IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM :

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

W.P.Nos.12116 of 2004, 8226 of 2005 & 12559 of 2006
and
W.P.M.P.Nos. 8891 of 2005, 14164 of 2004, 14143 of 2006, 539, 540 & 541 of 2010

Tata Tea Ltd.,
Valparai Estate,
Old Valparai 642 127 .. Petitioner in all writ petitions

vs

1.State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Religious Endowment & Commercial Taxes,
Fort St.George, Chennai – 09.

2.The Deputy Commercial Tax Officer,
Valparai. .. Respondents in all writ petitions

Prayer in W.P.No.12116 of 2004 : Petition filed under Article 226 of the Constitution of India praying to issue any order of direction more particularly an order in the nature of a writ of prohibition or any other appropriate order or direction prohibiting the respondents from levying and collecting Additional Sales Tax from the petitioner in respect of the turnover of the tea brokers and from applying explanation I to sec.2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 to the petitioner.

Prayer in W.P.No.8226 of 2005 : Petition filed under Article 226 of the Constitution of India praying to issue any order of direction more particularly an order in the nature of a writ of prohibition or any other appropriate order or direction prohibiting the respondents from levying and collecting Additional Sales Tax from the petitioner in respect of the turnover of the tea brokers and from applying explanation I to sec.2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 to the petitioner.

Prayer in W.P.No.12559 of 2006 : Petition filed under Article 226 of the Constitution of India praying to issue any order of direction more particularly an order in the nature of a writ of prohibition or any other appropriate order or direction prohibiting the respondents from levying and collecting Additional Sales Tax from the petitioner in respect of the turnover of the tea brokers and from applying explanation I to sec.2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 to the petitioner.

For Petitioner : Mrs.Hema Muralikrishnan
for Ms.S.Pushya Sitaraman
(in all writ petitions)

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader
(in all writ petitions)

COMMON ORDER

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

In these three writ petitions, the petitioner, a dealer in Tea, holding a registration under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short, 'TNGST Act') has challenged show-cause notices dated 15.02.2005.

2. In the impugned notices, the assessing authority has rejected the returns filed by the petitioner on the ground that the turnover in regard to sales of tea made by the brokers / agents at auction centres of Coimbatore and Connoor have not been included in taxable turnover for determining Additional Sales Tax (AST) liability under the provisions of the Tamil Nadu Additional Sales Tax Act, 1970 (in short, 'AST Act').

3. The four auction houses are (i) Tvl. Paramount Tea Marketing

(S.I.) Pvt. Limited, Coonoor, (ii) Tvl. Carnt Moran & Co., Pvt. Limited, Coimbatore, (iii) Tvl.J.Thomas & Company, Coimbatore & (iv) Tvl.Best Tea Brokers Pvt. Limited, Coimbatore (in common hereinafter referred to as 'brokers / auction houses / agents').

4. The assessing authority in the impugned notices goes on to determine the total and taxable turnover as follows:-

"<u>TURNOVER AS PER ACCOUNTS</u>

First sales of Tea		*Rs.58,98,98,830.00*
First sales of Scrap	*Rs.*	*3,04,850.00*
First sales of Scrap	*Rs.*	*2,46,123.00*
First Sales of Scrap		*Rs. 7,18,185.00*
First Sales of Scrap		*Rs. 22,050.00*
First Sales of Strawberry		*Rs. 3,30,076.00*
First Sales of Pepper		*Rs. 27,34,032.00*
First Sales of Cardamom		*Rs. 90,431.00*

Taxable Turnover		*Rs.59,43,44,487.00*

<u>EXEMPTED TURNOVER</u>

Tea sales at auction centres		*Rs.10,75,92,977.00*
Sales of Rice	*Rs.*	*18,67,803.00*
Sales of Sugar		*Rs. 51,300.00*

Total turnover as per accounts		*Rs.10,95,12,080.00*

Total turnover proposed to be determined		*Rs.70,38,56,567.00*
Taxable turnover proposed to be determined		*Rs.59,43,44,487.00*
Exempted turnover proposed to be allowed		*Rs.10,95,12.080.00*

<u>DETERMINATION OF TURNOVER FOR LEVY OF AST</u>

Sales turnover of Tea	*Rs.58,98,98,830.00*
Scrap	*Rs. 7,18,185.00*
Scrap	*Rs. 22,050.00*
Strawberry	*Rs. 3,30,076.00*
Pepper	*Rs. 27,34,032.00*

Cardamom	*Rs.*	*90,431.00*
Sales turnover of Tea through Brokers at auction centres	*Rs.*	*5,80,97,031.00*
Total		*Rs.65,18,90,545.00*

Additional sales tax at 2% on the above turnover of Rs.65,18,90,545.00 is proposed to be levied.

Penalty under section 3-B of the TNAST Act'70 read with Section 12(3)(b) of the TNGST Act'59 will also be levied."

5. We note that the impugned notices do not propose any liability qua the TNGST Act, rather, and on the contrary, the assessing authority categorically accepts the turnover from the tea sales at auction centres as exempt from tax, rejecting the returns as incorrect and incomplete solely on the aspect of non-inclusion of turnover under AST Act.

6. The petitioner has challenged the impugned notices on the ground that the turnover from tea supplied by it has suffered tax in the hands of the auction houses / its agents. Reference is made to Explanation 1 to section 2 (1) (aa) of the AST Act, stating that taxable turnover, in respect of a principal selling or buying goods through agents, is the aggregate taxable turnover of that principal or of his agents relating to the sale or purchase of goods within the State.

7. In the present case, the petitioner has brought on record material that indicates, prima facie, that the turnover in respect of the tea supplied by the petitioner, is being offered to tax in the hands of two of the agents, who also are dealers registered under the TNGST Act. As far

as Paramount Tea Marketing is concerned, a notice has been issued for the period November, 2001 to March, 2002 bringing to tax, turnover of a sum of Rs.16,02,05,163/- invoking the provisions of Section 2(1)(a) of the AST Act.

8. As far J.Thomas and Company is concerned, the petitioner has placed on record Clarification dated 14.12.2002 issued by the Special Commissioner, Commercial Taxes to the effect that the auction house would have to bear the liability for the purposes of Additional Sales Tax levy. Notice dated 08.01.2004 has also been issued to J.Thomas and Company for the year 2002 - 03 calling upon it to pay additional sales tax.

9. Though reference is made to an order passed by the T.N.Special Tribunal in the case of Carnt Moran, no order is produced. No material has been placed in respect of Best Tea Brokers to indicate the imposition of additional tax liability on it. However, the petitioner would generally refer to, and rely upon the Coonoor Tea Traders Association Rules, 1969, specifically Clause 4 thereof, in support of the contention that the auction houses constitute 'agents' who would bear the full brunt of the tax liability.

10. On the basis of the above material, the petitioner argues that the entirety of the AST liability is being met by the agents and hence no liability would enure to it on this account. Any liability fastened over and above the agents' liability would amount to double taxation.

11. Per contra, learned Additional Government Pleader appearing for the Department would argue vigorously that the question of whether

the auction houses have suffered the AST liability is not clear. Notices have been produced for periods different than the assessment period in question and hence it is not conclusive as to whether the auction houses have suffered AST liability. In fact, no material has been provided in respect of two of the auction houses.

12. In all, there is no clarity on whether the auction houses have suffered AST liability. Hence it is highly pre-mature of the petitioner to have challenged show-cause notices thwarting an adjudication on the various issues that arise, including whether at all the auction houses have suffered AST liability. The question of double taxation can be determined by the assessing authority only thereafter. In this regard he also refers to the Coonoor Tea Traders Associations Rules, 1961, specifically Clause 21 thereof.

13. We agree with the Revenue that the question of whether the four auction houses constitute 'agents' of the petitioner would depend on a proper interpretation of the statutory provisions and Tea Traders Association Rules, and various facts would have to be marshalled, assimilated and appreciated by the authorities before a finding is given on this issue. This would also have a bearing on the argument relating to double taxation which can be answered only post the determination in regard to whether the auction houses constitute 'agents' of the petitioner.

14. However, there is yet another aspect to this matter. The charging provision in regard to additional sales tax is Section 2(1)(aa) of the Act extracted below:-

"Sec.2(1)(aa) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereafter in this section referred to as the said Act), shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover (for a year exceeds ten crores of rupees), be increased by an additional tax, calculated at the following rates, namely:-

		RATE OF TAX
[(i)	*Where the taxable turnover exceeds ten crores of rupees but does not exceed twenty-five crores of rupees.*	*1 per cent of the taxable turnover*
(i-a)	*Where the taxable turnover exceeds twenty-five crores of rupees but does not exceed fifty crores of rupees.*	*1.5 per cent of the taxable turnover*
(ii)	*Where the taxable turnover exceeds fifty crores of rupees but does not exceed one hundred crores of rupees.*	*2 per cent of the taxable turnover.*
(iii)	*Where the taxable turnover exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees.*	*2.5 per cent of the taxable turnover*
(iv)	*Where the taxable turnover exceeds three hundred crores of rupees.*	*3 per cent of the taxable turnover*

Explanation I. - 'Taxable Turnover' for the purpose of this clause in respect of a principal selling or buying goods [...] through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State."

15. Section 2(1)(aa) states that any demand made under the TNGST Act in relation to turnover, or earned through agents shall be increased by an additional tax. The mode of computation of that additional sales tax is set out in the provision itself. Thus, and in our understanding, a demand of AST would draw sustenance from, and is dependent upon the demand raised under the provisions of the TNGST Act which is the parent

legislation.

16. In the impugned notices, the assessing authority has consciously chosen to accept the exemption claimed qua turnover from sales of tea supplied by the petitioner to the auction houses. Had this turnover been the subject-matter of taxation under the TNGST Act, the authority could well have raised a demand of additional sales tax incidental to the main levy. However, where the turnover in question has been exempted from the levy under the provisions of the TNGST Act, there can be no levy of Additional Sales Tax in regard to that turnover. With the grant of exemption under the TNGST, the assessing authority has irrevocably closed the door on the levy of AST.

17. We are thus of the view that the proposal under the impugned notices to impose levy of additional sales tax on the one hand, having accepted the claim of exemption for the main turnover under the provisions of the TNGST Act, cannot be sustained. Since this is the only proposal which the impugned notice contains, the notice itself would have to be set aside and we thus do so.

18. In *S.Kodar vs State of Tamil Kerala*[1], the vires of the Tamil Nadu Additional Sales Tax Act, 1970 stood challenged and while upholding the constitutionality of the Act, a Constitution Bench of the Supreme Court holds as follows:-

> *"As regards the contention that the State Legislature has no power to pass the measure, we are of the view that additional tax is really a tax on*

1 34 STC 73

> *the sale of goods. The object of the Act, as is clear from its provisions, is to increase the tax on the sale or purchase of goods imposed by Tamil Nadu General Sales Tax Act, 1959 and the fact that quantum of the additional tax is determined with reference to the sales tax imposed would not alter its character. It may be noted that additional tax is to be imposed only if the turnover of a dealer exceeds Rs. 10 lakhs. It is in reality a tax on the aggregate of sales effected by a dealer during a year. The additional tax, therefore, is an enhancement in the rate of the sales tax when the turnover of a dealer exceeds Rs. 10 lakhs a year and it is a tax on the aggregate of the sales affected by the dealer during the year. The decision in Ernakulam Radio Company v. State of Kerala which was affirmed by, a Division Bench of the Kerala High Court in Kiliker v. Sales Tax officer took that view. The same view was taken by the Andhra Pradesh High Court in A. S. Ramachandra Rao v. State of Andhra Pradesh. This is the correct view. Entry 54 in List II authorises the state legislature to impose a tax on the sale or purchase of goods. So, the contention of the appellants that the additional sales tax is not a tax on sales but on the income of the dealer is without any basis."*

19. A Division Bench of this Court in *HSI Automotives Limited v State of Tamil Nadu*[2] considered the question of whether turnover that was exempt from taxation under the TNGST (parent enactment) would be liable for inclusion to determine threshold for additional sales tax liability. The Bench notes that the Additional Sales tax Act is a 'parasitical piece of legislation', that depends upon the provisions of the Tamil Nadu General Sales Tax Act, 1959 (i) for the purposes of definitions of words and expressions (ii) for the purposes of assessment and levy (iii) for the purposes of collection and (iv) for the purposes of statutory remedies such

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as appeals, revisions, etc. Thus the conclusion was that what is exempt for the purpose of the TNGST would stand excluded for the purposes of computation of AST as well.

20. In *India Beedi Leaves v State of Tamil Nadu*[3], a Division Bench of this Court was considering a challenge to levy of additional sales tax by two agents. In that context, they state at paragraph 5 of that decision that the '*provision is very specific and it imposes liability to pay additional sales tax on that dealer in whose hands the sales tax been levied under the principal Act.'* In that case, the dealers / agents had been assessed under the TNGST Act and that assessment had not been challenged by them. Hence they conclude that once an assessment had been made to sales tax under the principal act, they automatically become liable to pay additional tax.

21. Since, section 2(1) of the AST Act specifically states that additional tax is payable by a dealer in whose hands the assessment of sales tax under the principal act has been made, they conclude that the levy of additional tax under Section 2(1) of the Tamil Nadu Additional Sales Tax Act, 1970, is consequential on the original assessment. Thus, if the original assessment to sales tax has been made on a person and that person's turnover exceeds Rs.10,00,000, then the levy of additional tax is automatic under section 2(1). Based on that interpretation, the case put forth by the agents was dismissed.

22. The argument of the Revenue is that the grant of exemption

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under TNGST is itself conditional upon the turnover having been brought to tax in the hands of the auction houses. However, no such condition has been imposed by the officer in the impugned proposals and the exemption claimed by the petitioner has been accepted unconditionally.

23. It is not for the learned Government Pleader to improve the impugned proposals or modify the same and we may, in this regard, make useful reference to the judgment of the Apex Court in the case of *Mohinder Singh Gill v Chief Election Commissioner*[4]*,* settling the proposition that an order (in this case, notices) must stand or fail on the strength of its contents only.

24. For the aforesaid reasons, and finding merit in these writ petitions, the impugned notices are quashed and the writ petitions are allowed. the same. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
26.09.2024

Index: Yes
Neutral Citation: Yes
ssm

To

1.The Secretary to Government,
Department of Religious Endowment & Commercial Taxes,
Fort St.George, Chennai – 09.

2.The Deputy Commercial Tax Officer,

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Valparai.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

ssm

W.P.Nos.12116 of 2004, 8226 of 2005 & 12559 of 2006

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