IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

AND

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.Nos.13807 & 13808 of 2013 and M.P.Nos.1 & 1 of 2013 & 2 of 2013

W.P.Nos.27764 & 27765 of 2013 and M.P.No.1 of 2013,

W.P.No.28344 of 2013 and M.P.No.1 of 2013,

W.P.No.28560 & 28561 of 2013 and M.P.No.1 & 1 of 2013,

W.P.Nos.392 & 393 of 2014 and M.P.Nos.1 & 2 of 2014
and
W.P.No.7758 of 2014 and M.P.No.1 of 2014

W.P.Nos.13807 & 13808 of 2013

M/s.A.L.Homes
Rep. by its authorised Signatory T.Chitty Babu
No.22, Nehru Nagar
2nd Street, Adyar
Chennai 600 020. ... Petitioner in both WPs

Vs.

1.The Assistant Commissioner (CT)
Adyar II Assessment Circle
Chennai.

2.The State of Tamil Nadu
Rep. by its Secretary
Commercial Taxes and Registration Department
Fort St. George, Chennai 600 009.

3.The Commercial Tax Officer
O/o.Deputy Commissioner (CT)
Group I, Enforcement South
Greams Road
Chennai 600 006. ... Respondents in both WPs

Prayer in W.P.No.13807 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the amendment Act 21 of 2007 inserting the words "other than the dealers who purchases goods from outside the State or imports goods from outside the Country" in Section 6 of the Tamil Nadu Value Added Tax Act, 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g) and Article 21, Article 301, 304 of the Constitution of India apart from being unreasonable, unjust, arbitrary, unfair, violating level playing field.

Prayer in W.P.No.13808 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the 3rd respondent in Tin.No.33250963164/CTO-Group-I/Enft(South) dt.18.02.2013.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.V. Prashanth Kiran
Govt. Advocate (Taxes)
Ms. Amirta Poonkodi Dinakaran
Govt. Advocate (Taxes)

W.P.Nos.27764 & 27765 of 2013

Sri Venkateswara Agencies
Represented by its Proprietor
D.Srinivasan
No.353, Sakthi Nagar, Aladu Road
Vridhachalam ... Petitioner in both WPs

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to Government
Commercial Taxes Department
Fort St. George, Chennai 600 009.

2.The Commercial Tax Officer
O/o.the Assistant Commissioner (CT)
Vridhachalam Assessment Circle
135, Junction Road, Vridhachalam. ... Respondents in both WPs

Prayer in W.P.No.27764 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare that Tamil Nadu Value Added Tax (Amendment) Act 2012 - Act No.3 of 2012 (Gazette dated 13.02.2012) being clarificatory and/or declaratory in nature, must have retrospective operation.

Prayer in W.P.No.27765 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records in respect of the impugned Notice TN 33654421770/2011-12 dated 10.09.2013 issued by the second respondent in respect of the assessment year 2011-12 under the Tamil Nadu Value Added Tax Act 2006 and quash the same.

For Petitioner : No appearance

For Respondents : Mr.V. Prashanth Kiran,
Govt. Advocate (Taxes)
Ms. Amirta Poonkodi Dinakaran
Govt. Advocate (Taxes)

W.P.No.28344 of 2013

Ooms Polymer Modified Bitumen Private ltd.,
Represented by its Managing Director
Col.Ashok Kumar Tiwari
D.No.122/5, Ponneri High Road
Chennai 600 103. ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to Government
Commercial Taxes Department
Fort St. George, Chennai 600 009.

2.The Commercial Tax Officer
Manali Assessment Circle
Kurulagam Annexure, 1st Floor
Chennai 600 108 ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the Tamil Nadu Value Added Tax (Amendment) Act 2007 [Act No.21 of 2007] in so far as amending Section 6 of the Tamil Nadu Value Added Tax Act 2006 as ultra-vires, unconstitutional and infringes Articles 14, 19(1)(g) and 301 of the Constitution of India.

For Petitioner : No appearance

For Respondents : Mr.V. Prashanth Kiran
Govt. Advocate (Taxes)
Ms.Amirta Poonkodi Dinakaran
Govt.Advocate (Taxes)

W.P.No.28560 & 28561 of 2013

Altron Security Engineering Pvt. Limited
Rep. by its Director R.Pratheep Gandhi
No.8/17, Zackaria Colony, 1st Street
Kodambakkam, Chennai 600 024 ... Petitioner in both WPs

Vs.

1.The Assistant Commissioner (CT)
Vadapalani II Assessment Circle
SIRE Mansion, First Floor
Annasalai, Chennai 600 006.

2.The State of Tamil Nadu
Rep. by its Secretary
Commercial Taxes and Registration Department
Fort St. George, Chennai 600 009. ... Respondents in both WPs

Prayer in W.P.No.28560 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words "other than the dealers who purchases goods from outside the State or imports goods from outside the Country" in section 6 of the Tamil Nadu Value Added Tax Act, 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g) and Article 21, Article 301, 304 of the Constitution of India apart from being unreasonable, unjust, arbitrary, unfair, violating level playing field.

Prayer in W.P.No.28561 of 2013: Petition filed under Article 226 of the

Constitution of India for issuance of Writ of Certiorari to call for the records of the first respondent in TIN/33951403256/2007-08 dated 04/09/13 issued pursuant to the proceedings in TIN/33951403256/2007-08 dated 28/03/13 and quash the same.

For Petitioner : Mr.V.Sundareswaran
For Respondents :Mr.V. Prashanth Kiran
Govt. Advocate (Taxes)
Ms. Amirta Poonkodi Dinakaran
Govt.Advocate (Taxes)

W.P.Nos.392 & 393 of 2014

M/s.Garabandal Constructions (P) Ltd.,
Rep. by its Director – L.Water Paul
No.13, Sea View Apartment
Santhome High Road
Chennai 600 028. ... Petitioner in both WPs

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Commercial Taxes &
Religious Endowments,
Fort St. George, Chennai 600 009.

2.The Assistant Commissioner (CT)(FAC)
Luz Assessment Circle
Greenways Road
Chennai 600 028 ... Respondents in both WPs

Prayer in W.P.No.392 of 2014: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the amendment to Section 6 of Tamil Nadu Value Added Tax Act, 2006, inserting the expressions "other than the dealer who purchases goods from outside the State or imports goods from outside the Country" introduced vide Act 21 of 2007 as ultra vires Articles 14, 19(1)(g), 265, 300A, 301 to 304 of the Constitution of India.

Prayer in W.P.No.393 of 2014: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records on the file of the 2nd Respondent in its impugned proceedings made in TIN/33890803150/2008-09 dated 24.10.13 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mr.V. Prashanth Kiran,
Govt. Advocate (Taxes)
Ms. Amirta Poonkodi Dinakaran
Govt. Advocate (Taxes)

W.P.No.7758 of 2014

R.G.E. Constructions & Development (P) Ltd.,
Rep. by its Director
No.113-114, Meena Kampala Arcade
6th Floor, B Wing, Thiagaraya Road
T.Nagar, Chennai 600 017 ... Petitioner

Vs.

1.The Assistant Commissioner (CT)
Thiagaraya Nagar East Assessment Circle
Chennai 600 028

2.The State of Tamil Nadu
Represented by
The Secretary to Government of Tamil Nadu

Department of Commercial Taxes
Secretariat, Fort St. George,
Chennai 600 009 ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the amendment introduced by Act 21 retrospectively with effect from 01.01.2007 to Section 6 of the Tamil Nadu Value Added Tax Act, 2006 (Act 32 of 2006) as unconstitutional, ultra vires Article 14, Article 19(1)(g), Article 301 and Article 304(a) of the Constitution of India.

For Petitioner : Ms.Radhika Chandra Sekhar

For Respondents : Mr.Prashanth Kiran
Government Advocate (Taxes)
Ms.Amirta Poonkodi Dinakaran
Government Advocate (Taxes)

C O MMON O R D E R

(***Made by Dr. ANITA SUMANTH,J.)***

The prayer in some of the writ petitions is for a declaration challenging the amendment introduced by Act 21 of 2007 to Section 6 of Tamil Nadu Value Added Tax Act, 2006 (Act 32 of 2006) ('Act') retrospectively with effect from 01.01.2007. The remaining writ petitions are filed challenging pre-assessment notices.

2. In a batch of writ petitions decided by a Division Bench of this Court on 31.03.2022 in *L.G. Electronics India Pvt. Ltd. V. The State of Tamil Nadu and Others,* the impugned amendment has been upheld and the batch of writ petitions have been dismissed.

3. The conclusions of the Division Bench at paragraph No.218 are as follows:

> *'XX. CONCLUSION*
> *218. In view of the foregoing discussions and findings, we hold thus:*
>
> > *a. Section 6 of the TNVAT Act, 2006 is not a charging Section. It only provides for an alternate mode of discharging taxes to the dealers, who voluntarily opt for the compounding scheme to pay taxes at a compounded rate. It is always open to the dealers to fall back under Section 5 from the next year, if their tax planning permits them. No tax under the TNVAT Act, can be levied at the point of interstate purchase. However, when such goods are brought in and used in the execution of the works contract, they are liable to pay tax on the deemed sale in accordance with Sections 5 and 10 of the TNVAT Act.*
> >
> > *b. While granting the concession at the point of payment of output tax, it is open to the State to impose any restriction or conditions for availing such concession. The concession at the point of interstate purchase from a registered dealer is already available under Section 8 of the CST Act and there is no tax on imported goods and such goods are taxed only at the first point of sale within the State.*
> >
> > *c. The composition scheme under Section 6 cannot be treated as provision for levy of tax on purchases or imposing any restriction on purchases from other State or import. The conditions do not alter the rate of tax of goods imported from outside the State. The concession is granted at the point of output tax payable on the transfer of property in goods.*

d. Works contract in general denotes the genus with different species. The dealers purchasing goods from local dealers form a distinct category/species from dealers who purchase goods from local as well as other state dealers or dealers who import goods to be used in the works contract.

There is a rationale behind such classification for the purpose of Section 6. In fiscal or taxing enactments, it is not necessary that every enactment should be backed by objects and reasons. What is relevant is the competence of the State and whether such enactment offends any constitutional rights, which in the instant cases, are held to be negative. The object and the reason adduced in the counter, which in the opinion of this court, can be discerned even without such counter as because, whenever, a purchase takes place in the course of intertrade or commerce falling under Section 8(1) of the CST Act, the rate of tax payable is at a concessional rate upon satisfaction of the requirement under Section 8(4), which is much lower than the rate of tax prescribed for the purchase of goods from a local dealer. The State obviously is at loss of revenue at the point of purchase, added together the option to pay tax at compounded rate on the value of the Contract, the State is at a loss. Such classification or distinction is not unknown in taxing law. Even Sections 5 and 6 of TNVAT Act classify works contractors into different categories.Similarly, Section 8 of the CST Act treats the dealers of the same goods differently, depending upon whether they fall under Section 8(1) or 8(2) of the CST Act. The object that is sought to be achieved is two folds viz., (i) to curb the loss of revenue accrued due to interstate purchase of goods or import; and ii) to create a level playing field for the local dealers. Therefore, the condition is well found on intelligible differentia and has a nexus to the object that is sought to be achieved. Hence, the challenge to the provision as being arbitrary and in violation of Article 14 is rejected.

e. The challenge to a provision as being ultra vires to the constitution is available only on limited circumstances, (i) when it is beyond the legislative competence of the State and (ii) when it offends or violates the constitutional guarantees and safeguards. In the present case, the authority of the State *to levy tax on sale of goods is traceable to Entry 54 of List II of Seventh Schedule as it stood then. The authority to impose tax carries with it all the incidental authority to lay down the procedure, to grant exemption or concession and to impose conditions or restrictions for availment of such exemptions and conditions. Therefore, the amendment challenged is well within the legislative competence of the State.*

f. As regards the provision offending Article 14, 19(1) (g), 301, 303 and 304 of the Constitution, we have already held that the impugned amendment is based on intelligible differentia, does not affect the right of the dealers to carry on any trade of business or impedes the free movement of goods. The compounding Scheme under Section 6 is only an option to be exercised voluntarily. There is no compulsion to opt under section 6 and it is open to a works contractor to pay taxes under section 5. The condition contained in section 6 cannot be regarded as giving any preference to one State over another or as discriminatory by levying more tax on the goods brought in from outside the State as because the State by such amendment has not imposed any tax. Therefore, the Amendment does not infringe any of the guarantees or safeguards provided under the Constitution. Accordingly, all the writ petitions challenging the vires of Section 6 of TNVAT Act, 2006, fail and are hence, dismissed.

g. Insofar as the challenge to the retrospective effect given to the amendment as being violative of Article 19 (1) (g) of the Constitution, the same is rejected as because it is within the authority of the State to bring in such amendments in fiscal statutes by clearly prescribing the date from which it must be given effect. The hardship that is caused to individuals seldom matters as validity of any fiscal enactment ought to be tested on the basis of generality of its operation and not on the basis of few individual cases.However, by the time amendment was introduced, the assessment year 2006- 07 was over. Hence, it will not apply to the assessment year 2006-07. With respect to the assessment year 2007-08, the retrospective operation will not affect the dealers, who had already exercised the option prior to the date of amendment for that year and would be *applicable only to those dealers who had not exercised the option by that date.*

h. Insofar as reading down the provision to permit the assessees to exclude the turnover relating to interstate purchase or import and pay tax for that separately under Section 5 and for the balance turnover under Section 6, the said request is rejected as the same is not possible, once the provisions are upheld. The same would amount to re-writing the law and defeat the very purpose of the amendment.

i. Regarding the co-developers of SEZ are concerned, the provision cannot be read down to exclude the co-developers of SEZ, when the validity has been upheld. Such an exercise would amount to dichotomy in law. The facts, as to whether the activity against which an exemption is claimed, is an authorized activity of the Developer to extend the benefit to the co-developer, as to whether the ownership is transferred to third parties and the interpretation of contracts cannot be adjudicated in this writ petition. It is open to the concerned petitioner to challenge the order of assessment, if any, passed against him in the manner known to law.

j. With regard to the writ petitions challenging the notices are concerned, the petitioners are directed to submit their reply within a period of four weeks from the date of receipt of a copy of this order and the concerned assessing officers shall fix a date for personal hearing within two weeks thereafter and pass orders within a further period of four weeks. In case, the assessees fail to submit their reply, it is open to the assessing officers to fix a date for hearing and thereafter, pass orders in accordance with law.

k. Insofar as the challenge to the assessment orders is concerned, this court has already upheld the vires of Section 6. In some cases, this court finds that there are other issues which are dealt with in the assessment orders. It is only appropriate that the factual aspects are raised before the appellate authority. Therefore, this court relegates the petitioners to avail the alternative remedy of appeal under Section 51 of the TNVAT Act, 2006 within a period of four weeks from the date *of receipt of a copy of this order. The Registry is directed to return the original impugned orders to the respective counsel.*

219. To sum up, the writ petitions challenging the vires of Section 6 of TNVAT, 2006 are dismissed and the writ petitions challenging the notices and assessment orders are disposed of with the above directions. There will be no orders as to the costs. All the connected miscellaneous petitions are closed.'

4. The ratio laid down in the aforesaid judgment, and the conclusions therein would apply on all fours to the present writ petitions as well. Hence, there is no merit in the writ petitions and they are dismissed.No costs. Connected miscellaneous petitions are closed.

(A.S.M.J.) (C.K.J.)
04.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

nv

To
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Adyar II Assessment Circle
Chennai.

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Fort St. George, Chennai 600 009.

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