



W.P.No.34885 of 2004 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.Nos.34885 & 34886 of 2004, 46479, 42240 & 37807 of 2002, 24016,
20488, 17027 & 11116 of 2003, 12087 of 2008, 11682 & 18854 of 2005
& W.A.No.3615 of 2003

and

W.P.M.P.No.21291 of 2003, 20403 & 12749 of 2005, W.A.M.P.No.5902 of
2003 & W.P.M.P.No.67594 of 2002

W.P.Nos. 34885 & 34886 of 2004

H.P.Textiles Mills,
253/8, Avinashi Goundenpalayam Road,
Angeripalayam Post,
Tirupur – 641 603.

.. Petitioner

VS

1.The State of Tamil Nadu
Rep. by Secretary, Commercial Taxes
Commercial Taxes Department,
Fort St.George, Chennai.

2.The Special Commissioner,
Commercial Taxes, Chepauk, Chennai.

3.The Commercial Tax Officer, (FAC)
Rural Assessment Circle, Tirupur.

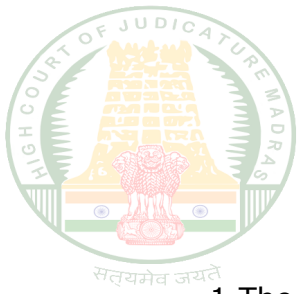
.. Respondents

W.P.No. 46479 of 2002

M/s Dhandapani Spinning Mills Ltd.,
Rep by its Director,
S.Lakshmipathy,
No.126, Arts College Road,
Coimbatore - 641 018.

.. Petitioner

VS



W.P.No.34885 of 2004 etc

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

2.The Commercial Tax Officer,
Trichy Road Circle,
Coimbatore- 641 018.

.. Respondents

W.P.No. 42240 of 2002

Tvl. Sri ManickkaVinayagar Spinning Mills Limited,
Director : Vetrivelkannan,
163, Nethaji Road,
Madurai.

.. Petitioner

VS

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 9.

2.The Commercial Tax Officer,
Nethaji Road Circle,
Madurai.

3.The Tamilnadu Taxation Special Tribunal,
SingaravelarMaligai,
Rajaji Salai,
Chennai.

.. Respondents

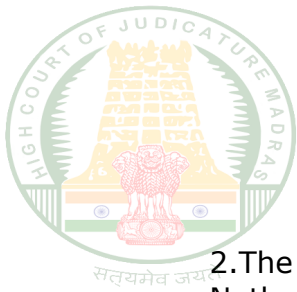
W.P.No. 37807 of 2002

Tvl. Sri ManickkaVinayagar Spinning Mills Ltd.,
Rep. by Director,
163, Nethatji Road,
Madurai.

.. Petitioner

VS

1.The State of Tamilnadu
Rep. by its Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 600 009.



W.P.No.34885 of 2004 etc

2.The Commercial Tax Officer,
Nethaji Road Circle,
Madurai.

.. Respondents

W.P.No. 24016 of 2003

Tvl. Shri Ramalinga Mills Ltd.,
Aruppukottai.

.. Petitioner

VS

1.The Commercial Tax Officer,
Aruppukottai.

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

3.The Tamil Nadu Taxation Special Tribunal,
Rep. by its Registrar,
SingaravelarMaligai, Rajaji Salai,
Second Floor, Chennai – 600 001.

4.The Appellate Assistant Commissioner
(Commercial Taxes), Virudhu Nagar.

.. Respondents

W.P.No. 20488 of 2003

Tvl. K.R.V.P.Overseas (P) Ltd.,
Sitalakshmi Mills Premises,
Tirunagar, Madurai – 625 006.

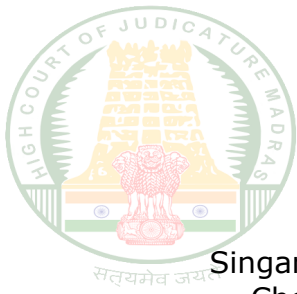
.. Petitioner

VS

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

2.The Commercial Tax Officer (FAC),
TirupparankundramAssmt. Circle,
Madurai – 20.

3.The Registrar,
The Tamilnadu Taxation Special Tribunal,



W.P.No.34885 of 2004 etc

SingaravalarMaligai,
Chennai.

.. Respondents

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W.P.No. 17027 of 2003

M/s. SreeJeyaSoundharam Textile Mills Pvt Ltd.,
Perungudi Village,
Madugapatti, Sivaganga District.
Petitioner

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VS

1.The Commercial Tax Officer,
Sivagangai.

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

3.The Tamil Nadu Taxation Special Tribunal,
Rep. by its Registrar,
SingaravelarMaligai, Rajaji Salai,
II Floor, Chennai – 600 001.

.. Respondents

W.P.No. 11116 of 2003

Tvl. Venkatesh Agencies
Rep. by its Partner M.N.Raghavan,
No.31, Srinivasa Nagar, 1st Street,
Thirunagar, Madurai.

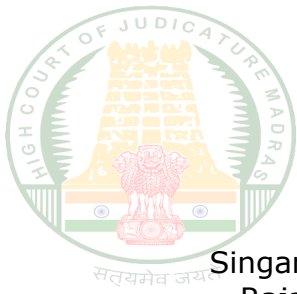
.. Petitioner

VS

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 9.

2.The Commercial Tax Officer (FAC)
ThirupparankundramAssmt. Circle,
Madurai – 20.

3.The Tamilnadu Taxation Special Tribunal,



W.P.No.34885 of 2004 etc

SingaravelarMaligai,
Rajaji Salai, Chennai.

.. Respondents

W.P.No. 18854 of 2005

M/s. Maxwell Industries Ltd.,
Kolapalur, Gobichettipalayam.

.. Petitioner

VS

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

2.The Deputy Commercial Tax Officer,
Gobichettipalayam.

.. Respondents

W.P.No. 11682 of 2005

M/s. H.P.Textiles Mills
253/8, Avinashi Goundenpalayam Road,
Angeripalayam Post,
Tirupur – 641 603.

.. Petitioner

VS

The Commercial Tax Officer (FAC),
Tirupur (Rural) Assessment Circle,
Tirupur.

.. Respondent

W.P.No. 12087 of 2008

M/s. Sri Kalaivani Spinners (P) Ltd,
Rep. by its Executive Director,
T.Rajkumar, Myvadi Road,
Myvadi Post, Udumalpet.

.. Petitioner

VS

1.Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore – 641 018.

2.The Appellate Assistant Commissioner
of Commercial Taxes, Pollachi.



W.P.No.34885 of 2004 etc

3.The Commercial Tax Officer,
Udumalpet (North), Udumalpet.

.. Respondents

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W.A.No. 3615 of 2003

1.M/s. Sri Murugan Spinning Mills (P) Ltd.,
Rep. by its Director,
136, 1st Agraharam, Salem.

2.P.Sundaram

.. Appellants

VS

1.The Union of India,
Rep. by its Secretary,
Ministry of Revenue and Finance,
New Delhi.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Dept. of Commercial Taxes and Religious Endowments,
Fort St.George, Chennai – 9.

3.The Special Commissioner and Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai – 600 005.

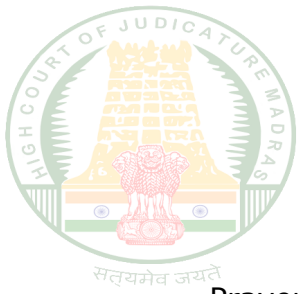
4.The Assistant Commissioner (CT),
Salem Bazaar Division, Salem.

5.The Commercial Tax Officer,
Salem Bazaar Division, Salem.

.. Respondents

Prayer in W.P.No. 34885 of 2004 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case on the file of the third respondent in CST No. 612298/2001-2002 dated 15.06.2004 and quash the same.

Prayer in W.P.No. 34886 of 2004 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the notification in G.O.Ms.No. 273 dated 5.8.1996 declaring the portion of the notification "the dealer who does not have any branch transfer or consignment transfer during the year" as arbitrary, illegal and violative of Art 14,19,301 & 304 of the Constitution of India.



W.P.No.34885 of 2004 etc

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Prayer in W.P.No. 46479 of 2002 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that the words "the dealer who does not have any branch transfer or consignment transfer during the year" occurring in Notification No. 11(1)/CTRE/22(a-6)/97 dated 5.3.1997 and the corresponding words "the dealer who does not have any branch transfer or consignment transfer outside the State during the year" occurring in Notification No.11(1)/CTRE/43(d-2)/98 dated 7.4.1998 are ultra vires art.14, 19(1)(g) of the Constitution of India insofar as the petitioner is concerned.

Prayer in W.P.No. 42240 of 2002 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring the Notifications issued by the 1st respondent in G.O.Ms.No.73, CT&RE dated 05.03.1997, notification no.II (1)/CT&RE/22(a-6)/97 and G.O.Ms.No.108, CT&RE dated 07.04.1998 in Notification No.II(1)/CT&RE/43(d-2)/98, the validity of the said notifications insofar as the condition that the "dealer does not have any branch transfer or consignment transfer during the year" confirmed by the 3rd respondent in O.P.No. 878 of 2002 dated 30.10.2002 as wrong, illegal, unconstitutional and violative of Articles 301, 304(a) and 304(b) of the Constitution of India.

Prayer in W.P.No. 37807 of 2002 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that G.O.Ms.No.73, CT&RE dated 05.03.1997 in notification no.II (1)/CT&RE/22(a-6)/97 and subsequent G.O.Ms.No.108, CT&RE dated 07.04.1998 in Notification No.II(1)/CT&RE/43(d-2)/98, insofar as it stipulates the condition to the effect that "dealer does not have any branch transfer or consignment transfer during the year" is violative of Articles 301, 304(a) and 304(b) of the Constitution of India and is, therefore, invalid and unconstitutional.

Prayer in W.P.No. 24016 of 2003 : Writ Petition filed under Article 226 of the Constitution of India to call for the records on the file of the third respondent in O.P.No. 788 of 2003 dated 17.07.2003 issue a writ of certiorari and quash the same while declaring the words "the dealer who does not have any branch transfer or consignment transfer during the year" occurring in Notification No.II(1) CT&RE (a-6)/97 dated 09.03.1997 are ultra vires to Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.



W.P.No.34885 of 2004 etc

Prayer in W.P.No. 20488 of 2003 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the 3rd respondent in O.P.No. 518 of 2003 dated 19.06.2003, quash the same and consequently declare the Notifications in No.II(1)/CTRE/22(a-6)/97 issued in G.O.Ms.No. 73, CT&RE, dated 05.03.1997 and Notification No.II(1)/CTRE/43(d-2)/98 issued in G.O.Ms.No.108, CT&RE dated 07.04.1998 by the 1st respondent insofar as the portion "the dealer does not have any branch transfer or consignment transfer during the year" as wrong, illegal, unconstitutional and violative of Articles 301, 304(a) and 304 (b) of the Constitution of India.

Prayer in W.P.No. 17027 of 2003 : Writ Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the third respondent in O.P.No. 353/2003 dated 01.04.2003 issue a writ of certiorari and quash the same while declaring that the words " the dealer who does not have any branch transfer or consignment transfer during the year" occurring in Notification No.II(i) CT & RE 43 (d-2)/98 dt 07.04.1998 and the corresponding words "dealer who does not have any branch transfer or consignment transfer outside the state during the year" occurring in further extended Notification No.II(i) CT/40 (a-3)/99 dated 17.03.1999 are ultra vires to Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

Prayer in W.P.No. 11116 of 2003 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring the notification in No.II(1) CT.RE/22 (a-6)/97 issued in G.O.Ms.No.73 CT&RE dated 5.3.1997 and Notification No.II(1)/CTRE/43(d-2)/98 issued in G.O.Ms.No. 108, CT&RE dated 07.04.1998 by the 1st respondent herein insofar as the portion "the dealer does not have any branch transfer or consignment transfer during the year" confirmed by the 3rd respondent in O.P.No.306 of 2003 dated 19.03.2003 as wrong, illegal, unconstitutional and violative of Articles 301, 304(a) and 304(b) of the Constitution of India.

Prayer in W.P.No. 18854 of 2005 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration, declring that Notification No.II (1) / CTRE/ 84(a-2) dt. 5.8.1995 issued by the first respondent in so far as it contains the words "by any dealer who does not have any branch or consignment transfer during a year" is wrong, illegal, unconstitutional and violative of Articles 301 and 304(a) of the Constitution of India.



W.P.No.34885 of 2004 etc

Prayer in W.P.No. 11682 of 2005 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case on the file of the respondent in CST No. 612298/2002-2003 dated 24.12.2004 and quash the same.

Prayer in W.P.No. 12087 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 file of the 1st respondent in his order in Coimbatore Tribunal Appeal no. 116/2000 dated 23.3.2007 quash the same.

Prayer in W.A.No. 3615 of 2003 : Appeal filed under Clause 15 of Letters Patent against order dated 22.09.2003 made in W.P.No. 38555 of 2002.

Writ Petition / Writ Appeal Number	For Petitioner(s) / Appellant	For Respondent(s)
WP.34885 & 34886 of 2004, 11682 of 2005	Ms.Lakshmi Sriram for Mr.T.RameshKutty	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate
WP.46479 of 2002	Mrs.R.Hemalatha	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate
WP.42240 of 2002, 20488 of 2003 & 11116 of 2003	Mr.A.Chandrasekaran	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate for R1, R2 R3 – Tribunal
WP.37807 of 2002	Mr.A.Chandrasekaran	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran



W.P.No.34885 of 2004 etc

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Writ Petition / Writ Appeal Number	For Petitioner(s) / Appellant	For Respondent(s)
		Government Advocate and Mr.P.Hari Babu Government Advocate
WP.24016 of 2003 17027 of 2003/	No appearance	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate for R1, R2 & R4 R3 – Tribunal
WP.18854 of 2005	Mr.C.Subramanian for Mr.K.J.Chandran	Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate
WP.12087 of 2008	Mrs.R.Hemalatha	R1 – Tribunal Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate for R2, R3
W.A.3615 of 2003	Mr.Rajesh for Mr.S.Sivanandan	R1 – No appearance Mr.Haja Nazirudeen AAG assisted by Mr.Prashanth Kiran Government Advocate and Mr.P.Hari Babu Government Advocate for R2 to R5



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W.P.No.34885 of 2004 etc

COMMON ORDER

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

This common order disposes 12 writ petitions and 1 writ appeal as the issue that arises for resolution is one and the same.

2. The Writ Petitions raise the question of validity of two Government Orders issued by the Commercial Taxes Department in G.O.Ms.No.273 in No.II(1)/CTRE/84(a-2)/96 dated 05.08.1996 and G.O.Ms.No.73, No.II(1)/CTRE/22(a-6) dated 05.03.1997 read with G.O.Ms.No.108, Commercial Taxes and Religious Endowments in No.II(1), CTRE/43(d-2) dated 07.04.1998 (collectively referred to as impugned Government Orders).

3. The petitioners may be broadly divided into two categories, one, dealers in hosiery garments engaged in both domestic and interstate sales (referred to as Group I), and two, spinning mills, also engaged in both domestic and interstate sales of yarn (referred to as Group II). G.O. (Ms.) No.273 dated 5.8.96 touches upon those dealers dealing in hosiery goods and G.O.(Ms).No.73 read with G.O.(Ms).No. 108 touches upon those dealers dealing in yarn.

4. We have heard the detailed submissions of Ms.Lakshmi Sriram for Mr.T.RameshKutty, Mrs.R.Hemalatha, Mr.A.Chandrasekaran & Mr.C.Subramanian for the petitioners and Mr.Haja Nazirudeen, learned Additional Advocate General, assisted by Mr.Prasanth Kiran, learned Government Advocate and Mr.P.Hari Babu, learned Government Advocate,



W.P.No.34885 of 2004 etc

for the Commercial Taxes Department.

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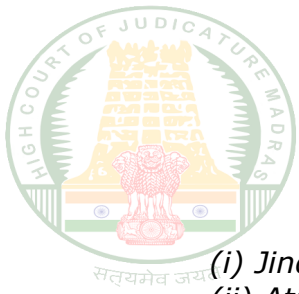
5. The submissions of the petitioners in one voice are as follows. They argue that the impugned Government Orders impinge upon their right to trade which should be free and unfettered as guaranteed under Article 301 of the Constitution of India.

6. The dealers are offended by the condition imposed under the impugned Government Orders to the effect that they would be extended concessional rate of 1 % (in the case of dealers in Group I) and 2 % (in the case of dealers in Group II) upon condition that they are not engaged either in branch or consignment transfers. They see no logic either in fact or in law, in the imposition of this condition.

7. They would argue that the condition imposed is discriminatory insofar as it creates a cleavage within a class of identically placed dealers. The dealers constitute one homogenous class, engaging in manufacture and sales of either hosiery or yarn. However, by the imposition of this condition, the State has carved out an unreasonable and discriminatory restriction in respect of those dealers within the class, who are engaged in effecting branch or consignment transfers.

8. Such branch/consignment transfers may be in respect of any goods whatsoever as there is no elaboration on the goods that must be the subject matter of the branch / consignment transfers in order for the condition to operate.

9. They rely on the judgments in:-



W.P.No.34885 of 2004 etc

- (i) *Jindal Stainless Limited and another v State of Haryana and others*¹
(ii) *Atiabari Tea Co., Ltd v State of Assam and others*²
(iii) *State of West Bengal v Kesoram Industries Ltd and others*³
(iv) *Minerva Talkies, Bangalore & Ors v State of Karnataka & Ors*⁴
(v) *State of Madras v V.G.Row, Union of India & State*⁵
(vi) *Mohd. Faruk v State of Madhya Pradesh*⁶
(vii) *A.Anraj v Government of Tamil Nadu*⁷
(viii) *Weston Electronics and another v State of Gujarat and another*⁸
(ix) *Hi- Beam Electronics Pvt Ltd., and another v State of Andhra Pradesh and another*⁹
(x) *Andhra Steel Corporation v Commissioner of Commercial Taxes in Karnataka*¹⁰
(xi) *Lohran Steel Industries Limited v State of Andhra Pradesh*¹¹

10. According to them the above judgments would support the position that any condition imposed must be rational, have a reasonable nexus with the levy sought to be imposed, and not discriminatory. Based on the above submissions, they pray that the impugned Government Orders insofar as they contain a restrictive condition denying concessional rate of tax in cases of dealers engaging in branch/consignment transfers, be quashed.

11. Per contra, learned Additional Advocate General, at the outset, points out that it does not lie in the mouth of the assessee to claim a concession as a matter of right. For this purpose, he would rely on the judgment of the Supreme Court in *ALD Automotive (P) Ltd v Commercial*

¹ [(2017) 12 SCC 1]

² [AIR 1961 SC 232]

³ [(2004) 10 SCC 201]

⁴ AIR 1988 SC 526]

⁵ [AIR 1952 SC 196]

⁶ [AIR 1970 SC 93]

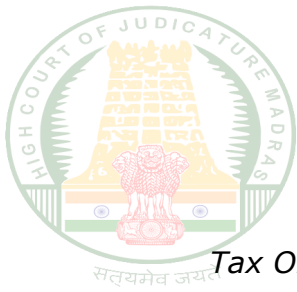
⁷ [61 STC 165]

⁸ [70 STC 52]

⁹ [71 STC 305]

¹⁰ [78 STC 243]

¹¹ [105 STC 30]



W.P.No.34885 of 2004 etc

*Tax Officer*¹², particularly paragraph 36 thereof.

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12. Learned Additional Advocate General takes us through the Budget Speech of the Hon'ble Finance Minister for the year 1997-98 based on the report of the Taxation Reforms Committee formed under the Chairmanship of Hon'ble Justice Thangaraj¹³ as well as the relevant Entries under the Act providing for the levy of tax on hosiery and yarn.

13. He submits that the rationale for the condition that has been imposed has been properly appreciated by the Special Tribunal in the case of *Shri Ramalinga Mills Limited v Secretary to Government, Commercial Taxes and Religious Endowments Department*¹⁴. In that order, the Tribunal has rejected an identical case filed by Shri Ramalinga Mills noticing that the reasoning for imposition of the condition was not discriminative but reasonable, and imposed in the interests of the State.

14. The decision was challenged by Shri Ramalinga Mills in writ petition, which ultimately came to be dismissed for default. Hence the ratio of that order would, according to him, be applicable to the present cases as well.

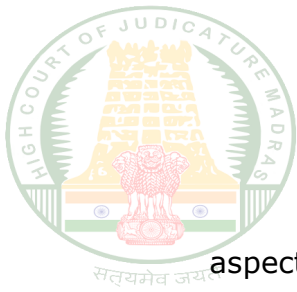
15. Learned Additional Advocate General further takes us through the judgment of nine Hon'ble Judges of the Supreme Court in the case of *Jindal*¹⁵, particularly, paragraphs 123 to 127 and 130 to 136 thereof, to buttress his submission that there is a difference between the

¹² [2018] 99 taxmann.com 202 (SC)

¹³ in short 'Committee Report'

¹⁴ [(2001) 122 STC 365]

¹⁵ Foot note supra 1



W.P.No.34885 of 2004 etc

aspects of 'differentiation' and 'discrimination'. According to him, what has transpired in the present case, is only the former. He maintains that the State holds the exclusive prerogative to impose such a condition in public interest.

16. The Budget Speech of the Hon'ble Finance Minister was based on the report of the Committee that had made recommendations for concessional rate in order to provide a fillip to dealers of hosiery goods and yarn in the State. Hence, he would argue that the condition imposed is rational and ought to be upheld.

17. We have heard all learned counsel and perused the papers and case law. The impugned Government Orders are extracted below in full:-

G.O.Ms.No. 273

*INTER-STATE SALE OF READY-MADE GARMENTS
AND HOSIERY GOODS*

RATE OF TAX (TAMIL NADU)

*NOTIFICATION G.O. Ms.No.273, Dated the 5th
August, 1996.*

No. II (1) / CTRE/84 (a-2) /96 - In exercise of the powers conferred by Sub-Section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) the Governor of Tamil Nadu, having been satisfied that it is necessary so to do in the public interest, hereby directs that the tax -

(1) payable by any dealer in respect of the sale effected by him of ready-made garments including undergarments and body supporting garments (excluding hosiery goods) in the course of inter-State trade or commerce shall be calculated at the rate of 4%.



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W.P.No.34885 of 2004 etc

(2) Payable by any dealer, who does not have any branch transfer or consignment transfer during a year, shall be calculated at the reduced rate of one per cent in respect of the sale effected by him of hosiery goods (other than those made of wool) in the course of inter-State trade or commerce.

G.O.Ms.No. 73

SALES OF MAN-MADE FIBRES, FIBRE YARN, FILAMENT YARN ETC., - REDUCTION IN RATE OF TAX (TAMIL NADU)

Notification G.O.Ms. No.73, dated the 5th March, 1997

No. II (1) /CTRE/22(a-6) - In exercise of powers conferred by sub-section (1) of section 17 of the Tamilnadu General Sales Tax Act, 1959 (Tamilnadu Act 1 of 1959) the Governor of Tamilnadu hereby makes a reduction in rate to two per cent in respect of the tax payable under the said Act on the sale of the following goods by any dealer who does not have any branch transfer or consignment transfer during the year:

- (a) Man-made staple fibre, fibre yarn, filament yarn and waste of any of them
- (b) Jari of all kinds including metallic yarn, metallic yarn, polyester film yarn and radiant yarn.

G.O.Ms.No.108

REDUCTION OF TAX PAYABLE ON SALE OF MANMADE STAPLE FIBRES FIBRE YARN, ETC., TO CERTAIN DEALER UNDER TAMILNADU GENERAL SALES TAX ACT .

(G.O.Ms No. 108, Commercial Taxes and Religious Endowments 7th April, 1998)

No. II (1) CTRE/43 (d-2) /98,

In exercise of the powers conferred by subsection (1) section 17 of the Tamilnadu General Sales Tax Act, 1959 (Tamilnadu Act 1 of 1959), the Governor of Tamilnadu hereby makes a reduction in rate to two per cent in respect of the tax payable under the said Act on the sale of manmade staple fibre, fibre



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W.P.No.34885 of 2004 etc

yarn, filament yarn and waste of any of them by any dealer who does not have any branch transfer or consignment transfer to outside the State during the year.

2. This notification shall be deemed to have come into force on the 27th day of March, 1998 and shall remain in force upto and inclusive of the 26th March, 1999."

18. The genesis for the Government Orders is the report of the Sales Tax Reforms Committee chaired by Hon'ble (Retd) Mr. Justice Thangaraj. The remit to the Committee was to examine the avenues of loss of commercial taxes in the State of Tamil Nadu and propose reforms that would be in the interests of both the exchequer as well as the economy. The narration and background as recorded by the Committee in the context of man-made fibers reads as follows:-

"MANMADE FIBRES

Manmade Staple Fibres, Fibre Yarn, Filament Yarn and Waste of any of them are taxable at 8% under Entry 27 of Part-C of First Schedule to the TNGST Act, 1959.

Jari of all kinds including Metallic Yarn, Metallic Jari Yarn, Metallic Plastic Yarn, Plastic Yarn, Polyester Film Yarn and Radiant Yarn are taxable at 8% under Entry 24 of Part-C of First Schedule to the TNGST Act, 1959.

A comparison of Sales Tax on Staple Fibre, Fibre Yarn imposed by other States in India will show that the rate of tax in Tamil Nadu is relatively highest.

Bihar : Nil

Madhya Pradesh : 2%

Maharashtra : 2%

West Bengal : 3%

Pondicherry : 1%



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W.P.No.34885 of 2004 etc

Kerala : 2.5%

Karnataka : 2%

Andhra Pradesh : 4%

The present Central Government policy permits multi fibre flexibility allowing the mills the use of different fibres. This has been done to achieve the objective of making available quality cloth of blended varieties to the population at reasonable prices. It is estimated that Tamil Nadu consumes 50,000 M.Tonnes of Polyester Staple Fibre per annum and the consumption of Viscose Staple Fibre in Tamil Nadu is about 40,000 M.Tonnes per annum.

However, less than 10,000 M.Tonnes alone is sold locally in view of higher levy of tax at 8% as against lesser levy of 2% prevailing almost in all States in India. No appreciable revenue is realised by the State as 90% of the Staple Fibre is billed from outside the State.

It has been estimated by the Trade that a turnover of about Rs.650 crores both in fibre and yarn is involved in this and reduction in the rate of tax to 2% will yield considerable increase in the revenue with maximum sale taking place within the State by way of direct first sale in Tamil Nadu."

MANMADE FIBRE YARN

It has also been represented that Tamil Nadu Mills producing Polyester Staple Fibre Yarn, Viscose Staple Fibre Yarn, Polyester Filament Yarn could not sell their yarn to the consumers within the State in view of higher incidence of taxation at 8%.

A large number of Textile Mills in Tamil Nadu are engaged in the use of 100% Viscose Staple Fibre Yarn. This yarn is converted into grey fabrics in large number of powerlooms and the cloth manufactured caters to the lower strata of the Society. It has been stated that on a rough estimate in Pallipalayam area alone, a total quantity of 5250 M.Tonnes of Viscose Staple Fibre Yarn is consumed, of which 3150 M.Tonnes of Viscose Staple Fibre Yarn is supplied by North based Mills. Consequently, Mills in Tamil Nadu have resorted to sell their



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W.P.No.34885 of 2004 etc

produces on consignment or Depot transfer basis through Pondicherry as the incidence of Sales Tax is only 1% resulting in loss to our State.

Hence it is represented that if the rate of tax is reduced to 2%, all local mills will start selling their produces within the State of Tamil Nadu which would greatly help the local manufacturing mills to have an edge over the North-based mills and to compete with them and thereby increasing their market share. Above all, it would fetch more than Rs.6 crores per annum to the State which is hitherto going to the other States. (The enclosed case study of IOCL will justify the above recommendations)."

19. The recommendations of the Committee read thus:-

"RECOMMENDATIONS:

- 1. The rate of tax leviable on the last purchase of Cotton at 4% under Entry 2 of Second Schedule to the TNGST Act, 1959 be REDUCED to 2%. The incidence of taxation from the point of last purchase be shifted to the point of first sale in respect of goods purchased from outside the State and for the rest, at the point of first purchase in the State as exists in the case of oil seeds.*
- 2. The rate of tax leviable at 8% on the sale of Viscose Staple Fibre under Entry 22 of Part-C of First Schedule be REDUCED to 2% both under the TNGST Act, 1959 and CST Act, 1956 with or without 'C' Form.*
- 3. The rate of tax leviable at 8% on the sale of Polyester Staple Fibre under Entry 24 of Part-C of First Schedule be reduced to 1% both under the TNGST Act, 1959 and CST Act, 1956 with or without 'C' Form.*
- 4. The rate of tax leviable at 8% on the sale of Manmade Staple Yarn, Polyester Filament Yarn, Radiant Yarn and Filament Yarn and Wastes of any kind coming under Entries 22 and 24 of Part-C of First Schedule be REDUCED to 2%.*



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W.P.No.34885 of 2004 etc

5. The rate of tax leviable at 4% on the sale of Cotton Yarn (both Cone Yarn and Hank Yarn), Manmade Fibre Yarn, Polyester Filament Yarn, Radiant Yarn and Wastes of any kind under the CST Act, 1956 be REDUCED to 1% with 'C' Form."

20. It is relevant to note that there is no reference to a restriction or condition in the Committee Report. In the Budget Speech for the year 1997-98, the recommendations of the Hon'ble Committee have been accepted and it is only then that a condition is imposed, that too, in the context of man-made fibre and yarn only. The relevant portion of the Budget Speech of the Hon'ble Finance Minister is extracted below:-

"159. I had announced a long term taxation policy in the last year's Budget to foster a stable, clear and friendly taxation environment for stimulating industrial growth and commerce. Accordingly, many reforms were undertaken in the Sales Tax structure. Taxes were reduced in respect of several categories. Trade and Industry have welcomed these measures. Following this, a Sales Tax Rationalisation Committee was constituted under the Chairmanship of Thiru C. Thangaraju, I.A.S. (Retd.) to make recommendations for necessary further changes in commercial taxes. After careful consideration of the report of this Committee it has been decided to make the following changes in Sales Tax. I hope these changes would provide further impetus to the growth of agriculture, industry and trade in our State.

...

170. Sales Tax on Hosiery goods is being reduced from 4% to 1%.

171. Sales Tax Rationalisation Committee has now recommended certain changes in the rates of sales tax in order to minimise the present widespread tax evasion in certain commodities and promote sales within the State. The following decisions have been taken on the basis of these recommendations:-

** Purchase tax on cotton is being reduced from 4%*



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W.P.No.34885 of 2004 etc

to 2%.

** Sales tax on Zari is being reduced from 8% to 2%.*

** Sales tax on man-made yarn and fibre will be reduced from 8% to 2% on the condition that there shall not be any sale by way of branch transfer to agents in other States or consignment transfer."*

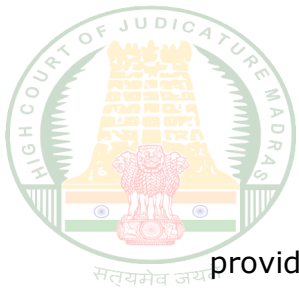
21. In the Budget Speech, the rate of tax for hosiery goods stands reduced from 4% to 1%, sans any condition. The rate qua man-made fiber has been reduced from 8 % to 2% on condition that the dealer shall not engage in branch/consignment transfer. This is further expanded in the impugned Government Orders to hosiery as well. What is assailed before us is the condition in relation to branch/consignment transfer in the impugned Government Orders, particularly since there is no elaboration as to what the branch or consignment transfer should relate to.

22. It certainly cannot be the intention of the Legislature that the benefit of concessional rate should be denied to all dealers who engage in branch/consignment transfers, irrespective of the goods dealt with, which is the impact of the condition under the impugned Government Orders. This is undoubtedly a flaw in the condition imposed.

23. To put it alternatively, while the Government Order grants the benefit of concessional rate of rate for yarn and man-made fibre, the condition imposed is that the dealer seeking the concession should not engage in branch/consignment transfers of any goods or products.

24. Section 6A of the Central Sales Tax Act, 1969¹⁶ which

¹⁶(in short, 'CST Act')



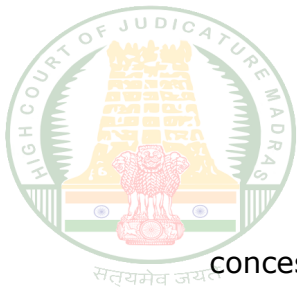
W.P.No.34885 of 2004 etc

provides for burden of proof in cases of transfer of goods claimed otherwise than by way of sale, enables a branch transfer as a statutory right, upon production of the necessary forms. Hence the imposition of the present condition would militate against the right granted under Section 6A of the CST Act. That apart, such denial qua the entire quantum of sales, is also, in our view, disproportionate.

25. The offending condition does not figure in the Committee Report and thus does not emanate from the recommendations of the Committee. We clarify that, undoubtedly, an interstate sale camouflaged as branch or consignment transfer must be enquired into and addressed appropriately. Hence, it is certainly open for the authorities to look into the veracity of such a transaction.

26. However such a position has not arisen in the present cases and instead, the condition imposed under the impugned Government Orders encompass all branch/consignment transfers, irrespective of the goods dealt with. We agree with the petitioners that such imposition has the adverse effect of impinging on the rights of the petitioners to engage in free and unfettered trade as it forces the petitioners to make an unnecessary choice between whether it engages in legitimate branch / consignment transfers, or avail the concessional rate of tax.

27. Thus, what the State hopes to achieve by virtue of imposition of this condition remains a mystery. While it is a settled position that the State may impose such conditions as may be appropriate in the grant of



W.P.No.34885 of 2004 etc

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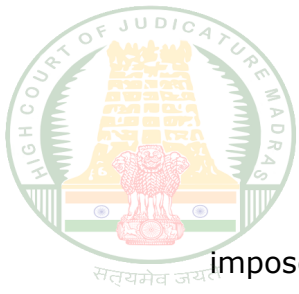
concessions, such conditions cannot be arbitrary or discriminatory and must have a sound rationale. In *Shri Ramalinga Mills Ltd (supra)* the

Special Tribunal has justified the condition in the following terms:-

'Therefore, only for the purpose of realising the sales tax within the State, the Government of Tamil Nadu has restricted the branch transfer and consignment transfer for those who wanted to avail the concessional rate of tax at 2 per cent and for others who make branch transfer and consignment transfer to pay the tax at 8 per cent. Therefore, it cannot be stated that the Government of Tamilnadu has made any discrimination in the levy of tax or restricted the free movement of goods in violation of the freedom given under article 304(a) of the Constitution. When the goods manufactured within the State are moved outside the State, the State incurs heavy loss and therefore, the consignment transfer or branch.'

28. The Special Tribunal observes that when goods manufactured within the State are moved outside the State, such transfers result in heavy revenue loss. Aside from the fact that there cannot be an omnibus bar on branch / consignment transfers without caveat whatsoever, this is also opposed by the Appellants on facts. They submit that the quantum of consignment sales in their cases is only a fraction of the domestic sales and affidavits have been filed by some of the petitioners to the effect that branch transfers are only a minuscule portion of their business. They should hence, should not have such egregious impact on the viability of their business. The restriction imposed is thus clearly arbitrary and disproportionate when compared with the object avowedly sought to be achieved, which object is itself, unclear.

29. We are also of the considered view that the condition

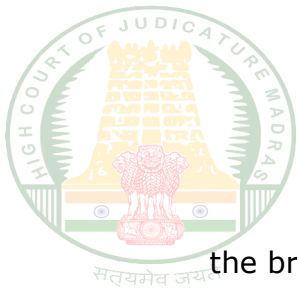


W.P.No.34885 of 2004 etc

imposed is discriminatory as it carves out one group of dealers from amongst a class of dealers, all of whom are engaged in sale of yarn and man-made fibre, for prejudicial treatment. Those assesseees who deal in yarn and man-made fibre and who do not engage in branch/consignment transfers have been granted the concessional rate of tax whereas, those do engage in such transfers are denied the benefit.

30. Article 301 of the Constitution guarantees the freedom of trade, commerce and intercourse subject to the restrictions under Article 304(a). The judgment in *Atiabari Tea Co. Ltd.* (supra) has been discussed minutely in the case of *Jindal Stainless Steel Ltd.* (supra). The conclusion was that the non-discriminatory tax does not, per se, constitute a restriction on the right to free trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India. Thus, the ratio in *Jindal Stainless Steel Ltd.* (supra) is that a declaration to the effect that taxes, generally, are restrictions on the freedom of trade, commerce and intercourse, would not be liable to be granted.

31. In the present case, there is no such generality with which we are concerned but a specific cause of action created by the offending condition in the impugned Government Orders. In our considered view, the condition imposed does have the consequence of making an unjustified discrimination and not a differentiation, between the petitioners before us and other dealers dealing with hosiery and man-made fibre as the condition does not have a nexus with the goods that are the subject of



W.P.No.34885 of 2004 etc

the branch / consignment transfers.

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32. The Committee had suggested the measure of reduction of tax in order to provide an impetus to dealers in the hosiery and man-made fibre in Tamil Nadu, and does not mention anywhere that a corresponding limitation should be built into such a concession. It is only the State which has thought it fit to impose the condition and that too without any correlation of the goods in respect of which concessional rate has been extended on the one hand and the branch/consignment transfers on the other.

33. Clearly, and to this extent, there is a lacunae in the Government Orders. The judgment of the Supreme Court in *Video Electronics P. Ltd. V. State of Punjab*¹⁷, recognized the critical difference between differentiation and discrimination holding that every differentiation would not amount to a discrimination. This has been amplified in *Jindal Stainless Steel Ltd.* (supra) to state that so long as there was no such element of intentional and unfavourable bias evident from the measures adopted by the State, the mere grant of exemption or incentives aimed at supporting local industries in their growth, development and progress do not constitute discrimination.

34. In the present case, the measures adopted by the State tip, and in our view, unjustifiably, towards those assesseees dealing in yarn and man-made fibre who did not engage in branch/consignment transfers. We say unfavourably, since there is no basis or rationale for such bias in their

¹⁷ 1990 3 SCC 87



W.P.No.34885 of 2004 etc

favour. Hence, the ratio of the judgements in *Video Electronics P. Ltd.*

(supra) and *Jindal Stainless Steel Ltd.* (supra) would wholly support the conclusion that we have arrived at in these cases.

35. For the aforesaid reasons, the condition imposed under the impugned Government Orders are quashed. Orders of assessment and show-cause notices insofar as they relate to the present issue are also quashed. All the Writ Petitions are allowed. No costs.

36. Writ Appeal No. 3615 of 2003 has been filed challenging order dated 22.09.2003 passed by the writ court in W.P.No. 38555 of 2002 directing the appellant to file a reply to a show cause notice dated 13.09.2000 and finding that the writ petition was premature. In light of the fact that the impugned Government Orders based upon which the impugned show-cause notice was issued has been quashed, we find no reason to relegate the appellant to statutory remedy. The Writ Appeal is also allowed. No costs. Connected miscellaneous petitions are closed.

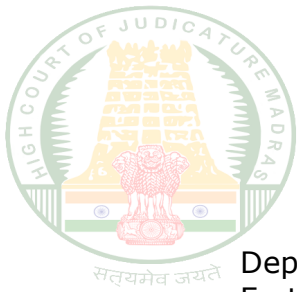
[A.S.M., J] [C.K., J]
07.04.2025

Index:Yes
Neutral Citation:Yes
ssm

To

1.The Secretary,
The Union of India,
Ministry of Revenue and Finance,
New Delhi.

2.The Secretary,

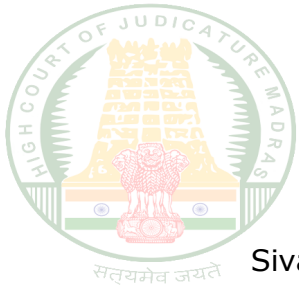


W.P.No.34885 of 2004 etc

Dept. of Commercial Taxes and Religious Endowments,
Fort St.George, Chennai – 9.

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- 3.The Special Commissioner and Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai – 600 005.
- 4.The Assistant Commissioner (CT),
Salem Bazaar Division, Salem.
- 5.The Commercial Tax Officer,
Salem Bazaar Division, Salem.
- 6.The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore – 641 018.
- 7.The Appellate Assistant Commissioner
of Commercial Taxes, Pollachi.
- 8.The Commercial Tax Officer,
Udumalpet (North), Udumalpet.
- 9.The Commercial Tax Officer (FAC),
Tirupur (Rural) Assessment Circle,
Tirupur.
- 10.The Secretary to Government,
Commercial Taxes & Religious Endowments Department,
Fort St.George, Chennai.
- 11.The Deputy Commercial Tax Officer,
Gobichettipalayam.
- 12.The Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 9.
- 13.The Commercial Tax Officer (FAC)
Thirupparankundram Assmt. Circle,
Madurai – 20.
- 14.The Tamilnadu Taxation Special Tribunal,
Singaravelar Maligai,
Rajaji Salai, Chennai.
- 15.The Commercial Tax Officer,



W.P.No.34885 of 2004 etc

Sivagangai.

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- 16.The Tamil Nadu Taxation Special Tribunal,
Rep. by its Registrar,
Singaravelar Maligai, Rajaji Salai,
II Floor, Chennai – 600 001.
- 18.The Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 600 009.
- 19.The Commercial Tax Officer (FAC),
Tirupparankundram Assmt. Circle,
Madurai – 20.
- 20.The Registrar,
The Tamilnadu Taxation Special Tribunal,
Singaravalar Maligai,
Chennai.
- 21.The Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai – 600 009.
- 22.The Commercial Tax Officer,
Nethaji Road Circle,
Madurai.
- 23.The State of Tamil Nadu
Rep. by Secretary, Commercial Taxes
Commercial Taxes Department,
Fort St.George, Chennai.
- 24.The Special Commissioner,
Commercial Taxes, Chepauk, Chennai.
- 25.The Commercial Tax Officer, (FAC)
Rural Assessment Circle, Tirupr.



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W.P.No.34885 of 2004 etc

DR. ANITA SUMANTH.,J.
and
C.KUMARAPPAN.,J.

ssm

W.P.No.34885 of 2004 etc

07.04.2025