IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.4355 of 2008, 36068 of 2004, 16051 of 2005,
4563, 5830, 5831, 8396 & 9011 of 2008,
21104 of 2009, 29013 to 29015 of 2011,
17 of 2014, 29404 of 2015, 22822 & 22823 of 2016, 762 & 763 of 2017,
3802, 11345 to 11347, 13428, 15964 & 16833 of 2018
and
W.P.(MD).Nos.4527 of 2009 & 5612 & 5613 of 2014
and
M.P.Nos.1 of 2008 (In 5 cases), 1 of 2009, 1 of 2011 (In 3 cases),
1 of 2014, 1 of 2015 & 2 of 2008
and
W.P.M.P.No.43397 of 2004 & W.V.M.P.No.340 of 2007
and
M.P.(MD) Nos.1 of 2009 & 1 of 2014 (In 2 cases)

M/S.APPASAMY ASSOCIATES,
REP. BY ITS PARTNER,
NO.20, SBI OFFICERS COLONY,
FIRST STREET, ARUMBAKKAM,
CHENNAI 600 106.

... PETITIONER in W.P.No.4355 of 2007

M/S APPASAMY ASSOCIATES
REP. BY P.S.N.APPASAMY PARTNER,
NO.20, SBI OFFICERS COLONY,
FIRST STREET, ARUMBAKKAM,
CHENNAI 600 106.

... PETITIONER in WP No.36068 of 2004

EXCEL OPTICS PVT.LTD.
56 THIRD EAST CROSS ST AMARAVATHI NAGAR
ARUMBAKKAM CHENNAI-16

... PETITIONER in WP No.16051 of 2005

ALERGAN INDIA LTD.
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
V.S.PRAKASA SRAO 89 NO 81 LUZ CHUCH ROAD
MYLAPORE CHENNAI 4

... PETITIONER in WP No.4563 of 2008

M/S.TOWA SALES CORPORATION
REP BY ITS POWER OF ATTORNEY
MR.M.MEENATCHI SUNDARAM
NO.152 GREAMS ROAD CHENNAI 6.
... PETITIONER in WP No.5830 of 2008

M/S.TOWA SALES CORPORATION
REP BY ITS POWER OF ATTORNEY
MR.M.MEENATCHI SUNDARAM
152 GREAMS ROAD CHENNAI 6.
... PETITIONER in WP No.5831 of 2008

M/S. A1 OPTICS LTD
REP. BY ITS DIRECTOR
NO. 20 SBI OFFICERS COLONY
ARUMBAKKAM CHENNAI-106.
... PETITIONER in WP No.8396 of 2008

EXCEL OPTICS PVT. LTD.
8/1 SECOND EAST CROSS ST.
AMARAVATHI NAGAR
ARUMBAKKAM CHENNAI-106
... PETITIONER in WP No.9011 of 2008

ALLERGAN INDIA LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
POWER OF ATTORNEY V.S.PRAKASA RAO
NO.81 LUZ CHURCH ROAD MYLAPORE CHENNAI-4.
... PETITIONER in WP No.21104 of 2009

M/S.INTRA OCULAR CARE (P)LTD
REP BY ITS AUTHORIZED SIGNATORY AND
MANAGER (ACCOUNTS) NO.52 U.R. NAGAR
CHENNAI 50
... PETITIONER in WP Nos.29013,29014 & 29015 of 2011

TVL.APPASAMY ASSOCIATES
REP BY ITS PARTNER
NO.20 SBI OFFICERS COLONY
FIRST STREET ARUMBAKKAM CHENNAI 106
... PETITIONER in WP No.17 of 2014

TVL.UDHAYAM ENTERPRISES
REP. BY ITS MANAGING PARTNER MRS.M.SUHARABEE
NO.51 VENKATASAMY ROAD WEST
R.S.PURAM COIMBATORE
... PETITIONER in WP No.29404 of 2015

M/S.HOYA MEDICAL INDIA PVT.LTD
REP. BY ITS DIRECTOR MR.MUKESH KUMAR SINHA
PLOT NO.67 NUMABL MADARVEDU VILLAGE
THIRUVERKADU CHENNAI-600 077.
... PETITIONER in WP Nos.22822 & 22823 of 2016

M/S.HOYA MEDICAL INDIA PVT.LTD
REP BY ITS ACCOUNTS MANAGER MR.ANURAG GUPTA
PLOT NO. 67 NUMABL MADARVEDU VILLAGE
THIRUVERKADU CHENNAI 77
... PETITIONER in WP Nos.762 & 763 of 2017

M/S.HOYA MEDICAL INDIA PVT.LTD
REP BY ITS DIRECTOR MUKESH KUMAR SINHA
PLOT NO.67 NUMABL MADARVEDU VILLAGE
THIRUVERKADU CHENNAI 77
... PETITIONER in WP No.3802 of 2018

M/S FREEDOM OPTHALMIC PVT LTD
REP. BY ITS DIRECTOR G.KANNAYIRAM PLOT NO.31
PHASE I SIPCOT INDUSTRIAL COMPLEX
SIPCOT HOSUR 635 126 KRISHNAGIRI DIST
... PETITIONER in WP No.11345 of 2018

M/S FREEDOM OPTHALMIC PVT LTD
REP. BY ITS DIRECTOR G.KANNAYIRAM
PLOT NO. 31 PHASE I SIPCOT INDUSTRIAL COMPLEX
SIPCOT HOSUR 635 126 KRISHNAGIRI DIST
... PETITIONER in WP No.11346 of 2018

M/S FREEDOM BIO PHARMA PVT LTD
REP. BY ITS DIRECTOR G.KANNAYIRAM
PLOT NO. 21 PHASE I SIPCOT INDUSTRIAL COMPLEX
SIPCOT HOSUR 635 126 KRISHNAGIRI DIST
... PETITIONER in WP No.11347 of 2018

M/S.FREEDOM OPTHALMIC DEVICES PVT LTD
REP BY ITS DIRECTOR- G.KANNAYIRAM
P.NO.9A NEW SIDCO INDUSTRIAL ESTATE
2ND FLOOR SRI NAGAR HOSUR - 635 109
KRISHNAGIRI DT
... PETITIONER in WP No.13428 of 2018

M/S. FREEDOM OPTHALMIC PVT LTD
REP. BY ITS DIRECTOR - G. KANNAYIRAM
NO. 31 PHASE I SIPCOT INDUSTRIAL COMPLEX
SIPCOT HOSUR - 635126 KRISHNAGIRI DISTRICT
... PETITIONER in WP No.15964 of 2018

M/S.FREEDOM OPTHALMIC PVT.LTD
REP. BY ITS DIRECTOR - G.KANNAYIRAM
NO.31 PHASE-1 SIPCOT INDUSTRIAL COMPLEX
SIPCOT HOSUR-635 126 KRISHNAGIRI DISTRICT.
... PETITIONER in WP No.16833 of 2018

M/S.AURO LAB
(A TRUST REP. BY ITS PRESIDENT)
NO.72 K.K.SALAI LAICO BUILDINGS
GANDHI NAGAR MADURAI-20.
... PETITIONER in WP (MD) No.4527 of 2009

M/S.AURO LAB
REP. BY ITS SECRETARY
DR.S.ARVIND
NO.1, SIVAGANAGAI MAIN ROAD,
MADURAI-20
... PETITIONER in WP (MD) Nos.5612 & 5613 of 2014

-vs-

THE COMMISSIONER OF COMMERCIAL TAXES,
EZHILAGAM, CHEPAUK, CHENNAI 600 005.

THE COMMERCIAL TAX OFFICER,
VADAPALANI-I ASSESSMENT CIRCLE,
CHENNAI.

THE SECRETARY TO GOVERNMENT OF TAMIL NADU,
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
SECRETARIAT, FORT ST. GEORGE, CHENNAI-9.

.. RESPONDENTS IN W.P.NO.4355 OF 2007

[R3 - SUO MOTU IMPLEADED VIDE ORDER
DATED 06.07.2021 IN W.P.NO.4355 OF 2009]

THE COMMERCIAL TAX OFFICER
VADAPALANI ASST.CIRCLE CHENNAI
... RESPONDENT in WP No.36068 of 2004

THE COMMERCIAL TAX OFFICER
VADAPALANI ASSESSMENT CIRCLE
10-C RAZACK GARDEN ROAD CHENNAI-106
... RESPONDENT in WP No.16051 of 2005

THE COMMERCIAL TAX OFFICER
MYLAPORE ASSESSMENT CIRCLE CHENNAI 28
... RESPONDENT in WP No.4563 of 2008

THE COMMERCIAL TAX OFFICER
EGMORE II ASSESSMENT CIRCLE SPURTANK ROAD
CHENNAI 31.

THE COMMISSIONER OF
COMMERCIAL TAXES EZHILAGAM CHEPAUK
CHENNAI 5.

... RESPONDENTS in WP No.5830 of 2008

THE COMMERCIAL TAX OFFICER
EGMORE II ASSESSMENT CIRCLE SPURTANK ROAD
CHENNAI 31.

THE COMMISSIONER OF
COMMERCIAL TAXES EZHILAGAM CHEPAUK
CHENNAI 5.

... RESPONDENTS in WP No.5831 of 2008

THE COMMERCIAL TAX OFFICER
VADAPALANI I ASSESSMENT CIRCLE CHENNAI-106.

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI-5.

... RESPONDENTS in WP No.8396 of 2008

THE COMMERCIAL TAX OFFICER
VADAPALANI ASSESSMENT CIRCLE
10-C RAZACK GARDEN ROAD CHENNAI-106

COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI-5

STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVT.
COMMERCIAL TAX DEPT. FORT ST. GEORGE
CHENNAI-9

UNION OF INDIA
REP. BY SECRETARY TO GOVT. MINISTRY OF FINANCE
PARLIAMENT HOUSE NEW DELHI

... RESPONDENTS in WP No.9011 of 2008

THE ASSISTANT COMMISSIONER(CT)
MYLAPORE ASSESSMENT CIRCLE CHENNAI-28.

... RESPONDENT in WP No.21104 of 2009

THE COMMERCIAL TAX OFFICER
AMBATTUR ASSESSMENT CIRCLE NO.5 HIGH COURT
COLONY VILLIVAKKAM CHENNAI 49

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 5
... RESPONDENTS in WP Nos.29013, 29014 & 29015 of 2011

THE ASSISTANT COMMISSIONER (CT)
VADAPALANI I ASSESSMENT CIRCLE NO.1
GREEMS ROAD CHENNAI 6
... RESPONDENT in WP No.17 of 2014

THE ASSISTANT COMMISSIONER (CT)
(FAC) METTUPALAYAM ROAD CIRCLE
C.T.BUILDING COIMBATORE -18
... RESPONDENT in WP No.29404 of 2015

THE ASSISTANT COMMISSIONER(CT)
NOLAMBUR ASSESSMENT CIRCLE
176 M.T.H. ROAD VILLIVAKKAM
CHENNAI-600 049.
... RESPONDENT in WP Nos.22822 & 22823 of 2016
WP Nos.762 & 796 of 2017 & WP No.3802/18

THE ASSISTANT COMMISSIONER
ST HOSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DIST

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 5
... RESPONDENTS in WP No.11345 of 2018

THE ASSISTANT COMMISSIONER
ST HOSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DIST

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 5
.. RESPONDENTS in WP No.11346 of 2018

THE ASSISTANT COMMISSIONER
ST HOSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DIST

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 5
... RESPONDENTS in WP No.11347 of 2018

THE ASSISTANT COMMISSIONER (ST)
HOSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DT

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI-600 005
.. RESPONDENTS in WP No.13428 of 2018

THE ASSISTANT COMMISSIONER(ST)
HOUSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DISTRICT

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI - 600005
... RESPONDENTS in WP No.15964 of 2018

THE ASSITANT COMMISSIONER(ST)
HOSUR (NORTH) CIRCLE HOSUR
KRISHNAGIRI DISTRICT.

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK
CHENNAI-600 005.
... RESPONDENTS in WP No.16833 of 2018

THE ASSISTANT COMMISSIONER (CT)
THALLAKULAM, CHEPAUK
CHENNAI- 600 005.

THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHEPAUK,
CHENNAI-600 005
... RESPONDENTS in WP No.4527 of 2009

THE ASSISTANT COMMISSIONER
THALLAKULAM ASSESSEMENT CIRCLE
MADURAI
... 1ST RESPONDENT IN WP Nos.5612 & 5613 of 2014

THE COMMERCIAL TAX OFFICER OUT (WEST)
MADURAI/THE ASSESSING OFFICER (DEPUTATION)
THALLAKULAM ASSESSEMENT CIRCLE
MADURAI
... 2nd RESPONDENT IN WP Nos.5612 & 5613 of 2014

Prayer in WP No.4355 of 2008:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the first respondent issued in Lr.No.K.Dis.Acts Cell IV/58679/05 dated 02.05.2007 and quash the same and further direct the respondents to grant exemption on the sales turnover of “Intra-ocular lenses” both under the TNGST Act 1959 and CST Act 1956 as the above goods are generally exempt from tax as goods falling under Item 2 of Part B to the Third Schedule to the TNGST Act, 1959.

Prayer in WP No.36068 of 2004

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in CST No.26843/2002-2003 dt:29/10/2004 quash the proceedings since the same being without jurisdiction, illegal and consitutional.

Prayer in WP No.16051 of 2005

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the case on the files of the respondent herein in CST/772342/2003-04 dated 21.3.2005 issued under sec 9(2) of the Central Sales Tax Act,1956 read with Sec 12 of the Tamilnadu General Sales Tax Act,1959, quash the same, and direct the respondent to accept the return granting the exemption

Prayer in WP No.4563 of 2008

Writ Petition filed under Article 226 of the Constitution of India, to call for the records on the files of the respondent herein in CST/055796/2003-2004 dated 26/12/2007 and issue a writ of certiorari or any other apropriate writ, order direction under Article 226 of the Constitution of India, quashing the same

Prayer in WP No.5830 of 2008

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ, order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the 1st respondent issued in CST/59417/2003-2004 dt 20.12.2007 and quash the same as Intra Ocular Lenses are generally exempt from tax as falling under Item 2 of Part B to the Third Schedule to the TNGST Act, 1959.

Prayer in WP No.5831 of 2008

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ, order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the 1st respondent issued in CST/59417/2004-2005 dt 20.12.2007 and quash the same as Intra Ocular Lenses are generally exempt from tax as falling under Item 2 of Part B to the Third Schedule to the TNGST Act, 1959.

Prayer in WP No.8396 of 2008

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ, order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the first respondent issued in CST/689400/2002-2003 dated 14.03.2008 and quash the same as Intra-Ocular Lenses are generally exempt from tax as falling under Item 2 of Part B to the Third Schedule to the TNGST ACT, 1959.

Prayer in WP No.9011 of 2008

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate Writ, calling for the records of the case on the files of the 1st Respondents herein in CST/772342/2002-03 dated 14.3.2008, issued under Sec.9(2) of the Central Sales Tax Act, 1956 read with Sec.12 of the Tamil Nadu General Sales Tax Act, 1959, quash the same.

Prayer in WP No.21104 of 2009

Writ Petition filed under Article 226 of the Constitution of India, to call for the records on the files of the Respondent herein in his CST 655796/02-03 dated 20.7.2009 and issue a Writ of Certiorari or any other appropriate Writ, order or direction quashing the same, in so far as it relates to the levy of penalty of Rs.2,50,67,385/- imposed under Section 9(2-A) of the CST Act, 1956 read with Section 12(3)(b) of the TNGST Act, 1959.

Prayer in WP No.29013 of 2011

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the 1st respondent issued in TIN No. 33211323056/2007-08 dt 16.11.2011 and to quash the same as Intra-Ocular Lenses are generally exempt from tax as falling under Entry 2 of Part B to the Fourth Schedule of the TNVAT Act, 2006.

Prayer in WP No.29014 of 2011

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the 1st respondent issued in TIN No. 33211323056/2008-09 dt 16.11.2011 and to quash the same as Intra-Ocular Lenses are generally exempt from tax as falling under Entry 2 of Part B to the Fourth Schedule of the TNVAT Act, 2006.

Prayer in WP No.29015 of 2011

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the 1st respondent issued in TIN No. 33211323056/2009-10 dt 16.11.2011 and to quash the same as Intra-Ocular Lenses are generally exempt from tax as falling under Entry 2 of Part B to the Fourth Schedule of the TNVAT Act, 2006.

Prayer in WP No.17 of 2014

Writ Petition filed under Article 226 of the Constitution of

India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent passed in CST 26843/2012-13 dt 29.11.2013 and quash the same.

Prayer in WP No.29404 of 2015

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN.No.33592000780/2012-13 dated 11.8.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in WP No.22822 of 2016

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction most particularly in the nature Writ of Certiorari and call for the records pertaining to the impugned order dated 15.06.2016 in CST No.1122967/2014-15 passed by the respondent and quash the same.

Prayer in WP No.22823 of 2016

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction most particularly in the nature Writ of Certiorari and call for the records pertaining to the impugned order dated 15.06.2016 in TIN No.33851351804/2014-15 passed by the respondent and quash the same.

Prayer in WP No.762 of 2017

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction most particularly in the nature of Certiorari and call for the records pertaining to the impugned Notice dt 12.12.2016 in CST No. 1122967/2015-16 passed by the respondent and quash the same.

Prayer in WP No.763 of 2017

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction most particularly in the nature of Certiorari and call for the records pertaining to the impugned Notice dt 12.12.2016 in TIN. NO. 33851351804/2015-16 passed by the respondent and quash the same.

Prayer in WP No.3802 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction most particularly in the nature of Certiorari and call for the records pertaining to the impugned order dt 18.1.2018 in CST No. 1122967 / 2012-13 passed by the respondent and quash the same.

Prayer in WP No.11345 of 2018

Writ Petition filed under Article 226 of the Constitution of

India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST 944492/14-15 dated 19.12.2017 and quash the same as illegal and contracy to the scheme of the Act.

Prayer in WP No.11346 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST 944492/15-16 dated 19.12.2017 and quash the same as illegal and contracy to the scheme of the Act.

Prayer in WP No.11347 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST 1111944/15-16 dated 19.12.2017 and quash the same as illegal and contracy to the scheme of the Act.

Prayer in WP No.13428 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST No.1286978/ 2016-17 dated 24.04.2018 quash the same as illegal and contrary to the scheme of the Act.

Prayer in WP No.15964 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST No. 944492/ 2016-17 dated 31.05.2018 quash the same as illegal and contrary to the scheme of the Act.

Prayer in WP No.16833 of 2018

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in its impugned proceedings made in CST: 944492 / 2017-18 dated 31.05.2018 quash the same as illegal and contrary to the scheme of the Act.

Prayer in WP (MD)No.4527 of 2009

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ, order or direction moreso in the nature of Certiorari to call for the impugned proceedings of the first respondent issued in CST No.111637/2005-2006 dated 23.04.2009 and quash the same as "Intra-Ocular Lenses" are generally exempt from tax as falling under Item 2 of Part B to the Third Schedule to the TNGST Act, 1959.

Prayer in WP (MD)Nos.5612 & 5613 of 2014

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate Writ, order or direction to call for the records on the files of the Respondent herein in this CST No.111637/2010-11 (in WP No.5612 of 2014) and CST No.111637/2011-12 (in WP No.5613 of 2014) respectively dated 28.02.2014 and to quash the same in so far as it relates to the disallowance of exemption on the sale of "Intra-ocular lenses" which falls under serial no.2 of Part B of the Fourth Schedule to the TNVAT Act, 2006 read with Section 9(2) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.P.Rajkumar
(In W.P.No.4355 of 2008 &
W.P.(MD) No.4527 of 2009)

For Petitioner : Mr.S.N.Kirubanandam
(In W.P.No.36068 of 2004)

For Petitioner : Ms.Lakshmi Sriram
(In W.P.Nos.16051 of 2005 & 9011 of 2008)

For Petitioner : Mr.N.Inbarajan
(In W.P.No.4563 of 2008 & 21104 of 2009 &
W.P.(MD) Nos.5612 & 5613 of 2014)

For Petitioner : Mr.P.Rajkumar
(In W.P.Nos.5830, 5831, 8396 of 2008,
29013 to 29015 of 2011 & 17 of 2014)

For Petitioner : Mr.R.Senniappan
(In W.P.No.29404 of 2015)

For Petitioner : Mr.Hari Radhakrishnan
(In W.P.Nos.22822 & 22823 of 2016,
762 & 763 of 2017 & 3802 of 2018)

For Petitioner : Ms.R.Hemalatha
(In W.P.Nos.11345 to 11347, 13428,
15964 & 16833 of 2018)

For Respondent(s) : Mr.V.Nanmaran, Government Advocate
(In W.P.Nos.4355 of 2008,
36068 of 2004, 16051 of 2005, 4563, 5830,
5831 & 8396 of 2008, 21104 of 2009,
29013 to 29015 of 2011, 17 of 2014, 29404 of 2015,
22822 & 22823 of 2016, 762 & 763 of 2017, 3802,
11345 to 11347, 13428, 15964 & 16833 of 2018 and
W.P.(MD).Nos.4527 of 2009 & 5612 & 5613 of 2014)

For RR1 to 3 (In W.P.No.9011 of 2008)	:	Mr.V.Nanmaran, Government Advocate
For R4 (In W.P.No.9011 of 2008)	:	No appearance

COMMON ORDER

All these writ petitions are filed by the petitioners/registered dealers registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act"), Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the "TNVAT Act") and also under the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). Admittedly, all the petitioners sell Intra-ocular lenses to wholesalers, distributors, dealers and hospitals.

2.In view of the fact that the dispute and the issues raised in all these writ petitions are common, the writ petitions are heard together and are being disposed of by this common order and with the consent of the learned counsels for the parties, W.P.No.4355 of 2008 is taken as the lead case.

3.The dispute in nutshell is as to whether the sale of Intra-ocular lenses is exempted from tax under the provisions of the TNGST Act or not. The facts in general are not in dispute between the parties. Thus, this Court is inclined to consider the provisions of the TNGST Act, in order to consider the grounds raised.

4.The respective learned counsels appearing on behalf of the petitioners mainly contended that there is a general exemption contemplated in Item No.2 of Part-B of the Third Schedule to the TNGST Act in respect of the Intra-ocular lenses. Item No.2 stipulates 'aids for physically disadvantaged persons as notified by the Government'. The Government issued Notification in G.O.No.30, dated 27th March, 2002 and in Serial No.4, 'Intra-ocular lenses' are included. Thus, sale of Intra-ocular lenses is exempted from sale tax and in violation of the general exemption granted under the provisions of the TNGST Act, the respondents are demanding sale tax from the petitioner/dealers. Thus, they are constrained to move the present writ petitions.

5.To substantiate the said contentions, the learned counsels for the petitioners reiterated that absolutely there is no conditional exemption and therefore, the stand taken by the respondents is directly in contradiction with the exemption granted under the statute. The Commissioner of Commercial Taxes, issued clarifications as early as in the year 2011 stating that the sale of Intra-ocular lenses is generally exempted and therefore, the subordinate authorities cannot impose sale tax on the sale of Intra-ocular lenses. In spite of the clarifications issued by the Commissioner of Commercial Taxes in the year 2011, many of the executives are demanding sale tax and thus, the petitioners have approached this Court.

6.The petitioners solicited the attention of this Court with reference to the exemption clause contemplated under Section 8 of the TNGST Act. Section 8 enumerates that "subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable to pay any tax under the TNGST Act in respect of such goods".

7.It is contended that as contemplated under Section 8 of the TNGST Act (exemption clause), there is no restriction or condition imposed in the exemption granted in Item No.2 of Part-B of the Third Schedule to the TNGST Act. Thus, for all purposes, the exemptions are to be construed as general exemptions and thus, the action initiated, contrary to the exemption, is to be held as void.

8.As far as the CST Act is concerned, regarding sale of Intra-ocular lenses inter-State, Section 8 of the CST Act contemplates "rates of tax on sales in the course of inter-State trade or commerce". Sub-section (1) stipulates "every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3) shall be liable to pay tax under the CST Act, which shall be 3 percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax law of that State, whichever is lower".

9.As per the above provision, the general exemption granted under the State law is to be extended for the inter-State sales also. When Section 8 of the CST Act unambiguously contemplates that the exemption granted by the State law is to be applied in respect of the inter-State sales falling under the CST Act, then there is no reason for imposition of sale tax, as far as the sales of Intra-ocular lenses to the other States are concerned. In all respect, the Intra-ocular lenses are exempted and the goods exempted cannot be subjected to sale tax and thus, the actions taken are in violation of the provisions of the Act.

10.The learned counsels for the petitioners are of the opinion that there are many other exemptions wherein, certain restriction and conditions are imposed. However, the exemptions regarding Intra-ocular lenses are concerned, there is no such restrictions or conditions imposed and therefore, it is to be construed as general exemption for the purpose of sale tax and thus, the very contention raised by the respondents that it is a conditional exemption has no basis nor supported with the provisions of the CST Act.

11.The learned Government Advocate appearing on behalf of the respondents disputed the said contention stating that the exemption is conditional because Item No.2 of Part-B of the Third Schedule to the TNGST Act states “aids for physically disadvantaged persons as notified by the Government”. Admittedly, Government issued G.O.No.30, dated 27th March, 2002 including Intra-ocular lenses under the exemption clause. Therefore, if the Intra-ocular lenses are sold to physically disadvantaged persons directly, then alone exemption would be applicable and not otherwise. In other words, it is contended that Intra-ocular lenses sold by the manufacturer to the dealer are not exempted and dealer to the hospital are also not exempted and if the hospital is able to establish that such Intra-ocular lenses are sold to the patients directly and if it could able to provide some proof for such sale, then the exemption clause would be applicable.

12.At the out set, it is contended that if anybody including a dealer or hospital selling the Intra-ocular lenses directly to the physically disadvantaged persons, then exemption clause would be applicable and in respect of other sales between the manufacturer and dealer, the exemption is not available. This being the condition within the provision, there is no irregularity or illegality on the part of the respondents in imposing sale tax with reference to the transactions made by the petitioners, which all are admittedly, not directly to the physically disadvantaged persons.

13.In support of the said contention, the learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Sales Tax vs. Pine Chemicals Ltd. reported in (1995) 1 SCC 58 and the relevant paragraphs are as follows:-

> “8.The idea behind Sub-section (2-A) of Section 8 of the Central Sales Tax Act, which we have analysed hereinbefore, is to exempt the sale/purchase of goods from the Central Sales tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due regard and attach due meaning to the expression "generally" which occurs in the sub-section and which expression has been defined in the explanation. If the said expression had not been there, it could probably have been possible to argue that inasmuch as the goods sold

by a particular manufacturer- dealer are exempt from the State tax in his hands, they must equally be exempt under the Central Act. But Sub-section (2A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. Can it be said that the goods sold by the dealers in this cases are exempt from tax generally under the State sales tax enactment? The answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium industrial unit within five years of its commencement of production and sold within the said period, i.e., in certain specified circumstances alone. The exemption is not a general one but a conditional one. The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period. For the purposes of the government order, the nature, class or category of goods is irrelevant; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax generally? Certainly not. Exemption provided by Government Order No. 159, to repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods. Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid government order does not satisfy the requirements of Section 8(2-A).

....

11.We may now refer to and examine the basis on which the judgment under review holds that the exemption granted by Jammu & Kashmir Government Order No. 159 is a general exemption within the meaning of Section 8(2-A) of the Central Sales Tax Act. The Bench agreed that "the existence or otherwise of the three limitations under the explanation above referred to on claiming exemption under Section 8(2-A) of the Central Sales Tax Act will therefore, have to be tested with reference to the transaction of sale or purchase as the case may be" but then qualified the words "sale or purchase, as the case may be", by adding "of the dealer who claims the exemption in respect of his intrastate sale or purchase of the same goods". It was further added:

"Thus the specified circumstances and the specified conditions referred to in the explanation should be with reference to the local turnover of the same dealer who claims exemption under Section 8(2-A) of the Central Sales Tax Act".

In our respectful opinion, however, Sub-section (2-A) speaks of sale or purchase of goods being exempt generally under the State Sales Tax enactment; it does not speak of exemption qua the dealer, much less qua the unit manufacturing such goods. The exemption notification issued by the Jammu & Kashmir Government granted the exemption qua the industrial unit manufacturing the goods and the period within which they are manufactured and sold and not qua the goods. In the judgment under review, it has been further observed that:

"The facts which the dealer has to prove to get the benefit of the government orders are intended only to identify the dealer and the goods in respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted from payment of tax within the meaning of those provisions, the specified circumstances and the specified conditions referred to in the explanation should relate to the transaction of sale of the commodity and not

> identification of the dealer or the commodity in respect of which the exemption is claimed".
>
> With respect, we are unable to appreciate the above reasoning which is at variance with the clear an simple language employed in Section 8(2-A). The language of the sub-section does not bear or admit the construction placed upon it in the judgment under review. We are, therefore, of the opinion that the judgment under review suffers from a manifest error of law, an error apparent on the face of the record, and, therefore, liable to be reviewed. We are also of the opinion that in the interest of law, it is necessary that the said error is rectified."

14.Relying on the principles laid down by the Hon'ble Supreme Court of India in the judgment cited supra, the learned Government Advocate for the respondents reiterated that the exemption contemplated under the TNGST Act is unambiguous, as the aids for physically disadvantaged persons alone are exempted. Thus, the Intra-ocular lenses only if sold to the physically disadvantaged persons, then alone the exemption could be applicable and not otherwise.

15.In reply, the learned counsels for the petitioners relying on the very same judgment in Pine Chemicals Ltd. (supra) referred to the following paragraph:-

> "..........inasmuch as it was not a case where goods were "totally exempt from tax". It was a case where the exemption operated or was attracted only if it was established that such goods were manufactured in a large or medium industrial unit within five years of its going into production and were sold within that period. As pointed out hereinbefore, the exemption was not with reference to goods but with reference to the unit manufacturing the goods."

16.The petitioners have stated that the respondents have not substantiated their contention that the exemption is conditional. Contrarily, the language in the statute unambiguously clarifies that the exemption is general in nature. Thus, there is no reason to claim tax in respect of the sale of Intra-ocular lenses either to the dealer or to the hospital.

17.Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the lis on hand, this Court is of the considered opinion that whether the exemption granted is general in nature or certain conditions are impliedly or expressly imposed is the point to be considered.

18.Let us look into the Third Schedule to the TNGST Act, which should be read along with Section 8 which provides exemption from tax. Therefore, the object of Section 8 of the TNGST Act is to grant exemption in respect of the goods and such exemption is subject to such restrictions and conditions as may be prescribed by the appropriate Government. Therefore, there is no further classification or condition is required in respect of the grant of exemption. The Third Schedule to the TNGST Act unambiguously stipulates "goods exempted from tax by Section 8". It commences "the following goods produced or manufactured in India as described in Column (3) against the relevant heading in column (1) of the First Schedule to the Additional Duties of Excise (Goods of Special Importance Act, 1957) (Central Act 58 of 1957)". Therefore, Third Schedule stipulates goods exempted from tax.

19.As far as the Intra-ocular lenses are concerned, Part-B is relevant. Item No.2 of Part-B denotes "aids for physically disadvantaged persons as notified by the Government". Item No.2 did not prescribe any goods within the meaning of Section 8 of the TNGST Act. Section 8 contemplates 'goods specified in the Third Schedule'. However, Item No.2 of Part-B did not prescribe any goods. Contrarily, the said Item states that such goods, which all are aids for physically disadvantaged persons are to be notified by the Government. Therefore, Item No.2 Part-B is a general exemption granted, as far as the aids for physically disadvantaged persons are concerned and what all are the aids which all are exempted were notified by the Government in G.O.No.30 dated 27th March, 2005, viz., (i) electrical hearing aids and hearing-aid cords; (ii) simple spectacles sold to Government for distribution at Government Free Eye Camps; (iii) Crutches, wheel chairs, support sticks of all materials, prosthetics, artificial limbs and parts and three wheelers with or without motor used by physically handicapped person and cycle carriage for invalid persons; (iv) Intra-ocular lenses; and (v) Orthotics.

20.Certain goods notified by the Government are capable of being sold directly to the physically disadvantaged persons. Certain goods cannot be sold directly, as such goods require an implantation by a qualified Ophthalmologist Surgeon. Irrespective of these factors, the Court has to find out for the purpose of grant of exemption from sale tax and such technicalities regarding the medical implantation of the goods or otherwise may not be required, nor concerned. However, it is admitted that Intra-ocular lenses are exempted from sale tax as per Item No.2 of Part-B of the Third Schedule to the TNGST Act.

21.This Court has no doubt with reference to the language adopted in Item No.2 of Part-B of the Third Schedule to the TNGST Act, which contemplates "aids for physically disadvantaged person". The aids for physically disadvantaged may be many in numbers. However, such aids notified by the Government alone are exempted under the statute more specifically, Third Schedule. In the present case, five goods are exempted from sale tax. Further, the Third Schedule to the TNGST Act commences by contemplating "goods exempted from tax by Section 8", Therefore, once a particular goods is exempted from tax by Section 8, then such goods are to be treated as generally exempted, unless there is an expressed restriction or condition attached to the exemption clause. In the present case, there is no such restriction or condition contemplated in Item No.2 of Part-B of the Third Schedule. Item No.2 generally states 'aids for physically disadvantaged persons as notified by the Government'. Thus, the Government notified five goods which all are exempted and those five goods are to be exempted generally and therefore, the condition now suggested by the Government in their counter is presumptive and not supported with the provisions of the TNGST Act. Certain implied conditions may be possible only on certain circumstances. In the present case, the inference regarding any such implied condition cannot be drawn, as the language employed in Item No.2 of Part-B of the Third Schedule is unambiguous. It states 'aids for physically disadvantaged persons' and not all the aids for physically disadvantaged persons are exempted. Only certain aids alone are exempted for the physically disadvantaged persons and such aids are five goods which are stipulated. Thus, as far as those five goods are concerned, there cannot be any further restrictions or conditions, whether it is sold directly to the disadvantaged person or through dealers. In the absence of any specific condition to that effect, the respondents cannot presume or assume and impose sale tax in respect of the Intra-ocular lenses irrespective of the fact whether it is sold either to the dealer, hospital or to the Doctor or otherwise.

22.As far as the exemptions in such cases are concerned, it is for the benefit and welfare of the persons, who all are physically disadvantaged. The exemption in general is granted, as such medical goods are to be supplied for the benefit of the common man including the poor. Intra-ocular lenses are implanted in the eye (cataract).

23.Right to life is an integral part of Article 21 of the Constitution of India. Thus, the State is bound to extend decent medical facility for the welfare of the citizen in general. In this context, free medical treatments are also provided by the appropriate Government. Therefore, the aids for physically disadvantaged persons are once exempted and particular goods are notified pursuant to the general exemption granted in Item No.2 of Part-B of the Third Schedule, there cannot be any further restrictions or conditions for the sale of such Intra-ocular lenses, as it finally reaches to the physically disadvantaged persons and thus, this Court is of an opinion that the concept of conditional exemption as contemplated by the respondents is not traceable in any of the provisions of the TNGST Act, nor in the notification. Once the goods are exempted under the TNGST Act, then it is to be exempted under the CST Act also in view of Section 8 of the CST Act.

24.This being the constructive interpretation to be adopted in respect of such exemption, which all are granted for the benefit of the group of people in general, this Court is of the opinion that if any such presumptive condition is accepted, the same will cause inconvenience to the physically disadvantaged persons and thus, the case of the respondents is to be rejected.

25.It is made clear that the exemption, which is denied under the provisions of the TNVAT Act is also to be extended to the extent mentioned with reference to the provisions of the TNGST Act, which has been dealt with in this judgment.

26.Accordingly, all the impugned orders are quashed and the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Commercial Tax Officer,
Vadapalani-I Assessment Circle,
Chennai.

3.The Secretary to Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George, Chennai-9.

4.The Commercial Tax Officer,
Vadapalani Assessment Circle,
10-c, Razack Garden Road,
Chennai-106.

5.The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai-28.

6.The Commercial Tax Officer,
Egmore II Assessment Circle,
Spur Tank Road, Chennai-31.

7.Secretary to Government,
Union of India,
Ministry of Finance Parliament House,
New Delhi.

8.The Assistant Commissioner,
(CT) Mylapore Assessment Circle,
Chennai-28.

9.The Commercial Tax Officer,
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High Court Colony, Villivakkam,
Chennai-49.

10.The Assistant Commissioner,
(CT) Vadapalani I Assessment No.1,
Green Road, Chennai-6.

11.The Assistant Commissioner,
(CT) (FAC) Mettupalayam Road Circle,
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12.The Assistant Commissioner,
(CT) Nolambur Assessment Circle,
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Chennai-600 049.

13.The Assistant Commissioner,
ST Hosur (North) Circle Hosur,
Krishnagiri District.

14.The Secretary to Government,
Commercial Tax Department,
Fort.St.George, Chennai-9.

15.The Assistant Commissioner,
Thallakulam Assessment Circle,
Madurai.

16.The Commercial Tax Officer out (West)
Madurai / The Assessing Officer (Deputation)
Thallakulam Assessment,
Madurai.

+1cc to Mr.Hari Radhakrishnan, Advocate Sr No.33817
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+1cc to Mr.Lakshmi Sriram, Advocate Sr No.33769
+1cc to Special Government Pleader (Taxes Sr Nos.34063 34066, 34065, 33928, 34048, 34049, 34050, 34051, 34052, 34053, 34054, 34055, 34056, 34057, 34058, 34059, 34060, 34061 and 34062.

W.P.Nos.4355 of 2008, 36068 of 2004, 16051 of 2005,
4563, 5830, 5831, 8396 & 9011 of 2008, 21104 of 2009,
29013 to 29015 of 2011, 17 of 2014, 29404 of 2015,
22822 & 22823 of 2016, 762 & 763 of 2017, 3802,
11345 to 11347, 13428, 15964 & 16833 of 2018 and
W.P.(MD).Nos.4527 of 2009 & 5612 & 5613 of 2014

PL (CO)
PR (30/09/2021)