availed off, then, appropriate rate of tax is recoverable from the concerned dealer, and the Revenue cannot be non suited on the ground that the clarification obtained has to be implemented only from the date of issuance of the same. If such interpretation has to be adopted, then, it would cause severe dent on the taxing statutes and virtually, obliterate the rights of the Assessing Officer to recover appropriate rate of tax. By the impugned clarification, the first respondent has not for the first time, clarified, as to what would be appropriate rate of tax for a particular product, but the clarification is to the scope of Section 44 of Part-B of the fourth schedule. Therefore, the decisions in Mohan Breweries and Distilleries Ltd. (supra) and ii) P.A.S.

Industries (supra) cannot be applied to the facts and circumstances of these cases.

28. The contention that the reasons have not been assigned by the first respondent, in the impugned order, is an incorrect submission as the Court finds that the impugned order to be a well reasoned order. The argument based on Section 14 of the CST Act, to explain true meaning of the term 'hank yarn' is also not tenable, for the reasons assigned earlier with regard to the object, for which, such exemption was granted.

29. In the decision rendered in the case of Grenfell Vs. Inland Revenue Commissioner, reported in [(1876) 1 Ex.D 242, it was held that, 'if a statute contains language, which is capable of being construed in a popular sense, such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject matter with which the statute is dealing would attribute to it.' Applying the said decision to the facts and circumstances case, in popular sense, which the people conversant with the subject matter, referred to hank yarn as containing cotton yarn packed in hank form. Therefore, it is incorrect on the part of the petitioners to state that, in the popular sense, cotton yarn packed in hank form is cotton hank yarn and VSF yarn packed in hank form is VSF hank yarn. If this interpretation is accepted, it would militate against the statutory context of the exemption granted by virtue of the Entry No.44 of Part-B of the fourth schedule to the TNVAT Act.

30. The Hon'ble Supreme Court, in the case of A.I.R. (1967) S.C. 1454, held that, 'while interpreting items in statutes like sales tax, resort should not be made to scientific or technical meaning to such terms but their popular meaning or attached to them by those dealing in that is to say their commercial sense, that is to say, construction of words is to adopt the fitness to the matter of the statute'. If such is interpretation is made, the correct interpretation is to define the term 'hank yarn' referred in Sl.No.44 as cotton hank yarn only.

31. An argument was advanced by some of the learned counsel for the petitioners that, when there is no change in the statutory provision, and if two views are possible, then, one, which is favorable to the assessee has to be adopted. This issue

was considered by the Hon'ble Supreme Court, in the case of Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes, [(1992) Supp (1) SCC 21] and it was held that, such interpretation does not apply to the construction of an exemption provision and they have to be construed strictly. A person invoking an exemption provisions, to relieve him of the tax liability, must establish clearly that he is covered by the said provision, and in case of doubt or ambiguity, benefit of doubt must go to the State, as each such exemption increases the tax burden on other members of the community correspondingly.

32. Thus, what is required to be taken note of, is the plain terms, based on which, exemption was conceived and granted, and if this is examined, it is clear that the exemption was to reach particular section of weavers, viz. Handloom weavers. Likewise, the Hank Yarn Packing Notification issued by the Ministry of Textiles, Government of India, 17.04.2003, is to protect the handloom weavers, and under the said statutory notification, the term 'Yarn' has been defined only as cotton yarn. To interpret that Entry 44 to mean to include all types of yarn packed in hank form is incorrect way of interpreting the exemption provision.

33. The contention putforth by the learned counsel for the petitioners that all along the petitioners have been enjoying the exemption granted under Entry 44 of Part-B of the fourth schedule to the Act, and it would be very harsh to direct the petitioners to pay higher rate of tax on past transactions does not merit consideration, for, the petitioners cannot plead any equity in the matter of taxation. Equitable considerations are not relevant in interpreting the provisions of a taxing statute. There is no equity about a tax in the sense that a provision, by which, a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the Revenue or to the tax payer. Though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute.

34. The Commissioner of Commercial Taxes, in the counter affidavit has set out the history behind the purpose of the exemption to state that, it was to promote the artisans involved in base functioning of handloom sector, and who had at no point of time would be in a position to own such huge machinery, required to manufacture the viscose and other such yarn material, and hence, the notification for exemption was

issued for uplifting the livelihood of struggling artisans. In para No.9 of the counter affidavit, flow chart has been given, showing the process involved in the manufacture of combed cotton yarn, from which, it could be inferred that the product manufactured by the petitioners would not fall within the said frame work.

35. It has been further stated the yarn is a long continuous length of interlocked fibers. The staple length of cotton determines the thickness of yarn spun, and this is referred to as 'yarn count'. Standard measure for a length of cotton yarn is termed as 'hank'. A hank measures 840 yards. Hank yarn is used typically in handloom production. Accordingly, in order to protect the handloom Industry, which caters to the employment and earning capacity of lakhs of poor handloom weavers and their family members, the Central and State Governments formulated various schemes, including the hank yarn obligation mechanism to ensure adequate availability of hank yarn to handloom weavers at reasonable prices. It has been further stated that, VSF yarn dealt with by the petitioners are not used in hand loom industries. However, this is disputed by the petitioners, by producing a certificate from the Chairman, Handloom Export Promotion Council (HEPC) to state that hand loom weavers also use hank yarn produced from fibers, such as PSF, VSF, Blended fiber etc. In response, the learned Special Government Pleader circulated a letter, dated 11.12.2017, addressed to her by the Additional Chief Secretary/Commissioner of Commercial Taxes, stating that, the said letter was not produced before the Advance Ruling Authority, and not issued by referring to any Authority. Factually, the Commissioner is right in stating that the said letter of Chairman of HEPC was not placed before the first respondent, nor, there is any specific reference to the basis of his certification. In any event, this letter of the Chairman, HEPC may not be relevant, while considering the scope of the Entry 44 of Part B of the fourth schedule to the TNVAT Act.

36. As rightly pointed out by the first respondent, the decision of the STAT was relevant to the reduced rate of tax, under the TNGST Act and the present issue pertains to TNVAT Act, wherein, scheme of taxation is entirely different.

37. For the above reasons, the petitioners have not made out any grounds for interference with the impugned clarification, issued by the first respondent. Accordingly, the Writ Petitions fail and they are dismissed. Wherever revision notices were issued, the petitioners are granted liberty to file

their objections, which shall be dealt with by respective Assessing Officers after affording an opportunity of personable hearing to the petitioners. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Authority for Clarification and Advance Ruling, Rep. by its Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai - 600 005.
2. The Assistant Commissioner (CT), Periya Agraharam Assessment Circle, Erode, Erode District.
3. The Commercial Tax Officer, Arakkonam, Vellore District
4. The Assistant Commissioner (CT) Kangeyam Assessment Circle, Kangeyam, Erode District.
5. The Assistant Commissioner (CT) (FAC) Chithode Circle, Erode Erode District.
6. The Assistant Commissioner (CT) Tiruchengode Rural Circle Tiruchengode Namakkal District
7. The Authority for Clarification and Advance Ruling (U/s.48A of the TNVAT Act 2006) Office of the Principal Commr. & Commr. of Commercial Taxes Chepauk Ch-05
8. Commercial Tax Officer, Authority for clarification and advance Ruling Commercial Tax Department Government of Tamil Nadu

9. The Assistant Commissioner
(CT) (FAC) Tiruchengode Rural Circle
Tiruchengode Namakkal District

10. The Assistant Commissioner
(CT) Tiruchengode Rural Circle
Tiruchengode

+10ccs to Mrs.R.Hemalatha, Advocate, S.R.No.89180

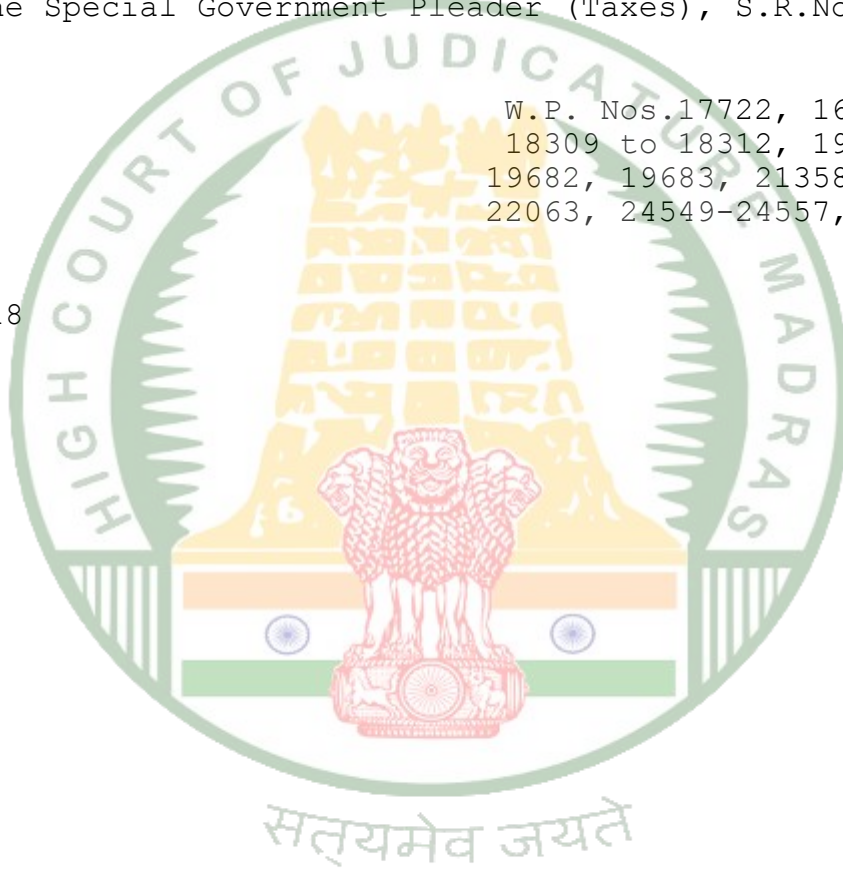
+8ccs to M/s.G.R.Associates, Advocate, S.R.No.89269

+1cc to Mr.R.Senniappan, Advocate, S.R.No.89646

+1cc to the Special Government Pleader (Taxes), S.R.No.89474

W.P. Nos.17722, 16368, 16369,
18309 to 18312, 19330, 19504,
19682, 19683, 21358, 22061 to
22063, 24549-24557, 27877/2017

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