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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.[MD]No.1692 of 2014
and
M.P.[MD]No.1 of 2014

The Hotel Annapoorna Tower,
Rep. by its Sole Proprietor,
T.Navaneethakrishnan,
S/o.Thangaraj,
No.48, Kuruvikaran Salai,
Anna Nagar,
Madurai. : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Law Department,
Fort St. George,
Chennai.

2.The Secretary to Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

3.The Managing Director,
Tamil Nadu State Marketing Corporation,
CMDA Tower, 4th Floor,
Gandhi Irwin Bridge Road,
Egmore,
Chennai - 600 008.

4.The District Manager,
Tamil Nadu State Marketing Corporation,
Madurai District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring the impugned Amendment to the Tamil Nadu Value Added Tax Act, 2006 under Act No.28 of 2013 published by Extra-ordinary Notification vide Part-IV Section 2 in the Tamil Nadu Government Gazette dated 08.11.2013 as ultravires, illegal, unforceable, unconstitutional and consequently to hold that the said act is not applicable for the F.L. - 3 Licences granted by the third respondents and forbearing the

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respondents from levying any tax retrospectively from 01.04.2013.

For Petitioner : Mr.V.R.Venkatesan
For Respondents 1&2 : Mrs.J.Padmavathi Devi
Special Government Pleader
For Respondents 3&4 : Mr.H.Arumugam,
Standing Counsel

O R D E R

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[Order of the Court was made by **Subramonium Prasad, J.**]

The challenge in the instant writ petition is to the amendment of the Tamil Nadu Value Added Tax Act, 2006, by way of Act 28 of 2013 and more particularly, the applicability of the Act retrospectively.

2.Similar challenge was made in W.P.(MD)Nos.19910 to 19912 of 2013 etc., batch, and this Bench, by order dated 17.12.2019, has accepted the contention of the assessees and has struck down the demand made between 01.04.2013 to 07.11.2013. However, the Bench upheld the applicability of the Government Order insofar as the demand is concerned from the date of notification. Paragraph Nos.7 to 11 of the said order, reads as follows:-

> *"7.A perusal of the ratio of the said decision, which was in relation to an imposition of a direct tax being applied retrospectively, would reveal that the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset.*
>
> *8. In our considered opinion, in the instant case, the principle will apply more squarely as this is a case of indirect tax where the burden of collecting tax on the petitioners lay from the customers who have already purchased the goods and have disposed of any tax liability with the completion of the transaction of sale without there being any indication in the statute for imposition of any future deferred tax. The result, therefore, is that the petitioners cannot now realise tax in respect of goods already sold to the customers for which there was no statutory liability nor was there any existence of a specific charging section for realisation of such tax retrospective that is, of course, confined only to the period from 01.04.2013 to 07.11.2013.*
>
> *9. As already indicated above, the grievance of the petitioners stands narrowed down only to this period of the transactions in relation to the aforesaid financial*

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year and therefore, even though it was neither a benefit nor an exemption, yet inflicting an imposition later on clearly amounts to retrospectively realising a tax on the sale of the goods which under the impugned Government Order was not leviable to tax for the aforesaid period. Thus, the burden or the liability on the petitioners for the said period as created by the notices issued to the petitioners by the respondent Tax Department are unsustainable in law. The same, in our opinion, amounts to an unreasonable and an unfair imposition of liability which does not find support from the statutory provisions, as a taxing statute in our opinion has to be construed strictly for imposing any liability.

10. It is trite that a fiscal legislation imposing tax is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of tax law that the law to be applied is that which is force for the assessment year in question until otherwise provided expressly or by necessary implication. The rule applies to the charging sections and other substantive provisions. A provision which has the effect of opening up liability will be subject to the rule of strict construction. A legislation cannot be given a greater retrospectivity than is expressly mentioned in the statute nor can such a provision be construed to initiate recovery of liability or commence proceedings in relation thereto in the absence of any charging provision. The impugned realisation sought to be made from the petitioners through the notices of demand would ultimately turn out to be unduly oppressive and confiscatory in nature, inasmuch as by virtue of the impugned liability created under the provisions under challenge, tax would be realised in respect of transactions that have already attained finality and stand foreclosed as the goods have already been supplied by the petitioners to their customers who are no longer available for meeting any such liability that has been created subsequently by virtue of the impugned Government Order.

11. We also find that the period of liability in respect of all the petitioners extending from 01.04.2013 to 07.11.2013 had been protected by an interim measure through the orders of this Court."

3.It has been pointed out by the learned counsel for the petitioner that notices were issued in writ petition and interim order has been passed restraining the Government from taking any coercive measure under the Government Order.

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4.In view of the above, we set aside the demand notice issued under the impugned Government Order demanding tax prior to the notification that is between 01.04.2013 to 07.11.2013.

5.The Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
State of Tamil Nadu,
Law Department,
Fort St. George,
Chennai.

2.The Secretary to Government,
Commercial Taxes and Registration Department,
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4.The District Manager,
Tamil Nadu State Marketing Corporation,
Madurai District.

+1 CC to M/s.SPL.GP (SR-8404[F] dated 26/02/2020)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-8551[F] dated 26/02/2020)

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-8617[F] dated 27/02/2020)

ORDER MADE IN
W.P.[MD]No.1692 of 2014
25.02.2020

KK/06.03.2020/4P-8C

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