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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

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The HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.10348 of 2022
and
WMP.No.10073 of 2022

Shri Chakra Agencies,
Represented by its Proptriex A.Jayasutha,
52-A, South Udayarpalayam,
Narayanasamy Street,
Attur - 636108

...Petitioner

Vs.

State Tax Officer
Attur (Town) Circle
No. 127, Gandhi Nagar,
Attur - 636102.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records on the files of respondent in CST No.886961/2013-14 dated 06.02.2020 and quash the same as being without jurisdiction and authority of law and contrary to the Notification No. II (1) / CTR/30 (a-2) 2007 (GO MS No. 79 CTR (B2)

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dated 23.03.2007 and issue such further writ or direction as this Court may deem fit and proper in the circumstances of the case.

For Petitioner	:	Mr.B.Raveendran
For Respondents	:	Mr.C.Harsha Raj, Special Government Pleader (Taxes)

ORDER

The challenge in this Writ Petition is to the order dated 06.02.2020 passed by the respondent and to quash the same.

2. In similar circumstances, this Court in W.P.Nos.4098 and 4100 of 2022 on 18.12.2024 passed the following order:

> "3. By a separate order, today i.e., on 18.12.2024 in W.P.No.14092 of 2022, this Court had allowed the Writ Petition filed by Mr.Natesan wherein, identical issue arose for consideration as to whether the benefit of exemption under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 would enure for exemption under Section 8(2) of the Central Sales Tax (CST) Act, 1956. Operative portion of the Order reads as under:-
>
> "11. The decision of the Hon'ble Supreme Court

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in the case of **Collector of Central Excise, Hyderabad** Vs. **Vazir Sultan Tobacco Co. Ltd.,** reported in 1996 (83) E.L.T.3(S.C) is not relevant. In the above case, the Hon'ble Supreme Court has merely held that adoption of provision of one fiscal statute does not mean that tax is payable under the adopting Act wherever it is payable under the adopted legislation. The case dealt with levy of excise duty under Section 3 of the Central Excise and Salt Act, 1944 as it stood then and the rules made thereunder. The Court merely held nil rate of duty is also a rate of duty following its ratio in **Wallace Flour Mills Company Limited** Vs. **Collector or Central Excise**, 1989 (4) SCC 592.

12. The Hon'ble Supreme Court in **Vazir Sultan Tobacco Company Limited's case** (cited *supra*) further held that once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the state of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience.

13. The Court dealt with Special Excise Duty. It held that the idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of removal. It is only the collection that is done at the stage of removal. Admittedly, the special excise duty is an independent duty of excise separate and distinct from the duties of excise levied by the Central Excises and Salt Act, 1944. This levy came into effect only on and from March 1, 1978 which means that the goods produced prior to that date were not subject to such levy. If that is so, the levy cannot attach nor can it be realised because such goods are removed on or after March 1, 1978.

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14. Therefore, Special Excise duty was levied only for a brief period between 01.03.1978 and 28.02.1979. Paragraph 5 from the decision of the Hon'ble Supreme Court in **Collector of Central Excise, Hyderabad** Vs. **Vazir Sultan Tobacco Co. Ltd.,** 1996 (83) E.L.T.3(S.C) is reproduced below:-

"5. We are inclined to agree with Sri Sobarjee. Entry 84 of List-I of the Seventh Schedule to the Constitution empowers the Parliament to make a law providing for levy of duties of excise on tobacco and other goods manufactured or produced in India [except, of course, certain goods mentioned therein]. Indisputably, the special excise duty is an excise duty and is relatable to Entry 84. If so, the levy must be on the manufacture or production of goods. That is how the words "goods manufactured or produced in India" in Entry 84 have been understood by this Court throughout. Once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of removal. It is only the collection that is done at the stage of removal. Admittedly, the special excise duty is an independent duty of excise separate and distinct from the duties of excise levied by the Central Excises and Salt Act, 1944. This levy came into effect only on and from March 1, 1978 which means that the goods produced prior to that date were not subject to such levy. If that is so, the levy cannot attach nor can it be realised because such goods are removed on or after March 1, 1978. The provisions of the Central Excise Act and the Rules, in our opinion, do not say otherwise."

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15. The Hon'ble Supreme Court further observed that Section 3 of the Central Excise and Salt Act, 1944, cannot be read to shift the levy from the stage of manufacture or production of goods to the stage of removal. The levy is and remains upon the manufacture or production alone. Only the collection part of it is shifted to the stage of removal. Once this so, the fact that the provisions of the Central Excise Act are applied in the matter of levy and collection of special excise duty cannot and does not mean that wherever the Central Excise duty is payable, the Special Excise duty is also payable automatically.

16. Thus, the said decisions is of no relevance to the facts of the present case. Similarly, the decisions of the Hon'ble Supreme Court in **Collector of Central Excise, Bombay** VS. **Polyset Corporation** reported in 2000 (115) E.L.T. (S.C) is also not relevant to the facts of the case.

17. As far as the present case, the product traded and sold by the petitioner was exempt in terms of 26th Item in Sl.No.121 to the Schedule to the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 and under Sections 8(2) and 9(2) of the CST Act, 1956.

18. Under Section 9(2) of the CST Act, subject to the other provisions of the Act and the Rules made thereunder, the authorities who are empowered to assess, reassess, collect and enforce payment of any tax under the 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 the Act as if the tax or [interest or penalty] payable by such a dealer under the Act is a tax or

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[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 or interest,] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.

19. As per Sub-Section (1) to Section 8 of the CST Act, every dealer, who in the course of interstate trade or commerce, sells to a registered dealer goods of the description referred to in Sub-Section (3), shall be liable to pay tax under the Act, which shall be 3% of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower.

20. The goods that are referred to in Sub-Section (3) to Section 8 of theCST Act are as under:-

“(3) The goods referred to in Sub-Section (1),

(a) .... *

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject

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to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing for sale of goods specified under clause (d) of Section 2.

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale.

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate or registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

Note: * omitted by Act 8 of 1963, with effect from 01.04.1963."

21. In this case, we are not concerned with either of the situation contemplated in Sub-Section (1), Sub-Section (3) or Sub-Section (8) to Section 8 of the CST Act.

22. Thus, the applicable provision would be Sub-Section (2) to Section 8 of the CST Act. Sub-Section 1 and Sub-Section 2 to Section 8 of the CST Act are reproduced below for the sake of clarity:-

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Sub-Section (1)	Sub-Section (2)
Every dealer, who in the course of interstate trade or commerce, sells to a registered dealer goods of the description referred to in Sub-Section (3), shall be liable to pay tax under the Act, which shall be 3% of his turnover or at the rate applicable to the sale or purchase of such	(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within Sub-Section (1), shall be at the rate applicable to the sale or purchase of such

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Sub-Section (1)	Sub-Section (2)
goods inside the appropriate State under the sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this Sub-Section.	goods inside the appropriate State under the sales tax law of that State. Explanation.- For the purposes of this Sub-Section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so

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Sub-Section (1)	Sub-Section (2)
	liable under that law.

23. As per Sub-Section (2) to Section 8 of the CST Act, the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within 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 that State.

24. Explanation to Sub-Section (2) to Section 8 of the CST Act also makes it clear that a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

25. Thus, the rate applicable to sale of purchase of goods inside the appropriate state under the sales tax law of the State is applicable insofar as the turnover or in part thereof which relates to the sale of goods in the course of interstate trade or commerce which does not fall within the purview of Sub-Section (1) to Section 8 of the CST Act.

26. However, there is an exception provided in Sub-Section (5) to Section 8 of the CST Act. It stipulates that notwithstanding anything contained in this Section, the State Government may (on the fulfillment of the requirements laid down in Sub-

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Section (4) by the dealer), if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,

(a) that no tax under the Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of interstate trade or commerce, to a registered dealer from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-Section (1) as may be mentioned in the notification.

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of interstate trade or commerce, to a registered dealer by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under the Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in Sub-Section (1) as may be mentioned in the notification.

27. Similarly, the proviso to Sub-Section (8) to Section 8 of the CST Act, will also not apply to any sale of goods made in the course of interstate trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in Sub-Section (4), a declaration in the prescribed manner on the prescribed form obtained from the authority

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specified by the Central Government under Sub-Section (6), duly filled in and signed by the registered dealer to whom such goods are sold.

28. Thus, as per Sub-Section (5) to Section 8 of the CST Act, the State Government has to issue a notification which should specify the conditions.

29. In this case, no notification has been issued under Sub-Section (5) to Section 8 of the CST Act which has been brought to the attention of the Court.

30. Unless a specific notification has been issued under Sub-Section (5) to Section 8 of the CST Act, only General Notification issued under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 will apply to the interstate transactions by applying Sub-Section (2) to Section 8 of the CST Act.

31. Since there is no notification issued under Section 8(5) of the CST Act, the conditions of Section 8(5) of the CST Act will not apply to the facts of the case.

32. Therefore, the demand proposed and confirmed in the Impugned Revision Order 22.04.2022 is liable to be interfered with.

33. Therefore, there is no legal basis on which, the Impugned Demand can be sustained.

34. As such, the Impugned Revision Order dated 22.04.2022 is liable to be set aside and is accordingly set aside.

35. Consequently, the petitioner is entitled to the benefit of exemption under Notification

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> No.II(1)/CTR/30(a-2)/2007 (TNGG Extraordinary/March 23, 2007 [G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department] dated 23.03.2007 with consequential relief.
>
> 36. Therefore, this Writ Petition is allowed. No costs. Connected Writ Miscellaneous Petitions are closed."
>
> 4. In view of the above, the issue has been answered in favour of the petitioner. Therefore, this Court is of the view that the above said order will hold good in respect of the present Writ Petition also and the present Writ Petitions deserve to be allowed.
>
> 5. Accordingly, the present Writ Petitions are allowed and the Impugned Proceedings of the respondent passed in CST:949062/2014-2015 dated 17.12.2021 as well as CST/949062/2014-2015 dated 25.01.2022 are set aside. Consequently, the petitioner is entitled to the benefit of exemption under Notification No.II(1)/CTR/30(a-2)/2007 (TNGG Extraordinary/March 23, 2007 [G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department] dated 23.03.2007 with consequential relief. No costs. Connected Writ Miscellaneous Petition is closed.

3. In the light of the aforesaid passed by this Court, this Writ Petition is allowed. The Impugned Proceedings of the respondent passed in CST:886961/2013-2014 dated 06.02.2020 is set aside. Consequently, the

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petitioner is entitled to the benefit of exemption under Notification No.II(1)/CTR/30(a-2)/2007 (TNGG Extraordinary/March 23, 2007 [G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department] dated 23.03.2007 with consequential relief. No costs. Connected Writ Miscellaneous Petition is closed.

24.06.2025

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

State Tax Officer
Attur (Town) Circle
No. 127, Gandhi Nagar,
Attur - 636102.

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KRISHNAN RAMASAMY, J.

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