IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 30.06.2026	Delivered On: 17.07.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA

T.C. No.81 of 2015

TVL. Ford India Private Limited.,
S.P.Koil Street,
Chengalpattu-603 204. … Petitioner

vs.

State of Tamil Nadu,
Represented by Joint Commissioner (CT),
Zone VII,
Chennai. … Respondent

Prayer: Tax Case has been filed under Section 38 of TNGST Act, against the order T.A.No.4 of 2012 dated 31st March 2015 passed by Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For Petitioner : Mr.Raghavan Ramabadran

For Respondent : M/s.G.Dhanamandhri,
Standing Counsel

ORDER

(Order of this Court made by Dr. G. Jayachandran, J.)

The revision petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959, involved in manufacturing and sale of Motor vehicles. For the assessment year 2001-2002, the revision petitioner (hereinafter referred to as 'dealer') disclosed its taxable turnover as Rs.1,31,64,67,905/- in their annual return. For scrutiny, the dealer was called upon to produce its accounts. Accordingly, the accounts were produced by the dealer and was checked by the Assessing Officer. On scrutiny, the Assessing Officer found the actual turnover as per the accounts was higher than what had been disclosed. The tax exemption claimed on a turnover to an extent of Rs.2,40,86,083/- disallowed by holding it will not fall under the exemption category of goods. Therefore, assessment order passed on the proposed turnover of Rs.2,60,07,22,929/-, along with Additional Sales Tax at the rate of 2.5% for the car components manufactured and sold, interest levied for the belated payment and penalty imposed.

2. Aggrieved by the determination of the total turnover, the rejection of exemption claimed on certain transactions which lead to dispute regarding the taxable turnover, the dealer preferred Appeal against the Assessment Order dated 03.09.2010.

3. The Appellate Authority, on considering the grounds of appeal, allowed the appeal partly. A portion of the assessment order was remanded with the direction that the Assessing Officer to levy penalty under Section 12(3)(b) strictly in accordance with the graded scale.

4. In substance, the order of the Appellate Authority was as under:-

(a)	Second sale of asset	Rs.4,71,993/-@ 12% (Confirmed)
(b)	Second sale of asset	Rs.2,18,198/-@ 12% (Confirmed)
(c)	Addition/ Deletion of items	Rs.47,87,308/-@ 12% (Confirmed)
(d)	Second sale disallowed	Rs.49,817/-@ 12% (Confirmed)
(e)	Sale of Waste Solvents against Form XVII-disallowed	Rs.1,55,852/- @ 9% (confirmed)
(f)	Royalty received from the dealers Ford Assured Cars	Rs.12,75,250/- @ 4% (confirmed and rate of tax modified to 4%)
(g)	Sale of imported cars	Rs.11,59,87,708/- @ 12% (Confirmed)
(h)	To levy penalty of Additional Sales Tax	Rs.12,27,90,274/- @ 2.5% (Remanded)
(i)	Levy of Penalty under Section 12(3)(b)	Rs.17,44,23,207/- (Remanded)

5. Not being satisfied with the order passed in Appeal No.41 of 2010, dated 01.11.2011, the dealer went on further appeal before the Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.4 of 2012. The Tribunal dismissed the appeal, however the Assessment order was partly modified in respect of the levy of tax to an extent of Rs.5,20,60,896/-.

6. In short, the Tribunal confirmed the disallowance of the exemption claimed on second sales of assets such as residential equipment and office equipment. It also disallowed the concessional rate of tax claimed on second sales of goods locally purchased. The rate of tax claimed on the sale of waste solvents was disallowed and the tax levied on royalty received was confirmed. Particularly, the Tribunal rejected the trader's plea that sales of imported cars was in the course of "high seas sale". It confirmed the levy of tax on the purchase of goods which sought to be exempted under Section 17 of the Act read with G.O.Ms.No.381, Commercial Taxes and Religious Endowments (B2), dated 15.09.1997 and also the consequential additional tax and levy of penalty was confirmed.

7. The Trader aggrieved has challenged the order of the Tamil Nadu Sales Tax Appellate Tribunal in respect of the issues tabulated as under:-

Sl. No.	*Issue*	*Tax amount involved (in INR)*
1.	*Levy of tax on second sale of asset-residential equipment*	*56,639/-*
2.	*Levy of tax on second sale of Asset – Office equipment*	*26,184/-*
3.	*Addition/Deletion of items*	*5,74,477/-*
4.	*Disallowance of second sale*	*5,978/-*
5.	*Sale of waste solvents against Form XVII-concessional rate disallowed*	*18,702/-*
6.	*Levy of tax on account of violation of the G.O.Ms.381 CT&R Endowment (D2) dated 15.09.1997 ('Exemption Notification')*	*5,20,60,896/-*
7.	*Royalty payment received from Dealers – Ford assured Cars*	*51,010/-*
8.	*Levy of tax on sale of cars in the course of import*	*1,39,18,525/-*
9.	*Penalty under Section 12(3)(b) of the TNGST Act*	*6,67,12,411/-*

8. This Court, considering the grounds raised in the revision, had admitted the Tax Case to address the following substantial questions of law:-

(i). Whether the Tamil Nadu Sales Tax Appellate Tribunal is right in confirming the levy of tax under the TNGST Act, 1959 on sales of cars in the course of import, ignoring the evidence on record that the goods

directly move from Mumbai to the customers in different parts of the country other than Tamil Nadu and on the sale basis of the invoices? And

(ii) Whether the Tribunal is right in restoring the order of the Assistant Commissioner without there being an appeal by the Department to the First Appellate Authority?

9. In the course of final hearing, the Learned Counsel for the dealer/ revision petitioner has filed a written submission wherein, it is stated that out of nine issues mentioned in the above table, considering the amount of tax involved in those issues, the revision petitioner is giving up the issues listed at Serial numbers 1 to 5 and 7. Leaving open those issues for consideration in appropriate case in future, if required. The remaining two issues alone be taken for consideration. Those remaining two issues are:-

(i) The claim of high seas sales of cars imported and

(ii) The applicability of the exemption G.O.Ms.No.381, Commercial Taxes and Religious Endowments (B2), dated 15.09.1997, for the goods purchased by the dealer.

10. According to the Learned Counsel for the revision petitioner/dealer, during the assessment year 2001-2002 certain vendors of the revision petitioner had sold goods which falls under the exemption notification G.O.Ms.No.381, Commercial Taxes and Religious Endowment (B2), dated 15.09.1997. The Assessing Officer and the Appellate Authority erred in disallowing the exemption and has levied tax on those goods.

11. According to the trader, the goods which are sought exemption were received by the export plant of the revision petitioner located at Maraimalai Nagar, Tamil Nadu and were used for pre-packing in appropriately engineered integrated modular cartons. The integration of manufactured items at the factory with brought out items through an assembly line for knockdown, plant packing operations and sequencing of the components to ready-assemble units. Since these activities involving the goods purchased should be classified as goods in the manufacture and the assembling, packing or labeling in connection with such manufacture of passenger cars and components to claim exemption.

12. Before the Appellate Authority, the trader made an alternate submission that at any event, even if the goods are not covered under the exemption G.O.Ms.381, the sale was not within the State of Tamil Nadu but were exported directly. Therefore such sales are not within the scope of TNGST Act. Taxing export sales is violative of Article 286(1)(b) of the Constitution of India.

13. The Appellate Authority, though upheld the view of the Assessing Authority that the goods are not covered under the exemption Government Order, but accepted the alternate plea of the trader and held that State under TNGST Act cannot levy tax on export transaction in view of Article 286(1)(b) of Constitution. After holding so, the Appellate Authority remanded the matter back to the Assessing Authority to levy Compounding Fees under Section 46 of the TNGST Act as if the trader has committed offence within the meaning of Section 45(2)(d) of the Act.

14. Aggrieved by the order of remand to levy compounding fees, being without jurisdiction, the trader filed further appeal to the Tribunal. The Tribunal in the appeal of the trader, restored the levy of tax on the exempted goods overturning the finding of the appellate authority regarding the remand order to consider levy of compound fees.

15. According to the Learned Counsel, the order of the tribunal overturning the order of the Appellate Authority *suo motu* on the point which was never challenged by the department is beyond jurisdiction and the scope of the appeal. The reasoning given by the Tribunal that the Assessing Officer has demanded tax from the trader for violation of the condition imposed in G.O.Ms.No.381 is incorrect. That apart, without prejudice to the above argument in respect of levy of tax on the goods claimed exemption, in any event even if the goods purchased not used for the purpose of manufacturing or activities mentioned in the exemption Government Order but sold as such, the benefit under Section 5(3) of the CST Act is available to the vendor.

16. The further contention of the revision petitioner is that, when there is no tax liability or willful suppression of turnover, the question of imposing corresponding penalty does not arise. Section 12(3)(b) of the TNGST act can be invoked only in case of specific circumstances and not when the assessment order is based on books of account. The books of accounts was produced by the trader and the assessment order was passed based on the books of accounts. No penalty be imposed if no element of suppression with an intention to evade payment of tax by the revision petition. The Courts have repeatedly held that penalty under Section 12(3)(b) is not imposable when the trader had sought exemption as per G.O.Ms.No.381 on a bonafide belief. The alternate plea was not after conceding the claim of exemption under G.O.Ms.No.381 but after satisfying the compliance of conditions imposed in the said Government Order. The Tribunal gravely erred in holding that the trader has given up the claim of exemption.

17. In respect of the second issue regarding the alleged High Seas Sales of the imported cars, levy of tax is challenged on the ground that the cars were imported at JNPT Port, Mumbai. Out of 98 cars so imported during the relevant year only two were sold within the State of Tamil Nadu for which tax already paid. The rest of the cars were sold before the goods entered the Indian Customs frontier, while the cars were on high seas. The cars on landing the customs territory were delivered from Mumbai to the other states against the invoices raised even before the goods entered the custom frontier of India for clearance. Merely because in the invoice the location of the trader shown as Chengalpattu, Tamilnadu, it cannot be presumed that the goods were sold from Tamil Nadu. The bill of lading, Lorry receipts and other documents will clearly prove that the cars never entered into the state of Tamil Nadu. The sale was

High Seas sales, the goods moved from Mumbai Port to the other places without entering the territory of Tamil Nadu. However, the tribunal failed to take note of the real situs of sale and the situs of the physical transfer of the goods but solely based on invoices, levied tax on the high seas sales confirmed. Therefore, the levy of tax on the imported cars has to be set aside.

18. Without prejudice to the above submission, the counsel for the appellant submitted that for imposing penalty under Section 12(3)(b) of the Act, there must be element of suppression and intentional evasion of tax. In the absence of any such allegation, the penalty is not imposable.

19. Submissions on behalf of the Department:

The trader failed to establish the fact that the goods purchased from the registered dealers in the State were used for the manufacture as mandated in the exemption G.O.Ms.No.381. During the inspection, the violation was noticed and explanation called. The trader, after availing tax exemption under G.O.Ms.No.381 by furnishing declaration, resort to the alternate plea that the sales covered under Section 5(3) of CST Act. If the goods purchased against declaration but not used in the manufacture but disposed otherwise, it amounts to violation of condition laid in G.O.Ms.No.381. Hence, the tax levied on the turnover relating to purchase of such goods as per the terms of the Government Order.

20. The order of the Appellate Authority set aside the levy of tax on the goods not used in the manufacturing the cars exported, after getting exemption on declaration flouting the jurisdiction of the Assessing Officer who imposed tax in terms of clause (b) of G.O.Ms.No.381. Further, remanded the matter to fix compound fees for flouting the G.O. The Tribunal, on noticing the error in order of remand is in contravention to the G.O.Ms.No.381 which categorically says, if the trader, after purchasing the goods in respect of which it has furnished any declaration fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner shall pay the tax at the rate of which tax is payable on the turnover relating to purchase of such goods.

21. Therefore, the Learned Counsel for the Department contented that, the breach of declaration empowers the department to levy tax on the goods for which exemption availed. The charging section being inbuilt in the exemption Government Order. The Appellate Authority finding that Assessing

Officer has no power to levy tax under TNGST Act in respect of export goods is incorrect. In this case, Section 5(3) of the CST Act has no role to play. The alternate plea of interstate sales and shelter under Section 5(3) of the CST Act will be available to the trader only if the trader has bonafidely disclosed the turnover without availing tax benefit under G.O.Ms.No.381 by giving false declaration.

22. Regarding the contention of the revision petitioner that the tribunal has over-reached it jurisdiction by overturning the order of the appellate authority and restoring the order of the Assessing Officer when there is no appeal by the Department as against the order setting aside the tax imposed on the goods on disallowing the exemption, the Learned Counsel for the Department contends that, in the exemption Government Order, the dealer has to give declaration about compliance of the conditions imposed and power is vested in the authorities to impose tax in case of any breach of the declaration. Hence, the Tribunal order is not in the nature of overturning the Appellate Authority order without appeal.

23. Both the Assessing Officer as well the Appellate Authority have concurrently held that the trader has violated the mandate of G.O.Ms.No.381. The consequence of the said violation is in-built in the Government Order itself. Ignoring the relevant clause in the Government Order, the Appellate Authority erred in interfering the order of the Assessing Officer, however remanded to the Assessing Officer for fixing compound fees. Levy of compound fees in exercise of general power under the Act. The order of remand is not appropriate since the provisions in the Government Order issued exclusive for the trader takes care of breach of the Government Order condition. Hence, the tribunal order is sustainable.

24. As far as the tax on the sales of imported cars, the Learned Counsel for the Department submitted that, sales of imported cars were assessed to tax at the rate of 12% since the records produced by the trader did not substantiate its claim that the sales was effected in the High Seas before the cars reached the Port at Mumbai. The invoice copy pertaining to the sales of the imported cars were emanated from Chennai and the situs of the sale purportedly from Chennai. The trader, who claims that the cars were delivered from Mumbai to other places miserably failed to show document that the sales was prior to the entry to the port or the custom duty paid by the buyer of the vehicle on entry of the goods into the custom frontier of the India.

25. Weighed the rival submissions in the light of the provisions of law and judgments of the Court.

<u>Substantial question of law (i):-</u>

> ***(i).Whether the Tamil Nadu Sales Tax Appellate Tribunal is right in confirming the levy of tax under the TNGST Act, 1959 on sales of cars in the course of import, ignoring the evidence on record that the goods directly move from Mumbai to the customers in different parts of the country other than Tamil Nadu and on the sale basis of the invoices?***

26. On verification of the import documents related to the import of 1,092 Mondeo cars during the years 2001 to 2003, the copies of bills of entry and sale bills produced by the trader. The Assessing Officer has found that trader had claimed exemption of tax as High Seas sales under the CST Act for 998 cars. For 94 cars, the bills of entry were not produced for verification. Further, during the assessment year 2001- 2002, for 86 cars, the invoices show that it was consigned from Chengalpattu to the dealers located in various States, including Tamil Nadu.

27. The revision petitioner, in response to the above said finding had stated that the Mondeo cars imported and sold to the dealers were high seas sales in the course of import of cars. For all such high sea sales the invoice of the foreign supplier shows the name of the dealers. The imported cars, on landing at JNPT Port, Mumbai, were delivered to the dealers located in Mumbai and other States and only two cars were delivered to the dealer at Chennai, for those two cars, tax has been paid. Insofar as the finding regarding non-production of bills of entry for 86 cars, the revision petitioner has given an undertaking that the same would be produced within 15 days, but it has not been produced. Hence, for the variation found in respect of the imported cars, the revenue effect for the year 2001- 2002 was determined by the Assessing Officer as below:-

Turnover:	Rs.11,59,87,708/-.
Tax at 12%:	Rs.1,39,18,525/-.

28. The explanation given by the revision petitioner/trader was unacceptable throughout by the Assessing Officer, the Appellate Authority, as well as the Tribunal. The fact as to whether the sale of imported cars was effected on the High Seas or after it landed the Indian territory through JNPT, Mumbai, could be easily examined through the bills of entry; invoices raised by the exporter, the invoices raised by the importer/dealer at India and the transport documents. To determine the situs of transfer of goods, the invoices raised by the dealer play a pivotal role. Verification of the these documents had disclosed that the date of sale invoices by the dealer is subsequent to the entry of goods within Indian territory. Admittedly, the sale invoices raised at the Office of the trader which is located at Chengalpattu, Tamil Nadu. While so, even if the exporter had mentioned the name of the dealers of the trader at other parts of the Country as the buyers, the law of the land which governs the taxing policy fixes the situs of sale at the place from which the transfer takes place. In this case, the transfer is shown as place the invoices raised. It is the admitted case of the trader that goods imported were distributed to the dealers at other parts of the Country and from the dealers, same was delivered to the end users. The lorry receipt is to prove the transport of the imported car between port of Mumbai to other parts of the state but it is not a conclusive proof to hold that the cars never entered the territorial jurisdiction of Tamil Nadu. Neither mentioning the name of the purchasers in the invoice of the exporter is a proof that the transfer of goods was effected in high seas. Furthermore, whether the goods physically entered the territory of Tamil Nadu or not, the tax liability is based on the point of sale. In the absence of contrary evidence, the place of transfer is to be determined from the sales invoice. In the case on hand, the sale invoices were raised showing the factory address of the trader's office in Tamil Nadu. Hence, the provisions of the TNGST Act squarely applies in respect of the sales turnover of the cars imported.

29. The documents further reveal that the invoices were raised after the goods came to the Port at Mumbai. The customs duty for the vehicles was paid by the revision petitioner/trader herein and not by the dealers whose names found in the invoices of the exporter. Neither the customs duty paid by the end user/customer nor the dealer located outside the territory of Tamil Nadu. Hence, we affirm the finding of the Tribunal confirming the Assessment Order and the Order in Appeal.

30. In the absence of proof that the transfer of the goods were affected while the goods where in high seas and in view of absolute proof that the sales of the cars imported were effected from Tamil Nadu through invoices showing the factory address at Tamil Nadu, the plea of the trader that the sales were high seas sales is unsustainable.

31. The alternate plea of the trader that, such sales to be considered as, interstate sales is mutually destructive and fortifies the observation of the Department that the dealer had suppressed turnover with intent to evade tax and the alternate plea to evade tax on the turnover warrants the levy of penalty.

Accordingly, we answer this substantial question of law (i) in favour of the Department

Substantial question of law (ii):-

> ***Whether the Tribunal is right in restoring the order of the Assistant Commissioner without there being an appeal by the Department to the First Appellate Authority?***

32. The answer to this question is based on the interpretation and intention of the G.O.Ms.No.381, which reads as below:-

The exemption notification G.O.Ms.No.381, Commercial Taxes and Religious Endowment (B2), dated 15.09.1997.

"In exercise of the powers conferred by sub section (1) of Section 17 of the Tamil Nadu General Sales Tax Act, 1959, (Tamil Nadu Act 1 of1959), the Governor of Tamil Nadu hereby makes an exemption -

(a) in respect of tax payable by any registered dealer under the said Act on the sale of any goods including consumables, packing materials and labels other than High Speed Diesel Oil, Light Diesel Oil and Molasses but excluding Plant and Machinery to Thiruvalargal Mahindra Ford India Limited;

(b) purchase tax payable under Section 7A of the said Act by Thiruvalargal Mahindra Ford India Limited on the purchase of goods specified in clause (a), - For use by Thiruvalargal Mahindra Ford India Limited in the manufactured and in the assembling, packing or labelling in connection with such manufacture of passenger cars and components at their factory situated at Maraimalai Nagar, Kancheepuram District.

Provided that in respect of goods specified in clause (a), the seller shall furnish to the assessing authority a declaration duly filled in and signed by Thiruvalargal Mahindra Ford India Limited containing the particulars in the form of declaration annexed to this notification. One *such declaration shall be sufficient to cover goods supplied against each purchase order;*

Provided further that where goods are supplied against a purchase order over more than one assessment year, then separate declarations shall be furnished for the purchase relating to each assessment year:

Provided also that if Thiruvalargal Mahindra Ford India Limited after purchasing the goods in respect of which it had furnished any declaration, fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the tax at the rate on which tax is payable on the turnover relating to the purchase of such goods.

(2) The notification hereby made shall come into force with effect on and from the I st April 1999 and shall remain in force upto and inclusive of the 31st March, 2013."

33. To the notice issued by the Assessing Officer regarding the purchase of goods in Parts Division Centre (PDC) locally against declaration without payment of sales tax and sold as such and claimed exemption as second sales for the assessment year 2001-2002, the dealer, referring to the G.O.Ms.No.381, had contended that the Government cannot shift the taxable point to purchaser. The proviso to the notification cannot fix liability on Ford India if the goods not utilised for the manufacturing purposes. The dealer also claimed that the suppliers made to the trader have the benefit of Section 5(3) of CST Act, 1956 and therefore they are ready to give H-Forms to the suppliers. The Trader's response to the alleged incorrect claim of exemption on second sales found without any specific details with regard to the goods purchased. Further, the Assessing Officer, in his order, clarified that the notification of the Government issued in exercise of powers under Section 17 of TNGST granting exemption to the trader is restricted for the goods meant for manufacturing cars by the dealer. Since the dealer has failed to furnish particulars of the goods purchased and details of export documents relating to each exports claim of exemption has to be rejected.

34. On appeal, the Appellate Authority, considering the contention of the dealer that taxing the purchase of goods against firm export orders overlooking Section 5(3) of the CST Act is erroneous, held in favour of the dealer by holding, "by all means the levy of tax on the goods exported is not sustainable for which Assessing Officer is not empowered. Hence, this portion is set aside with consequential penalty (penalty portion will be dealt separately). However, remanded for reason that in case of flouting a conditional G.O. which is the offspring of a section is nothing but a violation of a section of implementation on behalf of the State Legislature. In such a violation, the Assessing Officer is empowered to levy compounding fee under the above such sections and the option is open to the concerned Assessing Officer in the interest of revenue."

35. Before the Tribunal, the observation of the Appellate Authority regarding taxing the purchase of the goods against firm export orders were challenged by the dealer. The Tribunal, referring the third proviso to clause (b) in the G.O.Ms.No.381, held that the observation of the Appellate Authority was not in consonance with the provisions of the Act. The Government Order clearly mandates that the appellant must use the goods purchased without paying tax as provided under the G.O., for the purpose specified in the declaration. If the goods are not used for the said purpose but disposed of otherwise, the dealer has to pay tax at the rate on which tax is payable. The exemption under Section 5(3) of the CST Act, 1956, Act is applicable to the sellers who sold goods to the exporters and not to the dealer who has availed tax exemption under G.O.Ms.No.381 after furnishing the necessary declaration. Hence, the tribunal has restored the order of the Assessing Officer by setting aside the order of the Appellate Tribunal.

36. From the orders of the Assessing Officer, the Appellate Authority and the order of the Tribunal, on facts they all have consistently held that the dealer has violated the declaration made while availing exemption of tax under G.O.Ms.No.381. While the Assessing Officer has levied tax on the differential turnover, the Appellate Authority, applying Section 5(3) of the CST Act, has held that the Assessing Officer not empowered to levy tax on the goods exported but was empowered to levy compounding fees for violation of the declaration. The error in the order of the Appellate Authority is palpable. While concession is obtained on the strength of Government Order issued by the State under TNGST, the dealer is expected to satisfy the mandatory requirements laid under the said G.O which has granted exemption. As per the G.O., the goods purchased ought to have been utilized for the manufacture of vehicles meant for export and the necessary declaration to that effect should be given by the dealer before availing exemption. The G.O further says, in case any violation of the declaration is found later, the dealer is liable to pay tax.

37. In the present case, the trader treated the subject transaction falls within the scope of G.O.Ms.No.381 and availed exemption after furnishing necessary declaration that the goods would be used for the purpose of manufacturing cars proposed to be exported. While so, on verification of the records, the Assessing Officer has found that the dealer could not correlate the purchases with the details of export by producing documents. The readiness of the dealer to furnish H-forms for the export sales is only a lame excuse, since issuing H-form to his seller is of no use without furnishing proof of export.

38. The Tribunal, while considering the challenge to the finding of the Appellate Authority that contravention of G.O.Ms.No.381 issued under Section 17 of the Act will not empower the Assessing Officer to impose Tax but it being an offence punishable under Section 81(2)(d) of the Act. The Assessing Officer to levy compounding fees had affirmed the finding of the Appellate Authority and Assessing Officer that the goods purchased against declaration under G.O.Ms.No.381, dated 15.09.1997, were not utilised in manufacture but disposed of otherwise. Therefore, the Tribunal restored the order of the Assessing Officer holding that the dealer is liable to pay tax at the rate on which the tax on the turnover relating to the purchase of such goods. The trader has failed to produce records that the alleged goods purchased were used in the manufacture of taxable goods. For violation of the conditions stipulated in G.O.Ms.No.381, the trader is liable to pay tax as contemplated under the said

Government order, independently of other provisions of law.

39. We see two important facts been put against the trader in connection with his claim of exemption under G.O.Ms.No.381; firstly, the goods were not supplied to the trader directly but to his Parts Division Centre (PDC), whereas the Government Order issued specifically to the trader granting exemption in respect of goods, including consumables, packing materials and labeling, sold to the trader, namely TVL. Ford India Private Limited (revision petitioner); secondly, no evidence produced by the trader to show that the materials were used for manufacturing as declared.

40. We find when the trader was called upon to explain, after furnishing declarations regarding purchase of goods, how the exempted goods was used in the manufacture of cars for export, the trader had given an evasive reply and started harping of the alternate plea seeking protection under Section 5(3) of the CST Act. As rightly observed by the Tribunal, the alternate plea is not available to the trader after giving a declaration and getting exemption under G.O.Ms.No.381.

41. The Learned Counsel for the revision petitioner submitted that the tribunal, resorting the order of the Assessing Officer, overturning the findings of the Appellate Authority suo motu is against the dictum laid by the Hon'ble Supreme Court in ***State of Kerala vs. M/s.Vijaya Stores, reported in (1978) 4 SCC 41***, wherein the Hon'ble Supreme Court held that:

> *"It is elementary that if a party appeals, he is the party who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has any grievance, he has a right to file a cross-appeal or cross-objections. But if no such thing is done, the other party, in law, is deemed to be satisfied with the decision. He is, of course, entitled to support the judgment of the first officer on any ground open to him, but he is not entitled to raise a ground so as to work adversely to the appellant and in his favour."*

42. No doubt, the Department could have filed an appeal or cross-appeal challenging the observation of the Appellate Authority for remanding the matter to the Assessing Officer for assessing the compounding fees. However, such failure does not foreclose the power of the Tribunal, which was called upon to test the order of the Appellate Authority regarding the exemption claimed under G.O.Ms.No.381. In the appeal filed by the dealer, the Tribunal found error apparent due to misapplication of law. The order of the Appellate Authority to remand for assessing the compounding fees under Section 46 of the TNGST Act, instead of resorting to the proviso 3 of clause(b) of G.O.Ms.No.381, which was issued in exercise of powers conferred under Section 17 of the TNGST Act, necessarily required interference. G.O.Ms.No.381, being a composite subordinate legislation providing for levy of tax in case of any violation of the conditions stipulated in the said G.O. The levy of tax under proviso 3 of clause (b) cannot be substituted by the levy of compounding fees under Section 46 of the TNGST Act.

43. Coming to the alternate plea of the petitioner that the State cannot impose tax on the sale of goods against firm export contracts, since it will be in violation of Article 286(1)(a) of the Constitution, the record discloses that the transaction under scanner is not merely a sale against firm export order which sought to be taxed. It relates to exemption of tax on goods purchased locally on the strength of G.O.Ms.No.381 issued by the State Government in exercise of powers conferred under the State Act. The exemption of tax on materials was provided by the State Government in exercise of powers conferred under Section 17 of the TNGST Act, 1959. The trader having opted to avail the concession and having filed declaration regarding the proposed usage of the goods, he is taxed for violation of the declaration, the trader has to suffer the consequences. After availing the exemption citing G.O issued by the State Government and found to have violated the mandatory conditions laid in the said G.O.Ms.No.381, the dealer is estopped from raising a plea contrary to his own declaration.

44. For the aforesaid reasons, we hold that the Tribunal was right in restoring the order of the Assistant Commissioner while considering the legality of the Appellate Authority order in the appeal raised by the dealer before the Tribunal. Accordingly, substantial question of law (ii) is answered in favour of the Department.

45. Finally, we uphold the order of the Tribunal dated 31st March 2015 passed by Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai. In fine, the Tax Case filed by the dealer is dismissed. There shall be no order as to costs.

(**Dr**. **G.JAYACHANDRAN**, **J.**) & (**N. MALA, J.**)
17-07-2026

Index :Yes.
Neutral Citation :Yes/No.
bsm

To,
1. The Joint Commissioner (CT),
State of Tamil Nadu,
Zone VII,
Chennai.

2. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Chennai.

Dr. G.JAYACHANDRAN, J.
&
N. MALA, J.
bsm

Pre-Delivery judgment made in
T.C.No.81 of 2015

Judgment delivered on
17-07-2026