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W.P.Nos.36170/2007 & Batch



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-12-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT PETITION Nos.36170, 36171, 36996, 36997, 36998, 36999, 37143, 37144, 37145, 37146, 37147 of 2007; 1003, 1649, 2545, 3536, 3537, 3538, 3539, 3653, 3927, 3928, 8660, 8661, 8662, 8663, 8664, 9394, 9395 of 2008; 6518, 6519, 8280 of 2009; 6922 & 6924 of 2020

W.P.No.36170/2007 :

M/s.VG Paper and Boards Ltd.

...Petitioner

-VS-

1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Commercial Taxes and Registration Dept.,
Ft.St.George,
Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
Chennai-600 005.

3.The Commercial Tax Officer – II,
Palani.

...Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent in Lr.No:Acts Cell-III/27691/2007, dated 14.09.2007; quash



the same and direct the third respondent herein to forthwith refund the tax on last purchase of waste paper assessed and collected from the petitioner for the period between 16.06.2000 and 21.07.2006.

For Petitioner : Mrs.AL.Ganthimathi

For Respondents : Mr.Haja Nazimudeen,
Additional Advocate General-I,
assisted by Mr.M.Venkateswaran,
Special Government Pleader &
Mr.P.Haribabu,
Government Advocate.

COMMON ORDER

The common questions that arise in this batch of Writ Petitions relates to the validity of Notification No.II (1)/CTR/75 (b-2)/2007, dated 19.12.2007 (G.O.Ms.No.198) which is challenged on the premise that the same is ultra vires Sections 30 and 88 of the Tamil Nadu Value Added Tax Act, 2006, (in short, "the TNVAT Act"), apart from being unconstitutional and violative of Articles 14, 19 (1) (g), 265, 301 and 304 (a) of the Constitution of India.

2. In all, there are 33 writ petitions though the prayers in all the 33 writ petitions are not the same, however, the common issue revolves around the validity of the impugned notification. Broadly the prayers can be categorised as under:

**WASTE PAPER / WASTE PAPER BOARD**

S.No.	Writ Petition No.	Subject matter of Challenge
1	W.P.Nos.1003, 1649, 2545, 3536, 3537, 3538, 3539, 3653, 3927, 3928, 8660, 8661 of 2008, 6922 of 2020	G.O.Ms.No.198 dated 19.12.2007
2	W.P.Nos.36171 of 2007, 8662, 8663, 8664, 9394, 9395 of 2008 and 6924 of 2020	Assessment order
3	W.P.Nos.37143, 37144, 37145, 37146, 37147, 36996, 36997, 36998 and 36999 of 2007	To apply G.O.Ms.No.176 dated 28.12.2006
4	W.P.Nos.36170 of 2007, 8280 of 2009	Show cause Notice

WASTE BOTTLES (OLD AND USED EMPTY BOTTLES)

S.No.	Writ Petition No.	Subject matter of challenge
1	W.P.No. 6518 of 2009	To forbear the Respondents from applying G.O.Ms.No.198 dated 19.12.2007 retrospectively
2	W.P.No.6519 of 2009	G.O.Ms.No.198 dated 19.12.2007

3. Before proceeding further, it may be relevant to state that the counsel for the petitioners and the Respondents submitted that in all the writ petitions common question arises for consideration viz., whether it is open to the State Government in exercise of its powers under Section 17 of the Tamil Nadu General Sales Tax Act, 1959



(in short, "TNGST Act") (or) Section 30 of the TNVAT Act, 2006, to impose conditions retrospectively resulting in curtailing/whittling down exemptions granted. It was submitted that it may not be necessary to deal with each of the writ petitions individually.

4. In all these cases other than W.P. Nos.6518 and 6519 of 2009, the petitioners were engaged in manufacture of corrugated boxes. The petitioners purchased waste paper from registered/unregistered dealers and used the same in the manufacture of corrugated boxes/ boards. The period in dispute relates to the assessment years 2000-2006. In W.P.Nos.6518 and 6519 of 2009, the petitioners purchased used/old bottles, except for the difference in the product the question raised in the above writ petitions also revolves around the scope and ambit of the power of the State Government to impose conditions retrospectively thereby curtailing / whittling down the scope of the exemption. It is relevant to state that the notifications for waste paper, paper board and used/old bottles granting exemption and the subsequent notification importing conditions retrospectively are identically worded and part of the same notification.

5. Section 3 of the TNGST Act, is the charging provision. Sub-section (2) to Section 3 of the TNVAT Act, 2006, prescribes the rate of tax and the point of levy in respect of goods mentioned in the First Schedule to the TNGST Act. During the



relevant period Waste Paper and Corrugated Board were liable to tax @ 4% at the point of "Last Purchase" from 1.6.2000 to 18.8.2001 and 28.8.2001 respectively. While old/used bottles were liable to tax under Serial No.24 of Part-DD and Entry 90 of Part B of the First Schedule to the TNGST Act during 1.4.2000 to 31.5.2000 and 1.6.2000 to 31.3.2006. The relevant Entries in the Schedule to the TNGST Act, 1959, with regard to Waste Paper reads as under:

"Schedule 1 -82-A

S.No.	Description of Goods	Point of Levy in the State	Rate of Tax
1	Waste Paper - " ENTRY FROM 5-3-1997 TO 15-6-2000	First Sale	4%
2	Waste Paper - "ENTRY FROM 16-6-2000 TO 18-8-2001"	Last Purchase	4%
3	Waste Paper and (waste of paper board) - ENTRY FROM 28-8-2001 (Vide Note 4)	Last Purchase	4%

The relevant Entries in the Schedule to the TNGST Act, 1959, with regard to Corrugated Boards are extracted below :

ENTRY FROM 18-8-2001 (Vide Note 3)

Paper, all sorts (including paste board, mill-board, straw board and card board) that is to say -

(i) Cigarette tissue,

(ii) Bottling, filter, toilet or target tissue (other than cigarette tissue),

Bank, art, chrome, tub-sized, cheque, stamp or cartridge paper, parchment



board including art-board, chrome board and board for playing cards

(iii) Packing and wrapping paper, straw board and pulp board including grey board, corrugated board, duplex and triplex boards.

The relevant Entries in the First Schedule to the TNGST Act, 1959 with regard to old/used bottles is extracted below :

<i>S.No.</i>	<i>Period</i>	<i>Entry</i>	<i>Stage of Levy</i>	<i>Rate of tax</i>
1	01.04.2000 to 31.05.2000	I-DD-24	Last Purchase	12%
2	01.06.2000 onwards	I-B-90	Last Purchase	4%

6. Section 17 of the TNGST Act, 1959, empowers the State Government to grant exemption/concession in rate of tax by notification on any goods, transactions, or dealers in the entire State or part of it, subject to any restrictions or conditions that may be specified in the notification. The State Government in exercise of the power under Section 17 of the TNGST Act, 1959, granted exemption in respect of the tax payable under the said Act by any dealer on the last purchase of waste paper, waste of paper board and old/used bottles vide Notification G.O. Ms. No.176, Commercial Taxes and Registration (B2), dated the 28th December, 2006 with retrospective effect from 16th June 2000 to 21.07.2006. The notification is extracted hereunder:



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"Last purchase of waste paper and waste of paper board- Exemption (Tamil Nadu)

***Notification G.O. Ms. No. 176, Commercial Taxes and Registration (B2),
dated the 28th December, 2006***

No. II(1)/CTR/58(d-2)/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), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under the said Act by any dealer on the last purchase of waste paper and waste of paper board.

2. This notification shall be deemed to have come into force on the 16th June, 2000 and shall be deemed to have remained in force up to and inclusive of the 21st July, 2006."

NOTIFICATION:

Last purchase of glass bottles whether old or used - Exemption (Tamil Nadu)

***Notification G.O.Ms. No. 176, Commercial Taxes and Registration
dated the 28th December, 2006***

No. II(1)/CTR/58(d-1)/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), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under the said Act by any dealer on the last purchase of glass bottles whether old or used.

2. This notification shall be deemed to have come into force on the 1st June, 2000 and shall be deemed to have remained in force up to and inclusive of the 5th September, 2006."

Thereafter, the State Government issued G.O.Ms.No.198 dated 19.12.2007 whereby the exemption granted in respect of the tax payable under the said Act by any dealer on the last purchase of waste paper, waste of paper board and old/used bottles was subject to the condition that Waste Paper, Waste Paper Board and old or used bottles are sold on inter-state trade and tax has been paid under the Central Sales Tax Act 1956 (Central Act 74 of 1956). The above notification(s) was deemed to have come



into force on the 16th June 2000 and was deemed to have remained in force upto and inclusive of the 21st July 2006. The said notification is extracted hereunder:

**EXEMPTION IN RESPECT OF THE TAX PAYABLE BY ANY DEALER ON THE
LAST PURCHASE OF WASTE PAPER AND WASTE OF PAPER BOARD UNDER
THE ACT.**

[G.O. Ms. No. 198, Commercial Taxes and Registration (B2), 19th December 2007.]

No.11 (1)/ CTR / 75 (b-2)/2007.

In exercise of the powers conferred by sub-sections (1), (2) and (3) of Section 30 read with sub-section (4) of Section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) and in supersession of the Commercial Taxes and Registration Department Notification No.II(1)/CTR/58(d-2)/2006 published at page I of Part II – Section 1 of the Tamil Nadu Government Gazette Extraordinary dated the 28th December 2006 the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under the said Act by any dealer on the last purchase of Waste Paper and waste of Paper Board, subject to the condition that the said goods are sold on inter-state trade and tax has been paid under the Central Sales Tax Act 1956 (Central Act 74 of 1956).

2. The exemption hereby made shall be deemed to have come into force on the 16th June 2000 and shall deemed to have remained in force upto and inclusive of the 21st July 2006."

[G.O. Ms. No. 198, Commercial Taxes and Registration (B2), 19th December 2007.]

No.11 (1)/ CTR / 75 (b-1)/2007.

In exercise of the powers conferred by sub-sections (1), (2) and (3) of Section 30 read with sub-section (4) of Section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) and in supersession of the Commercial Taxes and Registration Department Notification No.II(1)/CTR/58(d-1)/2006 published at page I of Part II – Section 1 of the Tamil Nadu Government Gazette Extraordinary dated the 28th December 2006, the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under the said Act by any dealer on the last purchase of glass bottles whether old or used, subject to the condition that the said goods are sold on inter-state trade and tax has been paid under the Central Sales Tax Act 1956 (Central Act 74 of 1956).



2. The exemption hereby made shall be deemed to have come into force on the 1st June 2000 and shall be deemed to have remained in force upto and inclusive of the 5th September 2006."

A reading of the above notification(s) would show that the same are issued under Section 30 of the TNVAT Act, 2006, read with sub-Section (4) to Section 88 of the TNVAT Act, 2006, importing the condition that the benefit of exemption would be available subject to the condition that the goods purchased viz., waste paper, paper board and old or used bottles are sold by way of interstate sale and taxes due thereon is paid.

It is this notification which is under challenge in the present batch of writ petitions, on the premise that the same is ultra vires Section 30 and Section 88 of the TNVAT Act, apart from being unconstitutional and violative of Articles 14, 19 (1) (g), 265, 301 and 304 (a) of the Constitution of India, insofar as it imports conditions with retrospective effect which has the effect of curtailing/whittling down the exemption.

7. To appreciate the above contention, it is relevant to refer to the following provisions under the TNGST Act and TNVAT Act respectively:

"Section 17. Power of Government to notify exemptions and reductions of tax.- (1) The Government may, by notification, issued whether prospectively or retrospectively, make an exemption, or reduction in rate, in respect of any tax payable under this Act -
(i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales by successive



dealers; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover; or

(iii) on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.

.....

Sec.17(3) The Government may, by notification, cancel or vary any notification issued under sub-section (1).

....."

Section 30 of the TNVAT Act :

"Section 30. Power of Government to notify exemption or reduction of tax.

(1) The Government may, by notification, whether prospectively or retrospectively, make an exemption, or reduction in rate, in respect of any tax payable under this Act

(a) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points In the series of sales by successive dealers;.or

(b) by any specified class of persons, in regard to the whole or any part of their turnover; or

(c) on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.

(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1)-

(a) may extend to the whole State or to any specified area or areas therein; or

(b) may be subject to such restrictions and conditions as may be specified in the notification.

(3) The Government may, by notification, cancel or vary any notification issued under sub-section (1)."

Section 88 (4) of the TNVAT Act :

"88 (4)- All arrears of tax, interest, penalty, fee or other amount due under the said Act or 1970 Act, as the case may be, on the date of commencement of this Act, whether assessed or levied before such commencement, or assessed or levied after such commencement, may be recovered as if such tax, penalty, interest, fee or other amount is assessed or levied under the provisions of this Act and all methods of recovery including levy of penalty, interest or prosecution provided under this Act, shall apply to such



arrears, as if such amounts are assessed, levied and demanded under this Act."

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A reading of Section 17 and Section 30 of the TNGST Act and TNVAT Act respectively would show that while the State Government is conferred with the power to notify the exemption prospectively or retrospectively, the power to modify or vary or cancel can be done only prospectively and not retrospectively.

8. It is the case of the assessee/petitioners that the impugned notification insofar as it has introduced a condition retrospectively resulting in curtailing/ whittling down the scope of exemption is beyond the powers under Section 17 (or) Section 30 read with Section 88 (4) of the TNGST Act and TNVAT Act respectively.

9. In support of the above contention, reliance was sought to be placed on the judgments of this Court in *Honest Corporation v. State of Tamil Nadu*, [(1999) 113 STC 26 (Mad.)], and *State of Tamil Nadu v. Kannapiran Steel Re-rolling Mills*, [(1999) 112 STC 161 (Mad.)], wherein, while dealing with Section 17 of the TNGST Act, it was held that the power of the Government under Sub-section (3) to Section 17 of the TNGST Act, 1959, cannot be exercised retrospectively.

10. To the contrary, it is submitted by the learned Additional Advocate General that it was always intended that the benefit is only to grant either an exemption to waste



paper, paper board and old or used bottles from the levy of last purchase or from the levy of the Central Sales Tax but not both. The original notification dated 28.12.2006 resulted in exemption from last purchase as well as levy under the Central Sales Tax, which was unintended. It was to rectify the above error, which according to the State had inadvertently crept in, while issuing the first Notification dated 28.12.2006, notification dated 19.12.2007 was issued, importing the above condition. It was thus submitted that the case of retrospectivity that has been put across by the petitioners ought to be viewed bearing in mind the context of the present case. It is also the contention of the learned Additional Advocate General that the issue of refund if any ought to be examined by applying the “Doctrine of Unjust Enrichment”.

11. Heard both sides. Perused the materials on record.

12. Two questions arise for consideration in these batch of cases viz.,

(1) Whether the impugned notification(s) which imports the condition that the exemption to Waste Paper, Paper Boards and used/old bottles shall be subject to the concession that the said goods are sold on inter-state trade and tax has been paid under the Central Sales Tax Act, 1956, retrospectively is within or beyond the scope of the powers conferred on the Government in terms of Section 17 of the TNGST Act, 1959 (or) Section 30 read with Section 88 (4) of the TNVAT Act.



(2) Whether any refund consequent to a declaration that the impugned notifications are ultra vires would be subject to the doctrine of "Unjust Enrichment".

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13. We shall now proceed to answer the above questions in seriatim.

14. The first question is no longer *res integra*. Power may be conferred to make subordinate/ delegated legislation in the shape of rules, bye-laws, notifications etc., which have retrospective operation.¹ Such a power may be either conferred in express words or may be inferred by necessary implication.² In the absence, however, of an express or necessarily implied power to that effect, subordinate/ delegated legislation, be it a rule, a bye-law or a notification, cannot have retrospective operation.³

15. It has been consistently held by this Court in the context of Section 17 of TNGST Act which is *pari materia* with Section 30 of the TNVAT Act, that while the Government is conferred with the power to grant exemption prospectively or retrospectively, the power to withdraw, annul, modify or vary a notification traceable to sub-Section (3) to Section 17 of the TNGST Act, cannot be exercised retrospectively. In this regard, it is relevant to refer to the following judgments :

¹ Prohibition & Excise Supdt., A.P. v. Toddy Tappers Coop. Society, (2003) 12 SCC 738

² Indramani Pyarelal Gupta (Dr.) v. W.R. Natu, (1963) 1 SCR 721

³ ITO v. M.C. Ponnose, (1969) 2 SCC 351



(i) Honest Corporation v. State of Tamil Nadu (Mad.), (1999) 113 STC 26 (Mad) :

12. If we carefully peruse, the language in which sub-section (1) of section 17 is couched, it will be crystal clear that as and when the Government may, by notification, make an exemption or reduction in rate in respect of any tax payable under the Act, the same may be done whether prospectively or retrospectively. But, if we take into account the language in which sub-section (3) of section 17 is couched, the phraseology whether prospectively or retrospectively is not there and what is stated therein is the Government is empowered by way of a notification to cancel or vary any notification issued under sub-section (1). That means that notification issued under the said sub-section can be only prospectively and not retrospectively.

ii) G. Packirisamy & Co. v. State of Tamil Nadu [1995] 99 STC 21:

“By the enactment of sub-section (1) of section 17 of the TNGST Act the Legislature has given power to the Government to make subordinate legislation, by way of issuance of a notification to grant exemption or reduction of tax, either prospectively or retrospectively. No doubt true it is that under sub-section (3) thereof, the Government inheres power to cancel or vary any notification issued under sub-section (1) by the issuance of another notification. But the language of the said sub-section, if subjected to careful scrutiny, will reveal such a power is not taking in its fold the power to cancel or vary any notification with retrospective effect and to put it otherwise, such a power may be exercised only prospectively.”

(emphasis supplied)

(iii) In the case of State of Tamil Nadu v. Kannapiran Steel Re-rolling Mills, (1999)

112 STC 161 (Mad.) while considering similar provisions under Section 8(5) of the CST Act, 1956, this Court was pleased to hold as under:

"21....There is no provision in the Act which confers power on the State Government to issue a notification under section 8-A with retrospective effect. It is beyond dispute that a competent Legislature may make a law even on matters relating to taxation with retrospective effect. The question, however, is whether the executive authority, to which the power to modify a law as delegated by a Legislature under a statute, can withdraw a benefit already given in the absence of an express provision in the statute itself, enabling it to exercise that power with retrospective effect. The question is no longer res integra. In India Sugars and Refineries Ltd. v. State of Mysore AIR 1960 Mys. 326, the question which



arose for consideration was whether the power conferred by a Legislature on a subordinate legislative body like Government to issue notification having the force of law under a statute could be exercised retrospectively unless the power to issue such a notification with retrospective effect had been conferred expressly by the statute itself. This Court, relying upon the decision of the Supreme Court in *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union* AIR 1953 SC 95, held that in the absence of a legislative provision conferring power to issue a notification retrospectively, it was not open to the State Government to issue such a notification.

Income-tax Officer, Alleppey v. M.C. Ponnoose [1967] 64 ITR 117 (Ker); AIR 1966 Ker 5, following the decision of this Court in *India Sugars and Refineries Ltd.* AIR 1960 Mys 326 and the decision of the Supreme Court in *Indramani's case* AIR 1963 SC 274, the Kerala High Court held :

"unless the power to act retrospectively had been expressly conferred by the Legislature on the Government exercising subordinate and delegated legislative powers, the Government could not act retrospectively. No decision which takes a contrary view has been cited before us. We are of the opinion that in the absence of express power granted by the Legislature to act retrospectively it is not open to a subordinate legislative body like the State Government to issue a notification either taking away vested rights or imposing obligations with retrospective effect."

(emphasis supplied)

iv) Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise AIR 1970 SC 1950:

".....The rule-making authority had not been vested with the power under the Central Excises and Salt Act to make rules with retrospective effect. Therefore the retrospective effect purported to be given under exhibit P12 was beyond the power of the rule-making authority....."

On a reading of the above judgments it is beyond the pale of any doubt that the power of the State Government be it under Sub-section (3) to Section 17 or 30 of the



TNGST Act or TNVAT Act respectively cannot modify, annul or vary a notification retrospectively. Thus the impugned notification insofar as it imports conditions which curtails or whittles the exemption for waste paper, paper board and old or used bottles is in excess of the power conferred under Sub-section (3) to Section 17 or 30 of the TNGST Act or TNVAT Act respectively.

16. Now, insofar as the submission of the learned Advocate General that the exemption granted vide G.O.Ms. No.176 dated 28.12.2006, without any condition attached was due to inadvertence inasmuch as the intention was only to grant exemption either under TNGST Act or Central Sales Tax Act, 1956 (in short, "CST Act"). However, the notification dated 28.12.2006 resulted in taxes not being payable both under TNGST Act as well as CST Act, contrary to the intention. Thereby necessitating issuance of the subsequent notification dated 19.12.2017 importing the condition that the exemption would be subject to the condition that the goods are sold on inter-state trade and tax paid under the CST Act, with retrospective effect from 28.12.2006 to cure the above defect alleged to have inadvertently crept in. In other words the above circumstance is sought to be relied upon to justify the retrospective exercise of power. The above submission needs to be rejected for two reasons:

1. Firstly, as we have seen from the judgments referred to supra, the power be it under Section 17 or 30 of the TNGST/ TNVAT Act, respectively is not available to



withdraw/ import conditions with regard to exemptions/ concessional rate of tax retrospectively. In the absence of power to vary a notification retrospectively it may not be open to the State Government to assume such power on the basis of circumstances viz., the supposed legislative intent/ object having not been reflected appropriately when the power was initially exercised. In other words, the State Government's limitation or lack of power to issue notifications varying/curtailing notifications retrospectively under Section 17 and 30 of TNGST and TNVAT Act, respectively is not in view of the circumstance but rather due to absence of such power being conferred by the legislature. The extent, scope or width of the power would not vary depending on the circumstance as sought to be contended by the Revenue.

2. Secondly, it is trite law that the notifications granting exemption would be strictly construed and effect would be given to the plain language and the question of interpretation would not arise where the language is unambiguous. In the case on hand, admittedly there was no ambiguity as to the scope and width of the notification granting exemption vide G.O.Ms.No.176 dated 28.12.2006. The impugned notification even according to the Revenue was issued only with a view to curtail the scope of the exemption as it did not reflect the supposed intent of the notifying authority viz., the State Government. What the legislature intended to be done or not to be done can only be ascertained from that it has chosen to enact and when the language is unambiguous looking beyond the plain language ought to be avoided. One cannot call in aid supposed



intention to curtail the notification for intention is a slippery phrase. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

a) In the case of **Innamuri Gopalan v. State of A.P., (1964) 2 SCR 888**, the Hon'ble Supreme Court while examining an exemption granted to Textiles rejected the plea by the State to curtail the scope of exemption on the premise that exemption from payment of Sales Tax was granted in order to avoid double taxation of levy of excise duty by the Central Government and sales tax by the State Government. That the intention was clear from the condition imposed requiring the claimant of the exemption to prove that additional duties of excise have been paid to claim the benefit of exemption on sales tax. It was submitted that admittedly, no additional duty of excise was leviable on the goods in the possession of the appellants and thus the condition of proving that additional duties of excise have been paid to claim the benefit of exemption does not arise. It was submitted that the exemption being granted only with a view to avoid double taxation viz., of the liability to pay excise duty as well as sales tax and that the assessee not being bound to pay additional excise duty cannot claim the benefit of exemption on sales tax as such construction of the exemption notification was contrary to the intention. Rejecting the above contention, it was held by the Hon'ble Supreme Court as under:

“No doubt, statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, nothing to alter, or nothing to qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning. What we are now



concerned with is a fiscal provision and it has often been said that there is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made thereunder. 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 words of the provision. If the taxpayer is within the plain terms of the exemption he 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 statute or rule or by necessary implication therefrom, the matter is different". 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."

b. In, *Hansraj Gordhandas v. H.H. Dave*, (1969) 2 SCR 253, the Hon'ble Supreme Court while dealing with a notification which granted exemption from excise duty to cotton fabrics produced on power looms owned by Co-operative Societies, it was found for a fact that the appellant who was a dealer in textiles had entered into an agreement with Co-operative Society to manufacture cotton fabrics. The Society claimed exemption. The Revenue was of the view that the Society was not entitled to exemption as in its view the intention was to grant exemption to goods produced by the Society *"for itself"*. The same was rejected stating that the language being clear the attempt to add conditions on the basis of an assumed intent was not justified. In this regard, it may be relevant to refer to the following portions of the judgment:

"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 powerlooms "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."

The above ratio laid down in *Hansraj* case was followed by a Constitution Bench in the case of *CCE v. Hari Chand Shri Gopal*, (2011) 1 SCC 236, and stands reiterated by a recent Constitution Bench in the case of *Commissioner of Customs v. Dilip Kumar & Co.*, (2018) 9 SCC 1, wherein it was held as under:

"In *Hansraj* case, the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the



object and purpose for granting exemption is irrelevant and immaterial."

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17. We are therefore of the view that though exemption notifications ought to be strictly construed and in the event of any ambiguity it must be interpreted in favour of the Revenue, however one cannot curtail or add words by calling in aid the intent of grant of exemption nor can the government aid the authority granting notification or the Legislature in the event of a defective phrasing by adding or mending and thereby making up deficiencies with a view to further supposed intention. The submissions of the revenue on the basis of supposed intention in granting exemption deserves to be rejected.

18. In view of the repeal of TNGST Act, 1959 and introduction of TNVAT Act, 2006, doubts were expressed if the impugned notification is traceable to Section 17 of TNGST Act or Section 30 of the TNVAT Act. It is clear that the power whether traceable to sub-Section (3) to Section 30 or sub-Section (3) to Section 17 of the TNVAT Act or TNGST Act, respectively cannot be exercised to withdraw or import a condition and impose a disqualification or ineligibility retrospectively as would be clear from the above discussion.

19. We have no hesitation in holding that the impugned notification travels



beyond the scope of power conferred under sub-Section (3) to Section 17 (or) Section 30 of the TNGST Act and the TNVAT Act respectively and thus the impugned notification viz., Notification No.II (1)/CTR/75 (b-2)/2007, dated 19.12.2007 (G.O.Ms.No.198) is ultra vires to Sections 17 of the TNGST Act, 1959 (or) Sections 30 and 88 of the TNVAT Act, 2006, insofar as it imports conditions with retrospective effect which has the effect of curtailing/ whittling down the scope of exemption granted vide notification in G.O.Ms.No.176 dated 28.12.2006.

20. It was submitted that in view of Section 88(2)(i) of the TNGST Act , the saving is only in respect of notifications, which continued to be in force on or before the introduction of the TNVAT Act. However, the original notification dated 28.12.2006, had a limited operation and for a temporary period, which has expired long before the impugned notification importing the additional condition/ obligation was issued. The impugned notification is bad for the said reason as well. We are not inclined to examine the above question in view of the fact that we have already held that the impugned notification is ultra vires the power under Section 17(3) (or) Section 30(3) of the TNGST Act and the TNVAT Act respectively.

21. Coming to second question as to the applicability of 'Unjust Enrichment', except in one case, viz., W.P.No.6519 of 2009, it was submitted by the learned counsel



for the petitioners in the other matters that as and when a claim for refund is made, if the Assessing Officers choose to examine the claim applying the principle of "Unjust Enrichment", they would respond/ meet the said aspect.

22. However, in W.P.No.6518 of 2009, it was submitted that it was not a case of claim of refund, but a case where the assessment orders were made granting refund and the prayer is to direct the 1st Respondent herein to forbear from giving effect to or rely upon Notification No.II(1)/CTR/75/(81)/07 [G.O.Ms.No.198, Commercial Taxes and Registration (B2)] dated 19.12.2007, to revise or review completed proceedings granting exemption in respect of the purchases of old/ used empty bottles during the period from 1st June, 2000 to 5th September, 2006. It is submitted by the learned counsel that Doctrine of Unjust Enrichment is applicable only against a claim for refund and not to reopen closed assessment thereby resulting in recovery of any sums/amounts collected by way of or purporting to be by way of tax. We are not inclined to accede to the above prayer for we do not intend rather cannot pass orders pre-empting a quasi-judicial authority from exercising its power. We intend to make it clear that the above declaration on the validity of the impugned notification would not preclude the authorities to recover the sums if any collected by way or purporting to be by way of taxes if law enables/permits to do so. Needless to state that any such exercise shall be in accordance with law.



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23. In the result :

a. The impugned order in G.O.Ms.No.198 dated 19.12.2007 is declared invalid as being in excess of the power conferred on the State Government under Section 17 (or) Sections 30 read with Section 88 of the TNGST and TNVAT Act respectively.

b. Orders of assessment are set-aside insofar as it had invoked the G.O.Ms.No.198, with a direction to re-do the assessment in conformity with the declaration of invalidity of the impugned notification in 19.12.2007.

c. Where writ petitions are filed against notices, the petitioner shall submit their objections, if any, within a period of 4 weeks from the date of receipt of a copy of this order and the assessing officer shall pass orders of assessment in conformity with this order.

24. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(S.V.N., J.)

(M.S.Q.,J.)
21-12-2022

Index : Yes/No
Speaking / Non-speaking Order
dixit/ mka



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- To:
- 1.The Secretary to Government,
Commercial Taxes and Registration Dept.,
Ft.St.George,
Chennai – 600 009.
 - 2.The Commissioner of Commercial Taxes,
Chennai-600 005.
 - 3.The Commercial Tax Officer – II,
Palani.



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W.P.Nos.36170/2007 & Batch

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

dixit/mka

W.P.Nos.36170/2007 & Batch

21.12.2022