

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.91 of 2015

EID Parry (India) Limited,
Corporate Finance Division,
'Dare House'
No.234, N.S.C. Bose Road,
Chennai - 600 001. Petitioner / Appellants

-vs-

The State of Tamil Nadu,
Represented by the
Assistant Commissioner (CT),
Fast Track-I Assessment Circle,
Chennai. Respondent / Respondent

Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 14.05.2015 in T.A.No.51/2006 for the assessment year 1994-95 against the order of the Deputy Commissioner (CT) Appeals Chennai dated 14.11.2015 in A.P.No.3/2003 for the assessment year 1994-95 against the order of the Assistant Commissioner (CT), Fast Track Assessment Circle-I, Chennai - 6 dated 25.10.2002 made in TNGST No.10024 for the Assessment year 1994-95

For Petitioner : Mr.N.Prasad

For Respondent : Mr.Mohammed Shafiq
Special Government Pleader

ORDER

(Order of the Court was made by T.S.Sivagnanam, J.)

This tax case revision has been filed by the assessee challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in T.A.No.51 of 2006 dated 14.05.2015 relating to the assessment year 1994-95.

2.The tax case revision was admitted on 28.10.2015, on the following substantial questions of law:

"(i) Whether, on the facts and in the circumstances of the case, the Honourable Sales Tax Appellate Tribunal committed an error of law in holding that the petitioners were liable for tax under the provisions of Section 3(2) of the TNGST Act, 1959, on the resale of sanitary fittings effected by the petitioner within the State of Tamil Nadu, after purchase of the same from the Worth Trust on account of the fact that the sale of the Worth Trust to the petitioner was exempted under a notification issued under Section 17 of the TNGST Act, 1959, in G.O.Ms.No.436 dated 19.04.1983?

(ii) Whether, on the facts and in the circumstances of the case, the Honourable Sales Tax Appellate Tribunal committed an error of law in failing to note that the amendment brought about by insertion of a proviso to Section 3(2) of the TNGST Act, 1959 by Tamil Nadu Act 38 of 1996 effective from 17.07.1996 was only prospective in nature and did not apply to the assessment year in question?"

3.The facts which are necessary for disposal of the case are that the petitioner, who shall be referred to as the assessee, is a Public Limited Company incorporated under the Companies Act and registered on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") and Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act").

4.The controversy involved in this revision pertains to imposition of tax under Section 3(2) of the TNGST Act on the assessee by treating re-sale of the assessee as the first sale liable to tax under the TNGST Act. The assessment year under consideration is 1994-95. The assessee had a Division which was engaged in the activity of trading of sanitary fittings. By G.O.Ms.No.436 dated 19.04.1983, the first sale of sanitary fittings was exempted from tax at the hands of the assessee's vendor, namely, M/s.WORTH Trust. In terms of Entry 10 of Part-E of the First Schedule to the TNGST Act, sanitarywares were taxable at the point of first sale in the State.

5.The assessee's case is that M/s.WORTH Trust was their first seller and the sale at the hands of WORTH Trust was exempted by G.O.Ms.No.436 and no tax can be levied on the re-sale effected by the assessee in respect of sanitary fittings purchased from WORTH Trust. The Assessing Officer, namely, the

respondent issued show cause notice in which, among other things invoked Section 7-A of the TNGST Act and proposed to levy purchase tax on the assessee. The assessee submitted a reply stating that the said provision can have no application to the assessee's case, as none of the contingencies stipulated in sub-Clauses (a) to (c) under Section 7-A(1) of the TNGST Act stand attracted to the assessee's case. However, when the assessment was completed vide order dated 25.10.2002, the Assessing Officer while accepting the stand taken by the assessee that they have sold the sanitaryware locally as such without affecting the manufacturing activity levied the tax at the rate of 12% under Section 3(2) of the TNGST Act and the claim of exemption made by the assessee was rejected. Aggrieved by the same, the assessee preferred an appeal before the First Appellate Authority, namely, the Deputy Commissioner (CT) Appeals, Chennai in A.P.No.3/2003. The First Appellate Authority dismissed the appeal filed by the assessee and confirmed the assessment where under claim of exemption was denied. The assessee filed an appeal before the Tribunal which was rejected by the impugned order. Aggrieved by the same, the assessee is before us by way of this tax case revision which has been admitted on the above mentioned substantial questions of law.

6.Mr.N.Prasad, learned counsel for the petitioner/assessee has drawn the attention of this Court to various provisions of the TNGST Act, more particularly, Section 3(2) of the TNGST Act which is the charging section. It is submitted that re-sale effected by the assessee as a second seller has not been disputed by the Revenue and in such circumstances, the question of payment of tax by the assessee does not arise, since the point of taxation in terms of the provisions of the Act is the first sale, i.e., the sale by Worth Trust to the assessee and this transaction is exempted in terms of the notification issued by the Government in G.O.Ms.No.436 dated 19.04.1983. The Tribunal had stated that the first taxable sale suffer tax and to that effect placed reliance on certain decisions which dealt with the scope of Section 10 of the TNGST Act. It is submitted that Section 10 of the TNGST Act would have no application to the facts of the present case, as it is not the case of the Revenue that there is no second sale made by the assessee and therefore, the question of proving the same does not arise.

7.The learned counsel further submitted that the Tribunal placed heavy reliance on the decision of the Division Bench of this Court in the case of Vasu General Traders vs. The State of Tamil Nadu [1987 66 STC 358] to state that the assessee's sale being the subsequent sale which is the first taxable sale inside the State, the same is liable to be taxed. It is submitted that the said decision in the case of Vasu General Traders (supra) was referred to by the Tamil Nadu Taxation Special Tribunal in

the case of V.Guard Industries Ltd. vs. Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore [(2000) 119 STC 19] and the said decision was reversed by the Division Bench of this Court in the case of V.Guard Industries Ltd. vs. Commercial Tax Officer and another [(2004) 136 STC 562] and therefore, the correct legal position is what has been laid down by the Division Bench in V.Guard Industries Ltd. [(2004) 136 STC 562] (supra).

8.The learned counsel also referred to the decision of the Hon'ble Supreme Court in the case of Shanmuga Traders, ETC. vs. State of Tamil Nadu and others [(1999) 114 STC 1]. The learned counsel placed a caveat by stating that the decision dealt with declared goods under Section 14 of the CST Act, yet the Court has taken into consideration the various decisions of this Court, namely, State of Madras vs. T.Narayanaswami Naidu [(1965) 16 STC 29], Vasu General Trader (supra), Royal Steel Traders [(1992) 1 MTCR 580] and held that the Second Schedule of the State Act specifies the single point; it is the point of first sale in the State and the first sale of the State was the sale by the Electricity Board to the appellant therein and the same was exempt from tax by reason of the notification dated December 1, 1982 and the iron and steel sold by the Electricity Board to the appellants therein was therefore not liable to tax either at the point of first sale or any subsequent sale in the State. It is further submitted that the Hon'ble Supreme Court held that the State Act does not fix the single point of the levy at the first taxable sale, it fixes it at the point of first sale. Therefore, it is submitted that though the matter arose out of an assessment in respect of the declared goods, yet the law laid down by the Hon'ble Supreme Court clearly holds that the point of taxation cannot be shifted.

9.To strengthen the said submission, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of The Sales Tax Officer, Navgaon and another vs. Timber & Fuel Corporation [(1973) 31 STC 585 (SC)]. Further, it is submitted that the Tribunal failed to note as to what is the effect of an exemption notification issued by the State Government which has been explained by the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. vs. State of Bihar and others [(2004) 137 STC 389 (SC)] and Peekay Re-Rolling Mills (P) Ltd., vs. Assistant Commissioner and another [(2007) 6 VST 541 (SC)].

10.It is submitted that the Revenue are likely to rely upon the decision of the Division Bench of this Court in the case of Ruchi Soya Industries Limited vs. Commercial Tax Officer, Harbour III Assessment Circle, Chennai and others [(2008) 12 VST 546 (Mad)]. It is further submitted that the said decision

cannot be applied to the facts of the case, since it is a matter where the validity of section 7-A of the TNGST Act was called in question and it is in that context, the Court rendered the decision.

11.Further, the Hon'ble Supreme Court in the case of Sudesh Kumar vs. State of Uttarakhan [(2008) 2 SCC 111] has held that a decision made on a provision of a different State will be of no relevance unless the underlying objects of the two statutes are in pari materia.

12.The learned counsel also placed reliance on the decision of the Division Bench of this Court in the case of Sakthi Sugars Limited and others vs. Deputy Commercial Tax Officer, Bhavani and others [(1969) 23 STC 232 (Mad)]. It is submitted that the case related to levy of purchase tax and it was held that the facts of the said case is that the purchase tax was not leviable on the sugar mill as the last purchaser was the ryot. On the above submissions, the learned counsel sought for setting aside the order passed by the Tribunal and answering the question of law in favour of the assessee.

13.Mr.Mohammed Shaffiq, learned Special Government Pleader for the respondent had referred to the statutory provisions, more particularly, Section 3(2) of the TNGST Act and the amendment which was brought out in the year 1996 by Act 38 of 1996. It is submitted that in respect of assessments which arose out of declared goods, the rigor of Article 286 of the Constitution of India would come into play and therefore, the State is obligated to fix the point of taxation as well as the rate of tax and hence it is submitted that those decisions would not be pressed into service by the assessee. It is further submitted that the Court, more particularly, in the decision in the case of Shanmuga Traders, ETC. [supra] had specifically pointed that they were dealing with the goods which pertain to declared goods and in the background of those facts, the said decision was rendered. सत्यमेव जयते

14.The learned Special Government Pleader placed reliance on the decision of the Division Bench of this Court in the case of Govindan & Co. vs. State of Tamil Nadu [(1975) 35 STC 50 Mad] and submitted that the said decision is a clear answer to the appellant's case and the said decision was confirmed by the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. Raman & co. and others [93 STC 185]. Reliance was also placed on the decision of the Division Bench in the case of Sree Karpagambal Mills Ltd. vs. State of Tamil Nadu [(1984) 57 STC 300 (Mad)], wherein it has been held that the the onus is on the assessee to show that the first sale is a taxable sale.

15. Heavy reliance was placed on the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, J&K and others vs. Pine Chemicals Ltd. and others [(1995) 1 SCC 58]. This decision was relied on to bring about the distinction between the general exemption and a specific exemption. It is pointed out that the exemption which was granted in favour of WORTH Trust was only in respect of the organization and not on the commodity and therefore, the plea raised by the assessee is not sustainable. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of State of Kerala and others vs. Fr. William Fernandez and others [(2017) 12 Scale 463], wherein the Hon'ble Supreme Court while examining the effect of West Bengal Entry Tax Act with the other State Acts pointed out that in the West Bengal Entry Tax Act though there are words to indicate that entering into local area from any place outside the territory of India, the said inclusion of words 'from outside the India' is a provision made by way of abundant caution. Thus, by drawing inspiration from the said decision, the learned counsel submitted that Section 3(2) of the Act requires to be read in such a manner and the amendment which was made to the said provision has to be considered as a clarificatory.

16. We have heard the learned counsels for the parties and perused the materials placed on record.

17. The question of law, which we are called upon to decide, is whether the assessee is liable for payment of sales tax in terms of Section 3(2) of the TNGST Act on the re-sale of sanitary fittings effected by the assessee within the State, which were purchased from WORTH, an organisation, which was granted exemption by the Government of Tamil Nadu under Section 17 of the TNGST Act in G.O. (Ms) No.436, dated 19.04.1983.

18. Section 17 of the TNGST Act is the power of the Government to notify exemption and redemption of tax. Under sub-Section (1) of Section 17 of the TNGST Act, the Government may, by notification issued whether prospectively or retrospectively, make an exemption or reduction in rate, in respect of any tax payable under the TNGST Act. Three types of exemptions have been provided for in Section 17(1) of the TNGST Act, which are as hereunder:-

- "(i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales by successive dealers; or
- (ii) by any specified class of persons, in regard to the whole or any part of their turnover;
- (or)
- (iii) on the sale or purchase of any

specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover."

19. In the instant case, the petitioner's seller, "WORTH" was granted exemption in regard to the whole of turnover relating to the sale of its products manufactured and on all sales incidental or ancillary to such manufactures in their various centres by notification published under the Government Gazette. The exemption, which was granted to WORTH, falls under Section 17(1)(ii), as it is for a specified class of person, in regard to the whole of their turnover.

20. The assessee has purchased sanitary fittings from WORTH and has sold the same within the State. If the assessee's vendor, viz., WORTH, did not have the benefit of exemption, then the transaction is taxable at 12% in terms of Entry 10 of Part-E of the First Schedule to the TNGST Act. In terms of the said Schedule, the point of taxation is at the point of first sale in the State. Therefore, if the exemption was not granted to WORTH and the assessee had effected purchase of sanitarywares from WORTH, then the tax payable be at the point of first sale in the State, that is, when the assessee purchases the goods from WORTH. However, by virtue of the exemption granted to WORTH, the transaction was not taxable at the point of first sale in the State.

21. Before we proceed further, we need to understand what is the effect of an exemption from payment of tax. In Associated Cement Companies Ltd. (supra), the Hon'ble Supreme Court pointed out that literally, "exemption" is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. An exemption provision is like an exception and normally, principles of construction of interpretation of statute have been construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue.

22. In Peekay Re-Rolling Mills (P) Ltd. (supra), the Hon'ble Supreme Court after referring to the decision in the case of Associated Cement Companies Ltd., (supra), held that the question of exemption arises only when there is a liability, exigibility to tax is not the same as liability to pay tax, as the former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and the Rules framed thereunder if any. Therefore, it was held that liability to pay tax chargeable under Section 3 of the Kerala General Sales Tax Act, 1961, is different from quantification of tax payable on assessment, liability to pay

tax and actual payment of tax are conceptually different and but for the exemption, the dealer would be required to pay tax in terms of Section 3 of the Kerala General Sales Tax Act, 1961. Thus, it was held that exemption presupposes a liability and unless there is a liability, the question of exemption does not arise.

23.As pointed out earlier, the seller of the assessee, WORTH, had been granted exemption. In terms of Entry 10 of Part-E of the First Schedule to the TNGST Act, the transaction, viz., ceramic sanitarywares and sanitary fittings of every description including sinks, wash basins, etc., are taxable at 12% and the point of taxation is the first sale in the State. Admittedly, the first sale in the State was the sale effected by WORTH to the assessee. But for the exemption, the transaction was taxable. As pointed out by the Hon'ble Supreme Court, exemption only protects the seller from estimating the tax, but the liability is not whipped off. Thus, the grant of exemption itself presupposes a liability.

24.The question would be whether, the Revenue would be justified in contending that because the first sale within the State was exempted from tax, the sale effected by the assessee to third parties is taxable. In our considered view, if this interpretation is to be accepted, then it would amount to shifting the point of taxation as mentioned in in terms of Entry 10 of Part-E of the First Schedule to the TNGST Act. The question would be whether, this is permissible.

25.The Hon'ble Supreme Court in the case of Timber & Fuel Corporation (supra), was considering a case where the Forest Department was made liable to pay sales tax in respect of the timber sold by them. The assessee in the said case was a registered dealer under the Madhya Pradesh Sales Tax Act, and it was a forest contractor, which purchases large quantity of timber from the Forest Department of Madhya Pradesh in the auctions held by the Department. The Sales Tax Officer commenced assessment proceedings against the assessee and came to the conclusion that the sales effected by the assessee in Madhya Pradesh are first sales and the same are liable to be taxed. At about the said time, the Madhya Pradesh Government issued a notification exempting the Forest Department from paying any sales tax in respect of the sales effected by it as from 1st April, 1959 to 2nd November, 1962. Placing reliance on the said notification, the assessee became retrospectively liable to pay sales tax in respect of the sales effected by it. The question, which fell for consideration, was whether the exemption given to the Forest Department creates a fresh levy on the assessee with retrospective effect. The Hon'ble Supreme Court pointed out that when the taxing events took place, the

assessee was not liable to pay tax and its liability has to be determined as on those dates and having come to the conclusion that the assessee was not liable to pay any sales tax when the sales took place, the fact that the Forest Department was retrospectively exempted from paying tax from an earlier date cannot make the assessee liable to pay tax, which he was otherwise not liable to pay. Hence, it was held that the Government had no power to levy tax either prospectively or retrospectively and the power of the Government was merely to exempt one or more dealers from paying tax. Thus, the point of taxation can never be shifted.

26. The Revenue's case initially was that the transaction would be taxable at the hands of the assessee and they are liable to pay purchase tax in terms of Section 7-A of the TNGST Act. The assessee clearly pointed out that none of the contingencies contemplated in sub-Clauses (a) to (c) of Section 7-A(1) of the TNGST Act stand attracted to the assessee's case. Probably, realising that Section 7-A of the TNGST Act would not be attracted, the Assessing Officer proceeded to levy tax under Section 3(2) of the TNGST Act and rejected the claim for exemption. Section 3(2) of the TNGST Act at the relevant time, i.e., during the period 1994-95 reads as follows:-

"Section 3(2) Subject to the provisions of sub-section (1), in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods.

Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule."

27. The language employed in the said provision is clear, as it states that tax under the TNGST Act shall be payable by a dealer at the rate and only at the point specified therein on the turnover in each year relevant to such goods. If the argument of the Revenue is to be accepted, then the words "only at the point specified therein" would lose its significance.

28. As pointed out by us earlier, the point of taxation can never be shifted by the Assessing Officer. Therefore, we need to read the statute as it is, as Section 3(2) of the TNGST Act is the charging section and there is no room for any interdiction or interpolation or adding words to the statute.

By a plain reading of the statute, it is vividly clear that the point of taxation is as specified in the schedule, which is the point of first sale. Thus, whether the first sale is exempted or not is an irrelevant factor for the purposes of determining the liability to pay tax. As pointed out earlier, but for the exemption granted to WORTH, the first sale was taxable at 12% in terms of Entry 10 of Part-E of the First Schedule to the TNGST Act. Thus, the liability to pay tax has not been erased, but only a reprieve has been granted to WORTH by way of exemption.

29. In *Shanmuga Traders, ETC.* (supra), the question was when the point of levy was fixed by the TNGST Act and the sale at that point was exempted by Government Notification, whether sale at other points can be taxed. This question was answered in favour of the assessee.

30. It is pointed out by the learned Special Government Pleader that the decision in the case of *Shanmuga Traders, ETC.* (supra), was in respect of declared goods under the provisions of Section 14 of the CST Act. In paragraph 7 of the judgment, the Hon'ble Supreme Court has taken note all the decisions on the point including the decision in the case of *Vasu General Traders* (supra), which was relied on by the Tribunal to dismiss the appeal filed by the assessee. Thus, the decision rendered by the Hon'ble Supreme Court is on a larger issue and this is explicitly clear on a reading of paragraph 14 of the judgment, which is as follows:-

"14. There is no warrant for the emphasis that would appear to have been placed by the Madras High Court on the phrase "taxable sale". The State Act does not fix the single point of the levy at the first taxable sale; it fixes it at "the point of first sale". The impugned circular cannot validly shift the point of levy from the first sale to a subsequent sale and it is, therefore, bad in law."

31. As pointed out by the Hon'ble Supreme Court, if the interpretation given by the respondent-State is to be accepted, then it would be re-writing Section 3(2) of the TNGST Act by substituting the word "point of sale" with that of "point of first taxable sale". This is wholly impermissible and no taxation statute can be read in the manner as proposed by the Tribunal.

32. Mr. Mohammed Shaffiq placed reliance on the decision in the case of *Pine Chemicals Ltd.* (supra) to buttress his submission that the exemption granted is not a general exemption, that is, the products manufactured by WORTH were not

exempted, but the said organisation was granted exemption and therefore, the interpretation given by the Revenue, as accepted by the Tribunal, requires to be confirmed.

33. We have perused the decision in the case of Pine Chemicals Ltd. (supra), and the factual position in the said case is slightly different in the sense that exemption was granted for manufacture of a particular product by industrial units, which are of large or medium scale and commences sale within five years of its going into production. The effect of such exemption was considered vis-a-vis Section 8(2) of the CST Act, which pertains to the 'rate of tax' and in the background of the said facts, the Hon'ble Supreme Court held that the exemption not being a general exemption, but a conditional exemption, does not satisfy the requirements of Section 8(2-A) of the CST Act. Therefore, we are of the considered view that the decision in the case of Pine Chemicals Ltd. (supra) does not render any support to the case of the Revenue.

34. So far as the decision in the case of Vasu General Traders (supra) is concerned, it was a case where the assessee, who was manufacturing handmade matches, was granted exemption and it was not a general exemption. The Court held that the assessee's sale being the subsequent sale, which is the first taxable sale inside the State, the same is liable to be taxed. The contention advanced by the assessee was that the taxable event being the first sale in the State and the first sale having been exempted, there is no tax liability in respect of the subsequent sales. This contention was not accepted by the Division Bench of this Court on the ground that the exemption granted by the Government is not a general exemption. It is for the sale of handmade matches manufactured, and the sale by the person who purchases goods from the manufacturer, becomes the first taxable sale inside the State and this was pointed out by the Hon'ble Supreme Court in the case of Shanmuga Traders, ETC. (supra).

35. That apart, the decision in the case of T. Narayanaswami Naidu (supra) had not been noticed in the case of Vasu General Traders (supra). In addition to the above, the decision of the Hon'ble Division Bench of this Court in the case of V. Guard Industries Ltd. [(2004) 136 STC 562] (supra) comes to the aid and assistance of the assessee. In the said case, the assessment year under consideration was 1992-93, that is, much prior to the insertion of second proviso to Section 3(2) of the TNGST Act. The Hon'ble Division Bench noted that the TNGST Act was amended with effect from 17.07.1996 and the amendment of Section 3 of the TNGST Act provides for levy of sales tax on the second sale, if the first sale has not suffered tax for any reason, in cases where the point of levy is the first sale and

the said amendment does not cover the assessment year 1992-93. The said amendment having come into force only in the year 1996, will not cover the assessment on hand in the case of the assessee, which is 1994-95.

36. The Tribunal failed to take note of the law laid down by the Hon'ble Division Bench of this Court in the case of V. Guard Industries Ltd. [(2004) 136 STC 562] (supra) and restricted itself only to the aspect, where the Division Bench discusses about the scope of Section 55 of the TNGST Act in respect of rectification of an order passed by the Assessing Officer or the Appellate Authority or for that matter, the Taxation Special Tribunal.

37. In Ruchi Soya Industries Limited (supra), the assessee purchases sunflower oil and other oils from various registered dealers enjoying benefit of exemption issued by the Government. The assessee therein was made liable to pay tax in terms of Section 7-A of the TNGST Act and therefore, they approached the Court by challenging the vires of Section 7-A of the TNGST Act. The assessee's contention was that in Section 7-A, the expression used is "in circumstances in which no tax is payable under Sections 3, or 4" and therefore, argued that Section 7-A can operate only in cases where there is no liability. It was the submission of the assessee that the provisions of Section 7-A was introduced as an anti-tax evasion measure, an exempted sale by no logic, carries with it the stamping of tax evasion to fit in with the purposes for which the provision was introduced and hence, when once the sale is an exempted sale, invoking the provisions of Section 7-A would nullify the exercise of a power given under Section 17. The said contention raised by the assessee was negatived and held that it was irrespective of the fact that the liability to pay tax and actual payment of tax are conceptually different and merely because the assessee was exempted from payment of tax, it could not be said that there was no liability under the TNGST Act.

38. Section 7-A of the TNGST Act clearly provided for "levy of purchase tax" and the contingencies provided therein clearly fell within the said parameters and accordingly, the contention of the assessee was rejected. If the said decision is applied to the facts of the present case, we need to be conscious of the subtle yet marked distinction between the language employed in Section 7-A and an amended Section 3(2) of the TNGST Act. As mentioned earlier, prior to the amendment, the point of taxation was only at the point of first sale. It is only in the year 1996, the proviso was added, which provided that if the goods mentioned in the First Schedule are taxable at the point of first sale, the tax under the TNGST Act shall be payable by the first and earliest of the successive dealer in the State, who is

liable to tax under the said Section. Therefore, the charging section which stood prior to the amendment, did not contain any clause as contained in Section 7-A of the TNGST Act making the purchaser liable to pay purchase tax when they fall within any one of the contingencies in Section 7-A(1) of the TNGST Act. Though the decision in the case of Ruchi Soya Industries Limited (supra) was rendered in the context of Section 7-A of the TNGST Act and after the amendment to Section 3(2), we have referred to the said decision to point out the subtle yet marked difference between the various provisions of the Act.

39. Thus, for all the above reasons, we are of the considered view that the order passed by the Tribunal is not sustainable and the point of taxation cannot be shifted.

40. For the reasons assigned by us in the preceding paragraphs, this tax case revision is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse/abr

To

1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
2nd Floor, City Civil Court Buildings,
High Court Campus, Chennai-600 104.
2. The Assistant Commissioner (CT),
Fast Track Assessment Circle-I,
Chennai-6.
3. The Deputy Commissioner (CT) Appeals,
Chennai-1.

+1 cc to Mr.N.Inbarajan, Advocate, S.R.No.16274

+1 cc to the Special Government Pleader, S.R.No.17125

T.C.(R) No.91 of 2015

VBA (CO)
SSM(27/03/2019).