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W.P.(MD).Nos.25387 of 2022 etc., batch cases

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :	01.12.2022
Pronounced on :	07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.25387, 24847, 24850, 19298, 19299, 20363, 20364, 20365, 23516, 23517, 24824, 24825, 24826, 24841, 24842, 24844, 24845, 24846, 24851, 25148, 25149, 25150, 25151 and 25388 of 2022 and W.M.P(MD).Nos.18930, 18931, 19243, 14083, 14084, 14758, 14760, 14761, 17596, 17597, 18600, 18601, 18602, 18603, 18604, 18909, 18910, 18912, 18928, 18929, 18932, 18935, 18936, 18937, 19240, 19245, 19256, 19472 and 19473 of 2022

W.P.(MD).No.25387 of 2022:

M/s. J.K.Traders

Rep. by its Managing Partner Mr.Chidambarakani

NO.(466) 115/3, Katchery Road,

Virudhunagar.

... Petitioner

Vs.

1.The Principal Secretary/

The commissioner of Commercial Taxes,

Chepauk, Chennai.

2.The Assistant Commissioner (ST) III,

Virudhunagar III Assessment Circle,

Virudhunagar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the second respondent in TIN No.33315760072/2013-14 and quash the impugned proceedings dated 15.09.2022 in so far as the levy of purchase tax & Penalty under the TNVAT Act as it is unlawful and contrary to the provisions of the Act.



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For petitioner : Mr.R.D.Ganesan

For Respondents : Mr.M.Prakash,
Additional Government Pleader
Mr.S.Siddharthan
Additional Government Pleader

COMMON ORDER

The common question that arises for consideration in this batch of writ petitions is whether the exemption granted on the basis of the turnover of a dealer is conditional exemption and would attract the levy of purchase tax under Section 12 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the TNVAT Act").

2. It is submitted by the Counsel for the Petitioners and the respondents that the facts and issues are common in all the writ petitions.

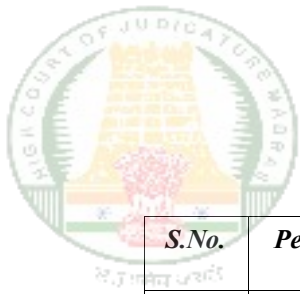
3. The Petitioners in this batch of Writ Petitions purchased Pulses and Grams from registered dealers. Entry 68 of Part B to the Fourth Schedule to the TNVAT Act exempts sales of pulses and grams by any dealer whose turnover does not exceed Rs.500 Crores in a year in respect of the goods mentioned in the said Entry. The turnover of the dealers from whom the purchases were effected by the petitioners was admittedly less than Rs.500 Crores in a year and thus entitled to exemption under the Entry 68 of Part B to the Fourth Schedule of the TNVAT Act. The selling dealer had claimed



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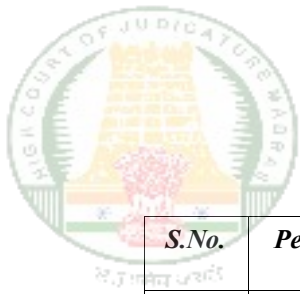
exemption in terms of the said Entry. Thus the purchases of pulses and grams did not suffer any tax. Admittedly the petitioners despatched/transferred the pulses and grams so purchased to places outside the State, otherwise than by way of sale. Orders of assessment came to be passed levying purchase tax under Section 12 of the TNVAT Act, on the premise that the purchases were made in circumstances in which no tax is payable by the registered dealer and the same was despatched to a place outside the State otherwise than by way of sales in the course of trade or commerce thereby covered by Section 12 (1) (c) of the TNVAT Act. The following table would show the assessment years under challenge:

<i>S.No.</i>	<i>Petitioners</i>	<i>Assessment Year</i>	<i>Products</i>	<i>Notice</i>	<i>Challenge</i>	<i>Exemption</i>	<i>Penalty SCN</i>
1.	J.K.Traders 25387 of 2022	2013-14	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by AC(ST)	Exemption U/S.15	No SCN Penalty was imposed
2.	J.K.Traders 25388 of 2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by AC(ST)	Exemption U/S.15	No SCN Penalty was imposed
3.	Tvl.Rams Enterprises 25148/2022	2016-17	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by AC(ST)	Exemption U/S.15	Penalty was not imposed
4.	Tvl.Sri Ramalakshmi and Co 25149/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
5.	Tvl.Sri Ramalakshmi and Co 25150/2022	2015-16	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed



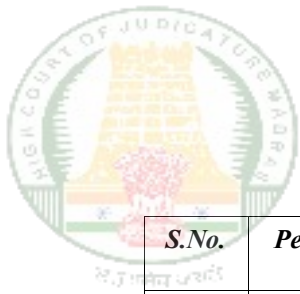
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S.No.	Petitioners	Assessment Year	Products	Notice	Challenge	Exemption	Penalty SCN
6.	Tvl.Sri Ramalakshmi and Co 25151/2022	2016-17	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
7.	N.V.R. and Co 23516/2022	2013-14	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by AC	Exemption U/S.15	No SCN Penalty was imposed
8.	N.V.R. and Co 23517/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by AC	Exemption U/S.15	No SCN Penalty was imposed
9.	Tvl.S.V.Vivek anandam and Co 24850/2022	2015-16	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
10.	Tvl.S.V.Vivek anandam and Co 24851/2022	2016-17	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
11.	Shree Vishnu Enterprises 24841/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
12.	Shree Vishnu Enterprises 24842/2022	2015-16	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
13.	Sri Durgaiamman Traders 24844/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
14.	Sri Durgaiamman Traders 24845/2022	2015-16	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
15.	Sri Durgaiamman Traders 24846/2022	2016-17	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed



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<i>S.No.</i>	<i>Petitioners</i>	<i>Assessment Year</i>	<i>Products</i>	<i>Notice</i>	<i>Challenge</i>	<i>Exemption</i>	<i>Penalty SCN</i>
16.	Sri Durgaiamman Traders 24847/2022	2017-18	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	Penalty was not imposed
17.	Tvl.C.Marimuthu 19298/2022	2010-11	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by STO	Exemption U/S.15	No SCN Penalty was imposed
18.	Tvl.C.Marimuthu 19299/2022	2011-12	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by STO	Exemption U/S.15	No SCN Penalty was imposed
19.	Tvl.C.Marimuthu 20363/2022	2012-13	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by STO	Exemption U/S.15	SCN not filed (but in impugned order extract it shows penalty notice was not given) Penalty was imposed
20.	Tvl.C.Marimuthu 20364/2022	2013-14	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by STO	Exemption U/S.15	SCN not filed (but in impugned order extract it shows penalty notice was not given) Penalty was imposed



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<i>S.No.</i>	<i>Petitioners</i>	<i>Assessment Year</i>	<i>Products</i>	<i>Notice</i>	<i>Challenge</i>	<i>Exemption</i>	<i>Penalty SCN</i>
21.	Tvl.C.Marimuthu 20365/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand penalty	Assessment order passed by STO	Exemption U/S.15	SCN not filed (but in impugned order extract it shows penalty notice was not given) Penalty was imposed
22.	Guru Traders 24824/2022	2014-15	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	penalty was not imposed
23.	Guru Traders 24825/2022	2015-16	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	penalty was not imposed
24.	Guru Traders 24826/2022	2016-17	Pulses and grams purchase tax U/S 12(1)	Assessment & demand	Assessment order passed by STO	Exemption U/S.15	penalty was not imposed

4. Though detailed submissions were made by both sides, as a preliminary objection the Revenue would contend that the above issue is no longer res-integra and stands covered by at least three Division Bench judgments of this Court. The revenue would submit that the petitioners are attempting to re-argue issues that stands resolved by Division Bench judgments and thus ought to be rejected. In view of the above submission I intend to examine as a preliminary issue if the above submission of the Revenue has merit.



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5. I would therefore refer to the judgments which in the view of the revenue would cover the issue raised in this batch of writ petitions. In this regard, it may be relevant to refer to the following extracts/portions of the said judgments:

i) *Ruchi Soya Industries Limited vs. CTO, 2008 (12) VST 546:*

“2.The Petitioner has preferred W.P.No.29700 of 2004 before this Court for a Writ of Declaration that the power of the State to levy purchase tax under Section 7A on goods purchased, the sale of which enjoyed exemption under the notification issued under Section 17 and sent on consignment basis to outside the State otherwise by way of sale under Section 7A(1)(c) of the Tamil Nadu General Sales Tax Act, 1959 is unconstitutional and beyond the legislative competence of the State under Entry 54, List II of the Seventh Schedule to the Constitution of India and ultra vires Entry 92B of List I of the Seventh Schedule to the Constitution and void as repugnant to Article 14....

29. A reading of the various decisions of the Supreme Court on the question of purchase tax show that every aspect projected in this case has been considered right from (1969) 24 STC 343 (SC) (Ganesh Prasad Dixit V. Commissioner of Sales Tax, Madhya Pradesh), (1972) 30 STC 537 (Ker); ... and there is hardly any justification in the contentions of the learned counsel appearing for the assessee.

..31.The policy of law is to tax every transaction of sale either at the point of sale or at the point of purchase. Exemption is granted either partially or in absolute. Where the seller is not taxed, the purchaser is taxed. By the same reasoning, when the seller is taxed, the purchaser is not taxed. As already seen, there may be several contingencies wherein no such first sale liable to tax is assessed and that goods are no longer available either because they cease to exist or be available for further consideration attracting tax. In such contingencies, if the selling dealer cannot be taxed,



the purchasing dealer is taxed by levy of purchase tax...

*37...In any event, in the face of the decisions referred to above on the aspect of liability and payability, we do not accept the contention of the counsel that the effect of the notification has the result of altering the tax policy. Considering the decision of the Supreme Court reported in (1975) 36 STC 191 at 197 (State of Tamil Nadu V. M.K. Kandaswami), on the phrase "sale or purchase of which is liable to tax" and that the Supreme Court reported in (1993) 88 STC 98 (Hotel Balaji V. State of Andhra Pradesh), we do not accept the plea that the notification touches on the policy of taxation and hence, the provision is bad. We hold that by levying tax under Section 7A in cases of **conditional exemption**, there is no shift in the policy of taxation...*

(emphasis supplied)

From a reading of the above judgment it would be clear that a conditional exemption would fall within the meaning of the expressions "*in circumstance in which no tax is payable*". Thus levy of purchase tax would get attracted if the exemption is conditional and the goods so purchased are dealt in any of the manner specified in Clauses (a) to (d) to Section 7A of the Tamil Nadu Goods and Services Tax, 1959 (hereinafter referred to as "the TNGST Act").

ii) Britannia Industries Limited v. State of T.N., 2012 (48) VST 241:

This was a case where sales of edible oil by a registered dealer with a turnover of less than Rs.300 Crores was exempt by a notification issued by the State Government in exercise of its powers as a delegatee under Section 17 of the TNGST Act. The petitioner/assessee had purchased edible oil from registered dealers who claimed exemption under the said notification as the



turnover of the selling dealer was less than the turnover stipulated in the said notification viz., Rs. 300 crores and consumed/used the said oil/goods purchased in the manufacture of biscuits. Purchase tax was levied under Section 7A of the TNGST Act, such levy of purchase tax was challenged. The challenge was rejected by the Division Bench holding that the exemption with reference to turnover of a dealer is conditional and section 7A of the TNGST Act stood attracted to cases of conditional exemption as held in *Ruchi Soya* and the contention by the assessee's do not deserve any further consideration as could be seen from the following extracts:-

*"..5. We do not think that the contention taken by the learned counsel for the assessee survives any more or for our consideration since the same was considered by this Court in the decision reported in (2008) 12 VST 546 – Ruchi Soya Industries Ltd. V. Commercial Tax Officer, to which one of us is a party. A contention similar to what is now argued was made by the learned counsel herein in the said reported decision relating to the very same assessment year 1999-2000, 2000-01. The contentions were rejected by this Court after elaborately considering to the scope of Section 7A of the Act. Referring to Section 3(2) as applicable to the assessment year under consideration, this Court held that goods falling under I Schedule suffer tax within the State at the point specified therein. Hence, where the goods does not suffer tax at the point of first sale for some reason or other, as per second proviso to Section 3(2), the said goods are brought under the net of taxation. The second proviso to Section 3(2) states that in the case of goods taxable at the point of first sale, the tax shall be payable at least once either by the first seller or by the second earliest of the successive dealers who is liable to tax under the section. **This proviso does not shift the liability, but only the payability to tax. In the circumstances, this Court held that Section 7A of the Act stood attracted to cases of conditional exemption and there was no shift in the policy of taxation.***

6. Given the fact herein that edible oil sold to the assessee had enjoyed the exemption under the Government Order by reason of the sellers' turnover being below Rs.300 crores limit and that the goods sold to the assessee was consumed in the manufacture of biscuits thus the edible oil



is no longer available for further tax treatment as per proviso to Section 3(2), rightly the assessment was brought to tax under Section 7A of the Act. Given the object of introduction of Section 7A, to plug the leakage and to prevent evasion of tax, even though there is no 'evasion of tax' as such in the sense in which 'evasion' is understood, applying the decision reported in (1975) 36 STC 191 – State of Tamil Nadu V. M.K.Kandaswami, we reject the submission of the assessee that the exemption granted is a circumstance which ought to have been taken note of as excluding the charge under Section 7A of the Act. As already pointed out, the decision reported in (2008) 12 VST 546 – Ruchi Soya Industries Ltd. V. Commercial Tax Officer, considered the similar line of argument and rejected the same. As against the said decision viz., (2008) 12 VST 546 – Ruchi Soya Industries Ltd. Commercial Tax Officer, Special Leave Petitions were filed by the assessee and the same were dismissed by the Apex Court in C.C.13571 to 13574 of 2008 by order dated 13.10.2008.”

(emphasis supplied)

iii) India Cements Limited vs. State of Tamil Nadu and Another, 2012 (51). VST 286 (Mad):

The Division Bench proceeded to hold that a purchase made against a conditional exemption would fall within the meaning of the expressions, “*in circumstance in which no tax is payable*”, employed in Section 7A of the TNGST , thereby attracting the charge under Section 7A of the TNGST Act as could be seen from the following extract:-

“..9. A reading of these decisions of this court and in the context of the decision reported in [1993] 88 STC 98 (SC) (Hotel Balaji v. State of Andhra Pradesh) and [1975] 36 STC 191 (SC) (State of Tamil Nadu v. M. K. Kandaswami), it is thus clear that the scheme of purchase tax levy under section 7A of the Act does not cover cases of sale or purchase of goods totally exempted from tax at all points under section 8 or section 17(1). However, where the exemption is a qualified one, be it goods related or dealer related, purchase or sale of goods subjected to any of the contingencies enumerated under section 7A, would certainly attract the charge under section 7A of the Act. Going by these decisions, we have no hesitation in rejecting the plea of the assessee that the notification granting exemption to sale by Tamil Nadu Electricity Board cannot be considered as



a circumstance to apply to the assessee to exclude the charge under section 7A of the Act.

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10. The amendment brought to section 7A of the Act with effect from January 1, 1987 by notification and the phrase "not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4,

were purchased at a point other than the taxable point specified in the First or the Second Schedule) and either" was considered by this court in the decision reported in [2008] 12 VST 546 (Mad) (Ruchi Soya Industries Limited v. Commercial Tax Officer, Harbour III Assessment Circle, Chennai), and similar contention now taken was rejected. Thus, this court applying the decision of the apex court, rejected the plea of the assessee and confirmed the assessment made under section 7A of the Act..."

(emphasis supplied)

From a reading of the above judgments it would be clear that wherever the exemption is a qualified one, be it goods related or dealer related, such purchases would fall within meaning of the expressions "*in circumstance in which no tax is payable*" and if such goods are consumed, used, disposed of, despatched, installed and used in the manner set out in Clauses (a) to (d) to Section 7A of the TNGST Act, the same would attract the charge under Section 7A of the TNGST Act. The expressions "*in circumstances in which no tax is payable*" considered and explained by the Supreme Court in the context of Section 7 A of the TNGST Act is employed in Section 12 of the TNVAT Act and would thus carry the same meaning.

6. Before I proceed further, it may be relevant to note that identical question under the TNVAT Act was considered by this Court on two



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occasions viz., in W.P.(MD).Nos.11425 of 2016 and batch cases etc., dated 06.12.2018 and W.P.No.21982 of 2016 wherein different views were expressed. In W.P.(MD).No.11425 of 2016, while dealing with similar notification, it was held that purchase tax under Section 12 of the TNVAT Act, would get attracted. While in W.P.No.21982 of 2016, it was held that the purchaser would be liable to pay tax under Section 12 of the TNVAT Act, if his turnover exceeds the turnover prescribed/ stipulated as a condition for exemption. However, when the matters were carried in appeal before the Division Bench of this Court in W.A.No.2549 of 2021 and W.A.(MD)Nos. 557, 611 to 614, 647 to 653, 666 and 667 of 2019, the finding/observations rendered by the learned Judges in both the matters were vacated and the assessing officer was directed to take an independent decision uninfluenced by any of the observations contained in the orders of the learned Single Judges.

7. Now in the background of the above judicial pronouncements, I shall proceed to examine the submissions made by the Counsel for the assesseees/petitioners and Revenue:

8. Case of the Assessee's/Petitioners:

a. Learned counsel for the petitioners Mr.R.D.Ganesan and



Mr. A.Chandrasekaran, would contend that the above judgments relied upon by Respondents are not relevant as those judgments dealt with provisions under the TNGST Act in the context of exemption granted by way of notification under Section 17 of the TNGST Act. On the other hand, the subject exemption is granted under an Entry to the Schedule to the TNVAT Act. The Schedule to an Act is part of the enactment and thus exemption under a Schedule cannot be equated with exemption by way of a notification. It was submitted that the exemptions having been granted under the Schedule to the Act would make a material difference insofar as the applicability of the judgments rendered under the TNGST Act, while construing the applicability of purchase tax under TNVAT Act.

b. Decisions rendered under the erstwhile regime i.e., TNGST Act would not have bearing under the TNVAT Act as the structure of the two tax regimes are different. While in the case of TNGST Act the levy of tax was at single point, however, under TNVAT Act every transaction is liable to tax and the quantum/incidence of tax stood reduced in the manner prescribed to the extent of tax paid on the purchases which was available as Input Tax Credit.

c. That there is a difference between exigibility, liability and payability. Exigibility is with reference to the charge created by statute while liability depends on the computation in accordance with statutory provision.



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Exemption would arise only if there is a liability. Thus, the very fact that exemption notifications are issued would reveal that the goods are otherwise liable and thus levy of purchase tax is not warranted.

d. That there is no rate of tax prescribed for pulses and grams.

e. The Petitioners are in any view entitled to the benefit of Input Tax Credit under sub-section (2) to Section 12 and thus the entire exercise is revenue neutral. Input tax Credit on purchase tax paid under section 12 of the TNVAT Act, is independent and not governed by Section 19 of the TNVAT Act.

f. It was also submitted that in the following cases penalty has been levied in the order of assessment though the Show cause notice did not contain any proposal insofar as penalty is concerned.

S.No.	Writ Petition Nos.	Petitioners
1.	WP (MD) No. 19298 of 2022	Mr C Marimuthu
2.	WP (MD) No. 19299 of 2022	Mr C Marimuthu
3.	WP (MD) No. 20363 of 2022	Mr C Marimuthu
4.	WP (MD) No. 20364 of 2022	Mr C Marimuthu
5.	WP (MD) No. 20365 of 2022	Mr C Marimuthu
6.	WP (MD) No. 23516 of 2022	N.V.R. & Co
7.	WP (MD) No. 23517 of 2022	N.V.R. & Co

9. Case of the Respondents:

To the contrary, the learned counsel for the Respondents reiterated



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their preliminary objection that the issues raised are no longer *res integra* and have been examined on more than one occasion by Division Benches of this Court in the case of *Ruchi Soya, Britannia Industries Limited* and *India Cements Limited*. The attempt to revisit the same is without reason and must be rejected. Further, the distinction sought to be made between exemption by way of notification and exemption under Entry in the Schedule is artificial, misconceived and non-existent. The submission that the petitioners would be entitled to Input Tax Credit in terms of sub-section (2) to Section 12 of the TNVAT Act, independent of the restrictions under Section 19 of TNVAT Act is baseless, unfounded and would distort the Scheme of Input Tax Credit under the TNVAT Act. Pulses and grams are declared goods and would normally fall under Entry 41 of Part B to the I Schedule of the TNVAT Act liable to tax at 5%. Thus the argument that there is no rate of tax provided is misplaced.

10. Heard both sides. Perused the material on record.

11.Object of Purchase Tax:

11.1. It may be relevant to set out broadly the object and purpose of levying purchase tax. The provision levying purchase tax is by itself a



charging provision as well as a remedial provision, the main object being to plug the leakage and prevent evasion of tax. In this context it is useful to refer to the judgement of the Hon'ble Supreme Court in *State of T.N. v. M.K. Kandaswami*, (1975) 4 SCC 745, wherein, the object of levy of purchase tax was explained. The relevant portions is extracted hereunder:

"It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation".

11.2. Purchase Tax under TNGST Act and TNVAT Act - Comparison:

Single point levy under the TNGST Act has given way to Value Added Tax which is a multi-point levy with the benefit of input tax credit, of the tax paid on the purchases being available to be set-off against the out put tax liability, subject to complying with the conditions stipulated. However, the purpose and object of purchase tax has not undergone any change even under Value Added Tax, but continues to remain the same viz., to plug loop holes and prevent evasion of tax and ensure that goods are subject to tax at



least once before they cease to exist in the State. To appreciate the same, it may be relevant to contrast the provision relating to levy of purchase tax under TNGST Act and TNVAT Act respectively, the following table containing the provisions is set out below:

The Tamil Nadu General Sales Tax Act, 1959	Tamil Nadu Value Added Tax Act, 2006
Section 7-A. Levy of purchase Tax. (1) Subject to the provisions of subsection (1) of section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, <u>the sale or purchase of which is liable to tax under this Act in circumstances in which no tax is payable under 2 (sections 3 or 4.) as the case may be, not being a circumstance in which goods liable to tax</u> under sub-section (2), (2-A) or (2-C) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First, the Fifth, the Eleventh or the Second Schedule], respectively, and either, – (a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or (b) disposes of such goods in any manner other than by way of sale in the State, (c) despatches or carries them] to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, or (e) installs and uses such goods in the factory for the manufacture of any goods shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in sections 3 or 4, as case may be. Section 7-A(2). Notwithstanding anything contained in sub-section (1), the provisions of section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods the sale of which is liable to tax under sub-section (1) of section 3 and whose total turnover for a year is not less than one lakh of rupees but not more than two lakhs of rupees, and such a dealer may, at his option instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of section 7: Provided that this sub-section shall not apply to the purchase made on or after the 1st day of April, 1990. Section 7-A (3). Every dealer liable to pay purchase tax under sub-section (1), shall, for the purpose of this Act, be deemed to be a registered dealer.	12. Levy of purchase tax .-- (1) Subject to the provisions of sub-section (1) of section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods <u>(the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer</u> on the sale price of such goods under this Act, and either - (a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or (b) disposes of such goods in any manner other than by way of sale in the State; or (c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce or in the course of export out of the territory of India; or (d) installs and uses such goods in the factory for the manufacture of any goods ,shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to this Act. (2) Notwithstanding anything contained in clause (24) of section 2, the dealer who pays tax under sub-section (1) shall be entitled to input tax credit on the goods specified in the First Schedule.



Though there are certain additions and omissions, I don't think that it would materially alter the object or the interpretation of the above section.

Importantly in both the regimes the charges under Section 7A and 12 of the TNGST Act and TNVAT Act, would get attracted if goods liable to tax are purchased “*in circumstances in which no tax is payable*” and the goods so purchased are dealt within any of the manner or falls within the circumstances set out in clauses (a) to (d) to Section 12 of the TNVAT Act, including goods so purchased being despatched to a place outside the State otherwise than by way of sale in the course of interstate trade or commerce.

11.3 Relevance of Instrument under which exemption is granted to decide the nature of exemption:

11.3.1. The thrust of the petitioner's contention is that the subject exemption is not conditional inasmuch as the exemption flows from the Schedule to the Act unlike in the judgments rendered under the TNGST Act, which were case of exemptions under notifications.

11.3.2. The question is would that make any difference. I would think it would not, for the above submission overlooks the fact that those judgments rendered under the TNGST Act, turned on the basis that exemptions were conditional, which was found to be a circumstance in which



no tax is payable attracting the levy of purchase tax. Importantly, Section 12 of the TNVAT Act employs the very same expressions “*in circumstances in which no tax is payable*”, which was considered and explained by Division Bench judgment of this Court. Thus the above judgments would continue to bind insofar as interpretation of the said expressions employed in Section 12 of the TNVAT Act.

11.3.3. That the above contention is misplaced would also be clear from the fact that the expressions “*in circumstances in which no tax is payable*” is explained by the Hon'ble Supreme Court in M.K. Kandaswami's case as taking within its fold purchases made from agriculturist and purchases made from dealers with a turnover below the threshold stipulated under sub-section (1) to Section 3 of the TNGST Act. Both are circumstance in which tax is not payable in view of stipulations contained in Sub-section (1) to Section 3 of the TNGST Act, 1959, which is the charging section. However, the Hon'ble Supreme Court held that the above purchases would fall within the meaning of the expressions “*in circumstances in which no tax is payable*”, thereby attracting the levy of purchase tax. The relevant portions of the judgment is extracted hereunder:

"24. In all the forty appeals under consideration, the goods in question, namely, arecanuts, gingelly seeds, turmeric, grams, castor seeds and butter are “goods, the sale or purchase of which is generally taxable under the Act”. That is to say, they are “taxable goods”. The sales of



arecanuts, gingelly seeds, turmeric and gram were not liable to tax in the hands of the sellers as they were agriculturists and the goods were the produce of the crops raised by them. Similarly, butter was purchased by the assessees concerned directly from the house-holders whose sales are not liable to tax under the Act. Castorseeds are said to have been purchased by the assessee concerned from unregistered dealers under bought notes. If this is a fact, then such sales may not be liable to tax under the Act.

25. Thus in all these cases, the purchases have been made by the dealers, of “goods, the sale or purchase of which is generally liable to tax under the Act”, but because of the circumstances aforesaid no tax was suffered in respect of the sale of these goods by the sellers. If it is a fact that the gingelly seeds (vide Civil Appeals Nos. 1046 to 1048, 1054 to 1057, 1059 to 1069 of 1973) and castor-seeds (vide Civil Appeal No. 1043 of 1973) were crushed into oil and the butter (vide Civil Appeals Nos. 1049, 1050, 1058, 1067 of 1973) was converted into ghee by the purchasers-dealers concerned, the condition in clause (a) of sub-section (1) of Section 7-A would be satisfied and Section 7-A would be attracted. If in the case of arecanuts (vide Civil Appeals Nos. 1040 to 1044 of 1973), turmeric and gram (vide Civil Appeals Nos. 1051 to 1053 of 1973), the purchasing dealers transported these goods outside the State for sale on consignment basis, their case would also be covered by clause (b) or (c) of Section 7-A(1) and such dealers would be liable to tax on the purchase-turnover of these goods."

(emphasis supplied)

Purchases made from an entity which in terms of the provisions under the primary enactment are outside the purview of the charging provision, has been explained as “a circumstance in which no tax is payable”, attracting the levy of purchase tax. If so, the contention that the



judgments rendered under the TNGST Act would have no bearing as it dealt with exemptions by way of notifications while the present exemption is granted under the Schedule to the Act on the premise which forms part of the Act is misplaced and liable to be rejected.

Yet another reason to why the above contention is misplaced is in view of Section 15 of the TNVAT Act which reads as under:

"15. Exempted Sale.-- 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."

A reading of the above provision would suggest exempted sale for the purpose of Section 15 of the TNVAT Act is both goods specified in the Fourth Schedule as well as goods exempted by way of notification issued by the Government. It does not matter whether the exemption is by way of an Entry in the Schedule to the Act or through a notification for the purpose of Section 15 of the TNVAT Act. This in my view would also make evident that the legislative intent is not to treat the nature of exemptions differently based on the legislative device by which it is granted. Thus the submission that merely because exemptions are granted under the Schedule to the TNVAT Act would result in judgments rendered under the TNGST Act in the context of exemptions granted under a notification as irrelevant is rejected.



11.4. Exemption on the basis of turnover – Whether

Conditional:

On a reading of the judgments of this Court in *Ruchi Soya*, *Britannia India and India Cements*, it would be clear that a "conditional exemption" would be covered by the expressions "in circumstances in which no tax is payable" contained in Section 12 of the TNVAT Act. Thus, the question is whether the exemption to pulses and grams in the present case is conditional.

To answer the above question it may be relevant to extract the relevant viz., Entry 68 of Part B of the Fourth Schedule to the TNVAT Act to appreciate the nature/scope of the exemption i.e., conditional or otherwise. The relevant Entry reads as under:

Sale of the following pulses and grams including broken, splits, flour, husk and dust thereof and parched and fried grams made from them by any dealer whose turnover in respect of the goods in each item does not exceed rupees five hundred crores in a year. (1) Gram or gulab gram. (2) Tur or arhar. (3) Moong or green gram. (4) Masur or lentil. (5) Urad or black gram. (6) Moth. (7) Lakh or khesari. (8) Mochai. (9) Karamani. (10) Thatta Payaru (11) Kollu. (12) Avarai.

A reading of the above entry would show that the exemption is not



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to Pulses and Grams but to a dealer with a turnover of less than Rs. 500

Crores in a year in respect of pulses and grams mentioned in the said Entry.

The exemption is qua a dealer with a turnover of less than Rs.500 Crores in a year and not qua goods i.e., Pulses and grams. The exemption is not general

but conditional, the condition being that the selling dealers turnover in respect of each item mentioned in Entry 68 of Part B of the Fourth Schedule

to the TNVAT Act, does not exceed Rs.500 Crores in a year. That the exemption is conditional would also be clear from the fact that the sales of

the very same pulses and grams by a dealer with a turnover in excess of Rs. 500 Crores in a year in respect of the said goods would not be entitled to

exemption but liable to tax under Section 3(2) of the Act read with Entry 41 of Part B of the First Schedule to the TNVAT Act at 5%. The fact that the

exemption is conditional would also be evident by contrasting it with some of the other exemptions (conditional/unconditional) granted under the

Schedule to the TNVAT Act. The following Table is relevant:-

TABLE A. GENERALLY EXEMPTED GOODS		
Entry no	Description	Commodity code Number
4	Appalam, pappad, vadam and vathal	704
8	Bagasse	708
13	Broom sticks	713



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14	Candles	714
16	Charcoal	716
23	Earthen pot and pottery items	723
25	Electrical energy	725
34	Garlic and ginger	734
40	Handicrafts. (For Thanjavur Plates, see item No. 6(12) of the Notification dated 23rd March 2007	740
41A	Handmade Locks	
44	Hank Yarn	744

TABLE B. CONDITIONALLY EXEMPTED GOODS		
Entry no	Description	Commodity code Number
18	Chillies and chilly powder, coriander and coriander powder, turmeric and turmeric powder, shikakai and shikakai powder, tamarind and asafetida (Hing) sold by any dealer whose total turnover in respect of those item does not exceed rupees three hundred crores in a year	718
29	Fly Ash sold to brick manufacturers	729
735	Gauze or bandage cloth produced or manufactured in power-loom sold by a dealer whose aggregate turnover does not exceed Rupees One 4 [***] crore in a year.	735
38	Goods taken under Customs bond for re-export after manufacturing or otherwise.	738
38A	Goods which are used for agricultural / horticultural purposes, namely:- (a) Chemical Fertilizers (b) Insecticides, Pesticides, Rodenticides, Weedicides, Fungicides, Herbicides and combinations thereof, Plant-growth promoters, Plant Nutrients, Micro Nutrients and Bio fertilizers]	



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A reading of the above Entries in the Fourth Schedule to the TNVAT Act, would show that the exemptions granted under the Fourth Schedule is both conditional and unconditional depending on the language employed. A reading of the above entries would show that the exemption in Table A is with reference to goods and not hedged by any conditions. The exemption in Table B has been granted with reference to goods, class of dealers with reference to turnover, user of goods, mode of manufacture etc., Such exemptions are conditional. Keeping in view the varied nature of exemptions granted under the Fourth Schedule, it is clear that exemption to pulses and grams under Entry 68 of Part B of the Fourth Schedule to the TNVAT Act, is a conditional exemption inasmuch as it is with reference to a class of dealers viz., dealers with a turnover of less than Rs. 500 Crores in a year in respect of such goods. The exemption being conditional the same would fall within the meaning of the expressions “*in circumstances in which no tax is payable*” employed in Section 12 of the TNVAT Act.

12. Mr.Chandrasekar, learned counsel for the petitioner would draw the attention of this Court to the judgment of the Hon'ble Supreme Court in *Associated Cement Companies Ltd. v. State of Bihar, (2004) 7 SCC*



642, to submit that there is a distinction between exigibility, liability and payability. While exigibility is with reference to the charge, liability depends on computation. The above distinction may not be relevant for the present purpose. What is to be enquired is whether the purchases was made “in circumstances in which no tax is payable”. A conditional exemption has been held “to be a circumstance in which no tax is payable” by three Division Bench judgments referred supra. Thus reliance on the above judgment would have no relevance in determining the scope of Section 12 of the TNVAT Act, where the legislature has looked at payability and not exigibility or liability. Further, the Division Bench of this Court in *Ruchi Soya* has considered the judgment in *Associated Cement*, while holding that conditional exemption would constitute a “*circumstance in which no tax is payable*” for the purpose of purchase tax.

13. Rate of Tax- Not provided - Purchase tax is not attracted:

The submission that pulses and grams are not liable to purchase tax inasmuch as there is no prescribed rate of tax is misconceived. Pulses and grams are Declared Goods in terms of Section 14 read with Section 15 of the Central Sales Tax Act. Entry 41 of Part B of the first Schedule to the TNVAT Act provides for levy of taxes on Declared Goods at 5%. Pulses and Grams



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being declared goods would be liable to tax at 5%, but for the conditional exemption granted under the Fourth Schedule to the TNVAT Act. This Court has found that the exemption under Entry 68 of Part B of the 4th Schedule to the TNVAT Act is conditional and Entry 41 of Part B of the First Schedule to the TNVAT Act, covers the sale of pulses and grams and thus the general rate of pulses and grams is 5%. In view of the above, the contention that there is no rate of tax prescribed under the Schedule to the TNVAT Act is misconceived and lacks merit.

14. Input tax credit on purchase tax under Section 12 of the TNVAT Act:

Having found that the levy of purchase tax would get attracted, the next question that has been raised is with regard to the applicability of Section 19 of TNVAT Act insofar as dealers eligibility to Input Tax Credit of the purchase tax that has been paid under Section 12 of TNVAT Act. The reliance upon the non-obstante clause in sub-section (2) to Section 12 of TNVAT Act to submit that Section 19 of the TNVAT Act will have no bearing insofar as Input Tax Credit on purchase tax only needs to be noticed to be rejected. It is trite law that a non-obstante clause is appended to a section in the beginning, with a view to give the enacting part of the section in case of



conflict an overriding effect over the provision or Act mentioned in the non obstante clause.¹ It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment.² Thus a non obstante clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the non obstante clause or to override it in specified circumstances.

15. Keeping the above principles in mind the non-obstante clause contained in Section 12 of the TNVAT Act, is limited in its operation only with reference to definition of Input Tax Credit under Section 2(24) of the TNVAT Act. Apparently, there was an need to provide for a non-obstante clause with reference to Sub-section (24) to Section 2 of the TNVAT Act, inasmuch as “input tax” was defined to mean tax paid by a registered dealer to another registered dealer on the purchase of goods. However in the case of purchase tax under Section 12 of the TNVAT Act, the taxes are not paid by the purchasing dealer to the selling dealer instead the levy/ charge is on the purchasing dealer and he is required to discharge the obligation/liability. But for the non-obstante clause in sub-section (2) to Section 12 of the TNVAT

¹ Union of India vs. G.M.Kokil, (1984) (Supp) SCC 196

² South India Corporation (P) Ltd., vs. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207



Act the taxes paid under section 12 of TNVAT Act may not qualify as Input Tax Credit within the meaning of Section 2(24) of the TNVAT Act.

With a view to give effect to the object of legislature viz., to grant Input Tax Credit of purchase tax under Section 12 of the Act, the non-obstante clause is employed with reference to Section 2 (24). Importantly, the non-obstante clause is limited in its operation to Section 2 (24) of the TNVAT Act and does not cover Section 19 of the TNVAT Act. Thus a construction that the non-obstante clause contained in sub-section (2) to Section 12 of the TNVAT Act, as operating even with reference to Section 19 of the TNVAT Act, would result in extending the scope of the non-obstante clause beyond the purpose for which it was enacted. A construction which ought to be avoided. As a matter of fact, there are provisions under the TNVAT Act which provides for a non-obstante clause which are much wider in its scope and operation. It may also be relevant to note that there are instances/provisions under the TNVAT Act where the legislature intended to give an over-riding effect over more than one provision, it had been expressly provided for as would be evident if one gleans through the TNVAT Act. While Sections 3(1-A), 4 to 10, 13 and 28 of the TNVAT Act employs the expression “*notwithstanding anything contained in this Act*”, thereby giving it very wide operation. Importantly the non-obstante clause in Section



29 reads as “*Notwithstanding anything contained in Sections 27 and 28 of the Act*”, thereby giving it an overriding effect which is limited to Sections 27 and 28. Thus if the legislature intended that Section 12 would override Section 19 of the TNVAT Act, it would have been provided for expressly and sub-section (2) to Section 12 of the TNVAT Act would have possibly read “*Notwithstanding anything contained in sub-clause (24) to Section 2 and Section 19 of the TNVAT Act*”. When the legislature has limited the operation of the non-obstante clause to clause (24) to Section 2 of the TNVAT Act extending its operation to Section 19 of the TNVAT is impermissible and contrary to the following settled rules of construction.

a. Statute to be Constructed to make it Effective and Workable

The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative³. If one construes the non-obstante clause in sub-section (2) to Section 12 as extending to Section 19 which governs the conditions for claiming input tax credit, it would result in taxes paid under Section 12 of the TNVAT Act, being automatically available as credit thereby neutralizing the charge and thus the provisions meaningless. The above construction thus ought to be avoided.

b. Avoiding additional or substitution of words/Judicial Legislation

³ CIT v S Teja Singh, 1959 (35) ITR 408.



The attempt by the revenue to extend the operation of the non-obstante clause in Section 12 (2) of the TNVAT Act, would result in re-writing sub-section (2) to Section 12 which reads as “notwithstanding anything contained in sub-clause (2) to Section 2” as **“notwithstanding anything contained in sub-clause (2) to Section 2 and 19”**.

Such construction ought to be avoided for the Court cannot aid the legislature, it cannot add or amend the provision⁴. It is contrary to all rules of construction to read words into an Act⁵. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute⁶. The court cannot re-frame the legislation for the reason that it has no power to legislate.

c. Different words different meaning

This Court had found that the legislature has employed the non-obstante clause differently through the Act, while in some provisions the non-obstante clause is very wide, in some cases it is limited to a particular provision or provisions. The non-obstante clause under sub-section (2) to Section 12 of the TNVAT Act, is limited in its operation to section 2 (24) of the TNVAT Act. If the intention of legislature of employing the non-obstante clause in sub-clause (2) to Section 12 of the Act, was to override Section 19

⁴ Crawford vs. Spooner, (1846) 6 Moore PC

⁵ Smt.Renula Bose vs. Rai Manmathanath Bose, AIR 1945 PC 108

⁶ Pinner vs. Everett, (1969) 2 All ER



of TNVAT Act it would have provided for it expressly in sub-section (2) to

Section 12, as done in various other provisions of the Act. It is settled rule of construction that if in relation to the same subject-matter different words are used in the same statute, there is a presumption that they are not used in the same sense"⁷ In this regard it may be relevant to refer the precedent laid down by the Hon'ble Supreme Court in the case of *CIT v. East West Import and Export (P) Ltd.*, (1989) 1 SCC 760 which is extracted hereunder:

7. There is abundant authority to support the stand of the counsel for the revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention.

From the above it is clear that input tax credit under sub-section (2) to Section 12 of the TNVAT Act would be governed and subject to the limitations contained in Section 19 of the TNVAT Act.

16. For all the above reasons, I am of the view that the exemption under Entry 68 Part B to the Schedule IV is conditional and the said goods on being despatched to places outside the State would attract the levy of purchase tax under Section 12 of the TNVAT Act. Thus the challenge to the levy of purchase tax is liable to be rejected. Input tax credit of the purchase tax would be subject to Section 19 of the TNVAT Act.

⁷ Brighton Parish Guardians v. Strand Union Guardians, (1891) 2 QB 156; Member, Board of Revenue v. Arthur Paul Benthall, AIR 1956 SC 842; CIT v. East West Import and Export (P) Ltd., (1989) 1 SCC 760



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17. However, insofar as penalty is concerned it was submitted that there was no proposal to levy penalty under the show cause notice in the following cases thus the levy of penalty in the impugned order cannot be sustain in the following cases:

S.No.	Writ Petition Nos.	Petitioners
1.	WP (MD) No. 19298 of 2022	Mr C Marimuthu
2.	WP (MD) No. 19299 of 2022	Mr C Marimuthu
3.	WP (MD) No. 20363 of 2022	Mr C Marimuthu
4.	WP (MD) No. 20364 of 2022	Mr C Marimuthu
5.	WP (MD) No. 20365 of 2022	Mr C Marimuthu
6.	WP (MD) No. 23516 of 2022	N.V.R. & Co
7.	WP (MD) No. 23517 of 2022	N.V.R. & Co

The above submission has merit, for levy of penalty ought to be preceded by giving a show cause notice enabling the petitioners to submit their objections. In the absence of any such notice, the proceedings would suffer from violation of natural justice. Therefore, the above impugned orders insofar as it imposes penalty are liable to be set-aside.

18. The Writ Petitions stand disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023



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Index:Yes/No
Speaking/Non speaking order
Neutral citation: Yes/ No
mka

MOHAMMED SHAFFIQ, J.

mka/shk

To:

- 1.The Principal Secretary/
The commissioner of Commercial Taxes,
Chepauk, Chennai.
- 2.The Assistant Commissioner (ST) III,
Virudhunagar III Assessment Circle,
Virudhunagar.

Pre-Delivery Order in
W.P.(MD).Nos.25387 of 2022 etc., batch cases



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07.02.2023