IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2024

CORAM

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

W.P.Nos.10031, 10033 and 10032 of 2004
& W.P.MP.No.11711 of 2004

Samsonite India Private Ltd.,
36, Arcot Road,
Chennai – 600 026. ... Petitioner in all W.P.'s

Vs

1. The Deputy Commercial Tax Officer,
   Group III, Enforcement (Central),
   Chennai – 600 006.

2. The State of Tamil Nadu,
   Represented by the
   Secretary to Government,
   Department of Commercial Taxes
   and Religious Endowments,
   Fort St.George,
   Chennai – 600 009. ... Respondents in all W.P.'s

3. Commercial Tax Officer,
   Office of the Commercial Tax Officer,
   T.Nagar (North) Assessment Circle,
   Chennai – 28.

(R3 impleaded suo motu vide this orer)
.... Respondent in W.P.No.10031 of 2004

PRAYER in W.P.No.10031 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the First Respondent in D2 358/2003-04 Group III (C) dated 24.3.2004 and quash the proceedings of the First Respondent in D2 358/2003-04 dated 24.3.2004.

PRAYER in W.P.No.10032 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare Serial No.8 of Part G of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 introduced by Tamil Nadu Act 18 of 2002, as its stood between 27.3.2002 and 30.6.2002 as ultra vires Articles 14, 265, 286, 301 and 304(a) of the Constitution of India.

PRAYER in W.P.No.10033 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare Serial No.9 of the Eleventh Schedule to the Tamil Nadu General Sales Tax Act, 1959 introduced by Tamil Nadu Act 22 of 2002 with effect from 1.7.2002, as ultra vires Articles 14, 265, 286, 301 and 304(a) of the Constitution of India.

In all W.P.'s
For Petitioner : Mr.K.A.Parthasarathy
for Mr.N.Inbarajan

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

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

In W.P.Nos.10032 and 10033 of 2004, the petitioner seeks writs of Declaration declaring Serial No.8 of Part G of the First Schedule and Serial No.9 of the Eleventh Schedule to the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') as ultra vires the Constitution.

2. This very issue has been adjudicated by this Court in the case of *Sony India Ltd. V. Commercial Tax Officer, Egmore II Assessment Circle, Chennai and others* ((2008) 18 VST 49), wherein the prayer, and the conclusion of this Court have been decided as follows:

> ***' Prayer:***
> *Aggrieved by the clarification dated July 20, 2002, they approached the Tamil Nadu Taxation Special Tribunal by filing O.P.Nos.969 and 970 of 2002 and 2002 and 564 and 565 of 2003 praying to declare the provisions contained in entry 14(vi) of Part D of the First Schedule to the TNGST Act as classifiable under entry 8 of Part G of the First Schedule to the said Act during the period from March 27, 2002 to June 30, 2002 and as classifiable under entry 9 of the Eleventh Schedule to the said Act with effect from July 1, 2002 prescribing 20 per cent rate of sales tax on the sale of respective imported goods from Delhi/Mumbai and stock transferred and sold in Chennai as violative of articles 14, 301 and 304 of the Constitution of India and void and unenforceable. By orders dated April 30, 2003(1) and May 27, 2003, the Taxation Tribunal upheld the provisions of levy of higher rates of sales tax at 20 per cent. Challenging the said orders, they have filed the above writ petitions seeking to set aside the orders of the Taxation Tribunal and for a*

consequential declaration to declare the impugned provisions ultra vires of the Constitution.

Conclusion:

30. Whether Part XIII could be made applicable to imported goods is a further question for consideration in this case. Part XIII of the Constitution relates to the restriction on inter-State and intra-State trade on goods. Inter-State trade would mean where the goods manufactured in a State are sold in the same State. Equally, an intra-State trade would mean only such of those goods manufactured in one State and sold in other State/States. So long as the movement of goods within the State or from one State to another is not restricted, Part XIII of the Constitution cannot be pressed into service. In the given case, there is no restriction on goods from one State to another. By virtue of the power the State had classified the goods for the purpose of levy of sales tax. Heavy reliance was also placed on a Division Bench judgment of this Court in Indian Sugar & General Industry Export Import Corporation Ltd., v. Commercial Tax Officer and others (2002) Vol.127 STC 339) to contend that there cannot be any distinction between imported and indigenous goods. That was a case where this Court had dealt with the imported sugar. The Division Bench considered the word "imported" found in item (viii) of Section 14 of the Central Sales Tax Act does not result in the declaration with regard to sugar being confined only to sugar which is produced domestically. The Court had taken note of the fact that sugar falling within the scope of the sub-headings of the Central Excise Tariff Act and referred to in item (viii) of Section 14 of the Central Sales Tax Act would be declared goods, irrespective of the place of their manufacture. The question before the Division Bench was when once the goods are treated as declared goods, whether there could be a further distinction as to the indigenous or imported goods for the purpose of levy of tax. The criteria of distinction for levying higher rate of tax is whether the goods imported from the other country lose its identity as foreign goods or not. In the given case, the goods are television sets, audio systems, handy cameras, handsets of cellular phones, cars, medium density fibre boards, etc., and even after their import, they did not lose their respective identity. However, in the case of sugar, even after the sugar is imported, it is *not sold in the market as imported sugar and it is possible for the trader to mix the imported sugar with the indigenous manufactured sugar as well. On the facts of the present case, we do not find that the said judgment would be of any use to the petitioners. For these reasons, we are of the considered view that Part XIII of the Constitution would not be applicable to imported goods. That apart, the impugned amendment Act fixing higher rate of tax for imported goods is on intelligible differentia and on the basis of reasonable classification and therefore we do not find any reason to hold that either the impugned Act is violative of Article 14 or the imposition of higher rate of sales tax for imported goods would in any way amount to restriction of trade under Part XIII of the Constitution of India. Equally the submission as to the impugned Act requires the assent of the President under Article 304(b) also cannot be accepted. Further, as the classification is reasonable, the submission as to the restriction for levy of tax on sale or purchase of goods based on Article 286(3) is also not available to the petitioners. Accordingly, point nos.(i) & (ii) are answered.'*

3. In conclusion, the Bench does not find any merit in the declaration sought and the Writ Petitions had come to be dismissed.

4. As against the above order, *Sony India Pvt. Ltd.* approached the Supreme Court in Civil Appeal Nos.1591 and 1592 of 2009, that were disposed vide order dated 05.03.2009. The Bench finds some merit in the contentions raised by the assessee and since the orders of assessment had been directly challenged before the then Special Tribunal without exhausting the statutory remedies, a direction was issued to that assessee to file statutory appeals in line with the hierarchy set out under the Act. The operative portion of the judgment of the Supreme Court reads as follows:

'We do not wish to comment about the above contentions. Suffice it to state that these contentions would require adjudication, which has not taken place in the present case. Against the assessment orders, the assessee chose to move the Tribunal without exhausting statutory remedy under the Act. In our view, looking to the contentions advanced by the assessee, they ought to have procceded to file appeals for each assessment year before the First Appellate Authority under the Act which they have failed to do. However, since an important question of law arises for determination and since the liability is likely to recur in future, we direct the appellant-asseesee herein to prefer statutory appeal(s) within a period of four weeks. It is made clear that the First Appellate Authority will decide the said appeal(s) within a period of six months, uninfluenced by the observations made by the Tribunal as well as by the High Court in the impugned judgment. We express no opinion on the merits of the case. Whatever is stated hereinabove is only in the support of our order remitting the matter to the First Appellate Authority and that Authority shall not be bound by any of our observations mentioned hereinabove. The First Appellate Authority shall decide the matter on merits and it shall condone the delay, if any, in filing the appeals.'

5. We are given to understand that the matter has been the subject of assessment in the case of *Sony India Pvt. Ltd.* as well as assessees in similar circumstances as the present petitioner.

6. However, no assessment has taken place in the case of the present assessee and what the assessee has challenged in W.P.No.10031 of 2004 is a notice issued on 24.03.2004 by the Assistant Commissioner (CT), Enforcement (Central) calling upon the petitioner to pay the differential tax after enhancement of tax rate from

12% to 20%. This demand appears to be pre-mature for the reason that a notice of adjudication has itself been issued only on 31.01.2005 in TNGST No.1521298/2002-2003 by the jurisdictional Assessing Officer of the petitioner, being the Commercial Tax Officer, T.Nagar (North) Assessment Circle.

7. The petitioner has also filed a reply on 14.03.2005 to the said notice. While the demand notice dated 24.03.2004 spans the period 27.3.2002 to 24.02.2004, i.e., three assessment periods, 01.04.2001 to 31.03.2002 (I), 01.04.2002 to 31.03.2003 (II) and 01.04.2003 to 31.03.2004 (III), the pre-adjudication show cause notice that has been issued relates only to the period 2002-03.

8. As no demands can be sustained sans valid proceedings for assessment, the impugned demand notice is set aside. The petitioner is granted liberty to file additional written submissions in response to the notice dated 31.01.2005 and produce such other material in support of its case before the assessing officer.

9. There is a direction to the present assessing officer, Commercial Tax Officer, T.Nagar (North) Assessment Circle, Chennai, who is impleaded suo motu as R3 in W.P.No.10031 of 2004, and for whom Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice, to hear the petitioner, consider the replies already filed and filed pursuant to that order, relevant materials and pass and order of assessment in accordance with law, within a period of six (6) weeks from today.

10. In fine, W.P.No.10031 of 2004 is disposed with directions as above, and W.P.Nos.10032 and 10033 of 2004 are dismissed. No costs. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (G.A.M.,J)
13.08.2024

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

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   Group III, Enforcement (Central),
   Chennai – 600 006.

2. The State of Tamil Nadu,
   Represented by the
   Secretary to Government,
   Department of Commercial Taxes
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