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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-09-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE E.MANOCHARAN

TC Nos. 15 , 16 of 2018 & 91 of 2014

CNR:{HCMA010918222018}



Case QR

T.C.No. 15 of 2018

The State Of Tamil Nadu
Rep By The Joint Commissioner (ct) Chennai
(north) Division, Chennai-6.

..Petitioner(s)

Vs

Tvl. Bombay Tools Supplying
Agencies Pvt Ltd., 180, Broadway,
Chennai 600 108.

..Respondent(s)



TC No. 16 of 2018

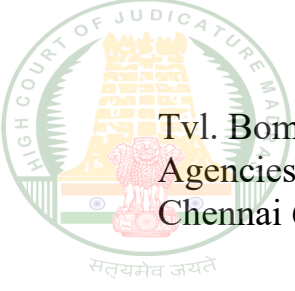
Case QR

CNR:{HCMA010918432018}

The State of Tamil Nadu
Rep By The Joint Commissioner (CT),
Chennai (North) Division,
Chennai-6.

..Petitioner (s)

Vs



Tvl. Bombay Tools Supplying
Agencies Pvt Ltd., 180, Broadway,
Chennai 600 108.

TC No. 15 of 2



Order QR

..Respondent(s)

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TC No. 91 of 2014



Case QR

CNR:{HCMA011110482014}

M/s.Bombay Tools Supplying
Agency Pvt Ltd, 180 Broadway,
Chennai 600 108

..Petitioner (s)

Vs

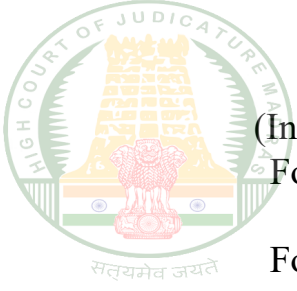
The State Of Tamil Nadu
Rep By The Commercial Tax Officer (FAC),
Loansquare II Assessment Circle,
Chennai 600 108

..Respondent(s)

Prayer in TC No. 15 of 2018 : Appeal filed under Section 38 of TNGST Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, dated 15th day of April 2014 and passed order in TA.No.256 of 2004.

Prayer in TC No.91 of 2014 : Appeal filed under Section 38 of TNGST Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, dated 15th day of April 2014 and passed order in TA.No.190 of 2008.

Prayer in TC No.16 of 2018 : Appeal filed under Section 38 of TNGST Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 15th day of April 2014 and passed order in TA.190/2008.



(In all cases)

For Petitioner(s): Mr.I.Dinesh Additional Government
Pleader

For Respondent(s): Mr.N.Prasad

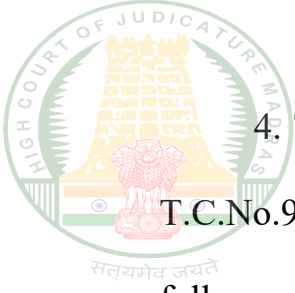
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COMMON JUDGMENT**(Delivered by Dr.Anita Sumanth J.)**

T.C.Nos.15 and 16 of 2018 are filed by the Department and T.C.No.91 of 2014 is filed by the assessee challenging common order of the Sales Tax Appellate Tribunal ('STAT'/'Tribunal') dated 15.04.2014 passed in respect of the periods 2002-03 and 2004-05.

2. The issue concerns eligibility of the assessee to concessional rate of tax in terms of Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). The facts are not in dispute, in that, the petitioner is the purchaser of precision equipments, such as Vernier Calipers, Depth Gauge, Cylinder Gauge etc. from an importer in Kandla Port, and sold to manufacturers in the State of Tamil Nadu on production of Form XVII.

3. For the period 2004-05, Form XVII was admittedly not produced at the time of assessment but only during first appeal. The assessee has received adverse orders concurrently at the stage of assessment, first and second appeals on the ground that mere production of Form XVII, albeit belatedly, does not entitle the assessee to benefit of concessional rate of tax as the usage of the goods does not satisfy the conditions stipulated under Section 3(3) of the Act.



4. The questions that have been admitted for resolution on 10.12.2014 in

T.C.No.91 of 2014 and on 16.02.2018 in T.C.Nos.15 and 16 of 2018 are as

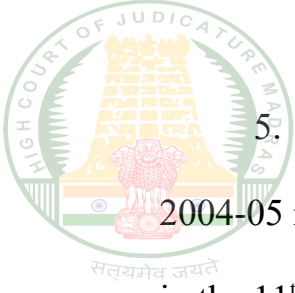
follows:

TC 91 of 2014:

- 1. Whether the Hon'ble Sales Tax Appellate Tribunal committed an error of law in failing to note that the provisions of Section 3(3) of the TNGST Act, 1959, applied to the petitioners as a matter of right, when the petitioners sold precision measuring instruments to buyers who are registered dealers and who in turn issued Form XVII declaration to the petitioners?*
- 2. Whether the Hon'ble Sales Tax Appellate Tribunal has committed an error of law in coming to the conclusion that the precision measuring instruments could not be treated as used in manufacturing activity, which conclusion was contrary to the evidence marked before the Hon'ble Tribunal?*

TC 15&16 of 2018:

- 1. Whether on the facts and circumstances of the case, the Tribunal was right in law, in holding that the imported precision instruments are not falling under any other schedule and to be classified under residuary entry of Tamil Nadu General Sales Tax Act, 1959?*
- 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the imported precision instruments are not fall either under Entry 9 of 11th Schedule or Part D and E of 1st Schedule to the Tamil Nadu General Sales Tax Act, 1959 since they are not specifically mentioned?*
- 3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in not considering the clarification No.101/04 issued subsequently in D.Dis.Acts Cell III/21336/2004 dated 8/4/2004 which is squarely applicable to the case?*



5. T.C.Nos.15 of 2018 and 91 of 2014 relate to the period 2002-03 and 2004-05 respectively. The taxability of the goods would be governed by Entry 9

in the 11th Schedule reading as follows:

E.No.	Description of the goods	Point of levy	Rate of tax
9	Imported Cigarettes, medium density fibre Boards textiles and other items falling in Parts D and E of the First Schedule	First Sale	20 percent

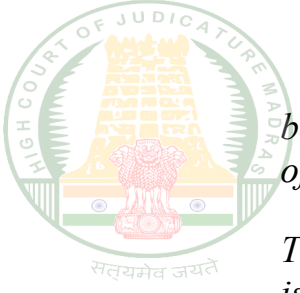
6. Entry 9 is a residuary entry and the rate of tax stipulated therein is 20%. As against the same, the assessee claims rate of tax at 3% on production of Form XVII.

7. In T.C.(A) No.16 of 2018 filed by the Department relating to the period 2002-03, the assessee has, admittedly, not produced Declaration in Form XVII. As the beneficial rate under Form XVII is not available to the assessee, Mr.Prasad puts forth an alternate argument.

8. The Entry in this case has been extracted supra. Mr.Prasad relies on Circular dated 24.05.2002 issued by the Commissioner of Commercial Taxes, in the context of imported goods. The relevant paragraph reads as follows:-

“Imported goods”

As per entry 9 of the XI Schedule imported cigarettes, imported medium density fibre boards, imported textiles and other imported items falling in part-D and E of the First Schedule are liable for tax on 20%. Doubts have been raised on the norms to



be adopted to identify the goods imported from abroad for levy of tax at 20%.

The matter has been examined and the following guidelines are issued for treating an item falling under Entry 9 of the XI Schedule. Further guidelines will issue if required. Doubts, if any, can be referred for clarification.

(i) The commodity should be an item which has a specific mention in Part-D or E; in other words residuary items falling under entry 41 of part-B are not liable for tax at 20%.

(ii) The commodity should be of a foreign make having clear foreign makings.

(iii) The commodity should not be an item sold under a "Indian Brand Name" of "Trade Mark".

(iv) It should not be an item, which had undergone any form of reprocessing, reassembling, reconstitution of repackaging in India.

9. We are not in agreement with the assessee or, for that matter the Commissioner. The reading by the Commissioner of this Entry appears to be that the rate of 20% would be confined only to those items that have been specifically named in Entry 9, and the rate in respect of the other items would be 5%.

10. We do not find any justification for this view. In fact, Entry 9 is comprehensive and deals, in the first part, with imported cigarettes, medium density fibre boards and textiles. The second limb of Entry 9 deals with other items falling under Part D & E of the First Schedule. The subject goods fall under Entry 41/Part D/First Schedule.



11. The conjunction used between the first and second limbs is 'and' which means that the tax treatment accorded to all the items in that Entry should be the same. We thus see no justification for the Commissioner or the Tribunal to have taken a contrary view.

12. The questions of law relating to the period 2002-03 are answered in favour of the Revenue and T.C.No.16 of 2018 is allowed.

13. Section 3(3) as it stood at the relevant point in time reads as follows:

'Section 3(3) Notwithstanding anything contained in sub-section (2), (2-A) or (2-C) but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labeling in connection with such manufacture inside the State, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack shall be at the rate of only three per cent on the turnover relating to such sale.'

14. The argument of Mr.I.Dinesh, learned Additional Government Pleader is to the effect that on a combined reading of Section 3(3) with Form XVII, it is clear that the goods purchased must be of the nature of consumables only, that are subsumed in the process of manufacture. For this purpose, he would draw our attention to the language in the Form that states '*for use by me/us as consumables/packing material/labels/component parts/raw materials/processing materials of other goods which I/We will manufacture inside the*



State for sale'. Since the goods in the subject case are precision testing equipments, they constitute capital goods that are not consumed at any stage of the manufacturing process and hence, according to him, Section 3(3) is inapplicable.

15. Per contra, Mr.N.Prasad, learned counsel for the assessee would draw our attention to the language in Section 3(3) that encompasses 'any goods' so long as it is used in the process of manufacture. The assessee relies on the following decisions:

- (i) *Indian Copper Corporation v. Commissioner of Commercial Taxes*¹
- (ii) *J.K.Cotton Spinning & Weaving Mills Co. v. Sales Tax Officer*²
- (iii) *Premier Electro Mechanical Fabricators, Madras v. The state of Madras*³
- (iv) *Member Board of Revenue, West Bengal v. M/s.Phelps & Co. Pvt. Ltd.*⁴
- (v) *Tata Engineering and Locomotive Ltd. v. State of Bihar*⁵
- (vi) *Sree Murugan Engineering Products v. Commercial Tax Officer, Coimbatore*⁶
- (vii) *Orient Paper and Industries Ltd. v. State of MP & Ors.*⁷
- (viii) *Maruti Handling Equipment's v. Deputy Commercial Tax Officer*⁸

¹ 1965 16 STC 259

² 1965 16 STC 563

³ 1968 22 STC 269

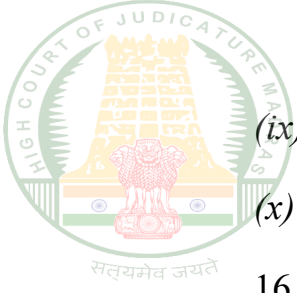
⁴ 1972 29 STC 101

⁵ 1995 96 STC 211

⁶ 2006 148 STC 419

⁷ 2006 148 STC 649

⁸ 2007 7 VST 261



(ix) *Flex Engineering Ltd. v. Commercial of Central Excise UP*⁹

(x) *Glaxo Smithkline Consumer Health Care Ltd. v. State of Tamil Nadu*¹⁰

16. Having considered the rival contentions as also the judgements in *M/s.Phelps & Co.Pvt. Ltd.*¹¹ and *Sree Murugan Engineering Products v. Commercial Tax Officer*¹² we are of the considered view that the benefit under Section 3(3) is available in respect of 'any goods' as long as they are used in manufacture in Tamil Nadu.

17. Section 3(3) is an inclusive provision that extends the benefit of lower rate of tax to any goods, including consumables and excluding plant and machinery. As the subject goods fall neither within the ambit of plant and machinery or consumables, but have admittedly, been used in the manufacture of goods in Tamil Nadu, they would stand covered by the ambit of the phrase 'any goods'.

18. We draw support from the judgment of the Supreme Court in *Phelps & Co.Pvt. Ltd.*¹³ where the issue relating to eligibility to lower rate of tax on sales of industrial gloves that were not subsumed in the manufacture but used as an aid in the manufacturing process, was answered in favour of the assessee.

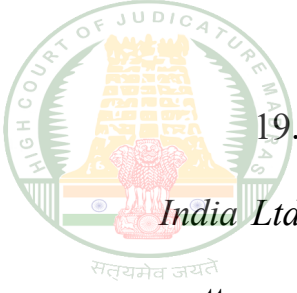
⁹ 2012 276 ELT 153

¹⁰ 2-13 62 VST 294

¹¹ Foot Note Supra (4)

¹² Foot Note Supra (6)

¹³ Foot Note Supra (4)



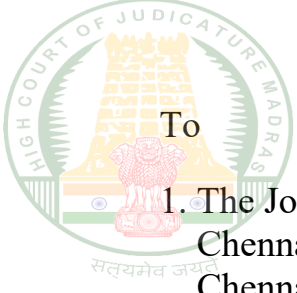
19. Mr.Dinesh refers to the decision dated 07.009.26 of this Court in *Sony India Ltd. V. The Commercial Tax Officer and others*¹⁴. The challenge in that matter was to the classification of imported goods. Sony India was relegated to statutory remedy holding that Article 226 cannot be invoked in those circumstances. In the present case the assessee has purchased imported goods against Form C and thereafter sold to the manufacturer in the State against Form XVII. Hence, the transactions are distinguishable on facts, and that decision is of no assistance to the revenue.

20. In light of the discussion as above, T.C.(A) Nos.15 of 2018 and 91 of 2014 are disposed answering the substantial questions of law in favour of the assessee to the effect that the sale of the goods, admittedly covered by declaration in Form XVII, would be entitled to the benefit of lower rate of tax at 3%. No costs.

(A.S.M.,J.) (E.M.,J.)
17-09-2026

Index: Yes
Speaking order
Neutral Citation: Yes
Sl/ssm

¹⁴ (W.P.No.17424 of 2023 etc.batch)



To

1. The Joint Commissioner (CT),
Chennai (North) Division,
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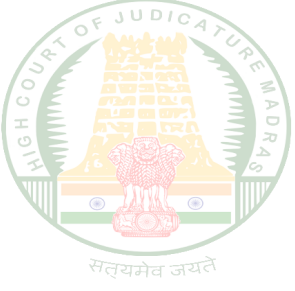
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