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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2022

Pronounced on: 04.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.21666 & 21672 of 2019 &
WMP.Nos.20886 & 20889 of 2019

Indian Oil Corporation Limited,
Represented by its Manager (Finance),
V.Kasi Viswanathan,
Manager (Finance),
Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Chennai – 600 034.

...Petitioner in both WPs

Vs.

The Deputy Commissioner (ST) – IV,
Large Taxpayers Unit,
5th floor, Dugar Towers,
No.34, Marshalls Road,
Egmore, Chennai-8.

...Respondent in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33270460111/2011-12 and TIN/33270460111/2012-13, both dated 24.06.2019 quashing the same.



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(In both WPs)

For Petitioner

For Respondent

: Mr.N.Prasad

: Mr.HajaNazirudeen

Additional Advocate General

Assisted by

Mr.M.Venkateswaran, Special Government Pleader

And

Mr.V.Prashanth Kiran, Government Advocate

COMMON ORDER

The petitioner in both Writ Petitions is an Oil manufacturing Company, the Indian Oil Corporation Limited (in short 'IOCL'), a Public Sector Undertaking engaged in the marketing of petroleum products and registered as a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2. In the course of its business, it had purchased Petroleum products, such as Motor Spirit (petrol), High Speed Diesel oil (HSD), furnace oil, Low Sulphur Heavy Stock (LSHS), Bitumen and Naphtha among others. Furnace oil is an input for power generation and is used by HT industrial users as fuel in gensets, to ensure and maintain continuous production.

3. The period in and around 2012 and 2013 saw the State of Tamil Nadu face power shortages and hence the demand for furnace oil at the instance of the HT industrial consumers rose. They approached the State for assistance in this regard and, at their instance, three Notifications came to be issued granting exemption from tax on the sales of furnace oil under Section 30 of the Act.



4. The first is G.O.Ms.No.103 dated 01.08.2012 issued in exercise of powers conferred by Section 30 (1) and (2) of the Act granting exemption in respect of the tax on sale of furnace oil to HT consumers, who are registered under the provisions of the Act for use in Gensets, subject to production of a certificate. The Notification covered the period 01.02.2012 to 30.09.2012.

5. The second is G.O.Ms.No.155 dated 08.12.2012 that continued the exemption granted under the first G.O. and covered the period 01.10.2012 to 31.05.2013, in the same circumstances as earlier, that is, in regard to sale of furnace oil to HT consumers registered under the Act for use in Gensets, upon production of a certificate.

6. The third is G.O.Ms.No.6 dated 06.02.2013, that superceded the second G.O. and expanded the exemption to include sale of furnace oil by one oil company to another oil company, apart from sales to HT consumers registered under Act for use in gensets.

7. The conditions imposed in the 2013 Notification were (i) a requirement that the HT consumers produce a certificate in Form-I annexed to the Notification and (ii) refund of VAT paid was subject to production of original documents such as sale bills and proof of payment of tax as well as certificates in the forms annexed to the Notification. Refunds obtained from the respondent of the tax paid, were to be fully restored to the respective HT consumers.



8. The exemptions span a little over 1 ½ years, from 01.02.2012 to 31.05.2013 and both the petitioner as well as the purchasing dealers have sought and obtained the benefit of the same, upon compliance with the conditions imposed under the Notifications.

9. While this is so, there was a proposal by the respondent to reverse Input tax credit (ITC) under Section 19(5)(a) of the Act for the period 01.02.2012 to 06.02.2013, vide notice dated 08.09.2016. In reply dated 21.10.2016, the main submissions of the petitioner echo the stand of the petitioner in these Writ Petitions.

10. The petitioner submitted that it has effected re-sale of furnace oil to various purchasers charging tax at 5% and ITC had also been availed. Furnace oil was purchased by the purchasing dealers not just from OMCs but also by way of stock transfer from their own refineries or by way of inter-state purchases.

11. Section 15 which speaks of exempted sales is specific to either goods that are exempted by Notification or as specified in the 4th Schedule. Thus, the scope of sales referred to under Section 15 cannot be expanded to other categories of transactions. Section 30 notifies exemptions under 3 modes, i.e., goods (specified taxable goods), assessee (specified class of assessee) and events (specified combinations of goods and assessees).

12. In the last category, the commodity, by itself, is not exempt, as it is



the 'event' that is the granted the benefit of exemption. Such an event is not brought under the cover of Section 15 and consequently does not attract reversal of ITC under Section 19(5)(a).

13. The petitioner also submitted that the right of ITC has already accrued and thus cannot be retrospectively taken away by the State. Writ Petitions filed by other OMCs on the same issue as in the present matter were cited, where a prima facie case was made out by those assesseees, and an interim stay granted by this Court.

14. A personal hearing was held on 21.10.2016, which culminated in an order dated 31.10.2016, adverse to the interests of the petitioner, confirming the reversal of ITC. Inter alia, the entirety of the submission of the petitioner has been extracted and by way of a non-speaking order, the officer confirms the reversal of ITC under Section 19(5)(a). The matter is now stated to be pending in second appeal before the Sales tax Appellate Tribunal in A.P.No.172 of 2016.

15. On 20.04.2018, the respondent issued a notice pursuant to the orders passed by this Court in W.P.No.33787 of 2017 dated 22.12.2017. That writ petition and several others, had been filed by purchasing dealers praying for the refund of taxes as per the Notifications issued in this regard and this Court had directed the authorities to consider the issue of refund of taxes. The petitioner was called upon to file supporting evidences to enable the officer to grant



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16. On 13.08.2018, the petitioner filed supporting evidences as per the relevant Government Orders. This was followed by notices dated 24.01.2019, whereunder, the authorities proceeded to address two issues cumulatively. The first related to request for refund and the second was a proposal to reverse ITC under Section 19(5)(a) for the periods 2011-12 and 2012-13.

17. To be noted that the notices have been issued invoking the provisions of Section 84 qua the proposal to reverse ITC, as the officer has, evidently, been of the view that the grant of ITC is a mistake apparent on record.

18. The petitioner retorted by filing a representation to the Commissioner of Commercial taxes requesting that instructions be issued to the Assessing Authority to delink the issues and consider the classification of refund first before proceeding with the assessment, to which the Commissioner responded favourably by his communication dated 13.08.2019.

19. The proceedings relating to reversal of ITC concluded adverse to the petitioner vide order dated 24.06.2019, reversing the ITC in respect of the transactions that were exempt from tax by application of the provisions of Section 19(5)(a) of the Act.

20. Refunds of tax were sought and for both the periods, 2011-12 and 2012-13 and the petitioner, has, admittedly passed on the same to the purchasing dealers. On 10.04.2019, the petitioner had reported certain errors



that had crept in the computation, re-quantifying their eligibility for refund. The excess determined by it has been repaid electronically.

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21. The petitioner also informed the Assessing Authority that when a refund order had been issued on 10.04.2019 reiterating refund of tax to the petitioner, the petitioner has sought to restore the tax to the consumers. One of the consumers, i.e., Tamil Nadu Petro Products Limited had returned the refund indicating their inability to accept the same.

22. This is for the reason that credit had been availed by TNPPL on the strength of the invoice raised originally and hence the benefit of exemption was not preferred by them, since it would involve re-working of the taxes at a considerable distance of time.

23. As far as this amount is concerned, since the petitioner has consequently, and admittedly, restored the tax to the respondent on 07.08.2019 and thus irrespective of the conclusion in these Writ Petitions, proportionate ITC must be restored to the petitioners in this regard.

24. The quantification in this regard is as below and no dispute has been raised by the respondents in regard to the same.

S.No.	Assessment Year Ref.	Date of Assessment Order	Total ITC Reversed by the respondent	ITC attributable on sales to Tamilnadu Petroproducts Ltd.
1	2011-12	24.06.2019	Rs.98,76,536/-	Rs.48,59,224/-
2	2012-13	31.10.2016	Rs.1,08,308/-	



			(ITC attributable to sales to TVS Motor Co. Ltd.)	
3	2012-13	24.06.2019	Rs.2,98,42,712/- - Net tax demand of Rs.1,89,58,404/- - after adjusting ITC already reversed for 2011-12 of Rs.1,08,308/- by order dt.31.12.2016 (adjustment done, vide page 2 of impugned order dt.24.06.2019 – page 96 of the typeset)	Rs.1,50,15,978/- - Out of gross demand of Rs.1,89,58,404/- -

25. The Assessing Authority is directed to do so within a period of six (6) weeks from date of receipt of a copy of this order.

26. On the reversal of ITC, the first submission of Mr.N.Prasad, learned counsel for the petitioner is that Section 19(5)(a) has no applicability to the matter on hand, since it refers only to exemption granted qua specified 'goods'. A distinction is sought to be made between exemption granted for transactions of sale of specified goods on the one hand and for specified classes of goods and assesseees, on the other.



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27. The transaction in the present case involves two distinct constituents, involving sales to a specified class of persons (oil companies/HT consumers) as well as a specified class of goods (furnace oil). He also draws attention to the explicit language of Section 19(5)(a), comparing the use of phrase ‘exempted goods’ with the definition of that phrase under Section 2(20) of the Act.

28. According to him, the reversal of ITC under Section 19(5)(a) would thus be only in the case of ‘goods’ exempted under the Fourth Schedule of the Act and goods covered by exemption notification under Section 30(1)(a) of the Act.

29. In the present case, the exemption granted would fall under the third category of Section 30, covered under Section 30(1)(c), which constitutes a combination of specified classes of goods and assessee, and this limb of exemption is not, according to the petitioner, contemplated under Section 19(5)(a) of the Act. Reliance is placed on the judgement of the Hon’ble Apex Court in *Commercial Taxes Officer v. A Infrastructure Limited* [(2015) 15 SCC 98].

30. Mr.Haja Nazirudeen, Additional Advocate General, assisted by Mr.M.Venkateswaran, learned Special Government Pleader and Mr.V.Prashanth Kiran, learned Government Advocate appears for the respondent. A detailed counter has also been filed on 23.09.2020.

31. The respondent reiterates the position that reversal of ITC qua



exempted transactions is a universal proposition and no exclusions have been carved out in this regard. At first blush, this argument, appears plausible, since there is no restriction envisaged in either the definition of exempted goods under Section 2(20) of the Act or in Section 15 dealing with 'exempted sale'. Furthermore, Section 19(5)(a) does not restrict its application to one or the other of the categories under Section 30.

32. The sum and substance of the respondent's arguments turns on the interpretation of Section 19(5)(a) read with Section 17 and Section 2(20) as well as Section 30 of the Act. They distinguish the judgments cited by the petitioner in *A Infrastructure Limited* (supra) pointing out that, that judgment was rendered in the context of the Rajasthan Sales Tax Act.

33. That apart, while the Court had indeed noticed and approved the difference between 'exempted goods' and an 'exempted transaction', that observation must be seen in the context of the facts of that case. The dealer therein was a manufacturer of asbestos.

34. The transaction in question constituted the first link in a chain of sales. There were several subsequent transactions of sale pursuant to the sale between the manufacturer and the first purchaser that continued to be taxable, since what was taxed was the transaction involving specified goods and specified assessee and not specified goods alone. Denial of ITC at the first stage would thus add a burden upon the subsequent sellers.



35. In the present case, the transaction ends with the purchasing OMCs/HT consumers, as the furnace oil purchased by them is consumed in their manufacturing process. The facts in the two cases are thus distinct and distinguishable.

36. To answer this issue, I first extract the provisions of Section 30 that reads as follows:

30. Power of Government to notify exemption or reduction of tax .—

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

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

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

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

(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1) - (a) may extend to the whole State or to any specified area or areas therein; or (b) may be subject to such restrictions and conditions as may be specified in the notification.

(3) The Government may, by notification, cancel or vary any notification issued under subsection (1).

37. Section 30 is an enabling provision in terms of which the State extends an exemption in three specific situations, (i) qua taxable goods (ii) qua taxable persons and (iii) qua taxable events, that is, in respect of transactions involving both specified goods and assessees.



38. Three judges of the Hon'ble Supreme Court in the case of *The State of Tamil Nadu v. M.K.Kandaswami and others* ((1975) 4 SCC 745), has noted this categoric distinction in the context of a challenge to the provisions of section 7-A inserted in the Madras General Sales Tax Act, 1959 by virtue of the Tamil Nadu Amendment Act (2 of 1970).

39. Section 7-A provides for tax for purchase of and brings to sale goods that would normally have been taxed at some point in the State, subsequent to their purchase by the dealer, if such goods became unavailable for taxation owing to them having been a) consumed in manufacture on other goods for sale or otherwise, b) dispatched in any manner other than by way of sale c) dispatched to a place outside the State except as a direct result of sale or purchase in the course of interstate trade or commerce.

40. They noted that Section 7A is both a charging as well as the remedial provision and its main object was to block leakage and prevent evasion of tax. Thus, while interpreting such a provision, the avowed object cannot be lost sight of, such that, it would stand obliterated from the Statute book.

41. If more than one interpretation were possible, that interpretation which preserves its efficacy and intention must be preferred to one that would render otiose or sterile. The challenge to Section 7-A that had been accepted by the High Court stood reversed by the Hon'ble Supreme Court.

42. The relevant paragraphs in that judgement are extracted below:



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17. With due respect, it seems to us that in arriving at this erroneous interpretation, the learned Judges mixed up concept of goods liable to tax with the transactions liable to tax under the Act. The scheme of the Act involves three interrelated but distinct concepts which may conveniently be described as 'taxable person', 'taxable goods' and 'taxable event'. All the three must be satisfied before a person can be saddled with liability under that' Act.. Nevertheless, the distinction between them, is overlooked. may lead to serious error in the construction and application of the Act. 'Goods' Is defined in Section 2(j) as:

"all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities, and articles (including those to be used in the fitting out, improvement or repair of movable property); and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale". "Taxable person" is a 'dealer' as defined in Section 2(g).

18. "Taxable event" is the sale or purchase of 'goods' effected during the accounting period although the tax liability is enforced only after quantification is effected by assessment proceedings. 'Sale' is defined in Section 2(n) as .

"every transfer of the property in goods by one person to another in the course of business for cash or for deferred payment or other valuable consideration, but does not include a mortgage hypothecation, charge or pledge."

19. Section 3(2) which is the main charging provision, enjoins that in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever be the quantum of turnover in that year

20. The focal point in the expression, "goods the sale or purchase of which is liable to tax under the Act," is the character and class of goods in relation to their exigibility. In a way this expression contains a definition of 'taxable goods', that is, goods mentioned in the First Schedule of the Act, the sale or purchase of which is liable to tax at the rate and at the point specified in the schedule. The words, "the sale or purchase of which is liable to tax under the Act" qualify the term "goods", and exclude by necessary implication goods the sale or purchase of which is totally exempted from tax at all points, under Section. 8 or



Section 17(1) of the Act. The goods so exempted-not being taxable goods"- cannot be brought to charge under Section 7-A.

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43. Section 19(5)(a) grants an exemption to sale of goods specified in the Fourth Schedule and the goods exempted by notification by the Government by any dealer shall be exempted from tax. 'Exempted goods', is defined under Section 2(20) to state that the goods falling under the Fourth Schedule and goods exempted by the Government, by notification, from time to time.

44. The Hon'ble Supreme Court, in *Commercial Taxes Officer v. A Infrastructure Limited*, considered the grant of exemption at the first point of sale of asbestos. The assessee was engaged in the manufacture of Asbestos Cement Pressure Pipe and Asbestos Cement Sheets (A.C. sheets), and had availed ITC on the purchase of raw material used in such manufacture.

45. A proposal was made for disallowance of ITC, that despite objections raised by the petitioner, came to be confirmed. In the course of appeal proceedings, the assessee made a distinction between the exemption granted on the products itself and exemption granted to the manufacturers of the products.

46. Section 18 of the Rajasthan Sales Tax Act contains a pre-requisite that no ITC should be granted on exempted goods. Since the exemption in that case had been qua the manufacturers and not the goods, that assessee argued that the reversal of ITC was bad in law.

47. The judgment in the case of *ACTO V. Abishek Granites Ltd.* (23 Tax-



World 285) was cited to state that an exemption to a unit was different and distinct from an exemption granted to a transaction of sale of a commodity.

Though the statutory authorities rejected this argument, the learned single Judge found merit in the same and allowed the Writ Petitions.

48. The Commercial Tax Officer carried the matter in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court appreciated the distinction that had been made between the exemption granted to specified goods, specified persons and specified events, drawing inspiration in this regard from the judgment of the Supreme Court in the case of *M.K.Kandaswami* (supra).

49. The Bench also referred to its judgment in the case of *CST v. Pine Chemicals Limited* ((1995) 1 SCC 58, which decided the question of whether the benefit of ITC would be available even when the goods were exempted with regard to industrial unit and for a specified period of 5 years when the unit went into production.

50. Once again, the Court considered the question as to whether the exemption that was at issue in that matter was available in specified circumstances or under specified conditions or in a case where goods are exempt from tax generally.

51. Taking into account the aforesaid decisions, the Hon'ble Supreme Court in *A Infrastructure Limited* (supra) accepted the difference and



distinction between goods generally exempt and those exempt under specified circumstances.

52. When the goods are exempt, there would be no taxable transaction at all. On the other hand, where the exemption is granted in respect of a specific event, i.e, specified transactions or specified assessees, it is only upon concurrent satisfaction of the goods as well as assessee/circumstances be specified, that the exemption becomes available.

53. The identical distinction has been drawn between by the petitioner before me, and is well taken, finding support both from the judgments in *M.K.Kandaswami and A Infrastructure Limited* (supra).

54. As a sequitur to their acceptance of this position, the Court in *A Infrastructure Limited* went on to observe that if the assessee had been denied the benefit of ITC, then the entirety of the sale consideration would become taxable in the hands of subsequent purchasers/sellers hands adding to the burden of every subsequent limb of the transaction.

55. They say at paragraph 27 in the VST report (page 216) as follows:

27. As a sequitur, we are obliged to observe that if the contention of the appellant is to be accepted, the respondent though covered by exemption notification under section 8(3) of the Act could be at a disadvantage because finally when the subsequent sale is made by a non-exempted dealer or tax stands paid on the non-exempted transfer, the goods, ie, asbestos cement sheet, would suffer the tax on the entire sale consideration. This would place an exempted manufacturer-dealer at a disadvantageous position and make his products uncompetitive inspite of the exemption



notifications under section 8(3) of the Act.

56. The petitioner has supplied the following illustration to bring home

the position that the inequity that the Hon'ble Supreme Court notices in the case of A infrastructure applies a fortiori in the present matter as well and I find merit in this submission.

1. Price of Furnace Oil per KL, at the hands of the Refinery – Rs. 30,000/KL
2. Tax at 5% on Rs. 37,110/- = Rs. 1,500/-
3. Total purchase cost of Furnace Oil for the Petitioner = Rs. 31,500/-
4. Cost of Furnace Oil to the Petitioner if ITC is allowed = Rs. 30,000/-
5. Resale price of Furnace Oil per KL, at the hands of the Petitioner, if ITC is allowed = Rs. 40,000/-
6. Resale price of Furnace Oil per KL, at the Hands of the Petitioner, if ITC is not allowed = Rs. 41,500/-
7. Differential cost to HT consumer per KL if ITC is not allowed to the Petitioner (Additional Input Cost) = Rs. 1,500/-

57. As can be seen from the illustration above, upon grant of the exemption, the petitioner has effected sale and passed on the financial liability to the HT consumers. To deny them the benefit of ITC then would result in a position of great disadvantage to the petitioner and would distort the chain of transactions.

58. The petitioner has relied upon the following cases:

1. *Mahadeolal Kanodia v. Administrator –General of West Bengal* [(1960) 3 SCR 578]
2. *State of Karnataka v. M.K. Agro Tech. Private Limited* [(2017) 16 SCC 210]



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3. *Koteswar Vittal Kamath v. K.RangappaBaliga& Co.* [1969 (1) SCC 255]
4. *M/s.Frick India Ltd. V. Union of India and Others* [(1990) 1 SCC 400]
5. *Ajay Gandhi and another v. B.Singh and others* [(2004) 2 SCC 120]
6. *East India Commercial Co., Ltd., Calcutta and another v. Collector of Customs, Calcutta* [(1963) 3 SCR 338]
7. *The State of Tamil Nadu v. M.K.Kandaswami and Others* [(1975) 4 SCC 745]
8. *Fibre Boards Private Limited, Bangalore v. Commissioner of Income Tax, Bangalore* [(2015) 10 SCC 333]
9. *Deputy Commissioner, Central Excise and another v. Sushil and Company* [(2016) 13 SCC 223]
10. *National Insurance Co. Ltd. V. Mastan and Another* [(2006) 2 SCC 641]
11. *State of U.P. and Others v. Indian Hume Pipe Co. Ltd.* [(1977) 38 STC 355 (SC)]
12. *Chimanlal Premchand v. State of Bombay* [(1960) 1 SCR 764]
13. *Ruchi Soya Industries Limited v. Commercial Tax Officer, Harbour III Assessment Circle, Chennai and Others* [(2008) 12 VST 546 (Mad)]
14. *Tulsyan Nec Limited v. Assistant Commissioner (CT) Harbour-(III), Assessment Circle, Chennai* [(2015) 82 VST 63 (Mad)]
15. *M.U.A.Armugaperumal and sons v. Additional Commercial Tax Officer (FAC), Srivilliputtur* [(2008) 16 VST 188 (Mad)]
16. *Sree Murugan Engineering Products v. Commercial Tax Officer, Coimbatore* [(2006) 148 STC 419 (Mad)]
17. *Commissioner of Central Excise v. CEGAT, Madras* [2016 (344) E.L.T. 133 (Mad)]
18. *Sri Palani Dhandayuthapani Devasthanam rep. by its Executive Officer, D.Ramachandran, Palani-621 601 v. The Commercial Tax Officer, Palani Circle II, Palani* (2002 – 1 – L.W. 318)
19. *Prism Cement Limited and Another (formerly known as H & R Johnson (India) Limited) v. State of Maharashtra and others* [(2012) 54 VST 104 (Bom)]
20. *Commissioner of C. Ex., Chandigarh v. Alpha Drugs (India) Ltd.* [2002 (140) E.L.T. 43 (P&H)]
21. *Commercial Taxes Officer v. A Infrastructure Limited* [(2015) 15 SCC 98].

59. In *Mahadeolal Kanodia* (supra), three Judges of the Hon'ble

Supreme Court considered the construction of Section 1(2) in relation to



Section 28 of the Calcutta Thika Tenancy Act. The case of the petitioner therein was for relief under Section 28 when that was in force and whether his application under the Thika Tenancy Act that remained undisposed on the date when the amendment Act came into force would have to be disposed in light of unamended Section 28 or Section 28 post amendment.

60. The Court reiterated the settled principles of interpretation of statutory provisions, the first of those being that statutory provisions that create substantive rights or take away substantive rights, ordinarily are prospective and retrospectivity of such provisions would have to be expressly provided for. The second of the interpretational rule was that the intention of legislature has to be gathered from the plain, normal, grammatical and apparent meaning that the words convey.

61. The third was that if in any legislation, the general object was to benefit a particular class of persons, a provision which was ambiguous should would be interpreted such that it would preserve the benefit rather than the alternate interpretation which would take away the benefit. The fourth rule was that strict grammatical interpretation that gave rise to an absurdity or inconsistency must be eschewed, even, if necessary, by modifying the language used.

62. Applying these tests, the Court held that no relief could be granted in respect of applications that were pending as on date of the amendment



ordinance, being 21.10.1952, Section 28 having ceased to exist retrospectively, as the Bench has stated there was no escape from the inevitable conclusion that the effect of the amendment was to say that nothing more or less than the provisions of the amended Thika Tenancy Act shall apply.

63. In *Ajay Gandhi* (supra), the question that came before the Hon'ble Supreme Court concerned provisions relating to filing of appeals before the Income Tax Appellate Tribunal in terms of the Income tax enactments. The Court compared and considered Sections 5A of the 1922 Income Tax Act with Section 252(3) of the 1961 Act and in that context referred to the scope and import of executive construction under Corpus Juris Secundum and other scholarly commentaries.

64. Paragraphs 16 to 20 has been referred to by the learned counsel and are extracted below:

16. In Corpus Juris Secundum, Vol. 82, p. 761, it is stated that the controlling effect of this aid which is known as "executive construction" would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation.

17. In Francis Bennion's Statutory Interpretation, 4th Edn., the law is stated in the following terms at p. 596: "Section 231

231. The basic rule. In the period immediately following its enactment, the history of how an enactment is understood forms part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history



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may, under the doctrine that an ongoing Act is always speaking, indicate how the enactment is regarded in the light of developments from time to time.

COMMENT On a superficial view, it may be though that nothing that happens after an Act is passed can affect the legislative intention at the time it was passed. This overlooks the two factors stated in this section.

Contemporanea expositio.-The concept of legislative intention is a difficult one. Contemporary exposition helps to show what people thought the Act meant in the period immediately after it was passed. Official statements on its meaning are particularly important here, since every Act is supervised, and most were originally promoted, by a government department which may be assumed to know what the legislative intention was."

18. In R. v. Wandsworth London Borough Council, ex p. Beckwith the House of Lords has held that a departmental circular is entitled to respect. It can only be ignored when it is patently wrong. The said principle has also been followed in Indian Metals and Ferro Alloys Ltd. v. CCE (AIR at p. 1034: SCC p. 135), KeshavjiRavji and Co. v. CIT (AIR at p. 1817: SCC p. 250), Raymond Synthetics Ltd. v. Union of India (AIR at p. 859), P Kasilingam v. P.S.G. College of Technology (Scale at p. 397: SCC pp. 356 a 57) and CCE v. Dhiren Chemical Industries".

19. The Central Government, admittedly, never exercised its purported power of transfer and posting in its capacity as an employer or otherwise. From the impugned order, furthermore, it would appear that even therein the source of power had not been traced from the provisions of the Income Tax Act but to the delegation of financial powers which have no nexus therewith. b By reason of amendment to certain circular letters also, the Central Government cannot confer upon it such statutory power of transfer and posting of the members of the Appellate Tribunal.

20. Having regard to the fact that the Central Government had acted sub silentio and even allowed the President to delegate his power to constitute Benches to various Senior Vice-Presidents over a number of



years is itself a pointer to the fact that the Central Government was also of the opinion that the power of transfer and posting is a part of the administrative function of the President as an ancillary power of constitution of Benches.

65. The judgments at serial numbers 3, 4, 6 and 8 to 20 have been cited, but have not been referred to in the course of submissions by the petitioner.

66. The revenue has relied upon the judgement of the Hon'ble Supreme Court in case of *M.K.Agro Tech. Private Limited* (supra). The assessee was a manufacturer of sunflower oil, which is extracted from sunflower cake. Sunflower oil cake was an input, on the purchase of which VAT was payable under the provisions of the Karnataka Value Added Tax Act, 2003 (in short 'KVAT Act').

67. Credit was available as far as input tax was concerned. However, with the extraction of sunflower oil, there came a by-product, in the form of a de-oiled sunflower oil cake. This by-product was sold by the petitioner as an independent product, the turnover from which was exempt under the schedules to the KVAT Act.

68. Section 17 of the KVAT Act provided that where the final product is more than one and output tax is payable on the sale of one final product but another final product was exempted from tax, the input tax credit would not be available in regard to that portion relating to turnover from sale of exempted goods. The KVAT Rules provides for the manner in which partial exemption was to be computed.



69. It was that assessee's case that Section 17 would not be applicable because the entirety of the sunflower oil cake had been used as an input in the extraction of sunflower oil. According to it, the de-oiled cake was not the result of any manufacturing process, but was only a by-product.

70. The exemption granted was only in regard to the sale of a commodity that had resulted from a manufacturing process and not a by-product. Thus, the part reversal of ITC was, according to it, in error. The High Court accepted this argument.

71. In appeal, the Hon'ble Supreme Court considered the distinction between de-oiled cake and oiled cake, noting their judgment in *Ravi Prakash Refineries (P) Ltd. V. State of Karnataka* ((2016) 12 SCC 193) to the effect that the two comprised different and distinct commercial commodities.

72. They also noted their judgment in the case of *State of Gujarat V. Raipur Mfg. Co. Ltd.* ((1967) 19 STC 1) holding that where both the main and subsidiary product were being sold regularly in the course of business by a manufacturer concerned, clearly both commodities would be taken to be the result of the manufacturing process, as the intention of the manufacturer to sell both the main and by-product is very categoric and clear.

73. Per contra, the case of the State was that no ITC should be granted in regard to the exempted turnover. The appeal by the revenue was allowed by the Hon'ble Supreme Court on a plain interpretation of Section 17, which allowed



partial rebate on the 'sale of taxable goods and goods exempt under Section 5'.

74. Thus, neither of the limbs of Section 17 related to, or used the term 'manufacture'. The conclusion of the High Court to the effect that the de-oiled cake was emerged as a by-product, was thus, according to the Hon'ble Supreme Court, not material and thus the fact that de-oiled cake was not consciously/specifically manufactured ought not to have weighed with the High Court.

75. What was important was to note that it was a saleable commodity that was actually sold, and gave rise to turnover. De-oiled cake thus fit the definition of 'goods' and the turnover of such goods being exempt under Section 5 of the KVAT Act, Section 17 stood triggered automatically.

76. This conclusion was also supported by a proper construction of Rule 131 of the KVAT Rules. Since no output tax had been paid on the sale of de-oiled cake, Section 17 which provided for reversal of ITC in the case of exempted turnover would be applicable straightaway by application of principle of literal construction in a taxing statute.

77. The Court also went into the scheme of the KVAT Act and their observations to the effect that a statutory scheme has to be looked into, understood and applied in a schematic, thematic and wholistic manner, finds expression in paragraph 32 of the judgment, extracted below:

32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind

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and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as Inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same. This proposition is authoritatively determined by this Court in series of judgments. We may refer to the judgment in *Godrej & Boyce Mfg. Co. (P) Ltd. v. CST* and the relevant extract which is relevant for our purposes is as follows: (SCC pp. 631-32, para 9)

"9. Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. Insofar as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are dispatched by the appellant to his branches and agents outside the State of Maharashtra



and sold there. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules-which, as stated above, are conceived mainly in the interest of public-that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are dispatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the of But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale price with reference to the proportion in which raw material was purchased within and outside the State."

(emphasis supplied)

33. To the same effect are the judgments in Hotel Balaji v. State of A.P. and Jayam and Company v. CST. In this context, if the legislature has decided to give partial rebate of input tax under the circumstances mentioned in that provision, that has to be strictly applied.

78. In my considered view, the above judgement is of no avail to the



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respondents as the statutory provisions as well as the Rules are different when compared with the Tamil Nadu enactment and corresponding Rules. The question that came up for consideration in that case is also at variance with the specific issue that has been raised in this matter and thus, the ratio of the judgement of three judge in *A Infrastructure* has also not been taken into account. There is no equivalent of Rule 131 of the KVAT Rules that prescribes a pro rata formula for the grant of ITC qua exempt and taxable sales.

79. Having applied anxious consideration to the rival submissions on this score, I find merit in the arguments advanced by the petitioner and allow this ground.

80. One of the points that the Hon'ble Supreme Court has noted in the case of *A Infrastructure* is that none of the Notifications referred to therein, expressly refer to the reversal of ITC in the hands of the selling dealers. So too in the present case. The scope and ambit of the Notifications can be gleaned from the manner in which the notification and annexures have been constructed, and the language used. To illustrate, I refer to the third Notification, specifically the forms annexed thereto.

81. The third notification provides an exemption in respect of the sale of furnace oil to oil companies/HT consumer (purchasing dealers) by the petitioner (selling dealer). The first annexure (certificate-I) is to be given by the purchasing dealer certifying the purchases of furnace oil from the selling dealer



concerned.

82. Certificate-II is to be furnished by the selling dealer to the assessing officer concerned, certifying the exact quantity of furnace oil sold by it for the specified period and to whom it was sold.

83. Certificate-III is to be furnished by the purchasing dealer to the concerned assessing officer also selling out the details of purchases made of furnace oil and from whom.

84. Certificate-I, II and III are intended to be cross-matched to arrive at a proper reconciliation of the sales and purchases effected by the selling/purchasing dealers.

85. Certificate-IV is to be executed by the purchasing dealer to confirm the receipt/refunds of tax paid by it for the purchases of furnace oil. The purchasing dealer is also to confirm and declare that no ITC has been claimed by it in respect of those transactions where the tax has been refunded. The Notification, and the form of certificate-IV reads as follows:

NOTIFICATION

In exercise of the powers conferred by section 30 of the Tamil Nadu Value Added Tax Act, 2005 (Tamil Nadu Act 32 of 2006) and in supersession of the Commercial Taxes and Registration Department Notification No.II(1)/CTR/ 35(b-3)/2012, published at page 4 of Part II Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated the 8th December 2012, the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under the said Act by an oil company as defined in Explanation-III to the Second Schedule of the said Act to another oil company as defined in the said Explanation-III or tax payable by any oil company as defined in the said Explanation-III on the sale of furnace oil to HT consumers registered under



the said Act for use in Gen-sets, subject to the following conditions, namely:-

- (i) *The HT consumer shall produce Certificate-I every month as annexed to this Notification;*
- (ii) *Refund of VAT paid for the period from 1.10.2012 to the date of this notification shall be subject to verification of original sale bills and proof of payment of tax and production of Certificate-II, Certificate-III and Certificate-IV as annexed to this Notification.*

2.The exemption hereby made shall be deemed to have come into force on the 1st October 2012 and shall remain in force upto and inclusive of the 31st May 2013.

'CERTIFICATE-IV

(To be filled up by the concerned dealer and submitted to the concerned assessing officer)

*I / We certify that I / We have received the VAT paid amounting to Rupees In respect of tax paid on the purchases of furnace oil for the period from 1.10.2012 to the date of issue of this Notification from our suppliers in credit note no. dated and **I / We also declare that we have not adjusted any input tax credit on the VAT amount refunded to us** and we declare that if any discrepancies are found in future regarding the claim made by us in the certificates prescribed, we will repay the entire amount refunded to us with interest as provided under the Tamil Nadu Value Added Tax Act, 2006 from the date of credit received on the purchase of furnace oil for the said period.*

(Signature)

Name and address of the dealer with TIN.

Place:

Date:

SUNIL PALIWAL

SECRETARY TO GOVERNMENT.

(Relevant portion marked in bold by the Court)

86. Apart from there being no stipulation whatsoever in regard to the claim of ITC by the selling dealer, the forms annexed refer specifically only to the embargo placed upon the purchasing dealer in this regard. To my mind, this is an indication of how these notifications are to be understood. No exercise of



interpretation is really required as this conclusion appears evident just from a plain reading of the notification and the annexures.

87. There have been instances wherein similar exemptions have been granted and the petitioner draws attention to the fact that those Notifications specifically provide for the denial of ITC. The instances are:

- (i) G.O.Ms.No.33 dated 29.03.2010 wherein an exemption was granted in respect of tax payable under the TNVAT Act on the sale of imported sugar.
- (ii) The same G.O. exempted tax payable on the sale or purchase of zari excluding polyester film yarn and radiant yarn.
- (iii) G.O.No.30 dated 23.03.2015 exempts sale of goods produced during the course of training conducted by rehabilitation by way of sanction at Tiruvannamalai subject to the condition that no input tax credit shall be levied on the tax paid by them on their purchase.
- (iv) Similar to the above, G.O.No.9 dated 22.01.2016 exempts products manufactured by the Gandhi Niketan Rural Welfare and Development Trust subject to the same condition.

88. One last point before wrapping up is that, the proceedings relate to the periods 2011-12 and 2012-13 and the benefit granted under Notifications dated 01.08.2012, 08.12.2012 and 06.02.2013. The impugned proceedings however has commenced only from 2016 onwards and that too, as proceedings



for rectification under Section 84 of the TNVAT Act.

89. Section 84 provides for the rectification of an error apparent on record and not one which involves discussion, debate or possible multiple opinions. This is a settled position as per several judgments of the Hon'ble Supreme Court and High Courts.

90. In conclusion, what has to be borne out by process of reasoning taking note of rival contentions and differing points of view is not liable to be addressed under Section 84, the purpose of which is only to correct an apparent and evident mistake.

91. None of the Notifications in this case touch upon the aspect of Input Tax Credit in the hands of the selling dealers, and had they done so, the officer would perhaps have been right in stating that the grant of ITC even in the place of such express provision for reversal in the Notification, was an error apparent on record. Since the Notification did not mention anything about ITC or reversal, the impugned proceedings would also have to be tested in the context of whether at all Section 84 could be applied in this case, and thus fail.

92. The impugned orders are quashed and these writ petitions are allowed as are the connected miscellaneous petitions. The Sales Tax Appellate Tribunal will dispose A.P.No.172 of 2016 in line with the observations and conclusions under this order. No costs.



Index : Yes/No

Speaking Order/Non speaking Order

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To

The Deputy Commissioner (ST) – IV,
Large Taxpayers Unit,
5th floor, Dugar Towers,
No.34, Marshalls Road,
Egmore, Chennai-8.



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W.P.Nos.21666 & 21672 of 2



DR.ANITA SUMANTH,J.

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**W.P.Nos.21666 & 21672 of 2019 &
WMP.Nos.20886 & 20889 of 2019**

04.01.2023