



WEB COPY

WP.Nos.16641, 16642 & 16643 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

W.P.Nos.16641, 16642 & 16643 of 2008

M/s.Nikkon Colour Lab,
Represented by A.Arockiaswamy,
Proprietor,
15, Prakasam street,
Chennai-17.

... Petitioner in all WPs

VS

1.The Sales Tax Appellate Tribunal
(Additional Bench)
City Civil Court Buildings,
Chennai-104.

2.The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Chennai-28.

... Respondents in all WPs

Prayer in WP.No.16641 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the files of the 1st respondent in S.T.A.No.193/01 dated 26.3.08, relating to the year 1989-90, and quash the same as being invalid and illegal and contrary to law.



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Prayer in WP.No.16642 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the files of the 1st respondent in S.T.A.No.211/01 dated 26.3.08, relating to the year 1990-91, and quash the same as being invalid and illegal and contrary to law.

Prayer in WP.No.16643 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the files of the 1st respondent in S.T.A.No.226/01 dated 26.3.08, relating to the year 1992-93, and quash the same as being invalid and illegal and contrary to law.

(In all WPs)

For Petitioner : Mr.V.Srikanth

For Respondents: R1 – Tribunal

Mr.V.Prashanth Kiran

and

Ms.Amirtha Dinakaran (for R2)

Government Advocates

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J.)

Read this order in continuation of and in conjunction with order dated 30.09.2024 reads as follows:

'Referring to a decision in the case of Tvl.R.Mini Colour Lab v The Tamil Nadu Taxation Special Tribunal and others [W.P.No.19378 of 2003 dated 06.08.2007], learned counsel for the petitioner would give up the argument in relation to applicability of Section 3B of the Tamil Nadu General Sales Tax Act, 1959, not contesting the nature of the transactions.



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2. *The case of the petitioner is that the rate of tax to be adopted in the case of interstate purchase of Photostat paper is 5% as per Entry 21 of the IV Schedule. The assessing authority has, however, levied tax at the rate of 10%.*

3. *No doubt, this is not an issue that was raised either at the time of First or Second Appeal. However, since the rate of tax is one of the primary ingredients in framing of an assessment, we are of the view that this aspect of the matter ought to have been looked into by the assessing authority even at the time of original assessment. At any event, it can certainly be raised now.*

4. *Let written instructions be obtained by Mr.Prashan Kiran, learned Government Advocate in regard to the applicable rate of tax.*

5. *List on 15.10.2024 as item no.1.'*

2. Written instructions are received from the assessing officer, where the assessing officer concurs with the stand of the assessee to the effect that the rate of tax ought to be 5% treating the commodity as residuary item under the relevant entry of the Fourth Schedule.

3. Learned Government Advocate appearing for the Commercial Taxes Department, could also accede to the position that the rate of tax in this matter should only be 5%.

4. In light of the aforesaid, let the assessment be re-done as above, and appropriate orders be passed within a period of four (4) weeks from today. The impugned order, to the extent as relating to the rate of tax alone, is set aside.



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5.Writ petitions are disposed in terms of this order. No costs.

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[A.S.M., J] [G.A.M., J]
17.10.2024

Index:Yes/No
Speaking order
Neutral Citation:Yes
vs

To

- 1.The Sales Tax Appellate Tribunal
(Additional Bench)
City Civil Court Buildings,
Chennai-104.
- 2.The Deputy Commercial Tax Officer,
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Chennai-28.



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