IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.09.2022**

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.P.No.41089 of 2006 and W.P.No.8875 of 2007

W.P.No.41089 of 2006:

Tvl. The Dharmapuri District Co-operative
Sugar Mills Limited,
rep. by the Special Officer,
Hosur Road,
Palacode – 636 808,
Dharmapuri District. ... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by the Secretary,
Department of Commercial Taxes
and Religious Endowments,
Fort St. George,
Chennai – 600 009.

2. The Tamil Nadu Sales Tax
Appellate Tribunal,
rep. by its Secretary,
(Additional Bench),
Coimbatore – 636 018.

3. The Commercial Tax Officer,
Gowri Complex, By-pass Road,
Palacode – 636 808. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records of the 2nd Respondent in CTA 219/2002, dated 19.06.2006 and quash the same as illegal.

For Petitioner : Mr.S.Rajesh
for Mr.S.Sivanandam

For Respondents : Ms.Amirtha Poonkodi Dinakaran,
Government Advocate

W.P.No.8875 of 2007:

M/s.Dharmapuri Roller Flour Mills,
Ammanreddihalli,
Dharmapuri. ... Petitioner

vs.

1. The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal (AB),
Dr. Balasundaram Road,
Commercial Taxes Buildings,
Third Floor, Coimbatore – 18.

2. The Commercial Tax Officer,
Dharmapuri.

3. The State of Tamilnadu,
rep. by the Deputy Commissioner (CT) Salem,
Salem Division, Salem. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the 1st Respondent in C.T.S.A.No.498/2001, quash the impugned proceedings dated 08.11.2006 and further direct the 2nd Respondent not to assess or levy or collect the Additional Sales Tax from the Petitioner in view of the amendment of Section 2 of the Tamilnadu Additional Sales Tax Act, 1970, by substitution of clause (a) for the word “dealer” the words “casual dealer or agent of a non-resident dealer or a local branch of a firm or Company situate outside the State” and insertion of section 2(aa) by enhancing the limit of the taxable turnover from Rupees Ten Lakhs to Rupees 100 Crores by Amendment Act 31 of 1996 read with G.O.Ms.No.302, dated 03.11.1998.

For Petitioner	:	Mr.V.Sundareswaran
For Respondents	:	Ms.Amirtha Poonkodi Dinakaran, Government Advocate

* * * * *

COMMON ORDER

As the issues involved in the above Writ Petitions are one and the same, both cases are taken up for disposal by this common order.

2. In these Writ Petitions, the respective Writ Petitioners have challenged the impugned orders passed by the Sales Tax Appellate Tribunal vide order dated 19.06.2006 in C.T.A.No.219/2002 and the impugned proceedings dated 08.11.2006 in C.T.S.A.No.498/2001.

3. By the orders impugned in the above Writ Petitions, the Tribunal has held that, the respective Petitioners are liable to pay the additional sales tax under the provisions of Section 2(a) of the Tamil Nadu Additional Sales Tax Act, 1970, as it stood during the period in dispute.

4. The dispute in these Writ Petitions arise on account of amendment to Section 2 of the Tamil Nadu Additional Sales Tax Act, 1970 vide amendment in the year 1996, w.e.f. 01.08.1996. **Section 2 of the said Act** reads as under:

Before 01.08.1996 :

Section 2 - Levy of additional tax in the case of certain dealers:
(1)(a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act I of 1959) (hereinafter in this Section referred to as the said Act), shall, in the case of a **dealer** whose taxable turnover for a year exceeds [ten lakhs of rupees], be increased by an additional tax calculated at the following rates, namely:
Table – 1:

(i)	Where the taxable turnover exceeds ten lakhs of rupees, but does not exceed one crore of rupees Provided that no additional tax shall be payable under this item for the first ten lakhs of rupees of the taxable turnover.	1.5 per cent of the taxable turnover
(ii)	Where the taxable turnover exceeds one crore of rupees but does not exceed five crores of rupees	2 per cent of the taxable turnover

(iii)	Where the taxable turnover exceeds five crores of rupees but does not exceed ten crores of rupees	2.25 per cent of the taxable turnover
(iv)	Where the taxable turnover exceeds ten crores of rupees but does not exceed three hundred crores of rupees	2.5 per cent of the taxable turnover
(v)	Where the taxable turnover exceeds three hundred crores of rupees	3 per cent of the taxable turnover

After 01.08.1996:

Section 2. Levy of additional tax in the case of certain dealers: (1)(a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this Section referred to as the said Act), shall, in the case of a **[casual trader or agent of a non-resident dealer or a local branch of a firm or company situate outside the State]** whose taxable turnover for a year exceeds [ten lakhs of rupees], be increased by an additional tax calculated at the following rates, namely:

Table - 2 :

(i)	Where the taxable turnover exceeds ten lakhs of rupees, but does not exceed one crore of rupees Provided that no additional tax shall be payable under this item for the first ten lakhs of rupees of the taxable turnover.	1.5 per cent of the taxable turnover
(ii)	Where the taxable turnover exceeds one crore of rupees but does not exceed five crores of rupees	2 per cent of the taxable turnover
(iii)	Where the taxable turnover	2.25 per cent of the taxable turnover

	exceeds five crores of rupees but does not exceed ten crores of rupees	
(iv)	Where the taxable turnover exceeds ten crores of rupees but does not exceed three hundred crores of rupees	2.5 per cent of the taxable turnover
(v)	Where the taxable turnover exceeds three hundred crores of rupees	3 per cent of the taxable turnover

Section 2(1)(aa): The tax payable under the said Act, shall in the case of a **dealer** including the principal selling or buying goods in this State through agents other than a casual trader or agent of a non-resident dealer or a local branch of a firm or company situated outside the State whose taxable turnover for a year exceeds one hundred crores of rupees, be increased by an additional tax calculated at the following rates, namely:

Table – 3:

(i)	Where the taxable turnover exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees	2.5 per cent of the taxable turnover
(ii)	Where the taxable turnover exceeds three hundred crores of rupees	3 per cent of the taxable turnover

5. The vires of the above amendment in Table-2 was decided by the Tamilnadu Taxation Special Tribunal as it stood then in the case of **Siemens Limited vs. State of Tamilnadu**, reported in **(1998) 110 STC 313**.

The Tamilnadu Taxation Special Tribunal ultimately struck down the amendment as *ultra vires* the Constitution and passed the following order:

> "27. To give effect to the said intention, we proceed to hold that clause (a) of sub-section (1) of section 2 of the principal Act, namely, Act 14 of 1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of section 2(l). We also make it clear that under Section (2) and 2(3), the intention of the Legislature not to pass on the burden of additional sales tax to the consumers and the reference to prosecution, shall stand unaltered. So far as section 2(1)(aa) as amended by Tamil Nadu Act 31 of 1996, the following words shall stand deleted as obnoxious:
>
> (1) The words "in this State" after the words, "Principal selling or buying goods" in section 2(1)(aa) as well as in Explanation to section 2(1)(aa).
>
> (2) The words "other than a casual trader or agent of a non-resident dealer or a local branch of a firm or company situated outside the State" in section 2(l)(aa).
>
> If the above directions are carried out, the exemption granted up to rupees one hundred crores will be equally applicable to all dealers. ..."

6. The above amendment was accepted by the State Government and a Government Order was also issued on 03.11.1998 in G.O.Ms.No.302 on the strength of an opinion of the then Advocate General of Tamilnadu vide Opinion No.23 of 1998, dated 10.09.1998.

7. The case of the respective Petitioners is that, there can be only one year for the purpose of Section 2(a) of the Act and therefore, once the provision has been amended, the question of levying additional Sales Tax under the provisions of the Tamilnadu Additional Sales Tax Act, 1970, amended w.e.f. 01.08.1996 would apply.

8. It is submitted that, admittedly, the turnover of the respective Petitioners are below Rs.100 crores during the assessment year 1996-97 and therefore, there is no question of demanding additional sales tax from the respective Petitioners.

9. Learned counsel for the Petitioners have also placed additional reliance on a decision of this Court in case of **State of Tamilnadu vs. Tvl. Bannari Amman Sugars Limited** rendered in **T.C.(R) No.71 of 2017** vide order dated **08.01.2018.**

10. Per contra, learned counsel appearing for the Respondents would submit that, the issue is no longer *res integra* and it is covered by two decisions of the Division Bench of this Court, wherein, it has considered the impact of the amendment and the decision of the Tamilnadu Special Taxation

Tribunal in **Siemens** case (supra).

11. Reference is made to the decision of the co-ordinate Bench of this Court in **Philips India Limited vs. The Assistant Commissioner (CT), Chennai** reported in **(2004) 137 STC 134 Madras** and yet another decision of the co-ordinating Bench of this Court in the case of **State of Tamilnadu vs. National Time Company** reported in **(2010) SCC Online Mad. 3781.**

12. By way of rejoinder, learned counsel for the Petitioner in W.P.No.8875 of 2007 submits that, the decision of the Division Bench of this Court in the case of **Philips India Limited** referred to supra is distinguished on facts and therefore, submits that, the order passed by the Appellate Tribunal is liable to be set aside.

13. We have considered the arguments advanced by the learned counsel for the Petitioner in both cases and the learned counsel appearing for the Respondents.

14. As a matter of fact, for implementing the provisions of the Tamilnadu Appellate Sales Tax Act, 1970, the Tamilnadu Additional Sales Tax Rules, 1970 was framed in terms of Section 4 of the Act. **Prior to**

31.10.1996, Rule 4(1) of the aforesaid Rule read as under:

> *"**R.4(1)** A dealer, whose taxable turnover under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) exceeded rupees [Ten Lakhs] in the previous year shall be provisionally assessed to additional tax and it shall be collected in such manner and within such time as may be specified in the notice in Form N.)*

After 31.10.1996, Rule 4 read as under :

> *"**Rule 4. Provisional Assessment** – (1) A casual trader or agent of a non-resident dealer, or a local branch of a firm or company situated outside the State, whose taxable turnover under the Tamil Nadu General Sales Tax Act, 1959 (Tamilnadu Act 1 of 1959) exceeded Rupees Ten Lakhs in the previous year shall be provisionally assessed to additional tax and it shall be collected in such manner and within such time as may be specified in the notice in Form-N.*

15. In the case of **Banariamman Sugars**, though it has been concluded that, the Sales Tax Appellate Tribunal has rightly held that, additional sales tax cannot be levied, since the taxable turnover for the whole year was determined as Rs.43,03,53,904/-, which is below Rs.100 crores in a year, there is no discussion as to why the other two decisions rendered in the cases of **Philips India Limited and National Time Company** *(supra)* stand

dissented. However, it is noted that, the said Bench has taken a contra view in **T.C.(R) No.23 of 2018** vide order dated 19.02.2018 in the case of **Deputy Commissioner (CT) vs. R.P.Tikmany.**

16. We are of the view that, the co-ordinate Bench of this Court in the cases of **Philips India Limited** (supra) and **National Time Company** (supra) decided the issue and therefore, the levy and collection of additional sales tax has to be strictly in accordance with the decisions rendered therein. Hence, we do not find any reasons to take a different view.

17. In the light of the above discussion, we are inclined to set aside the impugned orders and remand the case back to the original Authority to reconsider the demand of additional sales tax under the provisions of the Tamilnadu Additional Sales Tax Act, 1970 in the light of the law declared by this Court in the above two decisions.

18. Considering the fact that, the dispute pertains to the assessment year 1996-97, we direct the Respondent Authority to complete the re-assessment and pass appropriate orders within a period of **three months** from the date of receipt of a copy of this order. Needless it is to state that, before passing such an order, the Petitioner and the Respondents shall be heard.

In fine, Writ Petitions are allowed on the above terms. No costs.

(S.V.N.,J.) (C.S.N.,J.)
28.09.2022

Index : Yes/No
Speaking Order : Yes/No

(aeb)

S.VAIDYANATHAN,J.
AND
C.SARAVANAN,J.

(aeb)

W.P.No.41089 of 2006
and
W.P.No.8875 of 2007

28.09.2022