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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-09-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.16595 to 16598 of 2008

And

M.P.Nos.1, 1, 1 and 1 of 2008

M/s Radel Electronics Pvt. Ltd.
Represented by its Manager,
Mrs. Santhoshi Janardhan,
Challa Mall, 203, 2nd Floor,
No. 11 & 11A, Sir Thyagaraya Road,
T.Nagar,
Chennai - 17.

... Petitioner in all WPs

Vs

The Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.

... R-1 in WPs 16595,
16597 & 16598/2008

Commissioner of Commercial Tax
Ezhilagam,
Chepauk,
Chennai - 05.

.... R-2 in WPs 16595, 16597
& 16598/2008/
R-1 in WP 16596/2008,

Deputy Commercial Tax Officer,
Office of the Commercial Tax Officer,
Nandanam Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.

... R-3 in WPs 16595, 16597
& 16598/2008/
R-2 in WP 16596/2008

WP 16595 of 2008 is filed Under Article 226 of the Constitution of India, for the issuance of a Writ of Declaration, declaring the impugned G.O.MS No.193 (CT & R (B2) dated 30.12.2006 as ultravires Section 17 of the TNGST Act, Article 14, 19 (1) (g) and 265 of the Constitution of India and



therefore requires to be declared invalid,

WP 16596 of 2008 is filed Under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records comprised in Clarification Lr.No.VAT Cell/8567/2008 A2 (VCC No.1510) dated 18.06.2008 on the file of the first respondent and quash the same.

WP 16597 of 2008 is filed Under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records comprised in Impugned Notice in CST No.818386/2005-06 dated 12.10.2007 on the file of the third respondent and quash the same.

WP 16598 of 2008 is filed Under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records comprised in Impugned Notice in TNGST No.1581900/2005-06 dated 12.10.2007 on the file of the third respondent and quash the same.

For Petitioner in all Wps : Ms.Anuradha P.M.

For Respondents in all WPs: Mr.V. Nanmaran,
Government Advocate.

C O M M O N O R D E R

The writs on hand are filed questioning the validity of G.O.MS No.193 (CT & R (B2) dated 30.12.2006 as ultravires Section 17 of the TNGST Act, Articles 14, 19 (1) (g) and 265 of the Constitution of India and liable to be declared as null and void, Clarification Lr.No.VAT Cell/8567/2008 A2 (VCC No.1510) dated 18.06.2008, Impugned Notice in CST No.818386/2005-06 dated 12.10.2007 and Impugned Notice in TNGST No.1581900/2005-06 dated 12.10.2007 on the file of the third respondent and quash the same.

2. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at Bangalore and engaged in the manufacture and sale of Indian Musical Instruments.

3. The petitioner-Company states that they are pioneer in the field of electronic musical instruments and teaching and practice aids for music. The abovesaid Company is operating for more than about 4 decades and has designed, developed, manufactured and marketed unique Indian Musical Instruments, which operates on electronic principles, that has found wide acceptance amongst top musicians as well as Teachers, Students,



Music Colleges, Universities and Government Institutions such as Akashvani, across the country. The Department of Secondary Education in Karnataka has permitted these instruments to be used in music examinations.

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4. The learned counsel for the petitioner contended that the petitioner had claimed exemption on the sales of the Indian Musical Instruments in terms of G.O.Ms.No.45/CT(B2) dated 12.02.2004, which exempted sales of Indian Musical Instruments. The said Notification reads that "exemption in respect of tax payable by any dealer on the sale of Indian Musical Instruments". Thus, any item which qualifies as Indian Musical Instrument is eligible for exemption. The said Notification does not impose any further condition such as the composition of the instrument or the source/mode of operation of the instrument to qualify for the exemption.

5. The said Notification issued in G.O.Ms.No.45, dated 12.02.2004, under Section 17 of the TNGST Act was superseded by G.O.Ms.No.193 (CT & R (B2) dated 30.12.2006. The said Government Order reads as under:-

"Notification IX : G.O.Ms.No.193, Commercial Taxes and Registration (B2) dated the 30th December, 2006 No.II(1)/CTR/58(h-10)/2006 - In exercise of the powers conferred by sub section (1) of Section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and in supersession of the Commercial Taxes Department Notification No.II (1) CT/72(a-5) 2004, published in Part II-Section 1 at page 3 of the Tamil Nadu Government Gazette Extraordinary, dated 12th February, 2004, the Governor of Tamil Nadu hereby makes an exemption in respect of tax payable by any dealer under the said Act, on the sale of Indian Musical Instruments namely, Veena, Violin, Tambura, Mirdangam, Ghatam, Khanjira, Flute, Sitar, Sarod, Santoor, Dilruba, Nadaswaram, Dolu, Tabla, Shenai, Pakwaz, Vichitra Veena, Gottu Vadyam, Morsing, Changle, Triangle, Rudraveena, Sarangi, Thalam, Dholak, Dholki, Thavil, Magudi, Salangai, Sangu, Uthu, Edakka, Mathalam, Chendai, Sruti Box, Tar Shenhai, Mahanaveena, Kanjeeris, Urumi, Kombu, Panchaloga Vadyam, Mandolin, Udukku, Khol, Horns, Nagara, Jalatharangam, Villadi Vadyam and parts and accessories thereof



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shall be added.

2. This Notification shall be deemed to have come into force on the 12th day of February, 2004."

6. The learned counsel for the petitioner reiterated that the above impugned Notification clearly curtails and narrows down the benefit conferred by G.O.Ms.No.45/CT (B2) dated 12.02.2004, since while the Notification dated 12.02.2004 exempted all Indian Musical Instruments, the same while being superseded by Notification dated 30.12.2006 restricts it only to items enumerated in the said Notification.

7. It is contended that the Notification issued on 30.12.2006, curtailing and whittling down the benefit is made retrospectively by the delegatee viz., the State Government, which is clearly beyond the scope of its power conferred under Section 17 of the TNGST Act from 12.02.2004.

8. Relying on Section 17 of the TNGST Act, which provides power of Government to notify exemptions and reductions of tax, the learned counsel for the petitioner states that the manner in which the impugned Notification was issued classifying the Indian Musical Instruments is in violation of Section 17 itself.

9. In view of the impugned Notification dated 30.12.2006, the respondents have issued the impugned notice proposing to reject the petitioner's claim of exemption by placing reliance on G.O.Ms.No.193, dated 30.12.2006 on the ground that the said Notification is a clarification and therefore, it is to be applied from the date of the original Notification on 12.02.2004.

10. The learned counsel for the petitioner is of an opinion that under First Schedule Part C Entry 49A of the TNGST Act, the Legislators had specifically stated of the Typewriters (excluding electronic typewriters). However, no such descriptions are provided in the impugned order and therefore, in the absence of express condition, the petitioner-Company is entitled for an exemption as they are the manufacturers of Indian Musical Instruments.

11. It is not stated whether the Indian Musical Instrument is manufactured either electronically or manually. In the absence of any such specific description in the Act, there is no reason for denying the benefit of exemption granted by the Government, especially for the Indian Musical Instruments.



12. In this regard, the learned counsel for the petitioner relied on the judgment of the Karnataka High Court in the case of State of Karnataka vs. Radel Electronics Pvt Ltd [pronounced on 02.11.2012 in STRP No.109 of 2011], the petitioner in these writ petitions.

13. The Karnataka High Court interpreted the Indian Musical Instruments, more specifically, 'Shruthi Box' and 'Tabala' in paragraph-9 of its judgment, which reads as under:-

"9. With regard to Shruthi box and Tabala, although they do not bear the appearance and shape of Tabala and traditional Shruthi box but they play the music of traditional Tabala and Shruthi box. It may be that electronic chips are fitted in the said instruments with prerecorded tunes and sounds but the dominant function of the said instruments is to play the music of Indian musical instruments. The need of skills to play the traditional Shruthi box and Tabala is dispensed with. The vocalist by switch of a button can have the tunes and musical sounds to suit the convenience. It is said that two instruments are of great assistance to the beginners for the music in practice. Merely because the said instruments have prerecorded chips, the dominant function of the said instruments is to play the role of Indian musical instruments. The said two instruments are only used in practice and not in concerts. In order to use the said instruments, the vocalist should have necessarily have the basic knowledge of thalas and ragas in order to use the instruments in their practice. Merely because they have shape of a tape-recorder and electronic chips fitted in, it cannot be said that they do not be called as Indian musical instruments because the functional features of the said instruments is very much that of traditional Shruthi box and traditional Tabala. It should be noted that the market for these instruments are very very marginal. There is a decline in the musical taste of the people towards the Indian music and Indian musical instruments. It is said that Shruthi box and Tabala manufactured by the assessee are very much necessary for the beginners who practice in music. In fact these instruments would play a tune for the



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practicing vocalist. Therefore, in order to propagate the object of Entry 15(i) of the Second Schedule of the Karnataka Sales Tax Act, 1957, to promote Indian music and Indian musical instruments, it is just and necessary to hold that all the instruments come under the definition within the purview of Entry 15 (i) and should be taxed. Accordingly, the revision is dismissed."

14. Relying on the above observations made in the judgment of the Karnataka High Court in the case of State of Karnataka vs. Radel Electronics Pvt Ltd (cited supra), the petitioner made a submission that Indian Musical Instruments manufactured electronically are also eligible to be classified as Indian Musical Instruments and therefore, the petitioner is entitled for exemption from payment of tax.

15. The learned Government Advocate, appearing on behalf of the respondents, disputed the said contentions raised by the learned counsel for the petitioner, by stating that the exemption is provided to encourage the poor artisans, who are engaged in the manufacturing of those instruments from generation to generation, who are normally living in penurious circumstances. There is another angle in granting such relief, which is to make available within the reach of poor and needy artisans, so as to develop the traditional Indian Music as far as possible, which is synonymous of Indian culture and tradition.

16. In these cases, the petitioner-Company having their manufacturing facility at Bangalore are manufacturing and selling electronic Musical Instruments. All the Musical Instruments manufactured and sold by the petitioner were electronically operated Indian Musical Instruments and they have not sold any Indian Musical Instruments other than as operated by electronic musical system. The petitioner under the guise of selling musical instruments is only marketing the electronic instruments manufactured en masse with only aim of making profit in the business. Therefore, the third respondent has correctly approached the issue by issuing pre-revision notices by treating the electronic musical instruments sold by the petitioner as falling under Item 14(iv) of Part D of First Schedule taxable at 12%. On the same analogy, similar revision notice has also been issued for the corresponding CST turnover for the year 2005-2006.

17. The petitioner-Company have challenged the Notification issued in G.O.Ms.No.193, dated 30.12.2006 on the ground that once exemption granted under sub-section (1) of Section 17 cannot be cancelled or varied under sub-section (3) of Section 17 with retrospective effect. The abovesaid



contention of the petitioner is mainly relied upon the decision of this Court in the case of G.Packirisamy and Co. vs. State of Tamil Nadu [(1995) 099 STC 0021], which was followed by the subsequent decision of this Court in the case of Honest Corporation vs. State of Tamil Nadu [(1999) 113 STC 0026].

18. In these cases, while issuing amendment under sub-section (3) of Section 17 in G.O.Ms.No.193, dated 30.12.2006, earlier Notification was neither cancelled nor varied with retrospective effect. As a matter of fact, in the earlier Government Order, exemption was granted on the sale of Indian Musical Instruments. In the subsequent Government Order also, exemption was granted for the Indian Musical Instruments. As in the earlier Government Order, even though exemption was granted for sale of Indian Musical Instruments, they were not sufficiently enumerated which resulted in difficulty and unsettlement in identifying the said Indian Musical Instruments. In order to clarify the doubts and difficulties, these musical instruments were exclusively enumerated in the later Government Order. By this act, it cannot be said that the scope of the earlier Government Order was neither narrowed down nor curtailed nor withdrawn retrospectively. On the other hand, more clarity has been introduced and therefore, there is no question of giving retrospective effect to the earlier Government Order.

19. The electronic musical instruments as manufactured by the petitioner would squarely fall under Item 14(iv) of Part D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 and therefore taxable at 12%. The above Entry starts with the term 'electronic instruments', which is comprehensive enough to bring within its fold electronic musical instruments also.

20. It is the contention of the petitioner in the affidavit that the goods enumerated under the said Entry are quite different from the musical instruments and therefore, the said Entry is not appropriate to the goods manufactured by them. The items which cannot straightaway be treated as electronic by their very names such as cash registers, tabulating and calculating machines etc., have been specifically enumerated in the Entry and this does not mean that the principle of ejusdem generis has to be applied in order to identify as to whether a particular item is electronic instrument or not.

21. It is contended that the writ petitions are preferred against the notice inviting objections. If at all the petitioner is having any documentary evidences in respect of their contentions, it is for them to place the said documents before the Authority Competent. Contrarily, the writ petitions against such notice need not be entertained as they are not maintainable.



22. Considering the arguments, this Court is of an opinion that the exemption was granted initially in Notification G.O.Ms.No.45, dated 12.02.2004. In the said Notification, it is generally stated that the exemption in respect of tax payable by any dealer in sale of Indian Musical Instruments. In view of the fact that the Commercial Taxes Department found certain difficulties, inconsistency and discrepancy, though not to describe further in respect of classification of Indian Musical Instruments. Situation warranted for issuing the subsequent order in G.O.Ms.No.193, dated 30.12.2006.

23. A close reading of these two orders would reveal that Notification in G.O.Ms.No.45 was issued under Sub-section (1) of Section 17 of the TNGST Act, 1919, granting exemption on the sale of Indian Musical Instruments. The subsequent Notification was issued stating that an exemption in respect of the tax payable by any dealer under the said Act, on the sale of Indian Musical Instruments namely, Veena, Violin, Tambura, Mirdangam, Ghatam, Khanjira, Flute, Sitar, Sarod, Santoor, Dilruba, Nadaswaram, Dolu, Tabla, Shenai, Pakwaz, Vichitra Veena, Gottu Vadyam, Morsing, Changle, Triangle, Rudreveena, Sarangi, Thalam, Dholak, Dholki, Thavil, Magudi, Salangai, Sangu, Uthu, Edakka, Mathalam, Chenadi, Sruti Box, Tar Shenhai, Mohanaveena, Kanjeeris, Urumi, Kombu, Panchalogavadyam, Mandolin, Udukku, Khol, Horns, Nagara, Jalatharangam, Villadi Vadyam and parts and accessories thereof shall be added.

24. Perusal of these two Notifications would reveal that both relate to Indian Musical Instruments. However, in the first Notification, the details/classification of Indian Musical Instruments have not been provided and in the subsequent Notification, it is clearly stated that the exemption in respect of the tax payable by any dealer under the said Act on the sale of Indian Musical Instruments namely, Veena, Violin etc. Thus, the subsequent Notification dated 30.12.2006 is only in the nature of clarification to understand what are all the instruments falling under the head of 'Indian Musical Instruments'. The benefit of exemption is not taken away and the benefit of exemptions conferred in Notification G.O.Ms.No.45 remains in tact. The subsequent Notification was issued on 30.12.2006 enumerating the list of instruments which all are falling under the category of Indian Musical Instruments. Thus, the impugned notice dated 30.12.2006 cannot be construed as if an alteration made in respect of the exemption granted in Notification G.O.Ms.No.45.

25. Even in the counter, the respondents have clearly stated that the intention in granting exemption of tax on Indian Musical Instruments is to grant relief to poor artisans, who are engaged in the manufacture of those instruments from generation



to generation, who are normally living in penurious circumstances and further to make available such instruments within the reach of poor and needy artisans, so as to develop the traditional Indian music in India. Thus the purpose and object of the exemption must be for Indian Musical Instruments are well enumerated by the respondents.

26. As rightly pointed out by the respondents, the State has not intended to grant exemption in respect of large scale manufacturers of electrically made Indian Musical Instruments. Such Indian Musical Instruments, which all are using the electronic technologies, then it is to be classified as electronic instruments, which would squarely fall under 14 (iv) of Part D of the First Schedule of TNGST Act, 1959.

27. This apart, when tax liability is fixed for electronic instruments, it is to be construed that Indian Musical Instruments electrically manufactured is to be classified as electronic instruments.

28. At the outset, whether it is Indian Musical Instruments or any other instruments, if it is an electronic instrument, then the same would fall under the further classification of "electrical instruments" and cannot be construed as traditionally manufactured Indian Musical Instruments, for which exemption was granted with the specific intention to grant the relief to poor artisans, who all are engaged in the manufacturing of these instruments from generation to generation and living in penurious circumstances in the State.

29. Tax exemption is a concession. Thus, exemption from payment of tax can never be claimed as a matter of right. Exemptions are to be granted strictly in consonance with the provisions of the Act. Thus, purposive and contextual interpretation of exemption provisions are imminent for the purpose of extending the benefit of exemption. The Government is vested with the power to grant exemption and such exemptions are to be granted in judicious manner. Power of exemption is conferred in order to minimise the inequality and to mitigate the unjust circumstances and to ensure that the Constitutional principles are achieved to the extent possible. Thus, exemptions granted under any Statute is to be measured with reference to the Constitutional principles and its perspectives. Excessive or erroneous exercise of power of exemption undoubtedly would lead to unconstitutionality. The State is duty bound to ensure that exemptions are granted to mitigate the unjust circumstances and to remove the injustice in a particular issue. Thus, exemptions cannot be granted in a routine manner, so as to facilitate the large scale manufacturers to gain profits in an unjust manner.



The Legislative intention of conferring power of exemption to the Government is to enforce the Constitutional principles of social justice equality in status amongst the citizen, including the economic status, which all are to be achieved. The power of exemption is to be utilised for the up-liftment of the depressed, oppressed and the poor class of people and not for the purpose of granting benefit to the large profit making organisations. Thus, any abuse or excessive grant of exemption is to be construed as opposed to public policy under the Constitutional philosophy.

30. In these cases, as discussed in the aforementioned paragraphs, exemptions granted by invoking Section 17 of the TNGST Act, remains as it is in respect of Indian Musical Instruments and the impugned Notification dated 30.12.2006 in G.O.Ms.No.193 was issued to clarify the Indian Musical Instruments, which all are falling under the exemption clause notified in G.O.Ms.No.45, dated 12.02.2004 and therefore, the subsequent Notification is a clarificatory in nature and cannot be construed as cancellation of the exemption granted in G.O.Ms.No.45, dated 12.02.2004.

31. The very Government Notification dated 30.12.2006 in G.O.Ms.No.193 would reveal that it is also relatable to Indian Musical Instruments and what are all the instruments, which all are falling under the category are enumerated for the purpose of removing the doubts for levying tax.

32. This being the scope of the order impugned, this Court do not find any merit on the contentions raised on behalf of the petitioner. Further, the writ petitions are filed challenging the Notice. No writ against the notice is to be entertained in a routine manner. If at all the petitioner is aggrieved, they are bound to file their objections along with the documents and the evidences.

33. For all these reasons the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.
 2. Commissioner of Commercial Tax,
Ezhilagam,
Chepauk,
Chennai - 05.
 3. Deputy Commercial Tax Officer,
Office of the Commercial Tax Officer,
Nandanam Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.
- +1cc to the Special Government Pleader, (Taxes), High Court,
Madras, S.R.No.44943

W.P.Nos.16595 to 16598 of 2008

CA(CO)
SU(18/10/2021)