IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.02.2020
Pronounced On	19.05.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.35865 of 2004
and
W.M.P.No.43168 of 2004

M/s.Tai Industries Limited,
rep. by its Power of Attorney Holder
Mr.R.Ganesan,
6th Cross Street,
Now at No.40/140,
Kanchi Natarajan Street,
Vasudevan Nagar, Ashok Nagar,
Chennai 600 083. ... Petitioner

Vs.

1.The State of Tamilnadu,
rep. by its Secretary to the Government,
Commercial Taxes Department,
Fort St. George,
Chennai 600 009.

2.The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai 600 083.

3.The Union of India,
rep. by its Secretary,
Department of Trade and Commerce,
Parliament Street, New Delhi. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 1959 (Act 18 of 2002) dated 26.05.2002, w.e.f. 01.04.2002 inserting the imported goods from the Government of Kingdom of Bhutan dated 28.02.1995 as item (8) of Part G to the First Schedule which was consequently substituted by Tamil Nadu General Sales Tax (Seventh Amendment) Act, (Act 22 of 2002) inserting Section 3(2-C) and Eleventh Schedule (Item 9) to the Tamil Nadu General Sales Tax Act, 1959 dated 26.05.2002, w.e.f. 01.07.2002 as ultra vires the provisions of the Constitution of India and in any event as not applicable to the petitioner in view of the Agreement on Trade and Commerce between the Government of Kingdom of Bhutan and the 3rd respondent Union of India dated 28.02.1995.

For Petitioner : Mr.V.Sundareswaran

For R1 & R2 : Mr.A.N.R.Jayaprathap, G.A.

For R3 : Mr.J.Madanagopal Rao, ACGSC.

O R D E R

The present Writ Petition has been filed for the following prayer:-

> to declare the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 1959 (Act 18 of 2002) dated 26.05.2002, w.e.f. 01.04.2002 inserting the imported goods from the Government of Kingdom of Bhutan dated 28.02.1995 as item (8) of Part G to the First Schedule which was consequently substituted by Tamil Nadu General Sales Tax (Seventh Amendment) Act, (Act 22 of 2002) inserting Section 3(2-C) and Eleventh Schedule (Item 9) to the Tamil Nadu General Sales Tax Act, 1959 dated 26.05.2002, w.e.f. 01.07.2002 as ultra vires the provisions of the Constitution of India and in any event as not applicable to the petitioner in view of the Agreement on Trade and Commerce between the Government of Kingdom of Bhutan and the 3rd respondent Union of India dated 28.02.1995.

2. At the out set, it may be noted that the prayer in this Writ Petition is not precise and does not clearly articulate the relief sought for by the petitioner. Though this Writ Petition is of the year 2004, none of the respondents have filed their counter. Since the issue is covered, I take up this case and dispose it.

3.The petitioner has challenged the levy of tax on imported goods at 20 % vide Tamil Nadu General Sales Tax (Fourth Amendment) Act, 1959 (Act 18 of 2002) dated 26.05.2002, w.e.f. 01.04.2002 as substituted by Tamil Nadu General Sales Tax (Seventh Amendment) Act, 1959 (Act 22 of 2002) inserting Section 3(2-C) and Eleventh Schedule (Item 9) to the Tamil Nadu General Sales Tax Act, 1959 dated 26.05.2002, w.e.f. 01.07.2002 as ultra vires the Constitution of India and in any event as not applicable to the petitioner in view of the Agreement dated 28.02.1995 on Trade and Commerce between the Government of Kindom of Bhutan and the 3rd respondent Union of India.

4. The Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred as TNGST Act) was amended by TNGST (4th

Amendment) Act, 2002, w.e.f. 26.05.2002/01.04.2002. Serial No.8 of Part G to the First Schedule specified tax at 20% on the imported goods. It reads as under:-

PART-G

Goods which are taxable at the rates specified below

Sl.No	Description of goods	Point of levy	Rate of tax
8	Imported cigarettes, medium density fibre boards, textiles and other items falling in Parts D and E of the First Schedule	First Sale	20

5. By the TNGST (7th Amendment) Act, 2002, (Act No.22 of 2002), certain other amendments were also incorporated. The Eleventh Schedule to the TNGST Act was introduced along with Section 3(2-C). After Sub-Clause (2-B) to Section 3 of the TNGST Act, Sub-Clause (2-C) was inserted which reads as follows:-

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

6. Sl.No.9 to the Eleventh Schedule which was introduced reads as under:-

THE ELEVENTH SCHEDULE

[See section 3(2-C)]

Sl. No	Description of goods	Point of levy	Rate of tax
9	Imported cigarettes, medium density fibre boards, textiles and other items falling in Parts D and E of the First Schedule	First Sale	20

7. The case of the petitioner is that it is a dealer carrying on business and having its office in Calcutta and is registered with the 2nd respondent the Commercial Tax Officer, Saligramam Assessment Circle.

8. It is the case of the petitioner that the petitioner was appointed as an agent of the Royal Government of Bhutan Enterprises which is known as M/s.Bhutan Fruit Products Limited and was having its registered office in the Kingdom of Bhutan and that the petitioner used to receive the goods such as Sherbet which falls under Part B, Item 4(vi) of the First

Schedule and not falling under Part D and E of the First Schedule from the Kingdom of Bhutan along with other goods such as the mixed fruit juice, orange juice, tomato puree, sauce, bamboo shoots, baby corns, sweet corn, baked beans, squashes etc. from the Kingdom of Bhutan for the sale and the supply to the various States in India.

9. It is the contention of the petitioner that two countries have entered into the aforesaid agreement dated 28.02.1995 with a desire to strengthen free Trade and Commerce between the two countries by way of Bilateral Trade and Collaboration in economic development of the two Sovereign States. According to the petitioner that the aforesaid agreement clearly stipulates that there shall free Trade and Commerce between the two countries.

10. According to the petitioner, the impugned amendments apart from being discriminating in nature is also contrary to Bilateral Trade and Commercial Agreement signed between the two countries. It is submitted that it is contrary to List I of Entry 10 and List I of 14 to the 7^{th} Schedule of the Constitution of India.

11. In this connection, the learned counsel for the petitioner has placed reliance on the following decision:-

i. Gramaphone Company of India Limited Vs. Birendra Bahadur Pondey and Others, AIR 1954 SC 667.
ii. Sheela Barse Vs. Secy., Children's Aid Society, (1987) 3 SCC 50.
iii. Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625.
iv. Indian Sugar and General Industry Export Import Corporation Ltd. Vs. Commercial Tax Officer and others, (2002) 127 STC 339

12. According to the petitioner, the impugned amendment has rendered the goods imported from Bhutan uncompetitive as they suffer higher rate of tax when compared to goods locally manufactured and sold. The petitioner has relied on the following passages from the decision of this Court in Indian Sugar and General Industry Export Import Corporation Ltd. (cited supra):-

> 33. On principle also there is no reason for making a distinction between indigenous and imported goods, as long as the goods are considered to be important in inter-State trade and commerce. After importation, the goods enter into the domestic stream and the interest of the customer would be adversely affected, if the imported goods were to be taxed at a higher rate, exceeding the rate at

which the goods of similar description manufactured in India is subject. The object of the declaration is to promote the interest of the consumer and to ensure the smooth flow of inter-State trade and commerce.

13. The learned counsel for the petitioner states that the Hon'ble Supreme Court in Ansraj Vs. State of Tamil Nadu, (1986) 61 STC 165 held that the differential rate of tax imposed on the sale of lottery tickets imported from Bhutan is discriminatory and struck down the said Notification granting exemption on the sale of lottery tickets of Tamil Nadu and imposing sales tax only on lottery tickets from Bhutan including other states. In view of the above said law laid down by the Hon'ble Supreme Court, it is submitted that the enhanced rate of tax imposed by the first respondent under Act is discriminatory and not applicable to the petitioner more so in the light of the trade agreement.

14. He submits that the Union of India alone has exclusive power under Article 246 read with Seventh Schedule/List I/ Item 14 of the Constitution of India to enter into trade agreements / treaties and implementing then with other sovereign countries. Since 1995, the Union of India had from time to time renewed the said free Trade Agreement with the Kingdom of Bhutan. Since the State Legislative power is diluted to the extent in Article 51, wherein the State is duty bound to honour the treaty obligations more particularly in view of the trade agreement and decision of Apex Court, the legislation brought about to tax the goods imported from the Kingdom of Bhutan had to held as not applicable to the petitioner.

15. In this connection, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in CC Vs. G.M.Exports, 2015 (324) ELT 209. The Court held that the decision of the Division Bench of this Court in M/s. Sony India (cited supra) is not applicable and is not binding upon the State.

16. Finally, the learned counsel for the petitioner submits that the recent decision of the Constitutional Bench of Hon'ble Supreme Court in Jindal Steel (P) Ltd Vs. State of Haryana and Others, (2017) 12 SCC 1 relating to the challenge to vires of Entry tax legislation by the States, it was categorically held that there should not be a discriminatory tax imposed by the States in their legislative power which was held to be ultravires of Article 304(a) of the Constitution of India.

17. The learned counsel for the State Revenue relied on decision of the Division Bench of this Court in M/s.Sony India Limited Vs. The Commercial Tax Officer, Egmore -II Assessment Circle, passed in W.P.No.17424 of 2003 and batch of cases, on

07.09.2007, wherein, vires of challenged the Entry 14(vi) of Part D of the First Schedule to the TNGST Act, 1959, Entry 8 Part G of the First Schedule and Entry 9 of Eleventh Schedule respectively prescribing 20% rate of sales tax on the sales of goods imported at Delhi and Mumbai and stock transferred and sold in Chennai were challenged a violative of Articles 14, 301 and 304 of the Constitution of India and therefore void and unenforceable. The Division Bench of this Court upheld the provision with the following observations:-

> 33. In view of the above law declared by the Supreme Court, we are of the considered view that merely because the GATT agreement recognises the relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, etc., that will not in any way curtail the State Government to identify the imported goods as separate class and to levy higher rate of sales tax so long as the power of the State Government to levy sales tax even on imported goods is not questioned. Accordingly, point no.(iii) is also answered.
>
> 34. For the foregoing reasons, we do not find any merit in the challenge to the impugned Act, the clarification and the impugned orders of the Taxation Tribunal. Accordingly, the writ petitions fail and they are dismissed. No costs. Consequently, the connected W.P.M.Ps. are closed.

18. After the arguments were completed, the learned counsel for the petitioner also circulated a note.

19. I have considered the submissions of the learned counsel for the petitioner and the respondents. The decision cited by the petitioner in the context of anti-dumping duty in the case of Commr. of Customs v. G.M. Exports, (2016) 1 SCC 91 : 2015 SCC OnLine SC 837 is of no relevance. There the Supreme Court was concerned as to whether anti-dumping duty imposed with respect to imports made during the period between the expiry of the provisional anti-dumping duty and the imposition of the final anti-dumping duty is legal and valid?

20. In paragraph 23, the Hon'ble Supreme Court summarised the position as follows:-

> 23.A conspectus of the aforesaid authorities would lead to the following conclusions:
>
> (1) Article 51(c) of the Constitution of India is a directive principle of State policy which states that the State shall

endeavour to foster respect for international law and treaty obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international treaty to which India is not a signatory or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, domestic law will prevail.

(2) In a situation where India is a signatory nation to an international treaty, and a statute is passed pursuant to the said treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous to have recourse to the terms of the treaty to resolve such ambiguity in favour of a meaning that is consistent with the provisions of the treaty.

(3) In a situation where India is a signatory nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

(4) In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations.

21. In the said decision there is no reference to the decision of the Division Bench of this court in Sony India Ltd and others Vs. CTO (cited supra) though it was stated by the learned counsel for the petitioner. The decision of the Honourable Supreme Court in Jindal Stainless Steel Vs. State

of Haryana, 2017 (12) SCC 1 is also of no relevance to the facts of the present case as it was concerned with entry tax.

22. The Division Bench of this court in Sony India Ltd and others Vs. CTO (cited supra) was specifically concerned with the same provisions which are in the challenge by the petitioner and the present writ petition. This court framed following points for consideration:-

> 16. On consideration of the sum and substance of the pleadings and the rival contentions, the following points arise for our consideration:
>
> (i) Whether the imported goods, on sufferance of customs duty and subsequently cleared from the customs frontiers, would lose its character as foreign goods for the purpose of levy of sales tax under the provisions of the TNGST Act?
>
> (ii) Whether the levy of 20% sales tax on imported goods by the amended provision as against the levy of 12% sales tax for the goods manufactured in India would be discriminatory in the wake of Articles 301 to 304 of the Constitution?
>
> (iii) Whether by virtue of the Agreement (GATT), the State would be competent to bring the goods imported and levy higher rates of sales tax and in such circumstances, whether such enactment would require the assent of the President under Article 304(b) of the Constitution of India?

23. In paragraph 30 the Division Bench of this Cour in Sony India Ltd and others Vs. CTO (cited supra) observed as under:-

> 30. Whether Part XIII could be made applicable to imported goods is a further question for consideration in this case. Part XIII of the Constitution relates to the restriction on inter-State and intra-State trade on goods. Inter-State trade would mean where the goods manufactured in a State are sold in the same State. Equally, an intra-State trade would mean only such of those goods manufactured in one State and sold in other State/States. So long as the movement of goods within the State or from one State to another is not restricted, Part XIII of the Constitution cannot be pressed into service. In the given case, there is no restriction on goods from one State to another. By virtue of the power the State had classified

the goods for the purpose of levy of sales tax. Heavy reliance was also placed on a Division Bench judgment of this Court in Indian Sugar & General Industry Export Import Corporation Ltd., v. Commercial Tax Officer and others (2002) Vol.127 STC 339) to contend that there cannot be any distinction between imported and indigenous goods. That was a case where this Court had dealt with the imported sugar. The Division Bench considered the word "imported" found in item (viii) of Section 14 of the Central Sales Tax Act does not result in the declaration with regard to sugar being confined only to sugar which is produced domestically. The Court had taken note of the fact that sugar falling within the scope of the sub-headings of the Central Excise Tariff Act and referred to in item (viii) of Section 14 of the Central Sales Tax Act would be declared goods, irrespective of the place of their manufacture. The question before the Division Bench was when once the goods are treated as declared goods, whether there could be a further distinction as to the indigenous or imported goods for the purpose of levy of tax. The criteria of distinction for levying higher rate of tax is whether the goods imported from the other country lose its identity as foreign goods or not. In the given case, the goods are television sets, audio systems, handy cameras, handsets of cellular phones, cars, medium density fibre boards, etc., and even after their import, they did not lose their respective identity. However, in the case of sugar, even after the sugar is imported, it is not sold in the market as imported sugar and it is possible for the trader to mix the imported sugar with the indigenous manufactured sugar as well. On the facts of the present case, we do not find that the said judgment would be of any use to the petitioners. For these reasons, we are of the considered view that Part XIII of the Constitution would not be applicable to imported goods. That apart, the impugned amendment Act fixing higher rate of tax for imported goods is on intelligible differentia and on the basis of reasonable classification and therefore we do not find any reason to hold that either the impugned Act is violative of Article 14 or the imposition of higher rate of sales tax for imported goods would in any way amount to restriction of trade under Part XIII of the Constitution of India. Equally the submission as to the impugned Act requires the assent of the President under Article 304(b) also cannot be accepted. Further, as the classification is reasonable, the submission as to the restriction for levy of tax on sale or purchase of goods based on Article 286(3) is also not available to the petitioners. Accordingly, point nos.(i) & (ii) are answered.

24. The issue canvased by the petitioner here has already been negatived by the Division Bench of this Court in the above case. The issue having attained finality in Sony India Ltd and others Vs. CTO (cited supra), it is no longer open for this court to either refer the issue to a Division Bench of this Court or take a contra view.

25. The learned counsel for the petitioner has also neither produced any other decisions of the Hon'ble Supreme Court which has taken a contrary view nor has produced any order of the Hon'ble Supreme Court staying operation of the decision of the Division Bench of this court in Sony India Ltd and others Vs. CTO (cited supra).

26. In the light of the views of the Division Bench in the above case, I am inclined to hold that the present writ petition is liable to be dismissed.

27. I therefore dismiss this writ petition. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
1.Secretary to the Government,
The State of Tamilnadu,
Commercial Taxes Department,
Fort St. George, Chennai 600 009.
2.The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai 600 083.
3.The Secretary, Union of India,
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EU 24.06.2020