



Tax Case (Revision) Nos.25 & 26 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On: 01.04.2026

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CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

Tax Case (Revision) Nos.25 & 26 of 2013
& C.M.P.Nos.48 & 54 of 2019

Cholamandalam Investment & Finance Co., Ltd.,
No.28, Rajaji Salai,
Chennai – 600 001.

... Petitioner in both cases

vs.

The State of Tamil Nadu,
Represented by the Commercial Tax Officer,
Harbour-I Assessment Circle,
Chennai – 600 108.

... Respondent in both cases

Prayer in T.C.No.25 of 2013: Tax Case filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the Common Order of the Sales Tax Appellate Tribunal (Additional Bench), Chennai – 104, dated 31.10.2012 in T.A.No.693/02.

Prayer in T.C.No.26 of 2013: Tax Case filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the Common Order of the Sales Tax Appellate Tribunal (Additional Bench), Chennai – 104, dated 31.10.2012 in T.A.No.692/02.

For Petitioner
in both cases

: Mr.N.Sri Prakash,



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For Respondent
in both cases

: Mr.Haja Nazurudeen, AAG,
Assisted by Mr.C.Harsha Raj
Special Government Pleader

COMMON ORDER

M/s.Cholamandalam Investment & Finance Company Limited (hereinafter referred as 'assessee') is the revision petitioner in both the Tax Case (Revision) petitions filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959.

2. The assessee herein filed returns in Form-I filed under GST Act for the year 1995-96 declaring the total turnover as Rs.68,91,52,009/- and its taxable turnover as 'NIL' as under:-

Gross turn-over:		Rs.68,91,52,000/-
Less: Transaction under TNGST Act*		Rs.56,86,60,514/-
Total turnover under CST Act.		Rs.12,04,91,495/-
Less exemption claimed on		
a) Sales in the course of import	Rs.7,29,92,498/-	
b) Sales in the course of transit	Rs. 4,74,98,297/-	
Taxable turn over		NIL

*As far as the Rs.56,86,60,514/- as total turnover in respect of transactions under TNGST Act, same was examined and separate order came to be passed.



3. In respect of exemption sought under the Central Sales Tax Act, the checking of the accounts, unravelled that the assessee claims exemption for High Sea sales by transfer of documents of title to goods in the course of import under Section 5(2) of the Central Sales Tax Act and produced High Sea sales invoices, import invoices and the Bill of Lading. Examination of these documents further disclosed that, in the invoices of High Sea sales, it was mentioned that, 'the goods delivered under Hire Purchase Agreement.' Being a sale under hire purchase agreement which means that the goods remain the property of the dealer. Instead the same is shown as High Sea sales as if it is an outright sale. Similarly for the exemption claimed on sales in transit under the Central Sales Tax Act, the connected records produced by the assessee revealed that in the invoice it is stated that the goods are delivered under 'Hire Purchase Agreement'. However, in the bottom of the invoice it is stated that 'the sale under Section 6(2) of the Central Sales Tax Act. Hence, C-Form required.' Neither of the claim as Sales in the course of import and sales in High Seas, title of the goods remained only with the assessee, since the transaction were under Hire Purchase Agreement.

4. After collecting materials from the business premises of the assessee situated at various places and on examination of material documents,



the Assessing Officer concluded that the turnover disclosed by the assessee in its return is incorrect and incomplete. The assessee by camouflaging interstate sales as sales in transit had claimed exemption under Section 6(2) of Central Sales Tax Act. Hence, after hearing the assessee, the tax payable determined as below:-

Total Turnover under CST Act:	Rs.12,04,91,494/-
Taxable Turnover under CST Act:	Rs.1,59,18,072/-
Tax levied	Rs.29,88,508/-
In addition: Penalty (150%)	Rs.44,82,762/-

5. Challenging the above assessment order dated 19.03.1999, the assessee preferred an appeal before the Assistant Commissioner (CT)-1 in Appeal Petition No.79 of 2009. The Appellate Authority confirmed the assessment order, holding that there is no case to interfere with the order of the Assessing Officer. Thus, the assessment on the turnover of High Sea sales and Transit sales was sustained. Further, the assessee preferred appeal before the Tamil Nadu General Tax Appellate Tribunal in T.A.No.692 of 2002.

6. By the time, the re-assessment of tax payable under TNGST was done in view of the revised annual return in Form A.1 filed by the assessee, reporting Rs.52,83,68,388/- as the total turnover under TNGST out of which the



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taxable turnover shown as Rs.1,03,21,440/- and exemption for

Rs.51,80,36,921/- claimed.

7. The Assessing Officer held that, based on the prior contract, the goods have moved from other State to the State of purchaser through the State of the assessee. Hence, the transactions are covered under Section 3(a) of the Central Sales Tax Act and not under Section 3(b) of the Act. The Assessing Officer, *vide* order dated 27.02.1999, determined the total turnover for the purpose of TNGST as Rs.67,32,33,936/- and levied tax of Rs.79,29,806.92/-. After deducting Rs.6,40,882/- the tax already paid from Rs.79,29,806.92/- demand notice for Rs.72,88,925/- issued. In addition as surcharge, additional surcharge, additional tax and penalty amounting to Rs.27,79,204/- levied and notice was issued to the assessee.

8. Against the assessment order dated 27.02.1999 passed under the TNGST Act, the assessee preferred an appeal before the Appellate Authority in A.P.No.171 of 1999. The said appeal dismissed on 22.10.2001. Aggrieved by the dismissal of the appeal, the assessee filed in T.A.No.693 of 2002 before the Sales Tax Appellate Tribunal (STAT).



9. The appeals in T.A.No.692 of 2002 and T.A.No.693 of 2002, both filed by the assessee for the same assessment year; one in respect of transactions claimed to be covered under the Central Sales Tax Act and the other covered under the TNGST Act were taken up together for consideration by the Tamil Nadu General Sales Tax Appellate Tribunal and a common order dated 31.10.2012 came to be passed, confirming the order of the Appellate Assistant Commissioner (Commercial Tax), the Appellate Authority. The said common order of TNSTAT is the subject matter of the above two revision petitions.

10. T.C.(Revision) No.25 of 2013, filed against the order of TNSTAT in T.A.No.693 of 2002 dated 31.10.2012 was admitted to answer the following substantial questions of law:-

1. Whether the Tribunal has committed an error of law in rejecting the claim of transit sales made by the Petitioners in terms of Section 6(2) of the Central Sales Tax Act, 1956?

2. Whether the Tribunal has failed to see that even in respect of hire purchase transactions, a sale by transfer of documents of title during the movement of the goods could be made as a result of the definition of 'sale' under Section 2(g) of the Central Sales Tax Act, 1956 and the definition of 'sale' as found in Section 2(n) of the Tamil Nadu General Sale Tax Act, 1959?



3. *Whether the Tribunal has committed an error of law in rejecting the claim of exemption of the petitioners falling under Section 5(2) of the Central Sale Tax Act, 1956?*

4. *Whether the Tribunal has committed an error of law in finding that the petitioners had not established their eligibility for exemption under the First Limb of Section 5(2) of the Central Sales Tax Act, 1956?*

5. *Whether the Tribunal has committed an error of law in finding that the petitioners had submitted fabricated documents before the Tribunal for establishing their claim under the Second Limb of Section 5(2) of the Central Sales Tax Act, 1956?*

6. *Whether the Tribunal has committed an error of law in holding that the finance charge of Rs.39,80,475/- was also part of the taxable turnover of the petitioners?*

(during the course of argument, the learned counsel submitted he is not pressing this question)

7. *Whether the Tribunal has committed an error of law in confirming the imposition of penalty contrary to the principles laid down by this Hon'ble Court in the Judgment reported in 125 STC 505 (Apollo Saline Pharmaceuticals (P) Ltd vs. Commercial Tax Officer (FAC))?*

8. *Whether the Tribunal has committed an error of law in finding that the assessment of the*



petitioners was a best of judgment assessment under Section 12(2) of the Tamil Nadu General Sales Tax Act, 1959?

11. T.C.(Revision).No.26 of 2013, filed against the order of TNSTAT in T.A.No.692 of 2002, dated 31.10.2012 was admitted to answer the following substantial questions of law:-

1. Whether the Tribunal has committed an error of law in rejecting the claim of transit sales made by the petitioners in terms of Section 6(2)(b) of the Central Sales Tax Act, 1956?

2. Whether the Tribunal has failed to see that even in respect of hire purchase transactions, a sale by transfer of documents of title during the movement of the goods, could be made as a result of the definition of 'sale' under Section 2(g) of the Central Sale Act, 1956 and the definition of 'sale' as found in Section 2(n) of the Tamil Nadu General Sales Tax Act, 1959?

3. Whether the Tribunal has committed an error of law in confirming the imposition of penalty contrary to the principles laid down by this Hon'ble Court in the judgment reported in 125 STC 505 (Apollo Saline Pharmaceuticals (P) Ltd vs. Commerical Tax Officer (FAC))?

4. Whether the Tribunal has committed an error of law in finding that the assessment of the



petitioners was a best of judgment assessment under Section 12(2) of the Tamil Nadu General Sales Tax Act, 1959?

12. T.C.(Revision) No: 25/2013:

This Tax Case (Revision) arise in respect of the proceedings dated 27.02.1999 of the Commercial Tax Officer.

13. Transit sale Assessed under TNGST Act:

The case of the assessee, in short, is that they are in business of leasing and Hire purchase of Plant and Machineries, vehicles, Electrical and Electronic Equipments and consumer durables. It has branches at various parts of the Country. The usual trade practice followed by them is, their customers used to identify his own vendors and the goods. The customer first place order with the supplier and then approach the assessee for financial assistance under the hire purchase facility. The sales in case of imported goods were through high sea sales. The sale of goods from other states to be used by Transit Sales, by transfer of title of the document of the goods. The goods never delivered to the assessee, the sale was effected by transfer of title through documents. Therefore, the transit sales under Section 6(2) of the Central Sales Tax Act



cannot be assessed under the TNGST Act.

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14. The case of the Department, in short, the assessee's documents discloses that it was not an outright sale by transfer of documents of title to the goods to the purchaser. It is a sales on hire-purchase scheme, where the goods remain the property of the seller. Further, the assessee had raised two sale bills for the same transaction. One at the time of original sale under Section 6(2)(b) of the CST Act as transit sale and other at the termination of period under Hire Purchase agreement, as local sales by charging 8% single-point tax and other taxes with Write Down Value (WDV). The sequence of dates and events, as found from the documents produced by the assessee, clearly establishes that the assessee obtained purchase orders from their customers first and then directed the supplier to dispatch the goods. Thus, the contract between the assessee and the customer occasioned the movement of goods from other State.

15. Further, it is contended by the Department that the records such as goods consignment notes of transporting companies, invoices of the consignors, delivery notes issued by the assessee and other documents reveal that the goods sent by the consignors from the other States first consigned by the assessee and thereafter sent to the customers. The goods are cleared by the assessee after



endorsing the lorry receipt in favour of its customer. After the Hire Purchase agreement signed, the goods were handed over to the customer, thereby retaining the title. Therefore, it is not a sales in the course of interstate trade as contemplated under Section 6(2)(b) read with Section 3(b) of the Central Sales Tax Act.

16. High Sea sales combined with hire purchase agreement:-

The assessee contention is that the sales in the course of import were high sea sales and therefore, not within the purview of the TNGST Act. According to the assessee, the hirer/customer cleared the machineries from the Customs. While the goods were on the high seas, they have transferred the documents of title in favour of the hirer. The finding of the Assessing Officer that the imported goods were cleared by the assessee after paying all the charges on behalf of the purchaser and thereafter handed over the goods to the purchaser is factually incorrect.

17. In contra, the contention of the Department is that, on verification of the copies of bill of entry, agreements with the customers of the assessee, import purchase invoice and other connected documents, it was found that although the sales in the course of import effected by making bills of sale by



transfer of document of title to the goods earlier to the date of bill of entry, the customs duty had been paid only on the import value which includes Customs duty and other charges and not on the high sea sale value. Though in the agreement with the customers, it is specifically mentioned that the customers has to clear the machineries/equipments from the customs executing all the necessary documents, required for the purpose of clearing the consignment which includes filing of Bill of Entry, in contrary the records indicates that the bill of entry filed by the assessee. All the charges paid by the assessee on behalf of the purchaser (Customer) and it was the assessee who cleared the goods and then handed over the machineries/equipment to the customer who is the ultimate buyer. The assessee had financed the total amount, which includes value of import, charges paid for the clearance of the goods from Customs, import duty paid and the profit margin. The total value given as finance was the total sale price of the machineries/equipment. Thus, the import is a separate transaction and the sales by hire purchase system is a separate transaction. Hence, taking into consideration that the sales on hire purchase system as first sales. The exemption sought on High Seas sale rightly disallowed.



18. T.C.(Revision) No: 26 of 2009

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This Tax Case (revision) relates to the proceedings of the Commercial Tax Officer, dated 19.03.1999. The assessee claimed exemption of Rs.4,74,98,297/- from the total turnover under the CST Act, as sale in transit. The assessee contended that the sale of machinery deemed to have taken place in the course of interstate trade, if such sale occasions the movements of goods from one State to another. In all these transactions, the movement of goods commenced after the Memorandum of Undertaking by the assessee with the customer. As a result of transfer of documents of title, the State of Tamil Nadu has no jurisdiction to levy tax in view of Section 3(b) of the Central Sales Tax Act.

19. However, the Department has found from the records that the machineries were not sold while in transit. The goods were put in transit prior to the contract with the customers. The entire sales effected under Section 6(2) of the Central Sales Tax Act and it is really an outright local sales or interstate sales. (Rs.3,15,80,924/- towards local sales and Rs.1,59,18,072/- towards interstate sales).



20. Counsel's submission and Court's conclusion:-

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The learned Counsel appearing on behalf of the assessee, for the first time in the revision as an additional grounds, pleaded that the legislative power of the State to tax hire purchase transactions falling under Article 366(29A) of the Constitution is not unfettered. Article 269(1) of the Constitution vests the power to tax on sale or purchase of goods which takes place in the course of interstate trade or commerce with the exclusive domain of Union Government. Article 286(1)(a) prohibits States from imposing a tax on sale or purchase which takes place outside the State and Article 286(1)(b) prohibits States from imposing a tax on sales or purchases which takes place in the course of export or import into the territory of India.

21. Further, in the Seventh Schedule, List II (State List), the Entry 54 limits the power of the State to impose tax, subject to Entry 94 A of List-I (Union List). Entry 94 A of List-I, confers exclusive power to the Union, to tax on inter-state sales or purchases. Therefore, the State has no power to tax the assessee.

22. To buttress his submission, the Learned Counsel for the assessee relied on the judgment of the Hon'ble Supreme Court rendered in *Builders*



Association of India and others vs. Union of India and others reported in

(1989) 73 STC 370.

23. There no doubt about the legal proposition that the State power to tax hire purchase transactions are circumscribed by constitutional limitations. At the same time, it is to be borne in mind that those limitations does not denude the power of the State to impose tax absolutely. Whether the impugned assessment of tax under TNGST falls within the limitations is a matter of fact. The same been tested and held against the assessee all through, since the assessee plea that it was only interstate sales or High Sea sales in transit not supported by documents. Further, the documents produced found to be contrary to the reasons claimed for deduction.

24. To elaborate further,

In CST Act, the term 'Sale' is defined under Section 2(g) as under:

"Sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or



other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

25. Under the TNGST Act, the term 'Sale' is defined in Section 2(n).

As per the definition, clauses (iii) and (iv) says sale includes, a delivery of goods on hire-purchase or any system of payment by instalments and a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment, or other valuable consideration.



26. Section 3 of Central Sales Tax Act, speaks about ‘inter-state sale’.

Section 4 of the Central Sales Tax Act, speaks about when a sale or purchase said to take place outside the State. Section 5 of the Central Sales Tax Act, speaks about when a sale or purchase said to take place in the course of import or export and Section 6 speaks about when a dealer is liable to pay tax on interstate sales. For the sake of convenience, the above provisions are extracted below:-

Section 3 of Central Sales Tax Act, 1956.

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Section 4 of Central Sales Tax Act, 1956.

“4. When is a sale or purchase of goods said to take place outside a State.—

(1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or



purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.”

Section 5 of Central Sales Tax Act, 1956.

“When is a sale or purchase of goods said to take place in the course of import or export.—

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course



of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.”

Section 6 of Central Sales Tax Act, 1956.

“6. Liability to tax on inter-State sales

(1) Subject to other provisions contained in this Act, every dealer shall, with effect from such date as the Central government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this act on all sales [of goods other than electrical energy] effected by him in the course of inter-state trade or commerce during any year on and from the date so notified.

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section 3 of section 5 is a sale in the



course of export of those goods out of the territory of India.

[1A] A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-state trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside the State.

[2] Notwithstanding anything contained in sub-section(1) of sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act;

Provided that no such subsequent sale shall be exempt from tax under the sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) If the subsequent sale is made



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(i) to a registered dealer, a declaration referred to in clause (a) of subsection(4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section(4) of Section 8;

Provided Further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods, if, -

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four percent. (Whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

(3) Notwithstanding anything contained in this Act, if—

(a) any official or personnel of -

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United nations or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force; or



(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub – clause (i) or sub-clause (ii) of clause (a).

Purchases any goods for himself or for the purposes of such mission, United nations or other body, then, the Central Government may, be notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act.”

27. Article 286(1) of the Constitution of India restricts the States from imposing tax on the sale or purchase of goods where such sale or purchase takes place either outside the said State or in the course of the import of the goods into, or export of goods out of, the territory of India. Article 286(2) gives power to the Parliament to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

28. Clause (3) to Article 286 inserted in the 46th amendment reads as below:-

286. Restrictions as to imposition of tax on the sale or purchase of goods-

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in



inter-state trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

29. By way of an inclusive definition, Article 366 (29A) defines the expression '***tax on the sale or purchase of goods***'. The relevant provision are the sub-clauses (b), (c) and (d) which reads as under:-

366. Definitions – In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(29A): 'tax on the sale or purchase of goods' includes:-

(a).....

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

(c) a tax on the delivery of goods on hire-purchase or any system of payment by installments.

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified



period) for cash, deferred payment or other valuable consideration.

30. Entry 92A of List-I (Union List) in the Seventh Schedule of the Constitution of India deals with Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

31. Entry 54 of List-II (State List) in the Seventh Schedule of the Constitution of India deals with Taxes on the sale or purchase of goods other than newspaper, subject to the provisions of Entry 92A of List-I.

32. The examination of records of the assessee, it has been found that:-

“(i) The dealer has raised two sales bills for one and the same sale. One at the time of original sale under Section 6(2)(b) as transit sale and the other at the termination of the period under 'Hire Purchase' agreement as local sales charging 8% single point and 20% surcharge and addl.surcharge on the written value.

(ii) Firstly, the dealer has obtained purchase order from their customer and direct their suppliers to



despatch the goods. Thus it occasions the movement of goods at the other State and hence the transaction will not come under Section 3(b) of the C.S.T. to effect transit sale under Section 6(2)(b) of the C.S.T. Act.

(iii) Where the contract itself occasioned the movement of goods from one State to another, the sales were inter-State sales falling under clause (a) of Section 3 and not under Clause (b) of Section 3. Clause (b) applies only where goods are put in transit without prior contract of sale and they are sold by transfer of documents, while they are still in transit.

(iv) It is not possible to invoke simultaneously both Section 3(a) and 3(b) in respect of the same transaction.

(v) Perusal of the records revealed that the goods sent by the consignor at the at the other State had been consigned to the dealers viz. Tvl.Cholamandalam Investment and Finance Co. Ltd, Madras who had delivered the goods to the customer as evidenced from the goods consignment notes of Transacting companies, Invoices of the consignors, Delivery Note by the dealers and other relevant documents relating to the transactions.”



33. Each of the transactions been examined and conclusively held that

the purchase orders were placed by the assessee on behalf of its customers and the sales made to the customers after taking delivery of the goods. Two sale bills for the same goods prepared; one under transit sale and another under direct sales, charging sales tax and surcharge. Two invoices for the same goods, one under Section 3(a) and another under Section 3(b) of the CST Act, is neither possible nor permissible. For filing incorrect and incomplete returns, camouflaging the interstate sales as sales in transit and claiming exemption under Section 6(2) of the Central Sales Tax Act, warrants levy of penalty.

34. The assessee, who have no explanation to the above conclusive findings based its own records produced during assessment, now in the course of arguments has made an alternate plea as below:-

“The assessee seeking to establish its stand of non-liability on the disputed transactions primarily under Section 3(a) of the CST Act (Transit sales) and the first limb of Section 5(2). In the alternate of the assessee seeks exemption under Section 6(2) and the second limb of Section 5(2) of the Act.”



35. The above alternate plea clearly exposes the intention of the assessee why it has prepared two invoices for the same transaction. The mentioning at the top of the invoice as 'delivered under Hire Purchase Agreement' and at the bottom mentioning it as 'Sales under Section 6(2) of the Central Sales Tax Act', hence 'C' Form requires or 'High Seas Sales under Section 5(2)' is obviously to evade the tax liability which arose on the first sales of goods under the hire purchase agreement, after payment of sales tax and surcharges, which is imposed by the State.

35. In all these case, the transfer of title of goods arise only on payment of the dues and the invoice is for the written down value (WDV) on the date of transfer of title to the customer. Till then, the assessee is the title holder of the goods. For sales of these nature the State Government is empowered to tax by virtue of exemption to the restriction under Article 286(3)(c) read with Article 366 (29A)

36. The next contention of the assessee is that the movement of goods both in transit sales as well as in High Seas sales occasioned before the goods entered the assessee State from the other State or before crossing the customs frontiers of India, as the case may be. It is claimed that the Hire purchase



agreement is Part and Parcel of the transaction. So, it cannot be isolated and treated as a separate transaction. On entering into the hire purchase agreement, the goods get appropriated and it occasions the movement of the goods. Without the hire purchase agreement, there will be no occasion for the movement of goods.

37. The contention of the assessee that the hire purchase transaction taken place outside the state of Tamil Nadu and therefore falls within the scope of inter-state trade is not borne by the record but only by way of submission. In fact the records indicate entirely a contrary situation. The hire-purchase transaction has taken effect within the State of Tamil Nadu and also suppose to culminate by convey the title on payment of entire dues at later point of time. Therefore, the provision applicable is Section 3(2) of the Tamil Nadu General Sales Tax Act, 1959, which says that goods mentioned in First Schedule taxable at the point of first sale, the tax under this Act shall be payable by the first or earliest of the successive dealers in the State who is liable to tax under this Section will apply.



38. The plea of the assessee that the sale has to be deemed to be an interstate sale failed to impress upon the Authority as well as this Court, since the document relied by the assessee establishes the fact that the goods were first received by the assessee and thereafter delivered to the customers. The transaction is not a composite transaction but separate and distinct. In case in hand, neither the movement of goods from one state to another occasioned before the hire purchase agreement, nor the document to title to the goods transferred during the movement from one state to another.

39. Looking at the facts from any angle, neither the original plea taken by the assessee nor the alternate plea raised in the course of arguments in the revision petition is sustainable.

40. Insofar as High Sea sales are concerned, the Bill of Lading, the customs duty paid by the assessee and the price of goods shown in the Bill of Lading and invoices to the customers which include the customs duty and other incidental charges show that only after crossing the customs frontiers of India, the sale was effected. Only after payment of customs duty, the same been added in the invoice issued to the customer. The assessee is shown as the consignee. Under Section 5(2) of the Central Sales Act, a sale or purchase of



goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

41. The admitted case of the assessee is that the sale of goods not in normal course but in the nature of hire purchase. In the hire purchase system, the title is retained by the assessee for the purpose of security and only after payment of the entire dues, the title get transferred. From examining the documents like bill of entry, the agreement entered into by the assessee with the customers and the import purchase bills, it is found that sale in the course of import has been effected by making bill for sale through transfer of the document of title to goods, prior to the date of bill of entry. The Customs duty has been charged and paid only on the import value and not on the High Sea Sales value. The conditions mentioned in the Memorandum of Undertaking proves that the assessee has filed the bill of entry, cleared the goods and paid all the charges on behalf of the ulterior purchaser (customer) and only thereafter the machinery has been handed over to the customer under hire purchase. The total amount financed included the value of import, charges paid for clearance of the goods from customs, import duty paid and the profit margin of the



assessee. The hire purchase agreement and invoice with written down value is for the said total amount. Thus, the records indicate that the import is a separate transaction and the sales by hire purchase is separate transaction.

42. Under these circumstances, the finding of the Tribunal disallowing the claim of transit sale is absolutely in order, since the appropriation of the goods occurred only after crossing the customs frontiers of India. The penalty imposed for wilful suppression is also sustainable. By making two invoices, the assessee has failed to establish eligibility for exemption either under the First limb of Section 5(2) of Central Sales Tax Act or under the Second limb of Section 5(2) of the Act.

43. The Learned Counsel appearing for the appellant attempted to impress upon this Court that the movement of the goods was pursuant to the contract of sales, either as a transit sale or as a high sea sale. He submitted that the Division Bench of this Court in ***Chesebrough Pond's Incorporation v. State of Tamil Nadu***, reported in 1983 (52) STC 164, has held that, “it does not matter how many stopovers there are in the delivery State before the goods reach the purchaser’s hands. All that matter is that the movement of the goods is in pursuance of the contract of sale or as a necessary incident to the sale



itself.”

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44. The Assessing Authority, the Appellate Authority and the Tribunal have found from the record that the movement of the goods was not pursuant to the any written contract in existence. Whereas the customer and the assessee might have engaged in informal negotiation, even before the machinery and supplier could have been identified by the customer, but that will not replace the documentary evidence like invoices by the supplier which is prior to the date of hire purchase agreement. The invoice to the customer is subsequent which includes duty, interest and other charges. Therefore, there is every reason to disbelieve the case of the assessee that the goods were appropriated before entering the customs frontiers or the title was transferred to the customer before the goods entered the State of delivery. Accordingly, these cases rightly fall under the category of first Sales, as held by the Tribunal and the Appellate Authorities.



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45. As a result, Tax Case (Revision) Nos.25 & 26 of 2013 stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.)
21-04-2026

Index :Yes/No.
Neutral Citation :Yes/No.
To,

1. The Commercial Tax Officer,
The State of Tamil Nadu,
Harbour-I Assessment Circle,
Chennai – 600 108.

2. The Sales Tax Appellate Tribunal (Additional Bench), Chennai – 104.



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Tax Case (Revision) Nos.25 & 26 of 2013

Dr. G.JAYACHANDRAN, J.
&
SHAMIM AHMED, J.
bsm

Pre-Delivery common order made in
Tax Case (Revision) Nos.25 & 26 of 2013

21-04-2026