



W.A.Nos.703 of 2015 and etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.01.2023
Pronounced on	28.02.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.Nos.703, 704, 963, 964, 965, 966, 967, 968, 829, 830, 875, 876, 877,
882, 883, 912, 913, 914, 915, 930, 931, 993, 994, 995, 1005, 1013, 1014,
1114, 1115, 1116, 1117, 1122, 1123, 1124, 1153, 1154, 1155, 1156, 1177,
1178, 1179, 1180, 1181, 1182, 1183, 1273, 1274, 1275, 1276, 1293, 1294,
1295, 1660, 1661, 1662, 1663 of 2015, 948, 949, 950, 951, 952 of 2020 and
W.P.Nos.5700, 5701, 5702 of 2011, 27674, 27675, 27676 of 2014, 26075,
26076, 26077, 26078, 26079, 26080, 26081, 26082, 31968, 31969, 31970
of 2015, 32429, 35964 of 2016, 23653, 23655 of 2021 and
T.C.Nos.36, 37 of 2016, 5,6,7,8,9,10 of 2022 and
CMP.Nos.4127, 11560, 11561 of 2016, 11452, 11454, 11461, 11451,
11456 of 2020, 13432 of 2021 and
W.M.P.Nos.28137, 30937 of 2016, 24901, 24902 of 2021**

W.A.No.703 of 2015:

M/s.Consolidated Construction Consortium Ltd.,
No.5, 2nd link Street, CIT Colony,
Mylapore, Chennai 600 004.

... Appellant

Vs.

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

... Respondent



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CASE NUMBERS	COUNSEL FOR APPELLANT(S)/PETITIONER(S)	COUNSEL FOR RESPONDENT(S)
W.P.Nos.31968, 31969, 31970 of 2015 and W.P.Nos.32429 of 2016	Mr.N.Venkataraman, Senior Counsel, assisted by Ms.P.Jayalakshmi	Mr.Haja Nazirudeen Additional Advocate General Assisted by
T.C.Nos.10, 9, 6, 5, 8, 7 of 2022	Mr.N.Sri Prakash	Mr.M.Venkateswaran Special Government Pleader
W.A.Nos.829, 830, 882, 883, 993, 994, 995, 1114, 1115, 1116, 1117, of 2015 and W.P.Nos.27674, 27675, 27676 of 2014 and 26075, 26076, 26077, 26078, 26079, 26080, 26081, 26082 of 2015	Mr.K.Vaitheewaran	and Mr.P.Haribabu, Govt. Advocate
W.A.Nos.963, 964, 965, 966, 967, 968 of 2015	Mr.Prakash Shah for Mr.A.K.Rajaraman	
W.A.Nos.912, 913, 914, 915 of 2015, 1273 to 1276 of 2015	Mr.B.Raveendran	
W.A.Nos.1177, 1178, 1179, 1180, 1181, 1182, 1183 of 2015	Mr.P.Rajkumar	
W.A.Nos.1660, 1661, 1662, 1663 of 2015	Ms.R.Hemalatha for Mr.S.Rajasekar	
T.C.Nos.36, 37 of 2016	Ms.R.Charulatha for Mr.Lakshmi Kumaran and Sridharan	



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W.A.Nos.948, 951, 952, 950, 949 of 2020	Mr.T.Ramesh	
W.A.Nos.875, 876, 877 of 2015 and W.P.Nos.23653, 23655 of 2021	Mr.N.Prasad	
W.A.Nos.703, 704, 930, 931, 1005, 1013, 1014, 1122, 1123, 1124, 1153, 1154, 1155, 1156 of 2015 and W.P.Nos.35964 of 2016	Ms.Aparna Nandakumar	
W.P.Nos.5700 to 5702 of 2011	R.Kumar	
W.A.No.876 of 2015	Mr.N.Prasad	Mr.Haja Nazirudeen Additional Advocate General for R1, R2 Assisted by Mr.M.Venkateswaran Special Government Pleader and Mr.P.Haribabu, Govt. Advocate V.Sundareswaran for R4 Ms.Aparna Nandakumar for R5
W.A.Nos.1293,1294 and 1295 of 2015	Mr.Haja Nazirudeen Additional Advocate General Assisted by Mr.M.Venkateswaran Special Government Pleader	Mr.C.Subramanian for Mr.B.Raveendran



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assisted Mr.P.Haribabu, Govt. Advocate	by	
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COMMON JUDGMENT

MOHAMMED SHAFFIQ, J.

The present batch of Writ appeals is filed challenging the order of the learned Single Judge inasmuch as it finds that “export” is a condition precedent to constitute “Zero Rate Sale”. There are Tax Case Appeals and Writ Petitions wherein identical questions are involved and thus taken up for hearing with the present batch of Writ Appeals by consent of all parties concerned. The common question that arises for consideration revolves around the scope of Section 18 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as “TNVAT Act”). There is also a challenge to the Circular No.9 /2013 dated 24.07.2013 issued by the Commissioner of Commercial Taxes, in which it was clarified that sales of goods to a dealer located in a Special Economic Zone (hereinafter referred to as “SEZ”) in the State would not qualify as a "Zero Rate Sale" unless the goods purchased by the dealer located in a SEZ is exported as such or consumed or used in the manufacture of other goods that are exported.



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2. At the outset, it may be relevant to note that in the present batch of cases the transactions involved are in the nature of works contract apart from conventional sale of goods covered under Section 18(1)(ii) of the TNVAT Act, i.e., sale of goods to any registered dealer located in SEZ in the State. There is no uniformity as to the nature of goods or transactions. The following Table gives a broad view of the nature of transactions/ activity undertaken by some of the appellants/ petitioners:

S.No	Case No.	Impugned Order	Nature of Activity
1.	W.A.Nos.993 to 995 of 2015 Consolidated Construction	TIN33140844351	Executed works contract for Special Economic Zone Customer
2.	W.A.Nos.1013 and 1014 of 2015 Larsen and Toubro Ltd.	TIN33800620015	Executed works contract for SEZ units and developers in the State.
3.	TC Nos.36, 37 of 2016 and TVL.MW High Tech Projects	S.T.V.A.T.No.85 of 2014	Engaged in the business of works contact.
4.	TC Nos.5 to 10 of 2022 Cummins India Ltd.	Order of Tribunal	Engaged in the business of works contact.
5.	W.A.Nos.875 to 877 of 2015 Philips India	quash the Circular No.9/2013-Act III/22237/2013 dt.24.07.2013	Involved in the activity of manufacture of High Tensile Fasteners, Gear Shifters, Radiator Caps, Cold Extruded components, power metal parts etc.
6.	W.A.Nos.1177 to	Assessment orders	Involved in electrical work, civil



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	1183 of 2015 Ocean Interiors		work and also interior decorating works under contract to SEZ units
7.	W.P.Nos.5700 to 5702 of 2011 Shapoorji Pallonji	TIN No.33510762037 for 3 AY	Engaged in the business of works contract SEZ location.
8.	W.P.Nos.27674 to 27676 of 2014 URC Constructions	TIN No.33983001169/2010-11 for 3 AY	Engaged in the business of works contract SEZ location.
9.	W.P.Nos.26075 to 26082 of 2015 Leighton Contractors	TIN No.33850461441/2006-07	Engaged in the business of works contract for construction SEZ location.
10.	W.P.No.35964 of 2016 K.S.Venkataraman & Co	A.P.No.32/2014 (VAT)	Engaged in the business of works contract
11.	W.P.No.32429 of 2016 Larsen & Toubro Ltd.	TIN. No.33800620015/2012-13	Engaged in manufacturing, trading, financial, import & export, undertaking execution of works contract for variety of customers executing works contract for SEZ.
12.	W.P.No.29159 of 2015	TIN No.33570523772/2012-13	Interior work, false ceiling, civil and electrical work
13.	W.P.Nos.31968 to 31970 of 2015 Larsen & Toubro Ltd.	TIN No.33800620015/	Engaged in manufacturing, trading, financial, import & export, undertaking execution of works contract for variety of customers executing works contract for SEZ.
14.	W.P.Nos.1153 to 1156 of 2015 Consolidated Interiors	TIN No.33620821249	Engaged in construction in work contract and interior work
15.	W.A.Nos.1122 & 1124 of 2015 Noble Consolidated	TIN No.33410821359/2007 3 AY	Engaged in work contract
16.	W.P.Nos.23653 & 23655 of 2021 CEE DEE YES	TIN 33330862143 for 32 AY	Involved in the activity of execution of various building and construction contracts



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	Housing		
17.	W.P.Nos.1273 to 1276 of 2015 Arunachalam & Co	TIN 33470780101 for 3 AY	Engaged in execution of civil works contract
18.	W.P.Nos.1293 to 1295 of 2015	TIN No.33741662410 3 AY Asst. Commissioner	Engaged in manufacture of construction machinery viz., concrete mixing etc.
19.	W.A.Nos.1660 to 1663 of 2015 Sujana Metal products	Circular No.9/2013 -Act Cell-III/22237/2013	Dealer in iron and steel inside the state of TN and resale the same inside the state to locally as well as the units located in SEZ
20.	W.A.Nos.948 to 952 of 2020 Swanag Construction Pvt Ltd.	Assessment order passed by the commercial tax	Engaged in civil construction work
21.	W.A.Nos.882 & 883 of 2015 E.T.A. Construction	TIN 33260640585	Engaged in executing work contract
	W.A.Nos.912 to 915 of 2015 S.P.Fabrications Pvt. Ltd.	TIN 33981346252 4 Ay	Manufacture of Aluminium fabricators and interior decorators
22.	W.A.Nos.829 to 830 of 2015 Padam Interiors	TIN 33380845480 2 AY	Interior decorator and work contract
23.	W.A.Nos.930 to 931 of 2015 K.S.Venkataraman	order in A.P.67 to 69 of 2014	Civil work contract
24.	W.A.Nos.703 to 704 of 2015 Consolidated construction	TIN 33490701326	Construction and work contract, commercial and civil construction
25.	W.A.Nos.963 to 968 of 2015 RDC Concrete India Pvt Ltd.	TIN 33221663278	Work contract- ready mix of concrete



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26.	W.A.Nos.1114 to 1117 of 2015 Leighton Contractors	TIN 33850461441	Work contract
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3. Order of the learned Single Judge:

a) The challenge to the Circular No.9/2013 dated 24.07.2013 issued by the Commissioner was rejected as the circular was not statutory in nature.

b) That the expression "Input Tax Credit" (ITC) cannot be divested from Section 18 of the TNVAT Act inasmuch as what is enjoyed by the dealer as Input Tax Credit gets culminated/ ripens into refund.

c) The concession granted under Section 18 of the TNVAT Act is a benefit given to exporters and such concession which is in the nature of Input Tax Credit, which may ripen into a refund claim is subject to the restrictions and conditions contained in Section 19 of the TNVAT Act.

d) Sales to Special Economic Zone being exempt, the dealers would not be eligible to claim Input Tax Credit, in view of Section 19(5) of the TNVAT Act.

e) To be entitled to the benefit of Zero Rate Sale under Section 18 of the TNVAT Act, it is necessary for the dealer to establish that the goods



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sold to dealers located in SEZ are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-Section (2) to Section 18 of the TNVAT Act.

f) That Section 18 of the TNVAT Act, contemplates two independent benefits viz., Input Tax Credit and Refund, which was rejected.

g) The submission that Section 18(2) of TNVAT Act is inapplicable to clause (ii) of Section 18(1) of the TNVAT Act was rejected on the premise that it amounts to inserting a new provision to the statute which is not contemplated. In other words, it would amount to rewriting the law.

3.1. After holding that export by the dealer purchasing the goods located in Special Economic Zone is a condition precedent for claiming the benefit of “zero rate sale”. The learned Single Judge disposed of the writ petitions granting liberty to the petitioners therein to file an appeal in case the challenge is to orders of assessment and to file objections in case the challenge was to the Show Cause Notice.

3.2. It is this order of the learned Judge which is the subject matter of challenge in this batch comprising of Writ Appeals. The tax appeals are



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against the order of the Tribunal and the writ petitions are against the order of assessments / notices where the above issue is involved.

4. Case of the Appellants:

4.1. Submissions of Mr.N.Venkataraman, Senior Advocate:

a) That sales to a registered dealer located in a SEZ in the State must be deemed to be an export. SEZ is treated as a territory outside India.

b) A sale to a registered dealer located in an SEZ in the State would constitute an export and thus qualify as a Zero Rate Sale.

c) The order of the learned Judge is erroneous inasmuch as it finds that Input Tax Credit would ripen into refund and that refund is nothing but Input Tax Credit.

d) Export is a condition to be complied for a dealer to claim refund and not a condition to claim input tax credit on the basis that the sale is Zero Rate under Section 18 of the TNVAT Act.

4.2. Submissions of Mr.N.Sriprakash:



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a) In terms of the definition viz., Section 2(44) of the TNVAT Act, “Zero Rate Sale”, would mean a sale of goods on which no tax is payable, but credit for the Input Tax related to that sale is admissible.

b) That Section 18 of the TNVAT Act, provides for two types of benefits viz., Zero Rate and additionally Refund. Both the benefits don't overlap but independent of each other.

c) That to import the requirement of export into transactions identified and mentioned under Section 18(1)(ii) of the TNVAT Act viz., sale of goods to any registered dealer located in a SEZ even to qualify as a “Zero Rate Sale”, is to import conditions through a process of interpretation resulting in whittling down/curtailing the benefit, which ought to be avoided.

d) The difference in language between Section 18(1)(i) and Section 18(1)(ii) of the TNVAT Act ought not to be ignored.

e) Legislature will use expressions / language which will convey its intention best. Section 18(1)(ii) of the TNVAT Act does not require export of the goods purchased as such or consumed or used in the manufacture of other goods that are exported as specified in sub-Section (2) of Section 18



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of the TNVAT Act as a condition by its plain language, such a condition ought not to be read into the said provision.

f) Section 18 of the TNVAT Act will have to be construed as a whole in order to best understand the scope of Section 18(1)(ii) of the TNVAT Act.

g) Section 18(2) of the TNVAT Act is applicable only to cases where refund is claimed and not to cases such as that of the appellant/ assessee where only a claim of Zero Rate Sale i.e., sale on which no tax is payable but credit for the Input Tax related to that sale is admissible. Consequently, Section 18(2) of the TNVAT Act cannot be telescoped into Section 18(1)(ii) of that Act.

h) The long title of the Special Economic Zones Act, 2005 (“the Central Act”) cannot control the scope and operation of the provisions of that Act. A reading of the SEZ Act and its Rules will show that a SEZ Unit can also make Domestic Tariff Area (hereinafter referred to as "DTA") sales. Consequently, requirement of an export cannot in any view be read into Section 18(1)(ii) of the TNVAT Act.



4.3. Submissions of Mrs.Aparna Nandakumar:

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a) The concept of zero rating is unique and adopted from the Value Added Tax System prevalent in European VAT Laws, Australian GST and the like. This unique concept postulates that the taxable event viz., sale or supply has the benefit of Input Tax Credit even though the sale or the supply is itself exempt.

b) The aspect of dual alternative benefit which flows from Section 18(1) of the TNVAT Act, 2006 is reinforced by the provisions of Section 18(3) of the TNVAT Act, 2006 which sets a maximum time limit of 180 days for either utilization of Input Tax Credit or claiming of refund.

c) The rights and obligations that pertain to developers, co-developers and entrepreneurs within the SEZ are identical. The only point of difference is that the developer and the co-developer as defined in Section 2(f) and 2(g) of the SEZ Act, 2005 respectively gets the letter of approval to establish a Zone, under Section 4 of the SEZ Act, 2005. The “entrepreneur” as defined in Section 2(1) of the SEZ Act, 2005 can only establish a "unit" within the Special Economic Zone and is not granted/issued with the letter of approval to establish a Special Economic



Zone. Thus, a developer or a co-developer can also be an entrepreneur by establishing an unit within its own Special Economic Zone. While the term 'Developer' or 'Co-Developer' and 'Special Economic Zone' form a genus, the terms 'entrepreneur' and 'unit' would be the species under the genus operating within the Special Economic Zone.

4.4. Submissions of Mr.K.Vaitheeswaran:

That there is no uniformity in tax treatment of sale to Special Economic Zone by the States. While some States had granted exemptions few others have granted exemption and also Input Tax Credit i.e., similar to Zero Rate in terms of Section 2(44) of the TNVAT Act. While Tamil Nadu has chosen a zero rate sale to be one on which tax is no payable but entitled to Input Tax Credit while also extending the additional benefit of refund under circumstances mentioned in sub-section (2) to Section 18 of the TNVAT Act subject to the conditions contained in sub-section (3) to section 18 of the TNVAT Act. In this regard, reference was made to provisions of various State across the country governing sales to SEZ.



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5. Case of Respondent:

On behalf of the State, the learned Additional Advocate General Mr.Haja Nazirudeen submitted the following:

a) That Section 18(1) and (2) of the TNVAT Act cannot be dissected both the sub-sections form a complete and integrated code and must be read together and an assessee should satisfy the conditions laid down in sub-section (1) and (2) to Section 18 of the TNVAT Act cumulatively.

b) That all the three sub-clauses contained in Section 18(1) of the TNVAT Act, are targeted for supplies outside the country.

c) The intention behind enacting the SEZ Act as could be discerned from the Preamble to the Act is to increase exports and thus Section 18 of the TNVAT Act must be understood in a manner that promotes the object of the SEZ Act and avoid a construction that would result in drifting away or diluting the object of the SEZ Act.

d) Section 15 of the TNVAT Act which deals with “*Exempted Sale*”, covers sales of goods exempted by notification. The State Government vide



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notification in G.O.Ms.No.193 dated 30.12.2006 and G.O.Ms.No.15 dated 29.01.2016 issued in exercise of powers under Section 17 and 30 of the TNGST/TNVAT Act respectively provides for exemption from tax on sale of goods to a dealer located in SEZ subject to the conditions set out therein. G.O.Ms.No.15 being a notification issued under Section 30 of the TNVAT Act would fall within the meaning of “Exempted Sale” in terms of Section 15 of the TNVAT Act, thus Input Tax Credit shall not be allowed in view of the restriction/embargo contained in Section 19(5)(a) of the TNVAT Act.

e) Placing reliance on the notification in G.O.Ms.No.15 dated 29.01.2016 issued under Section 30 of the TNVAT Act and on Section 12 of the TNSEZ Act both of which provides for exemption on sales to dealers in SEZ, it was submitted that the benefit of Zero Rate under Section 18 of the TNVAT Act ought to be understood as being distinct and covering/dealing primarily for circumstance different from what is provided in notification in G.O.Ms.No.15 dated 29.01.2016 and Section 12 of TNSEZ Act. Thus the condition of export as mentioned in Sub-Section (2) to Section 18 of the TNVAT Act, must be complied/fulfilled.

f) Refund which is provided for under Section 18(2) of the TNVAT



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Act is nothing but Input Tax Credit.

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g) That the scheme under the TNVAT Act and TNSEZ Act are distinct and the petitioners/ appellants cannot have the benefit of both the schemes.

h) Further, no clarification has been issued and the proceeding in Circular No.9 of 2013 dated 24.07.2013 is in the nature of letter and the authorities cannot override the statutory provision.

i) That sale under Section 18 of the TNVAT Act, would not include works contract inasmuch as there is no export of goods and thus the sale would not qualify as Zero Rate sale under Section 18 of the TNVAT Act.

6. Issue:

Against the above background, question arises as to whether for a sale to a dealer located in a SEZ in the State to qualify as a "zero rate sale" in terms of Section 2(44) read with Section 18(ii) of the TNVAT Act, the goods so purchased must be exported as such or consumed or used in the manufacture of other goods that are exported, by the dealer located in Special Economic Zone.



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To answer the above question it is necessary to understand the scope and ambit of Section 18 of the TNVAT Act. However, before proceeding further it may be necessary to examine the object behind development of Special Economic Zones and the tax treatment of the sales of goods to dealers located in SEZ under the Tamilnadu Special Economic Zones Act, 2005, TNGST Act, TNVAT Act and VAT Acts of other States.

7. Object of SEZ and relevant provisions under SEZ Act:

Special Economic Zones Act, 2005 was introduced with a view to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto as would be evident from a reading of the Preamble to SEZ Act, 2005:

a. SEZ - A Global Perspective:

Traditionally SEZs are created as open markets within an economy that is dominated by distortionary trade, macro and exchange regulation and other regulatory governmental controls. A long-held view is that



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investment, in particular foreign investment, in enclaves such as SEZ, pushes forward the process of industrial development.

The first known instance of a SEZ seems to have been an Industrial park set up in Puerto Rico in 1947 to attract investment from the US mainland followed by few other countries. But it was China that made the world look at SEZ as a device to promote economic development with its largest SEZ being the metropolis of Shenzhen.

b. Evolution of SEZ in India:

With a view promote export which is one of the markers of economic development and to earn valuable foreign exchange, periodical experiments were carried out. India experimented with the concept of Export Processing Zones (EPZ).

Economic Policies and legislations are a product/result of experimentation and made on the basis of trial and error. As a part of the continuing economic experiment in 2000, the new Export and Import Policy allowed SEZs to be set up in Public, Private or Joint sector or by the State Government. The EXIM Policy, 2000 launched a new scheme of Special Economic Zones. SEZ's are the markers of government's strategy to create



an "export-oriented" economy.

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In May 2005, the Government of India effectuated its policy through a legislative measure/action by introducing "*Special Economic Zones (SEZ) Act of 2005*" endorsing its commitment to a long-term and stable policy for the SEZ structure. In other words, what was previously an administrative construct was given a legislative framework.

The SEZ Act, received the assent of the President of India on 23.06.2005. The idea was to encourage export-oriented production. The SEZ provides a means to bypass many of the domestic economy's fiscal and infrastructural obstacles that may otherwise make Indian goods and services less competitive in international markets. The Special economic Zone (SEZ) is a duty-free enclave with separately developed industrial infrastructure.

In addition to tax breaks, SEZ law provides a one-step clearance and approval mechanism for setting up SEZ units. SEZs are regarded as foreign territory for the purpose of duties and taxes, and operate outside the domain of the custom authorities. They are free to sell goods in the Domestic Tariff Area "DTA" on payment of applicable duties. Sales from DTA entities to



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SEZ units is eligible to benefit of export incentives and foreign currency exemption schemes. In addition, many State Governments granted Sales Tax/VAT exemptions to DTA-SEZ sales. SEZ units are also exempt from the Central Government's Service and Excise Tax regimes.

c. Objectives of SEZ:

The objective behind a SEZ is to enhance foreign investment, increase exports, create jobs and promote regional development. The primary objectives of the SEZs are:

- (a) Generation of additional economic activity;
- (b) Promotion of exports of goods and services;
- (c) Promotion of investment from domestic and foreign sources;
- (d) Creation of employment opportunities;
- (c) Development of infrastructure facilities.

From the above it is evident that SEZ is part of an experiment in progress/ continuous experiment of fiscal and economic policy to promote export. The above policy was effectuated through affirmative legislative action with the introduction of the Special Economic Zones Act by the Parliament. The State legislature also introduced corresponding legislation



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such as TNSEZ Act, 2005. Extension of fiscal benefits being an integral part of the SEZ Scheme, the State legislatures extended/granted different benefits in the form of exemption and "Zero-Rate". TNVAT provides for exemption vide G.O.Ms.No.15 and Zero Rating i.e., sales on which no tax is payable but input tax credit is admissible, while providing the additional benefit of refund under certain circumstances.

The following Table contains the provisions relating to treatment of sales to dealers in SEZ by various States across the country:

Sl.No	RELEVANT ACT AND PROVISIONS	TAX TREATMENT OF SALE TO S.E.Z
	ZERO RATED SALES	
1.	Assam Value Added Tax Act, 2003 Section 9. Exceptions and Zero rating; and Section 2(59). Zero - rates Sales:	Section 2(59). Zero-rated Sales: "Zero-rated sales" mean the sales which are subject to tax is charged and credit for Input Tax paid in the State is allowable. Section 9. Exemptions and Zero rating: Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to a unit located in Special Economic zone(SEZ) shall be zero rated.
2.	Bihar Value Added Tax Act, 2005 Section 17. Exports to be Zero rated:	Section 17. Exports to be Zero rated: (1) In the case of a sale in the course of export under Section 5 of the Central Sales Tax Act, 1956 (74 of 1956); or sale of any input made to any dealer in a special economic zone outside the customs territory of India; or sale (including sale outside India and Domestic Tariff Area) by an export oriented unit, there shall be no tax payable on the turnover of such sale and the person exporting the goods or selling them shall be entitled, in the manner prescribed, to a credit of input tax paid— (a) on the purchase of the goods sold in the course of export (excluding sale to Domestic Tariff Area) or purchase of goods sold to any dealer in the special economic zone or sale (including sale outside India and Domestic Tariff Area) by an export oriented unit, or



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		(b) on the purchase of inputs and capital assets which have been used for the manufacture of goods sold in the course of export (excluding sale to Domestic Tariff Area) or to any dealer in the special economic zone :
3.	Goa Value Added Tax Act, 2005 Section 5. Levy of Value Added Tax on Goods specified in the Schedule.	Section 5. Levy of Value Added Tax on Goods specified in the Schedule. 5(2) Zero Rate for Exports.- (a) ... (b) The Government may, by notification published in the Official Gazette and subject to such terms and conditions as may be specified in this behalf, extend zero rate of tax for transactions effected from Domestic Trade Area to Special Economic Zone or for 100% export oriented units or Software Technology Park units or Electronics Hardware Technology Park units or for any such manufacturing or processing units as it may deem fit.
4.	Gujarat Value Added Tax Act, 2003 Section 5A. Zero rated sale:- Section 2(37). "Zero rated sale"	Section 5A. Zero rated sale. - The following sale shall be zero rated sale for the purpose of this Act and tax credit on the purchase related to such sale shall be allowed subject to such conditions as may be prescribed:- (1) Sale of goods to the Developer or Co-developer of Special Economic Zone as defined in the Gujarat Special Economic Zone Act, 2004 (Gujarat 11 of 2004); or (2) Sale of goods to a unit carrying on its business in the processing area or in the demarcated area of Special Economic Zone and approved as such by the Approval Committee as defined in the Gujarat Special Economic Zone Act, 2004 (Gujarat 11 of 2004): Provided that the sale of goods specified in Schedule III shall not be zero rated sale: Provided further that the sale of certain goods or sale of goods by any dealer or class of dealers as may be specified by the State Government by notification in the <i>Official Gazette</i> , shall not be zero rated sale. Section 2(37) "zero rated sale" means a sale of goods by a registered dealer to another registered dealer on which the rate of tax leviable shall be zero but tax credit on the purchase related to that sale is admissible.
5.	Jharkhand Value Added Tax Act, 2005 Section 2 (viii) Explanation 2 (lxv) "Zero rates sales"	Explanation 2 (lxv) to Section 2(lviii) - "Zero Rated Sales" for the purpose of this Act means a sale of goods, in the course of Inter-State Trade or Commerce, export to outside the territory of India including sale in course of Export and Sale of Goods to any unit located in Special Economic Zone as may be notified. Section 49. Sales not liable to Tax and Zero Rated Sales:—



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	Section 49. Sales not liable to tax and zero rates sales:-	49(1) Notwithstanding anything contained in this Act, a Value Added Tax shall not be imposed under this Act; (i) Where such sale or purchase takes place out side the State of Jharkhand; or (ii) Where such sale or purchase takes place in the course of Import of goods into the territory of India or Export of goods out of the territory of India. 49(2) The following shall be Zero-rated sales for the purpose of this Act, and shall be eligible for Input Tax Credit under sub-Section (4) of Section 18 of this Act— (i) Sale of taxable goods in the course of inter-State trade and commerce falling within the scope of Section 3 of the Central Sales Tax Act, 1956. (ii) Sale of goods falling within the scope of sub-Sections (1) and (3) of Section 5 of the Central Sales Tax Act, 1956. (iii) Sale of goods: to an unit located in Special Economic Zone or a STP unit or an EHTP unit or an EOU unit
6.	Manipur Value Added Tax, 2004 Section 17. Input Tax Credit:	15. Input tax.—Input tax in relation to a registered dealer means the tax charged under this Act by the selling dealer to such dealer on the sale to him of any goods for resale or use in manufacturing or processing of goods for sale. 16. Tax payable.— (1) The net tax payable by a registered dealer for a tax period shall be the difference between the output tax plus purchase tax, if any, and the input tax, which can be determined from the following formula: Net tax payable = (O+P)-I Where 'O' denotes the output tax payable for any tax period as determined under section 14, 'P' denotes the purchase tax paid by a registered dealer for any tax period as determined under section 10 and 'I' denotes the input tax paid or payable for the said tax period as determined under section 15. (2) The net tax payable by a dealer liable to pay tax but not registered



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	under this Act for a tax period shall be equal to the output tax payable for the said tax period as determined under section 14. (3) If the amount calculated under sub-section (1) is a negative quantum — (a) the same shall be adjusted against the tax liability, if any, under the Central Sales Tax Act, 1956 at the option of the dealer for the said tax period and only the remaining amount of the Central Sales Tax shall be payable; or (b) any amount of credit remaining after such adjustment shall be carried forward to the next tax period. 17. Input tax credit: (1) (2) (3) (4) Input tax credit shall be allowed for purchase of goods made within the State of Manipur from a registered dealer holding a valid certificate of registration and which are intended for the purpose of — (a) sale or resale by him in the State of Manipur; or (b) use as raw material or as capital goods in the manufacturing and processing of goods other than those exempt from tax under this Act intended for sale in the State of Manipur; or (c) inter-States sales effected from the State of Manipur; or (d) manufacture of goods, production, processing, assembling, treating, repairing, reconditioning, re-engineering, packaging in Special Economic Zone (SEZ) and Software Technology Part (STP); or (e) for use as containers for packing of goods other than those exempt from tax under this Act for sale or resale in the State of Manipur: Provided that if purchases are used partially for the purposes specified in this sub-section, input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.
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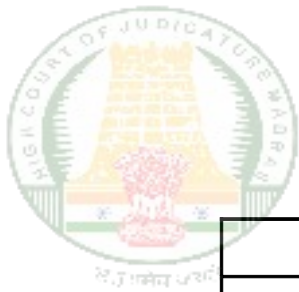
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	Section 18. Zero Rated Sales	when such goods are sold— (a) in course of inter-State trade or commerce; or (b) in course of export out of the territory of India; or (c) to a dealer having business under— (i) a SEZ; or (ii) a STP; or (iii) a EHTP; or (d) to an EOU
9.	The Sikkim Value Added Tax Act, 2005 Section 22. Exports to be Zero-rated:	Section 22. Export to be Zero-rated: (1) A sale specified under Section 5 of the Central Act, by a dealer or an export oriented unit, shall be zero-rated and there shall be no tax payable on the turnover of such sale, and the person exporting the goods shall be entitled in the manner prescribed to a credit of input tax paid:— (a) on the purchase of the goods sold in the course of export, or (b) on the purchase of inputs and capital goods which have been used for the manufacture of goods sold in the course of export: Provided that the input tax credit on account of capital goods shall be allowed only to the extent and in the manner prescribed. Explanation— For the purpose of this section, all sale of inputs made to the dealers in a Special Economic Zone as notified by the Central Government under Section 5 of the Foreign Trade Regulation Act, 1988 shall also be zero-rated.
10.	The Tamil Nadu Value Added Tax Act, 2006 Section 2(44). “Zero rate sale”: Section 18. Zero-rating:	Section 2(44). “Zero rate sale”: 'means a sale of any goods on which no tax is payable but credit for the input tax related to that sale is admissible. Section 18. Zero- rating: 18(1) The following shall be zero rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a moistered dealer in the State subject to such



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		resinctions and conditions as may be prescribed (i) A sale as specified under sub-Section (1) or (3) of Section 5 of the Central Sales Tax Act, 1956, (Central Act 74 of 1956) (ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, if such registered dealer has been authonsed to establish such units by the authority specified by the Central Government in this behart (iii) sale of goods to international organisations listed out in the Fifth Schedule 18(2) The dealer, who makes a zero rate sale shall be entitled to refund of input tax paid pr payable by him on the purchase of goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1) subject to such restrictions and conditions as may be prescribed.
11.	The Tripura Value Added Tax Act, 2004 Section 2(38) "zero rating Section 13 Exports	2(38) Zero rating means complete removal of tax up to the zero rated stage of production and: distribution No tax is charged on sale and credit is given for the tax paid on purchases. 13. Exports: 13(1) Export from India will be zero rated ie the tax applicable to the exported commodity would be zero and credit /refund would be available for VAT paid under this Act on input used by them. 13(2) Sale of goods to International Organisations specified in Schedule 1 and official and private purchases by the Diplomatic Missions/Consulates shall be deemed to be sale of goods in the course of export out of territory of India and shall be entitled to zero rating as provided 13(3) Supplies from domestic tariff area to Special Economic Zone and Export Onented Units would be zero rated and the supplying units would get credit/refund for VAT paid on inputs
12.	The Uttarakhand Value Added Tax Act, 2005 Section 4(2)(d).	Section 4(2)(d) A sale in the course of export of goods outside the Territory of India as specified under sub-section(1) and sub-section(3) of section 5 of the Central Sales Tax Act 1956 shall be Zero-Rated which means that there shall be no tax on the sale turnover of such transaction and the exporter shall be entitled to refund of tax paid by him on purchase of goods which are so exported Provided that units established in Special Economic Zones (SEZ), shall be entitled to claim refund of tax paid on purchase



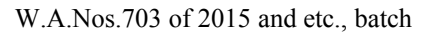
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		from units established in Domestic Tariff Area.
	The West Bengal Value Added Tax Act, Section 2(59) Section 21A(1) Zero Rated Sale Schedule AA	Section 2(59). 2(59) zero-rated sale means a sale of any goods on which no tax is chargeable but credit for the input tax related to that sale is admissible or section 16A, sale of goods between persons whether dealer or not, or organisations as specified in column (2) of Schedule AA, shall be zero-rated as defined in clause (59) of section 2 Schedule AA 4 By a dealer, to a dealer located in a Special Economic Zone (SEZ)
	EXEMPTED SALES	
14.	The Andhra Pradesh Value Added Tax Act, 2005 Section 7A. Exemption of tax on sale of goods for certain purposes to a unit located in a Special Economic Zone:	Section 7A Exemption of tax on sale of goods for certain purposes to a unit located in a Special Economic Zone Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer to a registered dealer for the purpose of setting up operation, maintenance, manufacture, trading production, processing, assembling, repairing reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any Special Economic Zone or for development operation and maintenance of Special Economic Zone by the developer, of the Special Economic Zone, if such registered dealer has been authorized to establish such unit or to develop, operate and maintain such Special Economic Zone by the authority specified by the Central Government in this behalf.
15.	The Chhattisgarh Value Added Tax Act, 2003 Section 38(1) Sales not liable to tax:	Section 38. Sales not liable to tax: 38(1) Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act- (i) (ii) (iii) (iv) where sale is made to such registered dealer for the purpose of manufacture, production, processing assembling repairing reconditioning, re engineering, packaging or for use as trading or packing material or packing accessories in a unit located in any Special Economic Zone, who has been authorized to establish such unit by the authority specified by the central government in this behalf
16.	Haryana Value Added Tax Act, 2005 Section 7. Rates of tax on sale or purchase of goods in the State:	Section 7. Rates of tax on sale or purchase of goods in the State: 7(6) Notwithstanding anything contained in this section no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer to a goods in the State registered dealer for the purpose of setting up, operation maintenance manufacture trading production,



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		processing assembling repairing reconditioning, re- engineering packaging or for use as packing material or packing accessories in an unit located in any Special Economic Zone.
17.	Karnataka Value Added Tax Act, 2003 Section 20. Deduction of input Tax on exports and Inter-state sales	Section 20. Deduction of Input Tax on exports and Inter-state sales: 20 (1) Tax paid under this Act by any dealer on purchase of inputs in respect of (a) any goods sold in the course of export out of the territory of India, or (b) any goods taxable under the Act, sold in the course of interstate trade or commerce, or (c) any goods sold to a dealer who is a unit located in any special economic zone established under authorisation by the authorities specified by the Central Government in this behalf, or (d) any goods sold to a dealer who is an Export Oriented Unit, shall be deducted as provided under Section 10, from output tax payable by such dealer) (2) Goods sold by a registered dealer to any other registered dealer who is a unit located in any special economic zone established under authorisation by the authorities specified by the Central Government in this behalf or who is an Export Oriented Unit shall be exempt from the tax payable under this Act.
17.	Kerala Value Added Tax Act, 2003	Section 6 Levy of tax on sale or purchase of goods Section 6. Levy of tax on sale or purchase of goods: 6 (7) Notwithstanding anything contained in sub-section (1). (a) any authorised retail or wholesale distributor dealing in rationed articles namely rice, wheat and kerosene under the Kerala Rationing Order, 1966 shall not be liable to pay tax on the turnover of such (b) goods sale of any building materials, industrial inputs, plant and machinery including components, spares, tools and consumables in relation thereto to any developer or industrial unit or establishments situated in any Special Economic Zone in the State for setting up the unit or use in the manufacture of other goods shall, subject to such conditions or restrictions, as may be prescribed, be exempted from tax.
19.	The MP VAT Act, 2002 Section 36 Sales no liable to tax	Section 36. Sales not liable to tax: 36 (1) Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act:-
20.	The Maharashtra Value Added Tax Act. 2002	Section 8. Section & Certain Sales and purchases not to be liable to tax:

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		would be zero and credit/refund would be available for VAT paid on Inputs going into such exports (ii) Sales from Domestic Tariff Area to Special Economic Zones would be eligible for the same treatment as in sub-section (1) of this Section. (iii) Exports of export oriented Units and EHTP/STP Units would be taxed at zero (0%) Supplies from DTA to such Units would be zero-rated and the supplying Unit would get credit/refund for VAT paid on inputs used by them . (iv) Sales from SEZ Units and units under FTZ's would be exempt from levy of VAT (v) Goods and services provided by EPZ/EPIP would be taxed at zero%
22.	The Rajasthan Value Added Tax Act, 2003 Section 8. Exemption of Tax:	Section 8. Exemption of Tax: (1)..... (2)..... (3)..... (4) The State Government may if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this Act in respect of any class of sales or purchase for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the notification.
24.	The Telangana Value Added Tax Act, 2005 Section 7A. Exemption of Tax on sale of goods for certain purposes to an unit located in any Special Economic Zone:	Section 7A Exemption of Tax on sale of goods for certain purposes to a unit located in any Special Economic Zone: Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer to a registered dealer for the purpose of setting up operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re- engineering, packaging or for use as packing material or packing accessories in an unit located in any Special Economic Zone or for development, operation and maintenance of Special Economic Zone by the developer of the Special Economic Zone, if such registered dealer has been authorized to establish such unit or to develop, operate and maintain such Special Economic Zone by the authority specified by the Central Government in this behalf.
25.	The Uttar Pradesh Added Tax Act, 2005 Section 13. Input Tax Credit:	Section 13. Input Tax Credit: 13 (2) Notwithstanding anything to the contrary in any provision of sub-section (1) of this section, credit of full or partial amount of input tax, in respect of all taxable goods, may be allowed to developer, co-developer and units established in Special Economic Zone for authorized operations subject to such conditions as may be specified in the notification issued by the state government Explanation For the purposes of this sub-section the word "co-developer" or "developer" and expressions "Special Economic Zone" or "authorized operations" shall have the meanings assigned to them in the Special Economic Zones Act, 2005.

On a perusal of the above table it would be evident that there is no



uniformity in terms of the benefits /tax treatment extended with regard to sales to registered dealer in SEZ. The benefit of exemption being fairly uniform and the least of the benefit extended. Some States had granted the benefit of not just exemption but also the corresponding input tax credit which is otherwise not available to exempted goods/sales. Under the TNVAT Act, sales to SEZ is treated as a “Zero Rate Sale”, which is distinct from exemption.

8. Legislative History of Tax Treatment to SEZ in Tamil Nadu:

With the above background relating to the object and purpose behind establishment of Special Economic Zones, we shall examine the benefit/tax treatment under the SEZ Act, TNSEZ Act, TNGST Act followed by TNVAT Act:

a. Tax Benefit under Special Economic Zone Act, 2005:

"Section 26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.

... (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

Section 51. Act to have overriding effect.



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The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

b. Tax Treatment under Tamil Nadu Special Economical Zone Act, 2005 :

A Developer or entrepreneur was granted exemptions under Section 12 of SEZ Act, the relevant portions of which reads as under:

"12(1) Subject to the provisions of sub-section (2), every Developer or entrepreneur shall be entitled to the following exemptions, namely:

—
(a) exemption from the levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales Tax Act, 1959, if such goods are meant to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from the tax payable under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970);..."

c. Tax Treatment under TNGST Act:

To effectuate the provision of Section 12(1)(a) of the TNSEZ Act, a notification was issued under TNGST Act, granting exemption on sales to SEZ. The relevant portion of the same reads thus :

"No. II(1)/CTR/58(h-14)/2006 (TNGG Extraordinary / December 30, 2006)
(G.O. M.S. No. 193, Commercial Taxes and Registration (B2), 30th December 2006)



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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) read with clause (b) of sub-section (4) of Section 2 of the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970), and in supersession of the Commercial Taxes Department Notification No. II(1)/CT/26(b-3)/2005, dated 28th June 2005, published at pages 2 and 3 of Part-11, Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated 28th June 2005, the Governor of Tamil Nadu hereby makes an exemption in respect of sales tax, surcharge, resale tax and additional sales tax payable by any dealer on the sale of any goods made by such dealer to a registered dealer for the purpose of setting up; operation, maintenance, manufacture, trading, production processing, assembling, repairing, reconditioning, re-engineering packaging or for use as packing materials or packing accessories in an unit located in Madras Special Economic Zone, Tambaram, Chennai and other Special Economic Zones in the State of Tamil Nadu notified by the Government of India or for development, and maintenance of Special Economic Zone by the developer of the Special Economic Zone if such registered dealer operation has been authorised to establish such units of such other establishments within the Special Economic Zone are to develop, operate and maintain such Special Economic Zone

by the authority specified by the Central Government, subject to the following conditions."

Under the TNGST Act exemption was thus granted in respect of sales tax, surcharge, resale tax and additional sales tax payable by any dealer on the sale of any goods made by such dealer to a registered dealer in SEZ for the purposes set-out in the said notification.

d. Tax Treatment under TNVAT Act:

With the introduction of TNVAT Act, 2006, a notification in G.O.Ms.No.15, Commercial Taxes and Registration (B1) was issued under



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Section 30 of the TNVAT Act, granting exemption to sales of goods to a registered dealer for the purposes mentioned therein. The relevant portion of the same is extracted hereunder :

"No. II(1)/CTR/(d-4)/2016 (TNGG Extraordinary -Part II -Sec. 1-No.21/January 29, 2016)

*[GO. Ms. No. 15. Commercial Taxes and Registration (B1).
29th January 2016. Thai 15, Manmadha. Thiruvalluvar Aandu-2047.]*

In exercise of the powers conferred by sub-sections (1) and (2) of section 30 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(h-14)/2006 published at pages 8 and 9 of Part II-Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated the 30th 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 sale of goods made by such dealer to a registered dealer for the purpose of setting up, operation and maintenance of a unit located in a Special Economic Zone in the State of Tamil Nadu as notified by the Government of India, or for development, operation and maintenance of a Special Economic Zone by the developer of the Special Economic Zone, if such registered dealer is authorized to establish such units or such other establishments within the Special Economic Zone or to develop, operate and maintain such Special Economic Zone by the Authority specified by the Government of India, subject to the following conditions."

9. Apart from the above notification granting exemption in respect of tax payable under the said Act by any dealer on the sale of goods made by such dealer to a registered dealer for the purposes set out in the notification, sale of goods to any registered dealer located in Special Economic Zone was treated to be a "Zero Rate Sale" under Section 18 read with Section 2(44) of



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the TNVAT Act. Zero Rating was a concept introduced for the first time in relation to tax on sale of goods in Tamil Nadu under Section 18 of the TNVAT Act.

10. The present controversy revolves around the scope and ambit of Section 18 of the TNVAT Act more particularly, whether export of goods by the purchasing dealer located in SEZ is a sine-qua non to qualify as a "Zero Rate" as held by the learned Single Judge. To resolve the above controversy, it is necessary to analyse Section 18 of the Act read with Section 2(44) of the Act. The said provisions read as under:

"Section 2 (44) "zero rate sale" means a sale of any goods on which no tax is payable but credit for the input tax related to that sale is admissible.

Section 18. Zero-rating. - (1) *The following shall be zero rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:-*

(i) A sale as specified under sub-section (1) or (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, [for the purpose of use in manufacture, trading, production, processing, assembling, packaging or for use as packing material or packing accessories]¹ if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organisations listed out in the Fifth

¹ Added by Section 7 of the Second Amendment (13 of) 2015, effective from 29.01.2016.



Schedule.

(2) The dealer, who makes zero rate sale, shall be entitled to refund of input tax paid or Payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

(3) Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days [from the date of making zero rate sale], such credit shall lapse to Government."

11. On a close analysis of Section 18 read with 2(44) of the TNVAT Act, the following position would emerge:

a. Section 18 of the TNVAT Act, identifies three categories of transactions/sales which would constitute "Zero Rate Sale", during the relevant period viz.,

"(i) A sale as specified under sub-section (1) or (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organisations listed out in the Fifth Schedule."

b. Zero Rate Sale is defined under Section 2 (44) of the TNVAT Act, to mean a "sale" on which no tax is payable but credit for input tax related to that sale is admissible.



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c. Zero-Rate Sale is distinct from exemption. Section 15 of the

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TNVAT Act provides that exempted sales would attract the restriction/embargo under Section 19(5) of the TNVAT Act. Section 19(5) of the TNVAT Act provides that no input tax credit shall be allowed in respect of sale of any goods exempted under Section 15 of the TNVAT Act. On the other hand, Zero-Rate Sale is defined to mean sale of any goods of which no tax is payable but credit for the Input Tax related to that Sales is admissible.

d. Section 18(1) of the TNVAT Act provides for two distinct and independent benefits. Section 18(1) of the TNVAT Act, provides that a dealer effecting a “Zero Rate Sale” shall be eligible for Input Tax Credit (or) refund of the amount of the tax paid on the purchase of goods.

e. On a plain reading of Section 18 of the TNVAT Act the benefit of Zero Rate under Section 2(44) of the Act, viz., that no tax is payable but credit for the Input Tax related to that Sales being admissible, is available to all three categories of sales mentioned in Section 18(1) of the TNVAT Act.



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f. A dealer effecting a zero rate sale can also claim the additional benefit of refund, if he satisfies the conditions contained in sub-section (2) to Section 18 of TNVAT Act viz., goods sold are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section(2) to Section 18 of the TNVAT Act, subject to such restrictions and conditions as may be prescribed.

g. The benefits extended /granted under Section 18 of the TNVAT Act viz., Zero Rating and refund are independent nor do they overlap. Refund is not part of the benefit of Zero rating as defined under Section 2 (44) of the TNVAT Act. It is not necessary that a Zero Rate must end up/culminate/ripen into a claim of a refund.

h. Section 18(2) and 18(3) of the TNVAT Act would get attracted only when a dealer claims the benefit of refund which is an additional benefit independent and distinct from Zero Rate Sale.

12. For the sake of completion, it may be relevant to note that there was an amendment to clause (ii) to sub-section(1) to Section 18 of the TNVAT Act, vide Second Amendment Act (13 of 2015) effective from 29th



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January, 2016, consequent to the amendment, dealer in sales to SEZ is treated to be Zero Rate only if such sale is for the purpose mentioned in Section 18 (1) (ii) of the TNVAT Act. The relevant provisions read as under:

"18. Zero-rating .-.

"(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, the purpose of use in manufacture, trading, production, processing, assembling, packaging or for use as packing material or packing accessories if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf."

13. On the basis of the above analysis of Section 18 read with 2(44) of the TNVAT Act we find that the order of the learned Judge insofar as it finds that to claim the benefit of Zero Rate Sale in the context of sales to dealer located in SEZ in the State and thus covered by Section 18(1)(ii) of the TNVAT Act, the condition stipulated in Section 18 (2) of the TNVAT Act viz., the goods purchased must be exported as such or consumed or used in the manufacture of other goods that are exported must all be satisfied would result in distorting the scheme of Section 18 of the TNVAT Act. The construction placed by the learned Judge would result in importing



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the condition contained in Section 18(2) of the TNVAT Act in respect of all categories of sale covered by Section 18(1) of the TNVAT Act which would amount to rewriting the provision which is impermissible. The reasoning of the learned Judge overlooks the fact that under Section 18 of the TNVAT Act, there are two class of beneficiaries and two kinds of benefits viz., a dealer effecting zero rate sale and claiming the benefit of zero rate sale viz., that tax is not payable on such sales and Input Tax Credit related to that sale is admissible and the second category being the dealer while claiming the above benefit of Zero Rate also make an additional claim for refund. It is the second category of dealers who are covered by Section 18(2) of the TNVAT Act, which requires that the purchasing dealer must export the goods purchased as such or consumed or used in the manufacture of other goods that are exported.

14. From the above analysis of Section 18 read with Section 2(44) of the TNVAT it is clear that the order of the learned Single Judge insofar as it finds “export” to be a pre-requisite to qualify as "Zero Rate Sale" even in respect of sales covered by Section 18(1)(ii) of the TNVAT Act is without



basis and contrary to the plain language of Section 18(1) of the TNVAT Act. The above conclusion arrived at by the learned Judge is also unsustainable for the following reasons:

a. Significance of the expression "or":

The order of the learned Single Judge fails to take into account the significance of the expression 'or' employed in Section 18 (1) of the TNVAT Act. The expression “or” employed in Section 18(1) of the TNVAT Act, between Input Tax Credit and refund makes it clear that they are disjunctive and independent of each other. Expression "or" is a disjunctive participle and connects alternatives, corresponding to ‘either’ i.e., “either this” or “that”. In this regard, it may be relevant to refer to the following judgments:

i. Union of India v. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635:

“17.The issue is as to whether the aforesaid word “or” appearing in Rule 14, twice, could be read as “and” by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word “or” in between the expressions “taken” or “utilised wrongly” or “has been erroneously refunded” as the word “and”. On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.”

(emphasis supplied)



ii. Union of India v. Rabinder Singh, (2012) 12 SCC 787:

"25. We accept the submission of Shri Tripathi that the two parts of Section 52(f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction "or" between the two parts of this clause (f) viz. (i) does any other thing with intent to defraud, and (ii) to cause wrongful gain to one person or wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction "and". "

(emphasis supplied)

Thus, the expression "or" employed between "input tax" and "refund" in Section 18 of the TNVAT Act would show that the two benefits are distinct and independent of each other.

b. If two benefits are available – it is open to the assessee to claim larger benefit:

The attempt by the Revenue to restrict the scope of Section 18 read with 2(44) of the TNVAT Act on the basis of notification in G.O.Ms.No.15 dated 29.01.2016 which is a piece of subordinate / delegated legislation granting exemption is unsustainable. The scope and width of plenary legislation cannot be curtailed or whittled down by a notification. Zero Rating under Section 18 of the TNVAT confers a larger/greater benefit. Thus assuming there are two benefits with regard to the sale to any registered dealer located in SEZ viz., exemption granted vide



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G.O.Ms.No.15 and benefit of Zero Rate under Section 18 of the TNVAT

Act, it would be open to an assessee to claim the larger/greater of the two benefits. In this regard, it may be relevant to refer to the following judgments:

i. CCE v. Indian Petro Chemicals, (1997) 11 SCC 318 at page 318:

“We have read the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal. It came to the conclusion that two exemption notifications were applicable and gave to the assessee the benefit of that notification which was more beneficial to it.”

ii. Share Medical Care v. Union of India, (2007) 4 SCC 573:

“16. This is hardly a ground sustainable in law. On the contrary, well-settled law is that in case the applicant is entitled to benefit under two different notifications or under two different heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit.”

(emphasis supplied)

c. Legislature presumed not to waste words – Redundancy to be avoided:



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Beneficial legislation must be construed in a manner that it advances the object. The Legislature is deemed not to waste words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted². It is trite law that the provision must be read as whole and effect must be given to every part of the Statute. Section 18 (1) (ii) of the TNVAT Act would become redundant if export is to be treated as a prerequisite to fall under Section 18 (1)(ii) of the TNVAT Act. It would then possibly be covered by Section 18(1)(i) resulting in Section 18(1)(ii) being reduced to a superfluity. In this regard, it may be relevant to refer to the judgments of Hon'ble Supreme Court:

i. Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271,

"14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

(emphasis supplied)

ii. In, RBI v. Peerless General Finance & Investment Co. Ltd.,
(1987) 1 SCC 424:

"34. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are

² Chanshyamdas v. Regional Asstt. Commr., Sales Tax, AIR 1964 SC 766



important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa (1980) 4 SCC 507 and we find no reason to depart from the Court's construction."

(emphasis supplied)

iii. CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57:

"19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. "

(emphasis supplied)

d. Interpretation resulting in importing conditions to an exemption / benefit to be avoided:



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It is impermissible to whittle down/curtail the width of beneficial legislation by importing conditions through a process of interpretation for that would amount to judicial legislation. Section 18(1)(ii) of the TNVAT Act only requires sales to be made to a registered dealer located in a SEZ. Export is not a condition for a sale to fall within the said clause. Thus, importing the requirement of export for a transaction to be covered by Section 18(1)(ii) of the TNVAT Act is to import condition to an exemption which is unsustainable. In this regard, it may be relevant to refer to the following judgments:

i. Union of India v. Inter Continental, 2008 SCC OnLine SC 22:

"6. We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down.

7. A three Judge Bench of this Court in the case of Tata Teleservices Ltd. v. Commissioner of Customs reported in (2006) 1 SCC 746 has taken a similar view. In para 10, it was held as under:

..... The Bombay Bench was also correct in its conclusion that the circular sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. It was not open to the Board to whittle down the exemption notification in such a manner."

(emphasis supplied)

ii. CCE v. Himalayan Cooperative Milk Product Union Ltd., (2000) 8 SCC 642:



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“8. Such notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled to it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.”

(emphasis supplied)

e. Sale under Section 18 of the TNVAT Act must be understood to include deemed sales:

The submission that the expression 'sale' employed in Section 18 of the TNVAT Act, while conferring the benefit of Zero Rate would not take within its folds, work contracts is contrary to the definition of “Sale” under Section 2(33) of the TNVAT Act, which includes transfer of property involved in the execution of works contract. The above submission is also contrary to the settled principle that fiction created by the legislature must be taken to its logical end. It may be useful to note that while “sale” was declared by the Hon'ble Supreme Court in the case of *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.*, reported in 1958 (9) STC 353 to be “*nomen juris*” and would carry the same meaning as defined under the Sale of Goods Act, 1930 and thus levy of tax on works contract was beyond the



purview of the State legislative competence. The 46th Amendment to the Constitution of India neutralized the said judgment whereby six categories of mutant sales including transfer of property involved in execution of works contract were deemed to be sales. The above fiction by which the definition of sale was expanded by the 46th amendment to the Constitution of India stands incorporated in the definition of Sale under Section 2 (33) of the TNVAT Act. Thus, the argument by the Revenue that sale in Section 18 of TNVAT Act would not include works contract is impermissible. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

a. Mysore v. Fakkrusab Babusab Karanandi, (1977) 1 SCC 666:

"3. It is now settled law that when a legal fiction is enacted by the legislature, the Court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect to it."

b. Union of India v. Jalyan Udyog, (1994) 1 SCC 318 :

19. It is well settled that where a fiction is created by a provision of law, the court must give full effect to the fiction, and as is often said, it should not allow its imagination to be boggled by any other considerations. Fiction must be given its due play; there is to be no half-way stop".

c. Builders' Assn. of India v. Union of India, (1989) 2 SCC 645:

"When the law creates a legal fiction such fiction should be carried to its logical end. There should not be any hesitation in giving full effect to it.



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(emphasis supplied)

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15. For all the above reasons, we are of the view that the order of the learned Single Judge insofar as it holds that export is a condition which ought to be satisfied for the purpose of claiming the benefit of Zero Rate in respect of sale to a dealer located in SEZ falling under Section 18 (1) (ii) of the TNVAT Act i.e., a sale on which no tax is payable but Input Tax Credit in relation to such sale is admissible, is unsustainable. However, a dealer effecting zero rate sale to claim refund it may be necessary to demonstrate that the goods have been exported as such or consumed or used in the manufacture of other goods that are exported, subject to such restrictions and conditions as may be prescribed.

16. To sum up:

a. Section 18 of the TNVAT Act, confers two benefits viz., Zero Rate i.e., sale on which no tax is payable but on which Input Tax Credit is admissible and the second being refund in addition to the above benefit of Zero rate. The benefits are independent of each other.



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b. Export of goods is not a condition precedent or sine qua non to qualify as a Zero Rate sale as long as the sale falls within clause(ii) of Section 18 (1) of the TNVAT Act.

c. To claim refund in terms of the Section 18 (2) read with 18 (3) of the TNVAT Act, export of goods is an essential condition but not the benefit of Zero Rate.

d. Zero Rate is distinct from exemption and thus the provisions of Section 19 (5) of the TNVAT Act would not get attracted.

e. The impugned circular is set-aside to the extent it is contrary to the law declared by this Court.

f. The provisions of Section 18 the TNVAT Act cannot be controlled by a notification under Section 30 of the TNVAT Act inasmuch as Section 18 of the TNVAT Act confers a larger benefit. It is open to an assessee to claim a larger/ greater benefit.

g. The expression sale in Section 18 of the TNVAT Act must be understood keeping in view the definition of sale under Section 2(33) of the TNVAT Act. Thus, works contract or for that matter any of the categories of



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mutant sales which is deemed to be sale would fall within the meaning of the expression sale employed in Section 18 of the TNVAT Act.

17. The order of the learned Single Judge is set-aside to the extent it is contrary to the views expressed above.

18. We do not intend to examine the merits and the facts of each case but remand the matter back to the Assessing Authority, who shall re-do the assessment keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act. Resultantly, in cases where the subject matter of challenge are show cause notices, it is open to the assessee/ appellant/ petitioner to submit their objections by placing reliance upon the present judgment and the assessing officer shall complete the assessment within a period of 12 weeks thereafter taking into account the law declared by this Court as to the construct of Section 18 of the TNVAT Act. In cases where the subject matter of challenge are orders of Assessments, the same are set-aside and the matters are remanded back to the Appellate Authority. It is open to the Revenue to re-do the assessment keeping in view the law



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declared by this Court as to the construct of Section 18 of the TNVAT Act.

The above exercise shall be completed after granting the assessee/ appellants/ petitioners adequate opportunity of personal hearing. The order of the Tribunal in Tax Case Appeals are also remanded back to the Assessing Officer for fresh consideration to consider in terms of this judgment. The above batch of Writ Appeals, Writ Petitions and Tax Case Appeals are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.N., J.] [M.S.Q., J.]

28.02.2023

Index:Yes/No

Speaking/Non speaking order

Neutral Citation :Yes/No

sp/ mka



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W.A.Nos.703 of 2015 and etc., batch

To:
The Assistant Commissioner (CT)
Mylapore Assessment Circle,
Mylapore, Chennai.



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W.A.Nos.703 of 2015 and etc., batch

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

sp/mka

Pre-Delivery Order in
W.A.Nos.703 of 2015 etc., batch cases



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and

W.P.Nos.5700, 5701, 5702 of 2011, 27674, 27675, 27676 of 2014, 26075,
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and

T.C.Nos.36, 37 of 2016, 5,6,7,8,9,10 of 2022

and

CMP.Nos.4127, 11560, 11561 of 2016, 11452, 11454, 11461, 11451, 11456
of 2020, 13432 of 2021

and

W.M.P.Nos.28137, 30937 of 2016, 24901, 24902 of 2021

S.VAIDYANATHAN, J.

AND

MOHAMMED SHAFFIQ, J.

At the instance of the learned counsel for the appellants these matters
were listed today under the caption "for being mentioned".



2. In continuation of the earlier common order of this Court dated

28.02.2023 paragraph 18 of the order shall stand substituted as follows:

"18. We do not intend to examine the merits and the facts of each case but remand the matters back to the Assessing Authority, who shall re-do the assessment keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act. Resultantly, in cases where the subject matter of challenge are show cause notices, it is open to the assesseees/ appellants/ petitioners to submit their objections by placing reliance upon the present judgment and the assessing officer shall complete the assessment within a period of 12 weeks thereafter taking into account the law declared by this Court as to the construct of Section 18 of the TNVAT Act. In cases where the subject matter of challenge are orders of Assessments, the same are set-aside and the matters are remanded back to the Assessing Authority. It is open to the Revenue to re-do the assessment keeping in view the law declared by this Court as to the construct of Section 18 of the TNVAT Act. The above exercise shall be completed after granting the assesseees/ appellants/ petitioners adequate opportunity of personal hearing. The order of the Tribunal in Tax Case Revisions are also set aside and remanded back to the Assessing Officer for fresh consideration keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act.

The above batch of Writ Appeals, Writ Petitions and Tax Case Revisions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed. "

3. Further, Registry is directed to carry out the following amendment



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in the first page of the order as the writ petition i.e., W.P.No.29159 of 2015 which was listed in the cause list at the time of pronouncing orders was not included in the cause title:

" W.A.Nos.703, 704, 963, 964, 965, 966, 967, 968, 829, 830, 875, 876, 877, 882, 883, 912, 913, 914, 915, 930, 931, 993, 994, 995, 1005, 1013, 1014, 1114, 1115, 1116, 1117, 1122, 1123, 1124, 1153, 1154, 1155, 1156, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1273, 1274, 1275, 1276, 1293, 1294, 1295, 1660, 1661, 1662, 1663 of 2015, 948, 949, 950, 951, 952 of 2020 and W.P.Nos.5700, 5701, 5702 of 2011, 27674, 27675, 27676 of 2014, 26075, 26076, 26077, 26078, 26079, 26080, 26081, 26082, 29159, 31968, 31969, 31970 of 2015, 32429, 35964 of 2016, 23653, 23655 of 2021 and T.C.Nos.36,37 of 2016, 5,6,7,8,9,10 of 2022 and CMP.Nos.4127, 11560, 11561 of 2016, 11452, 11454, 11461, 11451, 11456 of 2020, 13432 of 2021 and W.M.P.Nos.28137, 30937 of 2016, 24901, 24902 of 2021"

4. Except the above modifications, all other paragraphs made in the earlier order dated 28.02.2023 shall remain intact. Registry is directed to carry out necessary corrections and issue the corrected order copy to the parties forthwith.

[S.V.N., J.] [M.S.Q., J.]

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S.VAIDYANATHAN, J.
AND
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S.VAIDYANATHAN, J.

AND

MOHAMMED SHAFFIQ, J.

At the instance of the learned counsel for the appellants these matters were listed today under the caption "for being mentioned".

2. In continuation of the earlier common order of this Court dated 28.02.2023 paragraph 18 of the order shall stand substituted as follows:

"18. We do not intend to examine the merits and the facts of each case but remand the matters back to the Assessing Authority, who shall re-do the assessment keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act. Resultantly, in cases where the subject matter of challenge are show cause notices, it is open to the assesseees/ appellants/ petitioners to submit their objections by placing reliance upon the present judgment and the assessing officer shall complete the assessment within a period of 12 weeks thereafter taking into account the law declared by this Court as to the construct of Section 18 of the TNVAT Act. In cases where the subject matter of challenge are orders of Assessments, the same are set-aside and the matters are



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remanded back to the Assessing Authority. It is open to the Revenue to re-do the assessment keeping in view the law declared by this Court as to the construct of Section 18 of the TNVAT Act. The above exercise shall be completed after granting the assessee/ appellants/ petitioners adequate opportunity of personal hearing. The order of the Tribunal in Tax Case Revisions are also set aside and remanded back to the Assessing Officer for fresh consideration keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act.

The above batch of Writ Appeals, Writ Petitions and Tax Case Revisions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed. "

3. Further, Registry is directed to carry out the following amendment in the first page of the order as the writ petition i.e., W.P.No.29159 of 2015 which was listed in the cause list at the time of pronouncing orders was not included in the cause title:

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4. Except the above modifications, all other paragraphs made in the earlier order dated 28.02.2023 shall remain intact. Registry is directed to carry out necessary corrections and issue the corrected order copy to the parties forthwith.

[S.V.N., J.] [M.S.Q., J.]

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