

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2020

Delivered on : 04.12.2020

C O R A M

THE HON`BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.8292 of 2010

and

M.P.No.1 of 2010

Voltas Limited,
Rep. by its Territory Manager,
Mr.Kamlendra Singh,
Voltas House "A", Dr. Babasaheb Ambedkar Road,
Chinchpokli, Mumbai-400003. Petitioner

Vs

- 1.The State of Tamilnadu
Rep. by the Secretary to the Government,
Commercial Taxes & Religious Endowments
Department, Fort St. George, Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep. by the Secretary to the Government,
Revenue Department, Fort St. George,
Chennai - 600 009.
- 3.The Chief Controlling
Revenue Authority & Inspector General of
Registration,
Office of the Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 600 028.
- 4.District Registrar,
(A.I.G) Cadre,
Chennai North,
No.1, Moorthigal Street,
Chennai - 600 001.
- 5.The Joint Registrar II
Chennai North,
No.1, Moorthigal Street,
Chennai 600001. Respondents

PRAYER : Petition filed under Article 226 of the Constitution
Of India, praying to issue a Writ of Certiorarified Mandamus

calling for records of proceedings in NO.PM No.30984/P1/2009 dated 31.12.2009, on the file of the third respondent quashing the same and direct the Respondents to grant exemption in respect of the stamp duty in terms of the G.O.Ms.No.1224 of Revenue dated 25.04.1964 in respect of the Deed of Sale executed on 06.08.1997.

For Petitioner : Mr.M.P.Senthilkumar

For Respondents : Mr.S.R.Rajagopal,

Additional Advocate General

O R D E R

The erstwhile subsidiary of the Petitioner, Voltas International Limited (VIL), claimed exemption from stamp duty in respect of the Deed of Conveyance dated 06.08.1997 (the Sale Deed), which was executed by the Petitioner in favour of VIL. The said claim for exemption was rejected by order dated 31.12.2009, which is the subject matter of challenge in this writ petition.

2. The Petitioner is a company incorporated under the Indian Companies Act, 1913 by the Registrar of Companies, Bombay. VIL was incorporated under the Companies Act, 1956 on 06.03.1978 by the Registrar of Companies, Bombay. The Petitioner has its registered office at Mumbai as did VIL. As the owner, the Petitioner transferred the property comprising land and building at Door No.52, Armenian Street, Chennai - 600 001 (the Property) by way of the Sale Deed in favour of VIL. The Sale Deed was registered on 06.08.1997 before the District Registrar, Chennai North, by claiming an exemption from stamp duty in terms of G.O.Ms.No.1224, Revenue, dated 25.04.1964 (G.O.Ms. No1224). G.O.Ms.No.1224 provided for an exemption from stamp duty subject to fulfilment of any one of three conditions at the time of the transaction. The first of such conditions was if at least 90% of the issued share capital of the purchaser/transferee was in the beneficial ownership of the vendor/transferor. The second condition was where the transfer is between a parent company and its subsidiary and one of them is the beneficial owner of not less than 90% of the issued share capital of the other. The third condition was where the transfer of property was between two subsidiary companies and the common parent or holding company holds not less than 90% of the issued share capital of each of the subsidiaries.

3. After the registration of the Sale Deed, VIL received the notice dated 18.09.1997 from the District Registrar, Chennai North, demanding payment of a sum of Rs.52 lacs as stamp duty. The said demand was based on

G.O.Ms.No.37, Commercial Tax and Religious Endowment Board, dated 25.01.1995 (G.O.Ms. No.37). VIL objected to this demand on the basis that G.O.Ms.No.37 is not applicable because it came into force in the year 2000, whereas the transaction took place in the year 1997. This contention was rejected by the District Registrar, Chennai North, by proceeding dated 30.09.1997, on the ground that the registered office of the company is not within the State of Tamil Nadu. VIL filed an appeal against the aforesaid order under Section 33A(3) of the Indian Stamp Act, 1899 (the Stamp Act) before the Chief Controlling Revenue Authority but the said appeal was rejected by order dated 08.10.1999. Against the said order of the appellate authority, VIL filed W.P.No.20249 of 1999 to quash the order of the appellate authority by which the levy of stamp duty was confirmed.

4. Meanwhile, by order dated 08.08.2001 of the Hon'ble Bombay High Court, VIL was amalgamated with the Petitioner with effect from the appointed date, i.e. 01.04.2001. Thereafter, by order dated 29.06.2009, in W.P.No.20249 of 1999, this Court quashed the order of the appellate authority on the ground that G.O.Ms.No.37 was not applicable to the transaction and thereby directed the registration authorities to decide the exemption claim on the basis of G.O.Ms.No.1224. Pursuant thereto, by order dated 31.12.2009, the registration authorities concluded that the Petitioner is not entitled to an exemption from stamp duty in terms of G.O.Ms.No.1224. The present writ petition was filed in the said facts and circumstances.

5. I heard Mr.M.P.Senthilkumar, the learned counsel for the Petitioner, and Mr.S.R.Rajagopal, the learned Additional Advocate General for the Respondents.

6. The first contention of Mr.Senthilkumar was that the Petitioner is entitled to exemption in terms of G.O.Ms.No.1224. In particular, he stated that the Petitioner held 5,94,000 shares in VIL at the time of execution of the Sale Deed out of the total issued, subscribed and paid up share capital of VIL which consisted of 6,00,000 shares. Thus, except for 6 shares, the entire issued share capital of VIL was held by the Petitioner. In support of this contention, the learned counsel referred to the Annual Return of VIL, which was made up to 23.09.1997. With specific reference to page 95 of the additional typed set of papers filed by the Petitioner (the relevant page of the above mentioned Annual Return), he substantiated the contention that Voltas Limited(the Petitioner herein) held 5,99,994 shares in VIL. He also referred to the order of the Hon'ble Bombay High Court dated 19.09.2001 in C.P.No.528 of 2001 in and by which the Court sanctioned the Scheme of Amalgamation between VIL and Voltas Limited. As a consequence of the said amalgamation, he submitted that VIL merged with Voltas Limited and was dissolved without winding-up in terms of the order of the

Bombay High Court. Therefore, the writ petition was filed by Voltas Limited.

7. In order to substantiate the contention that the exemption notification is applicable to the transaction, he referred to said exemption notification and pointed out that the Petitioner satisfies the condition of holding at least 90% of the issued share capital of the purchaser/transferee, namely, VIL, at the time of transaction. As regards the proviso to the notification, he contended that the proviso deals with proof of satisfaction of the requirement of being the holder of at least 90% of the issued share capital of the purchaser. For this limited purpose, the proviso stipulates that a certified copy of the relevant records of the companies from the Registrar of Companies, Madras, should be produced. In other words, it was his contention that the exemption notification does not stipulate that both the vendor and the purchaser should be companies incorporated by the Registrar of Companies, Madras. In support of the contention that the Petitioner is entitled to the benefit of the exemption, he referred to and relied upon the judgment of the Hon'ble Supreme Court in State of Orissa v. M.A.Tulloch and Co., AIR 1966 SC 365(M.A.Tulloch). The said judgment pertained to a claim for deduction under Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1948 r/w Rule 27(2) of the Orissa Sales Tax Rules. Rule 27(2) specified a method of proving that the dealer is entitled to the deduction as per Section 5(2)(a)(ii). The Hon'ble Supreme Court concluded that Rule 27(2), which prescribed a method of proving entitlement to the deduction, is directory and not mandatory. On that basis, the Hon'ble Supreme Court concluded that the production of a declaration under Rule 27(2) is not obligatory for the purpose of claiming exemption; instead, it is open to the dealer to claim exemption by adducing relevant evidence to prove such entitlement. Likewise, the learned counsel submits that the Petitioner produced the balance sheet and annual returns of VIL for the relevant period from the records of the Registrar of Companies, Mumbai, so as to establish the entitlement and that the production of a certificate from the Registrar of Companies, Madras is not mandatory. He also relied upon the judgment of the Bombay High Court in The Commissioner of Sales Tax v. Hindustan Silk Mills, Bombay-2 (1972) 29 STC 99 Bom, wherein the Division Bench of the Bombay High Court concluded that the dealer was entitled to provide the requisite information instead of filing Form-J and that in light of the evidence that all the requisite information had been provided, the dealer was entitled to claim a deduction as per Section 8(b) of the Bombay Sales Tax Act, 1953. The last contention of Mr.Senthilkumar was that G.O.Ms.No.37 introduced a second proviso whereby it was stipulated that the exemption would be available only if both the companies have their registered offices within Tamil Nadu. By order dated 29.06.2009, in the earlier W.P.No.20249 of 1999, this Court concluded that G.O.Ms.No.37 is not applicable to the transaction in question

because the said Government order came into force only in the year 2000 whereas the transaction was executed in the year 1997. Thus, he contended that the required that the registered offices should be in Tamil Nadu is not applicable as regards this transaction.

8. In response and to the contrary, Mr.S.R.Rajagopal submitted that the exemption is extended as a benefit to companies which are incorporated in Tamil Nadu and that neither the Petitioner nor the VIL were incorporated in the State of Tamil Nadu. Both these companies were incorporated in the State of Maharashtra. According to Mr.S.R.Rajagopal, the relevant entry of the exemption notification, G.O.Ms.No.1224, should be read as a whole. If the relevant entry 38 is read as a whole, the proviso thereto assumes significance. The said proviso specifies that a certified copy of the relevant records of the company kept in the office of the Registrar of Companies, Madras should be produced by the parties to the instrument to show that the conditions prescribed are fulfilled. Therefore, he submitted that it is implied therein that the benefit of the exemption would be available only to companies which were incorporated by the Registrar of Companies, Madras. His next contention was that this is an exemption notification in a fiscal statute. Therefore, it is necessary to subject the notification to strict interpretation. In support of this contention, he referred to and relied upon the judgment of the Hon'ble Supreme Court in *Grasim Industries Ltd and another v. State of Madhya Pradesh and another* (1998) 8 SCC 547 (*Grasim Industries*), wherein the Supreme Court restated the principle of strict interpretation while interpreting exemption notifications. He also relied upon the judgments of the Supreme Court in *Union of India v. Wood Papers Limited*, (1990) 4 SCC 256 (*Wood Papers*), which was cited in *Grasim Industries* and the more recent Constitution Bench judgment in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and others* (2018) 9 SCC 1 (*Dilip Kumar*), wherein the law on the interpretation of an exemption notification was restated authoritatively. On that basis, he contended that a person claiming the benefit of an exemption notification should satisfy the Court that the claim is covered by the exemption notification, and that ambiguity should be resolved in favour of the revenue. In this case, he contended that the Petitioner admittedly did not satisfy the prescription in the proviso as regards production of the certified copies of the relevant records from the office of the Registrar of Companies, Madras. For all these reasons, he submitted that the Petitioner is not entitled to the exemption. He also submitted that the issue before the Court is not whether VIL was a subsidiary of Voltas Limited but whether the companies were incorporated in the State of Tamil Nadu and whether they produced the records from the office of the Registrar of Companies, Madras.

9. I considered the oral and written submissions of the learned counsel for the respective parties and examined the materials on record.

10. The principal question that arises for consideration is whether the Petitioner is entitled to the benefit of exemption from stamp duty in respect of the Sale Deed. A claim for exemption should be tested against the relevant exemption notification or provision. In this case, the claim is based on G.O. Ms. No.1224. By G.O. Ms. No.37, entry 38 of G.O. Ms.No.1224 was modified by including a second proviso. The second proviso is as under:

"Provided further that the remission will apply only to cases of transfer of properties situated in the State of Tamil Nadu and to companies with their registered office in the State of Tamil Nadu."

VIL challenged the appellate order imposing stamp duty on the Sale Deed by filing W.P. No.20249 of 1999. This writ petition was allowed by order dated 29.06.2009 largely on the basis that G.O.Ms.No.37 was not applicable to the Sale Deed because it came into force in the year 2000, and the said order was not carried in appeal and attained finality. Therefore, the claim for exemption, in this case, should be tested entirely with reference to G.O.Ms.No.1224 and G.O. Ms.No.37 should not be taken into consideration.

11. The learned counsel for the Petitioner contended that the Petitioner is entitled to the exemption because the first condition in entry 38, i.e. that the vendor/transferor should, as on the date of transfer, hold at least 90% of the issued share capital of the purchaser/transferee is satisfied in this case, and I propose to examine if this is borne out by the materials on record. The admitted position is that the Sale Deed was executed by Voltas Limited (the Petitioner herein) in favour of VIL. At the relevant point of time, the Companies Act, 1956 was in force and Section 159 thereof mandated that every company having a share capital should file with the Registrar of Companies an annual return within 60 days of its annual general meeting. Such annual return was required to contain, inter alia, particulars of shareholders and directors and any changes thereto made after the previous annual general meeting. Upon perusal of the Annual Return of VIL, which was made up to 23.09.1997, it is clear that the total issued, subscribed and paid-up share capital of VIL was 6,00,000 shares of which the Petitioner held 5,99,994 shares as on 23.09.1997. An annual return is required to disclose all share transfers that took place between the date of the previous annual return and the current one. The aforesaid Annual Return does not disclose that any share transfers were effected between 05.08.1997 (the date of Sale Deed) and 23.09.1997. Therefore, it is clear that the share holding of

the Petitioner in VIL was 5,99,994 shares as on the date of execution of the Sale Deed, and this would constitute more than 99% of the issued share capital of VIL.

12. Against the aforesaid factual background, it becomes necessary to examine G.O.Ms.No.1224. The said Government Order dealt with reduction and remission in stamp duty. Entry 38 thereof is material for purposes of this case, and, therefore, the said entry 38 is set out below:

"(38) Instrument evidencing transfer of property between companies limited by shares as defined in the Companies Act, 1956, in a case where(i) at least 90 per cent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company(emphasis added), or (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other or (iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company.

Provided that a certified copy of the relevant records of the companies kept in the office of the Registrar of Companies, Madras, is produced by the parties to the instrument to prove that the conditions above prescribed are fulfilled."(emphasis added).

Upon examining the text of entry 38 of G.O.Ms.No.1224, it is evident that it provides for an exemption under any one of three circumstances. The first of these is where the vendor holds at least 90% of the issued share capital of the purchaser. As stated above, it is clear from the Annual Return of VIL, as of 23.09.1997, that Voltas Limited held 5,99,994 shares in the issued share capital of VIL. The total issued share capital of VIL was 6,00,000 shares at the relevant point of time. Thus, Voltas Limited held more than 99% of the issued share capital of VIL. Accordingly, the undoubted position is that the "at least 90%" share holding condition is fulfilled.

13.This leads to the next question as to whether the proviso imposes additional conditions and whether the Petitioner's claim for exemption is liable to be rejected on account of the proviso. In order to test this aspect, the text of the proviso should be examined closely. The proviso does not prescribe that the exemption is available only to companies which were incorporated by the Registrar of Companies, Madras or that the companies concerned should have their registered

offices in the State of Tamil Nadu as on the date of the transaction. Nonetheless, as contended by the learned AAG, can such a condition be read into the proviso on the basis that the unstated intention of the exemption notification was to grant exemption only to companies incorporated in Tamil Nadu? The general principle in the construction of tax statutes is that one adopts a textual interpretation without implying unstated intentions. In the context of an exemption notification, this question was examined by a Five Judge Bench of the Hon'ble Supreme Court in *Hansraj Gordhandas v. CCE*, AIR 1970 SC 755. The appellant therein relied on an exemption notification that applied to cotton fabrics produced on power looms owned by a cooperative society on the ground that the appellant had procured cotton fabrics from a cooperative society for its commercial use. The revenue opposed the claim on the ground that the exemption was intended to encourage cooperative mills that produced cotton fabrics for its own use and consisted of members who owned and operated power looms. This contention was rejected by the Hon'ble Supreme Court by concluding, *inter alia*, as under:

"5. The main contention on behalf of the appellant is that the case fell within the language of two notifications, dated July 31, 1959 and April 30, 1960 and the appellant was entitled to exemption from payment of excise duty on the cotton fabrics. The argument was stressed that the exemption applied to all cotton fabrics which were produced on power looms owned by the Cooperative Society or on power looms allotted to its members and it was not a relevant consideration as to who produced or manufactured such fabrics, whether it was the Society itself or its members or even outsiders. It was conceded by the appellant that it was the owner of the cotton fabrics. But even upon that assumption the claim of the appellant is that it was entitled to exemption from excise duty as it was covered by the language of the two notifications already referred to. In our opinion, the argument of the appellant is well founded and must be accepted as correct. The notification dated July 31, 1959 grants exemption to "cotton fabrics produced by any Cooperative Society formed of owners of cotton power looms which is registered or which may be registered on or before March 31, 1961" subject to four conditions set out in the notification. In the next notification dated April 30, 1960 exemption was granted to "cotton fabrics produced on power looms owned by any cooperative society or owned by or allotted to the members of the society, which is registered

or which may be registered on or before March 31, 1961" subject to, the conditions specified in the notification. It was contended on behalf of the appellant that under the contract between the appellant and the society there was no relationship of master and servant but the appellant supplied raw material and the contractor i.e. the Society produced the goods. But even on the assumption that the appellant had manufactured the goods by employing hired labour and was therefore a manufacturer, still the appellant was entitled to exemption from excise duty since the case fell within the language of the two notifications dated July 31, 1959 and April 30, 1960, and the cotton fabrics were produced on power-looms owned by the cooperative society and there is nothing in the notifications to suggest that the cotton fabrics should be produced by the Cooperative Society "for itself" and not for a third party before it was entitled to claim exemption from excise duty. It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the power looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the

plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon v. Salomon & Co.* [(1897) AC 22, 38] :

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

It is an application of this principle that a statutory notification may not be extended so as to meet a *casus omissus*. As appears in the judgment of the Privy Council in *Crawford v. Spooner* [6 Moo PCC 8] .

"... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there".

Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power looms by constituting themselves into Cooperative Societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications dated July 31, 1959 and April 30, 1960 and the appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of certiorari to quash the order of

Baroda dated November 26, 1962 and the appellate order of the Collector of Central Excise dated November 12, 1963."

14. Thus, the scope, ambit and implications of the proviso should be gleaned from the text thereof, including any necessary implications, and not from unstated intentions. The text of the proviso prescribes that a certified copy of the relevant records of the companies from the Office of the Registrar of Companies, Madras should be produced to prove that the conditions specified in the principal clause are fulfilled. Upon consideration of this proviso, it is clear that the production of the records of the companies is required for purposes of proving that Voltas Limited held at least 90% of the issued share capital of VIL. In view of the fact that neither Voltas Limited nor VIL were incorporated by the Registrar of Companies, Madras, it is not possible to produce any records from the Registrar of Companies, Madras in order to prove the above. To put it differently, the Registrar of Companies, Madras, would not possess records relating to two companies that were incorporated in the State of Maharashtra. This leads to the issue as to whether the inability of the Petitioner to produce records from the Office of the Registrar of Companies, Madras, would justify rejection of its claims for exemption.

15. For purposes of deciding the question raised in the preceding paragraph, it is necessary to examine the law relating to exemptions as well as the law relating to a proviso. In *Tvl. Transtonnelstroy Afcons Joint Venture, Rep. by its Authorised Signatory v. Union of India, Rep. by its Secretary and Others*, 2020 SCC Online Mad 2570, the Division Bench of this Court considered the text and context of the proviso to Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 and concluded that the said proviso performed the role of specifying not only the class of registered persons, who would be entitled to refund, but also curtailed such entitlement with reference to the source of accumulation of unutilised credit. The law on the interpretation of a proviso was considered therein with particular reference to the judgment of the Hon'ble Supreme Court in *S.Sundaram Pillai v. V.R.Pattabiraman* (1985) 1 SCC 591 (*Sundaram Pillai*). Paragraphs 27 and 43 of the judgment of the Hon'ble Supreme Court in *Sundaram Pillai* are relevant and the said paragraphs are extracted below:

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three

separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

Reference may also be made, in this regard, to the judgment of the Hon'ble Supreme Court in *H.E.H. Nizam's Religious Endowment Trust, Hyderabad v. Commissioner of Income Tax, Andhra Pradesh, Hyderabad*, AIR 1966 SC 1007, and *Institute of Chartered Financial Analysts of India and others v. Council of the Institute of Chartered Accountants of India and others* (2007) 12 SCC 210.

16. From the above judgments, the principles that may be gleaned are that a proviso qualifies a main enactment in any of several ways. It could play a larger or smaller role by exempting, excluding, restricting, acting as an addenda, or even take on the tenor and colour of the substantial enactment. The aforesaid role may be played by imposing conditions that would restrict the scope of the enacting clause or by prescribing methods to satisfy the conditions prescribed in the enacting clause. Thus, the position that emerges is that the text of the proviso concerned should be subjected to close scrutiny so as to understand the scope and implications thereof. The proviso to entry 38 of G.O. Ms.

exemption. This is clear from the fact that it calls for the production of the records of the companies concerned so as to prove fulfilment of the conditions in the enacting clause. Nonetheless, is the method of proof prescribed therein of the essence of the exemption notification? We turn to this question next.

17. On the interpretation of an exemption notification, the learned counsel for the Petitioner relied upon the judgment of the Hon'ble Supreme Court in M.A.Tulloch, whereas the learned Additional Advocate General relied upon the judgment in Grasim Industries, Wood Papers and Dilip Kumar. The law on the interpretation of exemption provisions and exemption notifications is no longer res integra and has been authoritatively settled by judgments of the Hon'ble Supreme Court. For the present purposes, it is sufficient to refer to four judgments. In Wood Papers, it was held as under in paragraph 4:

"4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the

factory as it existed prior to 1964 is covered in the notification."

18. In *M.A.Tulloch*, which was relied upon by the learned counsel for the Petitioner, the Hon'ble Supreme Court concluded that the production of a declaration under Rule 27 (2) of the Orissa Sales Tax Rules is not mandatory and that it would be sufficient if the dealer adduces other evidence to establish entitlement to the deduction. Paragraphs 24 and 25 of the said judgment are set out below:

"24. It is plain from the terms of Section 5(2)(a)(ii) that a selling dealer is entitled to a deduction in respect of sales to a registered dealer of goods, if the goods are specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa. No other condition is imposed by the above section. The proviso deals with consequences that follow if the purchasing dealer uses them for purposes other than those specified in his certificate of registration, and directs that, in that event, the price of goods so utilised shall be included in his turnover. Therefore, there is nothing in the section itself that disentitles a selling dealer to a deduction, but if the contingency provided in the proviso occurs, then the price of goods is included in the taxable turnover of the buying dealer. But Mr Ganapathy Iyer says, be it so, but the rule-making authority is entitled to make rules for carrying out the purposes of the Act, and Rule 27(2) is designed to ensure that a buying dealer's certificate of registration does, in fact, mention that the goods are intended for resale by him, and for that purpose it has chosen one exclusive method of proving the fact before a Sales Tax Officer. He further urges that no other method of proving that fact is permissible. Rule 27(2) is mandatory and if there is breach of it the selling dealer is not entitled to deduction. The learned counsel for the respondent, on the other hand, contends that Rule 27(2) is directory. He points out that the word "shall" should be read as "may", in the context. He further says that supposing the selling dealer brought the original certificate of registration of a buying dealer and produced it before the Sales Tax Officer, according to the appellant, this would not be enough, but this could never have been intended. In our opinion, Rule 27(2) must be reconciled with the section and the rule can be

reconciled by treating it as directory. But the rule must be substantially complied within every case. It is for the Sales Tax Officer to be satisfied that, in fact, the certificate of registration of the buying dealer contains the requisite statement, and if he has any doubts about it, the selling dealer must satisfy his doubts. But if he is satisfied from other facts on the record, it is not necessary that the selling dealer should produce a declaration in the form required in Rule 27(2), before being entitled to a deduction (emphasis added).

25. We are, therefore, of the opinion that the High Court came to a correct conclusion. The High Court is correct in holding that the production of declaration under Rule 27(2) is not always obligatory on the part of a selling dealer when claiming the exemption. It is open to him to claim exemption by adducing other evidence so as to bring the transaction within the scope of Section 5(2)(a)(ii) of the Act. In this case, the Sales Tax Officer was satisfied by a mere statement of the dealer and it has not been shown that in fact the registration certificate of the buying dealer, M/s S. Lal and Co., did not contain the statement that the goods were intended for resale by him in Orissa."

19. Similarly, in Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and Others (2011) 1 SCC 236 (Hari Chand), the Hon'ble Supreme Court restated the principle that an exemption notification should be subjected to strict interpretation but also formulated the "substantial compliance" principle. Paragraphs 29 to 34 thereof are as follows:

"29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in

nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

30. In *Novopan India Ltd.* [1994 Supp (3) SCC 606] this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. CCE and Customs* [AIR 1970 SC 755 : (1969) 2 SCR 253] held that (*Novopan India Ltd. Case* [1994 Supp (3) SCC 606] , SCC p. 614, para 16)

"16. ... such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption.

31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished (emphasis added). In *Tisco Ltd.* [(2005) 4 SCC 272] this Court held that the principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be

expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements(emphasis added). Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

20. In Dilip Kumar, the Hon'ble Supreme Court pronounced authoritatively on the interpretation of exemption notifications and concurred with the "substantial compliance" formulation in Hari Chand. Paragraphs 59,60 and 66 thereof are as follows:

"59. The above decision, which is also a decision of a two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] deduced as follows: (Wood Papers Ltd. Case [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , SCC p. 262, para 6)

"6. ... Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally."

60. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] .

66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] stand overruled.

21. Upon examining the aforesaid judgments, the following illustrative principles are discernible as regards interpretation of exemption provisions or notifications:

(i) An exemption provision or notification is required to be construed strictly as regards eligibility conditions.

(ii) Any ambiguity in the exemption provision or notification in a fiscal statute, as regards applicability, would be construed in favour of the revenue.

(iii) Once the eligibility conditions are satisfied, it is sufficient if there is substantial compliance with the over all requirements of the exemption provision or notification.

(iv) In order to test whether there is substantial compliance, it is necessary to ascertain whether essential requirements for availing the exemption have been fully satisfied.

(v) All eligibility conditions for an exemption would be construed as essential, whereas methods of proving the fulfilment thereof would not be construed as essential provided there are reasonable alternative methods of proving fulfilment thereof.

(vi) Because the method of establishing fulfillment of conditions for availing an exemption would ordinarily be construed as non-essential and a matter of form and not substance, if the party claiming exemption establishes its claim by a reasonable alternative method, the Court may apply the "substantial compliance" test

and hold that the claimant is entitled to exemption.

22. The principles adumbrated in the preceding paragraphs should be applied to the present dispute. As regards the proviso to entry 38 of G.O.Ms.No.1224, I find that the proviso does not prescribe conditions to be fulfilled in order to avail the exemption. Instead, the proviso specifies a method of proving that such conditions have been satisfied. As stated earlier, the method of proof provided in the proviso is the production of the relevant records of the companies kept in the office of the Registrar of Companies, Madras. Given the fact that both Voltas Limited and VIL were incorporated in the State of Maharashtra, it is not possible to produce records from the Registrar of Companies, Madras in order to prove the entitlement of the Petitioner. Instead, the Petitioner produced certified copies of the balance sheet and annual returns from the records of the Registrar of Companies, Bombay.

23. Therefore, the question arises as to whether the Petitioner has fulfilled all conditions and requirements, wholly or substantially, to avail the exemption. As regards fulfillment of conditions, entry 38 of G.O.Ms.No.1224 prescribed three circumstances in which there would be entitlement to exemption. Upon perusal of the Annual Return of VIL, there is no doubt at all that Voltas Limited held more than 99% of the issued share capital of VIL as on the date of the Sale Deed. In effect, the Petitioner undoubtedly fulfilled the condition prescribed in the principal clause. More significantly, the text of entry 38 of G.O. Ms.No.1224 does not disclose the intention to restrict the exemption to companies which were incorporated by the Registrar of Companies, Madras, or have their registered offices in Tamil Nadu. If that were the intention, the proviso would have been broadly in the following terms:

"Provided that the companies concerned were incorporated by the Registrar of Companies, Madras or have their registered offices in the State of Tamil Nadu."

24. Needless to say, the proviso does not specify any thing to the above effect. The second proviso in G.O.Ms.No.37 imposes the condition that the registered offices of the companies should be in Tamil Nadu but G.O.Ms.No.37 has been held to be inapplicable to this transaction. The other aspect to be considered is whether the production of certified copies of the relevant records from the Registrar of Companies, Madras is an essential requirement for availing the exemption. The question could be framed as follows: is the claim for exemption liable to be rejected because the Petitioner was unable to produce records from the Registrar of Companies, Madras in order to prove the fulfillment of the eligibility condition and instead produced records from the Registrar of

Companies, Mumbai, Maharashtra? As stated earlier, the production of the relevant records of the companies concerned from the Registrar of Companies, Madras is not a condition for availing the exemption, and, on the contrary, is merely a method of proving that the conditions specified in the principal clause are fulfilled. The Petitioner produced the records from the office of the Registrar of Companies, Mumbai, Maharashtra, to prove the fulfillment of the condition. Both the Registrar of Companies, Mumbai, and the Registrar of Companies, Madras/Chennai are statutory authorities functioning under the Ministry of Corporate Affairs, Government of India. As a corollary, the production of records from the office of the Registrar of Companies, Mumbai to establish compliance with the condition is an acceptable near substitute and clearly qualifies as a reasonable alternative method of proving compliance with the condition. Hence, in my view, on application of the 'substantial compliance' principle, as formulated in Hari Chand and restated with approval in Dilip Kumar, the Petitioner is entitled to the benefit of exemption from stamp duty in terms of G.O.Ms.No.1224. Accordingly, the impugned order dated 31.12.2009 is liable to be quashed because the said order has been passed on the basis that the Petitioner could not produce records from the Registrar of Companies, Madras as prescribed in G.O.Ms.No.1224. For reasons set out above, the said conclusion in the impugned order is untenable. Accordingly, I conclude that the Petitioner is entitled to the benefit of G.O.Ms.No.1224 as regards the Deed of Conveyance dated 05.08.1997.

25. In fine, the impugned order is quashed and the writ petition is allowed on the above terms. Consequently, connected miscellaneous petition is closed. No costs.

-sd-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

rrg

To

- 1.The Secretary to the Government,
The State of Tamilnadu
Commercial Taxes & Religious Endowments
Department, Fort St. George,
Chennai – 600 009.

2.The Secretary to the Government,
The State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.

3.The Chief Controlling
Revenue Authority & Inspector General of
Registration,
Office of the Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 600 028.

4.District Registrar,
(A.I.G) Cadre,
Chennai North,
No.1, Moorthigal Street,
Chennai - 600 001.

5.The Joint Registrar II
Chennai North,
No.1, Moorthigal Street,
Chennai - 600 001.

+1 C.C. to MR.N.Muthukumar Advocate SR.NO. 39368

+1 C.C. to The Government Pleader High Court Madras
104 SR.NO. 39052

Pre-Delivery Order in
W.P.No.8292 of 2010

LN (CO)

VS 19.12.2020

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