

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.(R).No.23 of 2018

The Deputy Commissioner (CT),
State of Tamil Nadu,
Tirunelveli Division,
Tirunelveli - 627002.

.. Petitioner

Vs.

Tvl. R.P.Tikmany,
No.38, Virudhunagar Road,
Sivakasi.

.. Respondent

Prayer: Tax Case Revision Petition filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order dated 30.12.2003, passed in M.T.S.A.No.176 of 2003, on the file of the Tamil Nadu Taxation Special Tribunal, Chennai.

For Petitioner : Mr.V.Haribabu
Additional Govt. Pleader (Taxes)

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Tax Case Revision is filed to revise the order of the Tamil Nadu

<http://www.judis.nic.in> Taxation Special Tribunal, Chennai dated 30.12.2003, passed in

M.T.S.A.No.176 of 2003.

2. Short facts leading to the Tax Case Revision are that the respondent, Thiru.R.K.Tikmany, Sivakasi, was finally assessed by the Deputy Commercial Tax Officer-IV, Sivakasi, in his original assessment by determining the total and taxable turnover of Rs.68,66,088/-, as against the reported total and taxable turnover of Rs.16,15,840/- for the year 1996-97, under TNGST Act, 1959.

3. The above assessment was made by the Assessing Officer, by rejecting the exemption claimed by the assessee on the export sales of duplex board effected to Tvl.Limtex (India) Ltd, Kothagiri, as well as the estimated turnover arrived from the records recovered, when an inspection was conducted by the Enforcement Wing Officers in the place of business of the respondents on 13.3.97 and 14.3.97, to an extent of Rs.33,91,442/-. The Assessing Officer determined the above turnover. The Assessing Officer also levied a penalty of Rs.6,03,253/- under Section 12(3)(b) of the TNGST Act, 1959, for the shortfall established, in the taxes assessed and the same be paid, as per returns and Rs.110/- under Section 22(2) of the TNGST Act, 1959 for contravening the provisions of Section 22(1) by collecting excess surcharge.

4. Being aggrieved against the orders of the Assessing Officer,

the respondent preferred an appeal in Appeal No.240/2000 before the Appellate Assistant Commissioner (CT) Virudhunagar, disputing the entire addition of a turnover of Rs.52,50,248/- and penalty amount of Rs.6,03,253/- under Section 12(3)(b) of the Act and Rs.110/- under Section 22(2) of the Act.

5. The Appellate Assistant Commissioner, after hearing the parties, vide order dated 25.11.2002, deleted the turnover assessed to tax for the two different periods, as sales of packing materials to exporters to an extent of Rs.18,58,807/- and the entire penalty levied at Rs.6,03,253/- under Section 12(3)(b) of the TNGST Act, 1959. The Appellate Authority has remanded the turnover arrived from records recovered to an extent of Rs.33,91,442/-, but sustained the penalty levied under Section 22(2) of the Act, by partly allowing, partly remanding and partly dismissing the appeal of the respondents.

6. Being aggrieved over the order of the Appellate Assistant Commissioner, deleting the turnover of Rs.18,58,807/- assessed to tax for two different periods and Additional Sales Tax of Rs.27,401/-, revenue has filed an appeal in M.T.S.A. No.176 of 2003.

7. Before the Tribunal, revenue has contended that the materials that were used, as packing materials for the packing of goods, sale of

which fall under Section 5(1) of the CST Act, 1956, alone are eligible for exemption, as per the Government Notification. Here the respondent has sold paper board and this paper board had been used for making paper cartons and they were used as packing materials. Hence, they stated that the order of the Appellate Assistant Commissioner in deleting the sales of packing materials effected to exporters, from assessment to tax liability, is incorrect.

8. In respect of deletion of Additional Sales Tax by the Appellate Assistant Commissioner, revenue has submitted that the taxable turnover for a dealer is for the year only, which is unique and that there are no two taxable turnover, as alleged by the Appellate Assistant Commissioner. The taxable turnover of the respondent for 1996-97 was Rs.68,66,088/-, which was greater than Rs.10 lakhs but did not exceed Rs.100 Crores. Hence, they have stated that the respondent is liable to pay Additional Sales Tax on the turnover effected during the period from 01.04.1996 to 31.07.1996 by giving set off to first Rs.10 Lakhs. In support of the said contention, the appellant cited decisions in *Sri Murugan Timber Traders, Tenkasi vs. C.T.O. Tenkasi* [O.P.No.410/2001, dated 10.7.2001] and *Commissioner of Sales Tax vs. Indra Industries etc* [122 STC 100]. Thus, the appellant has prayed to restore the order of the Assessing Officer, including the penalty levied under Section 12(3)(b)

of the Act.

9. Before the Tribunal, the respondent in their counter submitted that they have supplied duplex board to Tvl. Limtex India Ltd, Kothagiri, for packing of goods, intended for export by the exporters. The Government of Tamil Nadu have issued a Notification, under Section 8(5) of the CST Act, 1956 in No.II(1)/CTRE/46(a-10)/87 dated 20.3.1987, wherein, it has been stated that no tax under the said Act shall be payable by any dealer on the sale of packing material to the exporters for use in packing of goods intended for export and they also submitted that a certificate to this effect was also produced and accepted by the Appellate Assistant Commissioner. Hence, the dealer has stated that the Appellate Assistant Commissioner was correct in allowing the exemption on the sales turnover of packing materials to exporters, which does not require interference. In support of the said contention, the dealer cited a decision reported in **99 STC 35**.

10. In respect of deletion of Additional Sales Tax by the Appellate Assistant Commissioner, the respondent has submitted that the Appellate Assistant Commissioner has correctly set aside the levy of Additional Sales Tax, which has to be calculated at the end of the financial year and on

calculation, if the taxable turnover does not exceed Rs.100/- crores, the question of levy of Additional Sales Tax does not arise. The dealer further submitted that as their turnover did not reach 100 Crores of rupees, levy of Additional Sales Tax, deleted by the Appellate Assistant Commissioner is quite correct and in accordance with the provisions of the Act. Thus, the dealer prayed to dismiss the appeal filed by the Revenue.

11. Based on the submissions of both parties, the facts and circumstances of the case and after considering the materials available on record, the Tribunal passed the following order:

"a) Now the point before us is whether the respondents is eligible for sale of paper which has been used as packing materials by the exporter is liable for exemption under Section 5(1) of the CST Act, 1956? It is an admitted fact that sale of packing material to exporter is also exempted as per the Notification relied on by the learned Authorised Representatives, provided the seller had produced the certificate issued by the exporter to the effect that the packing materials had been used for packing the goods exported by him. In this case, the view of the appellants/revenue is that the exporter had not used the paper board as packing materials but used the paper board for conversion of packing cases. The learned Appellate Assistant Commissioner verified the fact and found that the respondents had produced the certificate issued by the exporters for having utilised the paper as packing material.

In this case, there is no dispute that the paper has been used as packing material or used for conversion of packing cases. As per the decision relied only by the learned Additional State Representative which has been relied on by the Appellate Assistant Commissioner, the Honourable Higher Appellate Forum held that paper means writing paper, packing paper, drawing paper etc. In this case, one of the use of the paper is as packing material. It is also covered by the certificate issued by the respondents which is in accordance with Notification issued by the Government of Tamil Nadu. Even assuming that the buyer had converted the paper into cartons the purpose is for packing goods intended for export. In the above circumstances, we are of the view that the respondents are eligible for the claim in respect of the sale of paper to the exporter either for packing the goods or for converting it into packing case, because the buyer had utilised the paper for packing the goods intended for export. Therefore, we uphold the view of the learned Appellate Assistant Commissioner and the prayer of the appellants/revenue to restore the tax levied on the turnover of Rs.18,58,807/- is not sustainable.

b) Regarding the points mentioned by the Appellate Assistant Commissioner in his order that the respondents had purchased paper against Form XVII, there is no offence committed by the assessee/respondents. We have not gone into the fact, because this point had been disputed before us.

c) The next point prayed by the appellants/revenue is to restore the Additional Sales Tax deleted by the learned

Appellate Assistant Commissioner. In this case, the total turnover of the assessee/respondents had not crossed 100 crores during the financial year. Therefore, he has ordered to delete the Additional Sales Tax levied by the Assessing Officer holding that the turnover for the year cannot be split during the relevant period up to 31.7.96 as the turnover for the year 1996-97 had not exceeded 100 crores. The prayer by the appellants/revenue is that the provision to levy Additional Sales Tax up to 31.7.96 was Rs.10 Lakhs and as the turnover had exceeded Rs.10 Lakhs, Additional Sales Tax is leviable for the turnover up to 31.7.96. They also relied on the decision of the Honourable Tamil Nadu Taxation Special Tribunal, Chennai in the case of Tvl.Sri Murugan Timber Traders, Tenkasi vs. C.T.O. Tenkasi in O.P. No.410/2001 dated 10.7.2001. In the above case, the Honourable Tamil Nadu Taxation Special Tribunal, Chennai, upheld the levy of Additional Sales Tax in respect of the turnover for the period from 01.04.1996 to 31.07.1996 it is exceed Rs.10 Lakhs. The learned Authorised Representative at the time of hearing as well as in his written argument had not raised any point against the prayer of the appellants/revenue. Accordingly, by following the decision of the Hon'ble Tamil Nadu Taxation Special Tribunal, Chennai, and we are of the view that the learned Appellate Assistant Comissioner is not correct in deleting the Additional Sales Tax levied on the disputed turnover. Accordingly, we restore the Additional Sales Tax of Rs.27,401/- which was deleted by the Appellate Assistant Commissioner.

In the result, the State appeal stands modified."

12. The above said order is challenged in the instant Tax Case Revision, on the following grounds:-

“(i) The Tribunal failed to note that the first appellate authority had erred in deleting the turnover, because it is not clear that the sale of packing materials effected by the dealer is an outright sale. The dealer in this case had sold the duplex board to Lintex India Ltd, who had converted the same into cartons and used it for their export purpose as packing material. Therefore, they are not eligible to claim exemption as per section 5(3) of the CST Act because the transaction took place outside the State of Tamil Nadu and that the goods exported are different commodities. Therefore, the assessment made in the instant case is quite reasonable and justified.

(ii) The Tribunal erred in observing that no additional sales tax is leviable if the turnover falls below 100 crores.

(iii) The finding of the Tribunal that the taxable turnover for the assessment year cannot be split for the purpose of additional sales tax is based on erroneous understanding of law.

(iv) The Tribunal has erroneously held that since the taxable turnover did not exceed Rs.100 crores, the levy of additional sales tax till 31.07.1996 is invalid.

(v) The decision of the Tribunal is contrary to the view passed by the Hon'ble Special Tribunal in O.P. No.739/99 dated 22.6.99 and in O.P. No.1601/99 dated 21.1.2000 (Geethanjali Case) wherein it is held that additional sale tax

was adopted for the taxable turnover up to 31.7.96 i.e. from 1.4.96 to 31.7.96. The Government have also in their No.1591/D2/99-8 dated 25.5.2000 instructed to work out the levy of additional sales tax as per the amended provisions only from 1.8.96 and the earlier provisions for the period up to 31.7.96, the Commissioner of Commercial Taxes also had issued clarification in Ref. BD3/88803/96 dated 31.7.2000 in this regard. The Tribunal also has in its decision rendered in 661, 662, 645, 646 dated 6.11.2000 upheld the levy of AST for the period from 1.4.96 to 31.7.96."

13. In support of the grounds, the Joint Commissioner, Coimbatore has contended that the Appellate Tribunal failed to appreciate that the Additional Sales Tax is leviable for the period from 01.04.1996 to 31.07.1996, since the turnover exceeded ten lakhs. The Tribunal failed to consider that enhancement of exemption from 10 lakhs to 100 crores, was made only with effect from 01.08.1996, by Amendment Act 31 of 96, and the threshold limit was increased only with effect from 01.08.1996 and therefore, according to the petitioner, till 31.07.1996, the levy of Additional Sales Tax should be made, as per the existed section 2(1)(a) of the Tamil Nadu General Sales Tax Act, 1959.

14. Revision petitioner has further submitted that in a decision in

Tvl.Geethanjali Mills v. Commercial Tax Officer, Sankarankoil
[O.P.No.739 of 1999, dated 22.06.1999], the Special Tribunal held that

there is liability to pay Additional Sales Tax upto 31.07.1996, if the taxable turnover exceeds to Rs.10 lakhs. He further submitted that the Tribunal erred in not considering the fact that the amendment of Section 2(1)(aa), in which, the upper limit of taxable turnover of Rs.100 crores, came into force with effect from 01.08.1996 and that the dealer's turnover upto 31.07.1996, exceeded Rs.10 lakhs, which is liable for Additional Sales Tax, as decided by this Court in **Tvl. National Time Co.** reported in **39 VST 247**.

Heard Mr.V.Haribabu, learned Additional Government Pleader (Taxes), and perused all the materials available on record.

15. Before adverting to the rival contentions, let us consider the provision dealing with levy of additional tax, in the case of certain dealers, in Tamil Nadu Additional Sales Act, 1976.

16. In Tamil Nadu Additional Sales Tax Act, 1970, as it was originally enacted, Section 2 was the charging section, imposed a levy of additional tax in the case of certain dealers, whose total turnover for a year exceeded a particular limit. Thereafter, Section 2(1)(a) was omitted by the Tamil Nadu Amendment Act 37 of 1999. Section 2(1)(aa) was

inserted, reproducing the very language of Section 2(1)(a), with slight modification in the quantum of taxable turnover and the rate of tax.

Section 2(1)(aa) of the said Amendment Act, is extracted hereunder:

"The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act), shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover for a year exceeds ten crores of rupees, be increased by an additional tax, calculated at the following rates, namely :-

	<u>Rate of tax</u>
(i) Where the taxable turnover exceeds ten crores of rupees, but does not exceed twenty five crores of rupees :	1% of the taxable turnover
(i-a) Where the taxable turnover exceeds twenty five crores of rupees, but does not exceed fifty crores of rupees :	1.5 percent of the taxable turnover
(ii) Where the taxable turnover exceeds fifty crores of rupees, but does not exceed one hundred crores of rupees :	2 percent of the taxable turnover
(iii) Where the taxable turnover exceeds one hundred crores of rupees, but does not exceed three hundred crores of rupees :	2.5 percent of the taxable turnover
(iv) Where the taxable turnover exceeds three hundred crores of rupees :	3 percent of the taxable turnover

Explanation I : 'Taxable Turnover' for the purpose of this clause in respect of a principal selling or buying goods [...] through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods

of such principal within the State.

Explanation II : Notwithstanding anything contained in the said Act, for the purpose of this clause, 'turnover' in respect of sugarcane excluding sugarcane setts shall be arrived at by multiplying the total metric tonnes of sugarcane excluding sugarcane setts purchased during the year, by the minimum price fixed under Clause 3 and the additional price determined under Clause 5-A, of the Sugarcane (Control) Order, 1966 and such turnover shall be included in the total turnover of the dealer and the taxable turnover shall be arrived at accordingly for the purpose of this clause.

Explanation III : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 3-G of the said Act shall be the total turnover.

Explanation IV : 'Taxable turnover' for the purpose of this clause does not include the turnover of resale, taxable under Section 3-H of the said Act.

Explanation V : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 7-C of the said Act for the financial years commencing on the 1st day of April 1993, shall be the total value referred to in the said section."

17. The issue as regards the levy of additional sales tax in respect of the assessment year 1996-97 is covered by the decision of this court in the case of **State of Tamil Nadu v. National Time Co.** reported in [2011]

39 VST 247 (Mad), wherein, it has been held that after taking the taxable turnover for the entire year, the taxable turnover upto the date of amendment has to be assessed with reference to the relevant tax rate therein applicable to the period.

18. Issue considered in a decision in **State of Tamil Nadu v. National Time Co.** reported in **[2011] 39 VST 247 (Mad)**, is as follows:

"The vital question required to be considered in this revision is, as to how to apply Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970, which existed prior to Act 31 of 1996, since by Act 31 of 1996, the previous section 2(1)(a) came to be amended and after the amendment, Section 2(1)(a) and 2(1)(aa) came to be introduced. Further, Act 31 of 1996 was the subject matter of challenge before the Tamil Nadu Taxation Special Tribunal, in which the Tribunal rendered a judgment in *Siemens Limited v. State of Tamil Nadu* reported in Vol. 110 (1998) S.T.C. 313. The Tribunal struck down the amended Section 2(1)(a) and also deleted certain words in the newly inserted Section 2(1)(a) of the Tamil Nadu Act 31 of 1996. In the light of the above pre-amended Section 2(1)(a) and the amended Section 2(1)(a) and 2(1)(aa) as well as striking down of the provisions to the extent referred to in the above judgment of the Special Tribunal, the question to be considered is as to in what manner the additional sales tax liability of the respondent-assessee is to be determined."

Both amended and unamended provision, extracted in the above reported case, is extracted hereunder:

"3. In order to appreciate the contentions raised, it is better to note the un-amended provision as well as the amended provisions and the provision as it stands after the judgment of the Special Tribunal.

4. Section 2(1)(a) as it originally stood reads as under:-

"Levy of additional tax in the case of certain dealers:-

(1) (a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act), shall, in the case of a dealer whose taxable turnover for a year exceeds ten lakhs of rupees, be increased by an additional tax calculated at the following rates, namely:-

Rate of tax (i) Where the taxable turnover exceeds ten lakhs of rupees but does not exceed one crore of rupees.

Provided that no additional tax shall be payable under this item for the first ten lakhs of rupees of the taxable turnover - 1.5 per cent of the taxable turnover

(ii) Where the taxable turnover exceeds one crore of rupees but does not exceed five crores of rupees - 2 per cent of the taxable turnover

(iii) Where the taxable turnover exceeds five crores of rupees but does not exceed ten crores of rupees - 2.25 per cent of the taxable turnover

(iv) Where the taxable turnover exceeds ten crores of rupees but does not exceed three hundred crores of rupees - 2.5 per cent of the taxable turnover

(v) Where the taxable turnover exceeds three hundred cores of rupees 3 per cent of the taxable turnover Provided that where in respect of declared goods as defined in clause (h) of Section 2 of the said Act, the tax payable by such dealer under the said Act, together with the additional tax payable under this sub-section, exceeds four per cent of the sale or purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed four per cent of the sale or purchase price of such goods."

5. The amended Sections 2(1)(a) and 2(1)(aa) were as under:-

Amendment of Section 2:- In section 2 of the Tamil Nadu Additional Sales Tax Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1)--

(i) in clause (a), for the word "dealer" the words "casual trader or agent of a non-resident dealer or a local branch of a firm or company situate outside the State" shall be substituted;

(ii) after clause (a) and before the proviso thereto, the following shall be inserted, namely:-

"(aa) The tax payable under the said Act, shall in the case of a dealer including the principal selling or buying goods in this State though agents other than the casual trader or agent of a non-resident dealer or a local branch of a firm or company situated outside the State whose taxable turnover for a year exceeds one hundred cores of rupees, be increased by an additional tax calculated at the following rates, namely:-

(i) Where the taxable turnover exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees Rate of Tax - 2.5 percent of the taxable turnover;

(ii) Where the taxable turnover exceeds three hundred crores of rupees 3 per cent of the taxable turnover

Explanation:- 'Taxable turnover' for the purpose of this clause in respect of a principal selling or buying goods in this State through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State."

In the above reported case, the Hon'ble Division Bench considered the decision of the Special Tribunal in **Siemens Limited v. State of Tamil Nadu** reported in Vol. 110 (1998) S.T.C. 313, as follows:

"To give effect to the said intention we proceed to hold that clause (a) of sub-section (1) of Section 2 of the Principal Act, namely, Act 14 of 1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of Section 2(1). We also make it clear that under Section 2(2) and 2(3) the intention of the Legislature not to pass on the burden of additional sales tax to the consumers and the reference to prosecution, shall stand unaltered. So far as Section 2(1)(aa) as amended by Tamil Nadu Act 31 of 1996, the following words shall stand deleted, as obnoxious:

(1) The words "in this State" after the words, "Principal selling or buying goods" in Section 2(1)(aa) as well as in

Explanation to Section 2(1)(aa).

(2) The words "other than a casual trader or agent of a non-resident dealer or a local branch of a firm or company situated outside the State" in Section 2(1)(aa)."

If the above directions are carried out, the exemption granted upto rupees one hundred crores will be equally applicable to all dealers. The O.Ps. are allowed and ordered in the above terms. There will be no order as to costs."

Considering the submissions and the facts and circumstances of the case, the Hon'ble Division Bench of this Court, in the above reported case, held as follows:

"8. With the statutory provisions prevailing as above during the assessment year 1996-97, the order of the Assessing Authority as well as that of the Appellate Tribunal has to be examined.

9. The submission of the learned Special Government Pleader was that since section 2(1)(a) as it originally stood prior to amendment, was very much in force up to 31.7.1996, as the said provision came to be amended by introducing sections 2(1)(a) and 2(1)(aa) on and from 1.8.1996, the liability of the respondent-assessee for payment of additional sales tax has to be worked out based on the provisions, both unamended upto 31.7.1996 and as amended based on the Siemens case on and after 1.8.1996 which were in force during the relevant period. The further contention of the learned Special Government Pleader is that the definition of

the expression "year" in the Tamil Nadu General Sales Tax Act, though means the 'financial year', the same will not in any way affect the authority of the Assessing Officer to determine the tax liability as per the prevailing rate, which was applicable in that year up to 31.7.1996 and for the period subsequent to 1.8.1996.

10. As against the above submission, learned counsel appearing for the respondent-assessee would contend that since as per the Act, the expression "year" refers to the whole of the financial year, when once Section 2(1)(a) came to be amended, the liability could be fastened only on a dealer, whose turnover exceeded one hundred crores of rupees and it is the case of the respondent - assessee that in the said financial year namely, the period up to 31.3.1997, as the turnover of the respondent - assessee did not exceed rupees one hundred crores, there would be no liability of additional sales tax on the respondent - assessee. He further contended that assuming that the liability could be bifurcated for the period up to 31.7.1996 and for the period subsequent to 1.8.1996, the order of the Assessing Authority not having applied the unamended provision namely, Section 2(1)(a) as it originally stood, by not deducting the first ten lakhs of rupees in the taxable turnover, to that extent, the order of the Assessing Authority was liable to be interfered with.

11. Though the learned counsel admitted the contention that the notification came to be issued by which the amended Section 2(1)(a) was given effect to only from 21.6.1999 and therefore by virtue of the said notification, the applicability of Section 2(1)(a) prior to its amendment and

Section 2(1)(a) after its amendment has to be re-examined, we are of the view that such a question does not arise for consideration here, inasmuch as, we are concerned with the assessment year 1996-97 and with reference to the said assessment year, it was never in dispute that the amended Sections 2(1)(a) and 2(1)(aa) were effective from 1.8.1996. Therefore at the outset, we are not persuaded to consider the said submission of the learned counsel for the respondent.

12. In the above stated background, when we consider the respective submissions of the learned counsel for the petitioner as well as the respondent, we find that the definition of the expression "year" under section 2(1)(t) of the Tamil Nadu General Sales Tax Act will have no implication, while applying the un-amended Section 2(1)(a) up to 31.7.1996 and the amended Section 2(1)(a) and 2(1)(aa) after 1.8.1996.

13. The definition of the expression "year" which means the financial year, is only for the limited purpose of ascertaining what is the financial year with reference to which the tax liability under the main Act as well as the Additional Sales Tax under the Tamil Nadu Sales Tax Act is to be worked out. The mere fact that under Section 2(1)(a), a reference is made to a "year", the same will not in any way create any different impact, while applying the liability or the rate of tax to be worked out during the financial year. In other words, if in the very same financial year, different rates are to be worked out by virtue of prescription of such different rates, due to statutory amendments, the only

exercise to be carried out would be to ascertain the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating the financial year in the case of any assessee, while applying the un-amended Section 2(1)(a) upto 31.7.1996 and the liability after its amendment on and after 1.8.1996, for the purpose of calculating the additional sales tax liability.

14. In the case on hand, having regard to the decision of the Special Tribunal in Siemens' case, the Additional Sales Tax liability upto 31.7.1996 is to be worked out based on the un-amended Section 2(1)(a), which was prevailing upto that date. As per the provision as it stood as on 31.7.1996, in the case of a dealer whose taxable turn over in that financial year upto 31.7.1996 exceeded ten lakhs of rupees, upto one crore of rupees, his tax liability has to be increased by an additional sales tax at the rate of 1.5%; where the taxable turnover exceeded one crore of rupees upto five crores of rupees, it is 2% ; where it exceeded five crores of rupees up to ten crores of rupees, at the rate of 2.25%; where it exceeded ten crores upto 300 crores of rupees at the rate of 2.5% and where it exceeded 300 crores of rupees at the rate of 3%. However, no additional tax could be levied for the first ten lakhs of rupees.

15. Having regard to the impact made in the amended provision, as per the judgment of the Special Tribunal in Siemens' case on and after 1.8.1996, the payment of

additional sales tax would arise only if the taxable turnover for the whole of the financial year exceeded one hundred crores of rupees and even in such a situation, while for the period up to 31.7.1996, the liability will have to be worked out as per the provision which was prevailing upto that date namely, the unamended Section 2(1)(a) and that for the period subsequent to 1.8.1996 up to 31.3.1997 for the taxable turnover generated on and after 1.8.1996 alone, the applicable rate of tax will have to be calculated.

16. To make the position more clear, for instance, in the financial year 1.4.1996 to 31.3.1997, for the period upto 31.7.1996, if the taxable turnover was Rs.50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the liability by way of additional tax should be calculated at the rate of 1.5% and if for the whole of the financial year, the taxable turnover exceeded Rs.100 crores, for the remaining amount of Rs.99.50 lakhs i.e, excluding Rs.50 lakhs, which is relatable to the period only upto 31.7.1996, the rate of tax as per the amended Section 2(1)(a) will have to be worked out.

17. Keeping the above statutory implication relating to payment of additional sales tax as was applicable upto 31.7.1996 and after 1.8.1996, when we examine the order of the Assessing Authority dated 28.1.1998, in the case on hand, we find that the taxable turnover of the respondent - assessee was Rs.54,97,880/- up to 31.7.1996. The taxable turnover for the financial year is stated to have exceeded rupees one crore. But for the purpose of calculation of additional sales tax, since for the whole of the financial year,

the taxable turnover did not exceed one hundred crores, there would be no necessity to make any further calculation for the period beyond 31.7.1996. The Assessing Authority calculated the additional sales tax at the rate of 2% on the taxable turn over for the whole of the year.

18. The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force upto 31.7.1996, the calculation of additional sales tax would have to be made by the Assessing Authority for the taxable turnover which was prevailing only upto the period 31.7.1996 and for the period subsequent to 1.8.1996, the liability would have been assessed, if at all the taxable turn over upto the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied viz., 2% was not in consonance with the statutory provision as was prevailing as on 31.7.1996. Since the taxable turnover did not cross Rs.100 crores during the said financial year, in the case of the respondent - assessee, the liability of additional sales tax will have to be calculated only for the period upto 31.7.1996 and not beyond and that too, on the taxable turnover that was available upto that date viz., 31.7.1996.

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the Assessing Authority are liable to be set aside. While setting aside the order the Assessing Authority, we direct the Assessing Authority to pass fresh orders by keeping the taxable turnover of the respondent assessee upto 31.7.1996 in a sum of Rs.54,97,880/- and calculate the tax at the rate of 1.5% on

the sum of Rs.44,97,880/- (i.e.), after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of Section 2(1)(a).

20. The learned counsel for the respondent states that a Samadhan Scheme has been announced and prevalent as on date and the same will be in force upto 15.8.2010. The Assessing Authority, is therefore, directed to ensure that revised orders of assessment as directed in this order is passed before 10.8.2010.

21. The Tax Case (Revision) is disposed of accordingly.
No costs."

19. On the similar issue, a Division Bench of this Court in **State of Tamil Nadu v. Kirthilal Kalidas & Co.**, reported in (2014) 70 VST 359, following the decision in **State of Tamil Nadu v. National Time Co. [2011] 39 VST 247 (Mad)**, and while setting aside the order of the Sales Tax Appellate Tribunal, remanded the matter back to the assessing officer to work out the liability based on the decision of this court and thus, taking the taxable turnover for the entire year, the taxable turnover up to the period July 31, 1996, has to be worked out to attract the liability at the rates specified therein and beyond that, the liability of the turnover has to be worked out based on the amended provision depending on the taxable turnover crossing rupees 100 crores for the whole year.

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

asr/skm

20. In view of the decisions cited supra, we do not find any error in the order of the Tribunal. Accordingly, the Tax Case Revision is dismissed.

No costs.

[S.M.K., J.] [V.B.S., J.]

19.02.2018

skm/asr

To

The Tamil Nadu Taxation Special Tribunal,
Chennai.

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