



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos. 5101, 5102, 5105, 5103, 5104, 5108, 5109, 5106 & 5107 of 2002 &
22015 of 2007

W.P.No. 5101 of 2002:

Tamilnadu Telecommunications Ltd.,
No.42, Anna Salai, Chennai – 600 002.

.. Petitioner

Vs

1.The Commercial Tax Officer,
Triplicane Assessment Circle IA,
62, Cathedral Road,
Chennai – 600 086.

2.The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam,
Chennai – 600 004.

.. Respondents

Prayer in W.P.No.5101 of 2002 : Writ Petition filed under Article 226 of the Constitution of India praying to call for the records on the files of the First respondent herein in CST/36808/2000-2001 dated 7.2.2002 and issue a Writ of Certiorari or any other appropriate writ, order or direction, quashing the proceedings of the First Respondent herein in CST/36808/2000-2001 dated 7.2.2002.



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For Petitioner : Mr.N.Prasad
(in all writ petitions)

For Respondents : Ms.Amritha Dinakaran
Government Advocate
(in all writ petitions)

COMMON ORDER

(Made by Dr. ANITA SUMANTH.,J)

This is a batch of 10 writ petitions wherein the prayers are for a quash of orders of assessment passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). W.P.No.5101 of 2002 challenges an assessment for the period 2000-01 and the remaining writ petitions challenge provisional assessments for the months of April, May, June, July, August, September, October and November, 2001. In W.P.No.22105 of 2007, the petitioner challenges Clarification dated 29.04.1993 based on which the impugned assessment have been framed. Since the issue that arises in all the writ petitions is one and the same, we pass a common order disposing all writ petitions.

2. The assessee is a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959. Orders of assessment have been passed for the periods 2000-01 and 2001-02 accepting the returns filed under the provisions of the Act. In respect of the period 2000-01, the turnover was an amount of Rs.22,30,43,235/-. The Tamil Nadu Additional Sales Tax Act, 1970 ('AST Act'),



provides for the levy of additional sales tax setting out certain conditions on the basis of which such liability would stand triggered.

3. The threshold for triggering AST liability till September, 2001 was Rs. 25 crores, and hence for the period 2000-01, as the turnover was below the aforesaid threshold, the petitioner did not suffer any AST liability. The TNGST assessment was completed on such basis. As far as the period 2001-02 is concerned, an amendment was brought into the relevant provisions of the AST Act whereby the threshold for applicability was reduced from Rs.25 crores to Rs.10 crores with effect from 29.09.2001.

4. The sales turnover of the assessee as on 30.11.2001 was Rs.9,34,60,860/- and the turnover did not exceed a sum of Rs.10 crores even till 31.03.2002. Hence there was no AST liability for 2001-02 as well and the TNGST assessment was completed on that basis. The assessee had engaged in inter-state sales for the period 2000-01, returning turnover of Rs.90,52,12,546/-. In those returns under the Central Sales Tax Act (CST Act), the assessee proceeded on the basis that there would be no necessity to reckon AST liability.

5. Pre-assessment notices were issued by the assessing authority calling upon the assessee to show cause why AST should not been levied in the CST assessments. The assessee objected to the proposals pointing out that the charging provision, being Section 2(1)(aa) of the AST Act, stood attracted only to TNGST assessments. There was no provision in the CST Act that brought into play the



provisions of the AST Act and in such circumstances, the proposal of the assessing authority to levy AST in the CST assessments was not sustainable in law.

6. Overruling the objections, assessments came to be completed on various dates confirming the proposals under the show cause notices. In doing so, the assessing authority relies on the judgment of the Supreme Court in the case of *Deputy Commissioner of Sales Tax v Ayesha Hosiery Factory (P) Ltd*¹. The officer also relied on a decision of a Division Bench of this Court in the case of *Engine Valves Limited v Union of India*². It is as against those orders that the writ petitions had been filed.

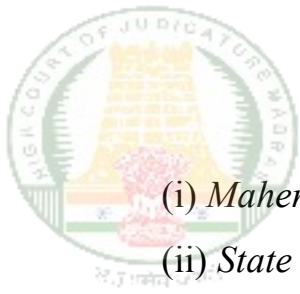
7. A common counter has been filed by the assessing authority supporting the orders of assessment and reiterating reliance on the judgments relied upon by the assessing authority.

8. Mr.Prasad, who appears for the petitioner, touches upon the statutory provisions of the TNGST Act, AST and CST Acts, pointing out that there is no legislative intention expressed in any of those enactments to support the levy of AST in a CST assessment.

9. The charging provision under the AST Act is specific to domestic tax alone and cannot be extended beyond what the legislature has intended, to encompass other enactments such as the CST Act. A compilation has been filed containing the following judgments:-

1 1992 85 STC 106

2 1993 90 STC 84



- (i) *Mahendra Kumar Ishwaralal & Company v The State of Madras*³
- (ii) *State of Tamil Nadu & Another v Sitalakshmi Mills Ltd & Others*⁴
- (iii) *Gwalior Ryan Silk MFG (WVG) Co., Ltd v The Assistant Commissioner of Sales Tax & Others*⁵
- (iv) *The State of Tamil Nadu v M.K.Kandasami & Others*⁶
- (v) *Janatha Expeller Company & Others v The Assistant Commissioner (Assessment), Sales Tax, Special Circle, Tiruchur*⁷
- (vi) *Govind Saran Ganga Saran v Commissioner of Sales Tax & Others*⁸
- (vii) *Assistant Commissioner (Assessment), Sales Tax v Janatha Expeller Company & Others*⁹
- (viii) *State of Tamilnadu v Wander Limited*¹⁰
- (ix) *Assistant Commissioner (Assessment) Sales Tax Special Circle Tiruchur v Janatha Expeller Co., & Others*¹¹
- (x) *Pine Chemicals Ltd & Others v Assessing Authority & Others*¹²
- (xi) *Deputy Commissioner of Sales Tax v Ayesha Hosiery Factory (P) Ltd*¹³
- (xii) *Engine Valves Limited v Union of India*¹⁴
- (xiii) *Commissioner of Sales Tax, Jammu & Kashmir & Others v Pine Chemicals Ltd & Others*¹⁵
- (xiv) *Mathuram Agrawal v State of Madhya Pradesh*¹⁶
- (xv) *Sudesh Kumar v State of Uttarkhand*¹⁷
- (xvi) *Seth Industrial Corporation v State of Punjab & another*¹⁸

3 (1967) 21 STC 72
4 (1973) 33 STC 200
5 (1974) 33 STC 219
6 (1975) 36 STC 191
7 (1981) 49 STC 216
8 (1985) 60 STC 205
9 (1987) 64 STC 435
10 (1990) 79 STC 421
11 (1991) 85 STC 105
12 (1992) 85 STC 432
13 Footnote Supra 1
14 Footnote Supra 2
15 (1994) 96 STC 355
16 (1999) 8 SCC 667
17 (2008) 3 SCC 111
18 (2010) 27 VST 581



- (xvii) *Sri Kaliswari Fire Works v Commercial Tax Officer – I, Sivakasi*¹⁹
(xviii) *M/s. International Flavours & Fragrances India Pvt Limited v State of Tamil Nadu, Rep. by Joint Commissioner, Chennai*²⁰
(xix) *Commercial Taxes Officer v A Infrastructure Ltd*²¹
(xx) *Indian Oil Corporation Limited v Deputy Commissioner (ST) Egmore, Chennai*²².

10. Detailed reference has been made to the judgments in *M.K.Kandaswamy*²³, *Pine Chemicals*²⁴, *Ayesha Hosiery Factory (P) Ltd*²⁵, *Engine Valves*²⁶ and *A Infrastructure Ltd*²⁷.

11. Per contra, Ms.Amritha Dinakaran, learned Government Advocate, who appears for the Commercial Taxes Department defends the impugned orders of assessment, pointing out that as per Section 8 of the CST Act, the levy of CST would be co-terminus with rate of general sales tax in that State, barring a situation where concessional rate of CST is applicable. She also relies on the judgements in *Ayesha Hosiery Factory (P) Ltd*²⁸ and *Engine Valves*²⁹ and, in addition, cites the following judgments:-

- (i) *TVS Motor Company Limited v State of Tamil Nadu and others*³⁰
(ii) *State of Uttar Pradesh and another v Hindustan Safety Glass Works (P) Ltd*³¹

19 (2009) 25 VST 384 (Mad)

20 T.C.(Revision) No. 154 & 165 of 2009 dt 23.10.2013

21 (2016) 87 VST 190

22 (2023) 110 GSTR 214

23 Foot Note Supra (6)

24 Foot Note Supra (12)

25 Foot Note Supra (1)

26 Foot Note Supra (2)

27 Foot Note Supra (21)

28 Foot Note Supra (1)

29 Foot Note Supra (2)

30 (2019) 13 SCC 403

31 (1996) 101 STC 529



(iii) *State of Gujarat v Meghdoot Laminard Ltd*³²

12. We have heard both learned counsel and perused the material papers.

The issue that arises for consideration relates to whether a CST assessment should be enhanced by the levy of AST in cases where the quantum of the turnover from CST exceeds the threshold under the TNAST Act. The Tamil Nadu General Sales Tax Act provides for the levy of tax on the sales turnover earned by an assessee. The TNGST assessments in the present case, have passed muster seamlessly, and the assessing authority has accepted the returns filed by the assessee without levy of AST as the turnover falls below the threshold as stipulated under the TNAST Act.

13. The TNAST Act is a specific enactment that provides for the levy of additional tax in the case of certain dealers. Section 2(1)(aa) of the TNAST Act reads as follows:-

2. Levy of additional sales tax in the case of certain dealer:

2(1)(aa) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter 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 twenty-five crores of rupees, be increased by an additional tax, calculated at the following rates, namely:-

		Rate of Tax
(i)	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

³² (1992) 86 STC 295 (Guj)



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		Rate of Tax
(ii)	Where the taxable turnover exceeds fifty crores of rupees but does not exceed one hundred crores of rupees.	2 percent 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

The threshold for the levy of AST has been reduced to Rs.10 crores from Rs.25 crores, with effect from 29.09.2001.

14. The CST Act provides for the levy of tax on interstate sales. Section 2 of the CST Act defines various terms relevant for the purposes of CST assessments and Section 2 (b), defines a 'Dealer' as follows:-

'dealer' means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission remuneration or other valuable consideration, and includes-

(i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not; and

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending



purchaser is accepted by him or by the principal or a nominee of the principal.

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15. 'Sales tax law' is defined in clause (i) of Section 2 as follows:-

'sales tax law' means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;

16. Turnover is defined under clause (j) as follows:-

'turnover' used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period 3 [and determined in accordance with the provisions of this Act and the rules made thereunder.

17. Section 6 of the CST Act deals with liability to tax on inter-State sales and states that, subject to the provisions contained in the CST Act, every dealer shall be liable to pay tax on the sales of all goods, barring certain stipulated goods, effected by him in the course of inter-State trade or commerce during any year on and from the date so notified.

18. Section 8 deals with *'The Rates of tax on sales in the course of inter-state trade or commerce'*, and sub-section (2) of section 8 states that the tax payable by any dealer on his turnover insofar as the turnover or any part thereof relates to sale of goods in the course of inter-State trade or commerce not falling



under sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of the State.

19. The petitioner is liable to tax in respect of inter-State sales at the rate of 12% under Entry 17/Part DD/Schedule I of the Act, that reads as follows:-

S.No.	Description of the goods	Point of levy in the State
17	<i>Entry from 23-1-2000</i> <i>Sound transmitting equipments of every description including telephones, inter-com devices, loud speakers including stereo or hi-fi amplifiers, speaker systems which are used with stereo or hi-fi musical systems, micro phones and stands therefor, head phones, ear phones and combined microphones/speaker sets, Parts and accessories thereof and telephone cables, fiber optic cables</i> <i>Note : 1. This entry was inserted by GO Ms.No.11 CT dated 23.1.2000 Notn.No.II(1)/CT/h-6/2000-Gazette dated 23.1.2000-Effective from 23.1.2000 – Act 12/2000-Gazette dated 2-6-2000.</i> <i>2. See Item 53 of Part D of First Schedule for the relevant goods, taxable at 11% prior to 23.1.2000</i>	<i>First Sale</i>

20. In the case of *Ayesha Hosiery Factory (P) Ltd*³³, three Hon'ble Judges of the Supreme Court had occasion to consider the similar question as before us, though in the context of a dealer under the Kerala General Sales Tax Act, 1963. The assessee in that case was a dealer engaged in local sales of sewing thread, coir, hosiery, rice, automobile parts, titanium dioxide, cement, paints and transformers etc, taxable at the rate of 3%.

³³ Foot Note Supra (1)



21. Under the Kerala Additional Sales Tax Act, domestic sales turnover was subject to additional sales tax at the rate 10% over and above the tax already imposed under the Kerala General Sales Tax Act, 1963. As a consequence, where the rate of tax was 2% under the KGST Act, it became 2.2% with AST, where rate of tax was 3%, it became 3.3% with the levy of AST, where the rate of tax was 10%, the tax payable became 11% with AST, so on and so forth.

22. The assessments under the KGST thus included liability of AST as well, as statutorily provided under the KGST. The assessee challenged the assessments successfully before the High Court and the matters were carried to the Supreme Court at the instance of the Revenue. The appeals of the revenue were rejected on the ground that the rate of general sales tax was to be enhanced by additional sales tax liability, and this was a statutory mandate. The relevant portion of the judgment is as follows:-

‘....What is relevant is if a particular intra-State sale transaction in a particular assessment year is subjected to a particular rate of tax that automatically gets reflected in and had to be taken into consideration for finding the rate and the applicability of Section 8 (2-A) or Section 8 (2)(b) of Central Sales Tax Act. As already stated if instead of an Additional Sales Tax Act the legislature has simply amended the Kerala General Sales Tax Act by varying the rate automatically that will come in for consideration and application of the provisions of Section 8 (2)(b) and 8 (2-A) of the CST Act. For this purpose, amendment of the State Act is not considered as an amendment of the Central Sales Tax Act. But since the rate applicable to the intra-State sales at a particular point of time is a relevant of consideration for finding out the rates tax on inter-State sale the amendment of the State Act automatically has the



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effect of changing the rate provided under Section 8 of the Central Sales Tax Act. That is not to say that the Central Act is amended by the State Legislature. The rates of tax in certain cases under the Central Act are linked to the rates fixed under the local Acts and that is how the amendment of the local acts affects the rates under the Central Act. It is still the Central Act that is applied but only for purposes of fixing the rate of tax leviable under the Central Sales Tax Act the provisions of the Local Act are looked into. So construed we have no doubt that in all cases where the rate of tax under the local law is less than four per cent that will be the rate applicable to the inter-State sale of the same commodity if the provisions of Section 8 (2-A) of the CST Act are applicable....’.

23. The case of *Ayesha Hosiery Factory (P) Ltd*³⁴ clarifies the position that the basis of an assessment has to be the statute and relevant provisions thereunder, and reiterates the settled premise that in the interpretation of taxing statutes there can be no assumption of a statutory intendment.

24. In the case of *Engine Valves*³⁵, a decision of a Division Bench of this Court dated 06.04.1993, the court interpreted the scope of Sections 8(2-A) and 8(2)(b) of the CST Act and examined whether the levies under the AST Act and Tamil Nadu Sales Tax (Surcharge Act), 1971 would be attracted in the case of inter-State sales.

25. One of the arguments raised by the assessee in that case, was that the tax liability, if any, would attach qua the transaction and not qua the goods, which argument was rejected by the Court following the judgments in the cases of

³⁴ Foot Note Supra (1)

³⁵ Foot Note Supra (2)



*Ayesha Hosiery Factory (P) Ltd*³⁶ and *Indian Aluminium Cables Ltd v Excise and Taxation and another*³⁷.

26. The Division Bench refers to, and relies upon the judgement in *Pine Chemicals*³⁸, where the same question had come to be answered, the Court concluding that the sale or purchase of goods should not be exempt from tax in respect of inter-State sales of those commodities if, the inter-State sale or purchase of those commodities is exempt under specific circumstances or under specified conditions or sale or purchase at specified stages.

27. However, in a Review filed as against the above judgment reported in *Commissioner of Sales Tax v Pine Chemicals Ltd*³⁹, the argument of the assessee was negatived, the Bench holding that exemption is to be reckoned qua industry and not goods. The question posed for determination is as follows:

9. The simple question before us is whether the Bench which decided Pine Chemicals is right in holding that the benefit of the said sub-Section is available even where the goods are exempted with reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question is whether an exemption of the nature granted under Government Order No. 159 dated March 26, 1971 is an exemption available "only in specified circumstances or under specified conditions" within the meaning of the explanation to Section 8(2-A), as contended by the State or is it a case where the goods are exempt from the tax "generally" within the meaning of Section 8(2-A), as contended by the respondents-dealers? We are of the opinion that the respondents-dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub-section.

36 Foot Note Supra (1)

37 1976 38 STC 108

38 Foot Note Supra (12)

39 (1995) 96 STC 355



28. Answering the above issue in favour of the State, the Bench makes reference to the earlier judgements in *Indian Aluminium Cables Ltd*⁴⁰. and *International Cotton Corporation (P) Ltd. etc. etc. v. Commercial Tax Officer, Hubli and Ors*⁴¹ holds thus:

10. The idea behind Sub-section (2-A) of Section 8 of the Central Sales Tax Act, which we have analysed hereinbefore, is to exempt the sale/purchase of goods from the Central Sales tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due regard and attach due meaning to the expression "generally" which occurs in the sub-section and which expression has been defined in the explanation. If the said expression had not been there, it could probably have been possible to argue that inasmuch as the goods sold by a particular manufacturer- dealer are exempt from the State tax in his hands, they must equally be exempt under the Central Act. But Sub-section (2A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. Can it be said that the goods sold by the dealers in this cases are exempt from tax generally under the State sales tax enactment? The answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium industrial unit within five years of its commencement of production and sold within the said period, i.e., in certain specified circumstances alone. The exemption is not a general one but a conditional one. The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period. For the purposes of the government order, the nature, class or category of goods is irrelevant; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax generally? Certainly not. Exemption provided by Government Order No. 159, to repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry

40 Foot Note Supra (37)

41 1975 3 SCC 585



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and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods. Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid government order does not satisfy the requirements of Section 8(2-A).

11. We may point out that this was also the view taken by this Court in two earlier cases. In *Indian Aluminium Cables Ltd. v. State of Haryana* the question was whether the poles and cables sold by the appellant therein to Delhi Electric Supply Undertaking were exempt from central sales tax by virtue of the fact that Section 5(2)(a)(iv) of the Punjab Sales Tax Act exempted "sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy" from the State tax. The claim of the appellant was negatived by Ray, C.J., speaking for himself and Beg and Jaswant Singh, JJ., holding that the exemption granted under Section 5(2)(a)(iv) of the State Act was not a general exemption but an exemption operative only in specified circumstances and under specified conditions. It was pointed out that the specified circumstance in that case was that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence and the specified condition was that the goods purchased by the undertaking must be used for generation or distribution of electrical energy. If any of these circumstances are not satisfied, it was pointed out, the sale of such goods was not exempt from tax. It was emphasised that "General exemption means that the goods should be totally exempt from tax before similar exemption from the levy of Central Sales Tax can become available. Where the exemption from taxation is conferred by conditions or in certain circumstances there is no exemption from tax generally", (emphasis added). In our respectful opinion, the ratio of this decision clearly concluded the question arising in *Pine Chemicals* against the assessee inasmuch as it was not a case where goods were "totally exempt from tax". It was a case



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where the exemption operated or was attracted only if it was established that such goods were manufactured in a large or medium industrial unit within five years of its going into production and were sold within that period. As pointed out hereinbefore, the exemption was not with reference to goods but with reference to the unit manufacturing the goods.

12. In *International Cotton Corporation (P) Ltd. etc. etc. v. Commercial Tax Officer, Hubli and Ors.* a Bench of this Court comprising four learned Judges observed that "the object of Sub-section (2A) of Section 8 is to exempt transaction of sale of any goods if they are wholly exempt from tax under the sales tax law of the appropriate State and make the said sales chargeable at lower rates where under the Sales Tax Act of the State the sale transactions are chargeable to tax at a lower rate...", though it is true, the point raised and determined in that case was a different one. In our respectful opinion, the decision in *Indian Aluminium* which was a decision rendered by a Bench of three learned Judges was binding upon the Bench which decided the *Pine Chemicals*. (This Bench too comprised three learned Judges). It is, however, interesting to notice that when the above two decisions were brought to the notice of the Bench, it referred to the ratio of the said decisions but neither followed it nor made any attempt to distinguish it but proceeded to make it a basis for their decision notwithstanding the fact that the said ratio ran exactly counter to the one adopted by the Bench. The two decisions did not certainly support the interpretation adopted in the judgment under review. On the contrary, they and in particular the decision in *Indian Aluminium*, militated against the said interpretation. It is for this reason, coupled with the fact that the interpretation placed in the judgment under review on Section 8(2-A) may affect a large number of cases all over the country, that we agreed to re-examine the issue, which we would not have agreed to ordinarily.

29. The above school of thought was carried forward subsequently, and in

*A Infrastructure*⁴², the Court holds as follows:-

20. On an analysis of the scheme of the Act, it is manifest that there is difference between exempted goods, i.e., goods on which no Value Added Tax is payable and are, therefore, not taxable and other cases where a particular

42 Foot Note Supra (21)



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transaction when it satisfies specific condition is not taxable. In this regard reference to the authority in State of Tamil Nadu v M.K.Kandaswami & Others, would be seemly, for this Court had adverted to three distinct concepts; taxable persons, taxable goods and taxable events and how they were distinguished. It was observed in the said case that if the said distinction is overlooked, it may lead to serious error in construction and application of a taxing provision or enactment. In the case of taxable or non-taxable/exempted goods, the focal point and the focus is on the character and class of goods in relation to their exigibility. Referring to the provisions of Section 7-A of the Madras General Sales Tax, 1959, the expression in the Act “taxable goods”, it was opined as regards the goods mentioned in the First Schedule of the Act that the sale and purchase was liable to tax at the rate and at the point specified therein. It was further held that the goods which were exempt were not taxable goods and, therefore, could not be brought to charge and taxed. However, notwithstanding the goods being taxable goods, there could be circumstances in a given case by reason of which a particular sale or purchase would not attract sales tax.”

30. There is thus a categoric distinction noticed between *taxable goods* and *taxable person* and this distinction is relevant in our appreciation of the issue under consideration, and resultant decision. The second judgement of *Pine Chemicals*⁴³ (in review) and judgement in *A Infrastructure*⁴⁴ would render the conclusion of the Division Bench in *Engine Valves*⁴⁵ to the effect that '*except the difference in the language employed by the draftsman of the Kerala Acts and the Tamil Nadu Acts, we do not see any basic or substantial difference in the purport*

43 Foot Note Supra (39)

44 Foot Note Supra (21)

45 Foot Note Supra (2)



or character of the levy or its incidence and, therefore, the levy of additional sales tax and surcharge under the Tamilnadu Acts appear to be, in our view, a levy on the sale of goods only and not of anything else', erroneous in law.

31. Ms.Amritha has relied on the judgment in *Meghdoot*⁴⁶ on the premise that the Gujarat High Court has taken a view in favour of the Revenue. This does not appear to be correct in that, the Gujarat Sales Tax Act contains Section 4A, entitled 'levy and collection from every dealer' stipulating that he shall be liable to pay tax under Sections 3 or 4 an additional tax on the sale or purchase of goods liable to tax under that Act at the rate of six paise in the rupee on sales tax, general tax or purchase tax or on any two or more of them, as the case may be. This decision is hence distinguishable in law.

32. As far as State of Tamil Nadu is concerned, the legislature has consciously not included AST within the ambit of general sales tax law. The enactment under which AST is levied is a specific enactment and the charging provision makes reference to general sales tax alone. We are hence inclined to accept the argument of the assessee that the levy under AST would be qua general sales tax only, and cannot be extended to inter-state transactions with liability under the CST Act.

33. Section 9(2) states that the mechanism for the levy of CST shall be as provided for under the TNGST Act, and sub-section 9(2) reads as follows:-

9. Levy and collection of tax and penalties.—

⁴⁶ Foot Note Supra (32)



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(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

34. Section 9(2) makes it clear that there must be an enabling provision under the specific enactment to fasten such a levy upon the assessee, by use of the phrase, '*payable by a dealer under this Act*'. Hence, reliance upon Section 9(2) is of no avail in the absence of an enabling mechanism for the levy of AST in CST



assessments. We may in this regard, make useful reference to the judgment in the case of *Indian Carbon Ltd v State of Assam*⁴⁷.

35. In that case, the Supreme Court considered the levy of interest on delayed payments and ultimately quashed the levy on the ground that there was no substantive provision under the CST Act enabling such levy. The Department was not entitled to take assistance of Section 9(2) in such a situation. The CST Act was amended thereafter to provide for the levy of interest.

36. Likewise, in the present case, till such time there is an amendment either to the TNAST or CST enactments, the interpretation of the revenue cannot be sustained. The impugned assessments and the consequential demands are hence quashed and barring W.P.No.22015 of 2007, all the above writ petitions are allowed.

37. As far as W.P.No.22015 of 2007 is concerned, the impugned clarification reads as follows:-

Acts Cell III/43921/93

*Office of the Special Commissioner and
Commissioner of Commercial Taxes, Chepauk,
Madras – 5
Dated 29.4.1993*

Circular

*Sub: CST Act '56 – Scope of sec. 8(2)(a), - Sec. 8(2-A) of the CST
Act '56- Inter-State sales not covered by "C" or "D" forms-
Reckoning of tax along with surcharge, Addl. surcharge and Addl.
sales tax—Certain instructions issued.*

*Ref: 1. The Madras High Court's decision in W.P. No. 6448/91,
dt. 6-4-93.*

47 (1997) 106 SCC 460



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2. *The Addl. Government Pleader (Taxes) D.O. Lr. No. 3026/93, dt. 13-4-93.*
3. *This office earlier clarification issued in Act Cell 111/100596/90, dt. 31-7-92 and 22-10-92.*

A batch of writ petitions filed by dealers challenging the inclusions of the rate of additional sales tax, surcharge and additional surcharge for the purpose of determining the rate of tax under the Central Sales Tax Act have been disposed of by the Madras High Court in the reference first cited. While disposing of the cases, the High Court has applied the decision of the Supreme Court in the case of Aysha Hosiery (P) Limited reported In (1992] 85 STC 106. The High Court has held that except for the difference in the language employed in Kerala Act and Tamil Nadu Acts, there is no substantial difference on the purport or character of levy or in the incidence and therefore the levy of additional sales tax, surcharge and additional surcharge for the purpose of Central Sales Tax Act is held legally valid. Taking into account the High Court judgment and legal opinion, the instructions are issued.

2. However, since the rates of surcharge varied from area to area, prior to 5-9-1991, there were consequential difficulties and possible legal infirmities, and also in the interests of not reopening too many old cases, during the arguments and counter-arguments and observations before their Lordships, we have given a categorical assurance that we will apply this principle only for those transactions which took place from 1-4-1992, and will not extend it to earlier transactions even if the cases are open and will also not reopen old cases. Therefore, for Central sales tax calculation purposes, whenever we talk of local rate, it shall mean :

(a) Up to 31-3-1992 :

Basic rate under TNGST only for all goods (i.e., no surcharge, additional surcharge and additional sales tax will be added).

(b) From 1-4-1992 :

Basic rate under TNGST

(+) Surcharge (except for declared goods, since declared goods are exempt from surcharge by notification).

Additional surcharge (in the areas where additional surcharge is applicable, this is for declared goods also)

(+) Additional sales tax (to be calculated according to subsequent paras, this is for declared goods also).



38. The impugned clarification relies entirely on the judgments in *Ayesha Hosiery Factory (P) Ltd*⁴⁸ and *Engine Valves*⁴⁹, both of which have been discussed extensively above in the paragraphs supra. Our conclusions therein will equally apply to the present matter as well and as a consequence, the clarification is quashed and W.P.No.22105 of 2007 is allowed. No costs.

[A.S.M., J] [N.S., J]
02.07.2025

Index:Yes/No

Neutral Citation:Yes/No

ssm

Note: Registry is directed to type full cause title, if necessary, while issuing this order.

To

1.The Commercial Tax Officer,
Triplicane Assessment Circle IA,
62, Cathedral Road,
Chennai – 600 086.

2.The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam,
Chennai – 600 004.

48 Foot Note Supra (1)

49 Foot Note Supra (2)



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W.P.Nos. 5101 of 2002 etc. b.



DR. ANITA SUMANTH, J.
and
N.SENTHILKUMAR, J.

ssm

W.P.No.5101 of 2002 etc batch

02.07.2025