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W.P. Nos.11234 & 11235 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

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

W.P. Nos.11234 and 11235 of 2015 & M.P. Nos.1 & 1 of 2015

Abir Infrastructure Pvt. Ltd.
represented by the Deputy Manager (Accounts)/
Authorised Signatory
P. Nagarajan
No.7 Ground Floor EID Parry Compound
Judge Banglow Road
Cuddalore

Petitioner in both W.Ps.

v

1 State of Tamil Nadu
represented by its Secretary to Government
Commercial Taxes Department
Fort St. George
Chennai 600 009

2 The Assistant Commissioner (CT)
Cuddalore (Town) Assessment Circle
Cuddalore

Respondents in both W.Ps.

Prayer in W.P. No.11234 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring Section 6 of the Tamil Nadu Value Added Tax Act, 2006, inserting the expressions “other than the dealer who purchases goods



from outside the State or imports goods from outside the country” introduced *vide* Act 21 of 2007 as *ultra vires* Articles 14, 19(1)(g), 265, 301, 302 and 304 of the Constitution of India.

Prayer in W.P. No.11235 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records comprised in order TIN No.33454383759/2011-12 dated 13.03.2015 on the file of the second respondent and quash the same.

For petitioner in
both W.Ps.

Mr. P. Purushotham

For respondents in
both W.Ps.

Mr. M. Venkateshwaran
Special Government Pleader (Taxes)

COMMON ORDER

(made by C. SARAVANAN, J.)

The issue involved in these writ petitions arises out of challenge to Section 6 of the Tamil Nadu Value Added Tax Act, 2006, which has been answered by a Co-ordinate Bench of this Court in a batch of writ petitions in **L.G. Electronics India Pvt. Ltd. vs. State of Tamil Nadu and another**¹. The operative portion of the said order reads as under:

¹ W.P. Nos.29096 of 2007 *etc.* batch decided on 31.03.2022



XX. CONCLUSION

218. In view of the foregoing discussions and findings, we hold thus:

a. Section 6 of the TNVAT Act, 2006 is not a charging Section. It only provides for an alternate mode of discharging taxes to the dealers, who voluntarily opt for the compounding scheme to pay taxes at a compounded rate. It is always open to the dealers to fall back under Section 5 from the next year, if their tax planning permits them. No tax under the TNVAT Act, can be levied at the point of interstate purchase. However, when such goods are brought in and used in the execution of the works contract, they are liable to pay tax on the deemed sale in accordance with Sections 5 and 10 of the TNVAT Act.

b. While granting the concession at the point of payment of output tax, it is open to the State to impose any restriction or conditions for availing such concession. The concession at the point of interstate purchase from a registered dealer is already available under Section 8 of the CST Act and there is no tax on imported goods and such goods are taxed only at the first point of sale within the State.

c. The composition scheme under Section 6 cannot be treated as provision for levy of tax on purchases or imposing any restriction on purchases from other State or import. The conditions do not alter the rate of tax of goods imported from outside the State. The concession is granted at the point of output tax payable on the transfer of property in goods.

d. Works contract in general denotes the genus with different species. The dealers purchasing goods from local dealers form a distinct category/species from dealers who purchase goods from local as well as other state dealers or dealers who import goods to be used in the works contract. There is a rationale behind such classification for the purpose of Section 6. In fiscal or taxing enactments, it is not necessary that every enactment should be backed by objects and reasons. What is relevant is the competence of the State and whether such enactment offends any constitutional rights, which in the instant cases, are held to be negative. The object and the reason adduced in the counter, which in the opinion of this court, can be discerned even without such counter as because, whenever, a purchase takes place in the course of inter-trade or commerce falling under Section 8(1) of the CST Act, the rate of tax payable is at a concessional rate upon satisfaction of the requirement under Section 8(4), which is much lower than the rate of tax prescribed for the purchase of goods from a local dealer. The State obviously is at loss of revenue at the point of purchase, added together the option to pay tax at compounded rate on the value of the Contract, the State is at a loss.



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Such classification or distinction is not unknown in taxing law. Even Sections 5 and 6 of TNVAT Act classify works contractors into different categories. Similarly, Section 8 of the CST Act treats the dealers of the same goods differently, depending upon whether they fall under Section 8(1) or 8(2) of the CST Act. The object that is sought to be achieved is two folds viz., (i) to curb the loss of revenue accrued due to interstate purchase of goods or import; and (ii) to create a level playing field for the local dealers. Therefore, the condition is well found on intelligible differentia and has a nexus to the object that is sought to be achieved. Hence, the challenge to the provision as being arbitrary and in violation of Article 14 is rejected.

e. The challenge to a provision as being ultra vires to the constitution is available only on limited circumstances, (i) when it is beyond the legislative competence of the State and (ii) when it offends or violates the constitutional guarantees and safeguards. In the present case, the authority of the State to levy tax on sale of goods is traceable to Entry 54 of List II of Seventh Schedule as it stood then. The authority to impose tax carries with it all the incidental authority to lay down the procedure, to grant exemption or concession and to impose conditions or restrictions for availment of such exemptions and conditions. Therefore, the amendment challenged is well within the legislative competence of the State.

f. As regards the provision offending Article 14, 19(1) (g), 301, 303 and 304 of the Constitution, we have already held that the impugned amendment is based on intelligible differentia, does not affect the right of the dealers to carry on any trade of business or impedes the free movement of goods. The compounding Scheme under Section 6 is only an option to be exercised voluntarily. There is no compulsion to opt under section 6 and it is open to a works contractor to pay taxes under section 5. The condition contained in section 6 cannot be regarded as giving any preference to one State over another or as discriminatory by levying more tax on the goods brought in from outside the State as because the State by such amendment has not imposed any tax. Therefore, the Amendment does not infringe any of the guarantees or safeguards provided under the Constitution. Accordingly, all the writ petitions challenging the vires of Section 6 of TNVAT Act, 2006, fail and are hence, dismissed.

g. Insofar as the challenge to the retrospective effect given to the amendment as being violative of Article 19 (1) (g) of the Constitution, the same is rejected as because it is within the authority of the State to bring in such amendments in fiscal statutes by clearly prescribing the date from which it must be given effect. The hardship that is caused to individuals seldom matters as validity of any fiscal enactment ought to be tested on the basis of generality of its operation and not on the basis of few individual cases.



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W.P. Nos.11234 & 11235 of 2017

However, by the time amendment was introduced, the assessment year 2006~07 was over. Hence, it will not apply to the assessment year 2006~07. With respect to the assessment year 2007~08, the retrospective operation will not affect the dealers, who had already exercised the option prior to the date of amendment for that year and would be applicable only to those dealers who had not exercised the option by that date.

h. Insofar as reading down the provision to permit the assesseees to exclude the turnover relating to interstate purchase or import and pay tax for that separately under Section 5 and for the balance turnover under Section 6, the said request is rejected as the same is not possible, once the provisions are upheld. The same would amount to re-writing the law and defeat the very purpose of the amendment.

i. Regarding the co-developers of SEZ are concerned, the provision cannot be read down to exclude the co-developers of SEZ, when the validity has been upheld. Such an exercise would amount to dichotomy in law. The facts, as to whether the activity against which an exemption is claimed, is an authorized activity of the Developer to extend the benefit to the co-developer, as to whether the ownership is transferred to third parties and the interpretation of contracts cannot be adjudicated in this writ petition. It is open to the concerned petitioner to challenge the order of assessment, if any, passed against him in the manner known to law.

j. With regard to the writ petitions challenging the notices are concerned, the petitioners are directed to submit their reply within a period of four weeks from the date of receipt of a copy of this order and the concerned assessing officers shall fix a date for personal hearing within two weeks thereafter and pass orders within a further period of four weeks. In case, the assesseees fail to submit their reply, it is open to the assessing officers to fix a date for hearing and thereafter, pass orders in accordance with law.

k. Insofar as the challenge to the assessment orders is concerned, this court has already upheld the vires of Section 6. In some cases, this court finds that there are other issues which are dealt with in the assessment orders. It is only appropriate that the factual aspects are raised before the appellate authority. Therefore, this court relegates the petitioners to avail the alternative remedy of appeal under Section 51 of the TNVAT Act, 2006 within a period of four weeks from the date of receipt of a copy of this order. The Registry is directed to return the original impugned orders to the respective counsel.

219. To sum up, the writ petitions challenging the vires of Section 6 of TNVAT, 2006 are dismissed and the writ petitions challenging the notices and assessment orders are disposed of with the above directions.



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There will be no orders as to the costs. All the connected miscellaneous petitions are closed.”

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2 Following the aforesaid order, these writ petitions also stand dismissed, however, sans costs. Connected W.M.Ps. stand closed.

[S.V.N., J.] [C.S.N., J.]
14.12.2023

cad



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To

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- 1 The Secretary
Commercial Taxes Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 2 The Assistant Commissioner (CT)
The Assistant Commissioner (CT)
Cuddalore (Town) Assessment Circle
Cuddalore



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W.P. Nos.11234 & 11235 of 2015

S. VAIDYANATHAN, J.

and

C. SARAVANAN, J.

cad

Common order in
W.P. Nos.11234 and 11235 of 2015

14.12.2023