IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

W.P.Nos. 35245, 35290, 35292 of 2013, 14180 & 14182 of 2014

W.P.No. 35245 of 2013

M/s. Sharp Business Systems (India) Limited,
Rep. by its Senior Accounts Executive Mr.M.J.Ramanath,
No.2, Lady Madhavan Road,
Mahalingapuram, Chennai – 600 034. .. Petitioner

vs

1.The Assistant Commissioner (CT), (FAC)
Valluvarkottam Assessment Circle,
No.621, II 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

W.P.No. 35290 of 2013

M/s BSH Home Appliances Pvt Limited,
Rep by its Authorised Signatory Mr.M.V.Saravanakumar,
No.8/26, Lake Area, 2nd Cross Street,
Mahalingapuram, Chennai – 600 034. .. Petitioner

vs

1.The Assistant Commissioner (CT)(FAC)
Valluvarkottam Assessment Circle,
No.621, II 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

W.P.No. 35292 of 2013

M/s BSH Household Appliances Manufacturing Pvt Limited,
Rep by its Authorised Signatory Mr.M.V.Saravanakumar,
Old No.4, New No.7, Palat Sankaran Street,
Mahalingapuram, Chennai – 600 034. .. Petitioner

vs

1.The Assistant Commissioner (CT)(FAC)
Valluvarkottam Assessment Circle,
No.621, II 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

W.P.No. 14180 of 2014

M/s. Primex Polymers,
Rep by its Proprietor Mr.Manish Kumar Jain
No.160, Linghi Chetty Street,
Chennai – 600 001. .. Petitioner

vs

1.The Assistant Commissioner (CT)(FAC),
Esplanade I Assessment Circle,

No.118, Angappa Street, Chennai – 600 001.

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

W.P.No. 14182 of 2014

M/s. Jampex Trading,
Rep. by its Director Mr.Manish Kumar Jain,
No.160, Linghi Chetty Street,
Chennai – 600 001. .. Petitioner

vs

1.The Assistant Commissioner (CT)(FAC),
Esplanade I Assessment Circle,
No.118, Angappa Street, Chennai – 600 001.

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

Prayer in W.P.NO. 35245 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 introduced by the Tamilnadu Act 32 of 2006 as ultravires of Entry 54/List II/ Seventh Schedule of the Constitution of India read with Article 14, Article 19(1)(g) being violate of discipline contained under Article 286 read with Entry 92A/List I/ Seventh Schedule of Constitution of India, wherein the respondents are not empowered to assess, levy or collect salestax under the Tamil Nadu Value Added Tax, 2006 on movement of goods from the State of Tamilnadu outside the State by way of stock transfer to the branch office of the petitioner situated in other states wherein local sales tax had been paid by the respective branches by filing the returns in the respective states therein.

Prayer in W.P.NO. 35290 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 introduced by the Tamilnadu Act 32 of 2006 as ultravires of Entry 54/List II/ Seventh Schedule of the Constitution of India read with Article 14, Article 19(1)(g) being violate of discipline contained under Article 286 read with Entry 92A/List I/ Seventh Schedule of Constitution of India, wherein the respondents are not empowered to assess, levy or collect salestax under the Tamil Nadu Value Added Tax, 2006 on movement of goods from the State of Tamilnadu outside the State by way of stock transfer to the branch office of the petitioner situated in other states wherein local sales tax had been paid by the respective branches by filing the returns in the respective states therein.

Prayer in W.P.NO. 35292 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 introduced by the Tamilnadu Act 32 of 2006 as ultravires of Entry 54/List II/ Seventh Schedule of the Constitution of India read with Article 14, Article 19(1)(g) being violate of discipline contained under Article 286 read with Entry 92A/List I/ Seventh Schedule of Constitution of India, wherein the respondents are not empowered to assess, levy or collect salestax under the Tamil Nadu Value Added Tax, 2006 on movement of goods from the State of Tamilnadu outside the State by way of stock transfer to the branch office of the petitioner situated in other states wherein local sales tax had been paid by the respective branches by filing the returns in the respective states therein.

Prayer in W.P.NO. 14180 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 introduced by the Tamilnadu Act 32 of 2006 as ultravires of Entry 54/List II/ Seventh Schedule of the Constitution of India read with Article 14, Article 19(1)(g) being violate of discipline contained under Article 286 read with Entry 92A/List I/ Seventh Schedule of Constitution of India, wherein the respondents are not empowered to assess, levy or collect sales tax under the Tamil Nadu Value Added Tax, 2006 on movement of goods from the State of Tamilnadu to other State by way of inter-state sales on which Central Sales Tax at 2% against form 'C' is collected and remitted by the petitioner to the second respondent and thereafter which had suffered local sales tax in the State of Andhra Pradesh on the subsequent sales effected by the respective purchasers in other states.

Prayer in W.P.NO. 14182 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 introduced by the Tamilnadu Act 32 of 2006 as ultravires of Entry 54/List II/ Seventh Schedule of the Constitution of India read with Article 14, Article 19(1)(g) being violate of discipline contained under Article 286 read with Entry 92A/List I/ Seventh Schedule of Constitution of India, wherein the respondents are not empowered to assess, levy or collect sales tax under the Tamil Nadu Value Added Tax, 2006 on movement of goods from the State of Tamilnadu to other State by way of inter-state sales on which Central Sales Tax at 2% against form 'C' is collected and remitted by the petitioner to the second respondent and thereafter which had suffered local sales tax in the State of Andhra Pradesh on the subsequent sales effected by the respective purchasers in other states.

For Petitioner : Mr.V.Sundareswaran
(in all Writ Petitions)

For Respondents : Ms.Amrita Poonkodi Dinakaran
(in all Writ Petitions)

COMMON ORDER

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

The prayer in these Writ Petitions is for a declaration to declare the the words "shall be deemed that the goods carried thereby have been sold within the State by the consignor" found in clause (c) of Section 70(2) of the Tamilnadu Value Added Tax Act, 2006 (in short 'TNVAT Act') as ultravires of various Articles of the Constitution of India.

2. Useful reference may be made to the judgment of the Supreme Court in the case of *Sodhi Transport Co. V. State of Uttar Pradesh* (62 STC 381), whereby, the challenge was to the provisions under Section 28-B of the Uttar Pradesh Sales Tax Act, 1948.

3. The aforesaid provision is analogous to Section 70 of the TNVAT Act. Both the provisions require a transporter/dealer when carrying goods entering their respective States to obtain transit passes for the delivery at the last check post/exit barrier, failing which presumption was to be drawn that the goods carried inside the State have been sold either by the owner or a person in charge of the vehicle without payment of tax.

4. The Supreme Court, in the aforesaid decision, has held in the course of the discussion that the presumption fastened by the provision is

a rebuttable presumption and hence there is no infirmity in the provisions of Section 28-B of the Uttar Pradesh Sales Tax Act.

5. Hence, the question of declaring Section 70(2) of the TNVAT does not arise. In any assessment made involving Section 70 of the TNVAT Act, a rebuttable presumption would arise and the transporter/dealer may well convince the assessing authorities that the transaction in question is above board and has been offered to tax.

6. In light of the above, the prayer seeking Declaration is rejected and these Writ Petitions are dismissed. No costs.

[A.S.M., J] [R.H., J]
03.03.2025

Index:Yes/No
Speaking Order/ Non-Speaking Order
Neutral Citation:Yes/No
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To

1.The Assistant Commissioner (CT), (FAC)
Valluvarkottam Assessment Circle,
No.621, II Floor, Annasalai,
Chennai – 600 006.

2.The Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai – 600 009.

3.The Assistant Commissioner (CT)(FAC),
Esplanade I Assessment Circle,
No.118, Angappa Street, Chennai – 600 001.

DR. ANITA SUMANTH.,J.
and
R. HEMALATHA.,J.

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