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WA(MD) No. 2147 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 21.09.2026**

**PRONOUNCED ON : 28.09.2026**

**CORAM**

**THE HON'BLE MR JUSTICE M.DHANDAPANI**

**AND**

**THE HON'BLE MR.JUSTICE N.DILIP KUMAR**

**WA(MD) No. 2147 of 2021**

**and**

**CMP(MD) No.10190 of 2021**

CNR:{HCMD010865442021}

1. The Principal Chief Commissioner Of Gst And Central Excise,  
Chennai.
2. The Commissioner Of Gst And Central Excise,  
No. 1, Williams Road, Cantonment,  
Tiruchirappalli - 620 001.
3. The Joint Commissioner Of Gst And Central Excise,  
No. 1, Williams Road, Cantonment,  
Tiruchirappalli - 620 001.

..Petitioner(s)

Vs

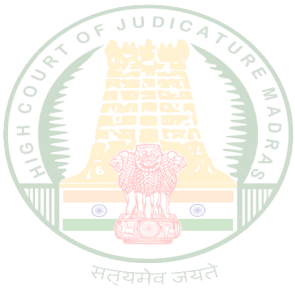
The Senior Regional Manager,  
Tamilnadu Civil Supplies Corporation, Thanjavur  
Region, Sachidanatha Mooppanar Road, Thanjavur -  
613 001.

..Respondent(s)

This writ appeal is filed as against the Order dated 19.03.2021 passed in  
WP (MD)No. 16629 of 2019.

For Petitioner(s):

M/s. R.Gowrishankar  
Senior standing counsel



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For Respondent(s):

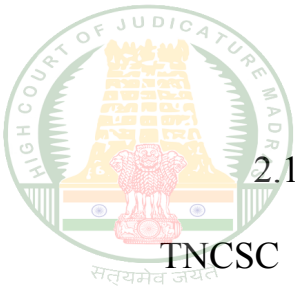
Mr. B. Saravanan  
Additional Advocate General assisted by  
Mr. G. Mohan Kumar  
Additional Government Pleader

### **JUDGMENT**

**(Judgment of the Court was delivered by N.DILIP KUMAR J.)**

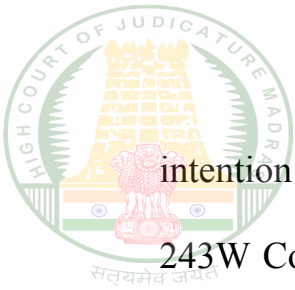
This writ appeal is filed against the order of the learned single Judge dated 19.03.2021 in W.P.(MD) No.16629 of 2019, whereunder the order in original No.18/COMMR/ST/2019 dated 19.02.2019 passed by the 2<sup>nd</sup> appellant was quashed.

2.Mr. R. Gowrishankar, learned senior standing counsel appearing for the appellant, at the outset, would raise a preliminary point that the learned single Judge ought not to have entertained a writ petition, in the light of the availability of an effective alternative appellate remedy. He attempts to draw strength from the action of the writ petitioner in filing a departmental appeal against the order passed in respect of the same subject matter for the earlier period from April, 2012 to September, 2015 vide order dated 26.03.2018 in Order in Original No.13/2018-ST.



2.1. He would further contend that the earlier order was challenged by TNCSC by filing an appeal before the Commissioner (Appeals) in Order in Appeal No.16/2019-TRY (ST) and it had been allowed in favour of TNCSC on 09.01.2019 and there against the Department had filed an appeal before the CESTAT in Appeal No.ST/40546/2019. He would therefore argue that when there is a hierarchy of statutory appeals and further appellate remedy provided under the statutory scheme, it is impermissible for the writ Court to entertain a writ petition directly against the Order in Original passed by the second appellant, more so, when they filed statutory appeal against the order passed for the previous period.

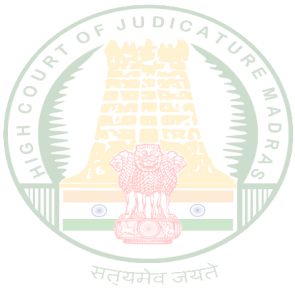
2.2. On the merits of the matter, he would contend that TNCSC is not a government authority competent to claim the exemption under any of the clauses of the Mega exemption notification; there had been various changes introduced to the exemption provisions and the exemption provided under Clause 12 (a) was omitted and was not available at the relevant point of time; and even to claim the said benefit, the writ petitioner should be declared first as an entity established to discharge the duties and responsibilities that are normally rested upon the shoulders of the municipalities as provided under Article 243W of the Constitution of India and the writ petitioner does not satisfy the same; he would thus contend that if TNCSC is not formed solely with an



intention to carry out any functions entrusted to a Municipality under Article 243W Constitution of India, the exemption provided either under Clause 12 or Clause 12A is not available and therefore, the conclusion to the contrary arrived at by the learned single Judge without appreciating the said submission is liable to be interfered with.

2.3 He would further argue that admittedly the writ petitioner utilizes these Scientific Storage godowns (*herein after shortly referred to as SS Godown*) for storing not only the freshly procured and harvested raw Paddy, but they can also use these SS godowns for storing various other agricultural and other commodities including cement and therefore it is not proper to consider the claim of the writ petitioner for exemption under clause 14 (d) of the mega exemption notification.

2.4. The learned senior standing counsel on the merits of the matter would further contend that the conclusion arrived at by the learned single Judge is predicated more on the relief granted to the writ petitioner in his earlier round before the Commissioner (Appeals), Coimbatore in A.No.16/2019-TRY (ST) dated 09.01.2019. He would further argue that the learned single Judge had not appreciated the merits of the matter and had simply bound the appellant to the order passed by the appellate commissioner for the earlier period.



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2.5. He would contend that the benefit of exemption was extended to TNCSC by holding that it is covered under Clause No.12-A(a) of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 and this conclusion is *per se* flawed, since the TNCSC will not satisfy the requirement of being a Governmental authority. Though it is established by the Government with 90% or more participation by way of equity or control, it does not carry out any function entrusted to a Municipality under Article 243W of the Constitution of India, and therefore the order of the writ Court has to be set aside and prayed for allowing the writ appeal.

3. *Per contra*, the learned Additional Advocate General, Mr.B.Saravanan, assisted by Mr.G.Mohan Kumar, learned Additional Government Pleader would seek to support the order of the learned single Judge. He made the following submissions:

3.1. There are no disputed questions of facts involved in the case. TNCSC is established out of the policy decision of the Government of Tamil Nadu to set up an entity to procure, purchase, store, process, move and distribute the food grains and the other essential commodities under the Public Distribution System on behalf of the Cooperation Food and Consumer Production Department of the



Government of Tamil Nadu.

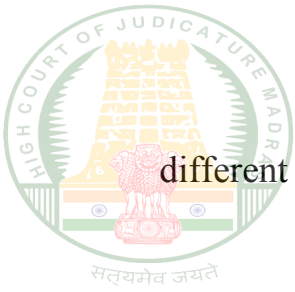
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3.2. TNCSC undertakes procurement of paddy, hulling and utilization of rice under the Decentralized Procurement System for the purpose of further distribution to the poor and needy through fair price shops. TNCSC is registered under Section 25 of the Companies Act, 1956, with effect from 01.04.2010 since it works on No profit/No loss module and it is a Public Limited Company with more than 99% of the government equity holding.

3.3. The major activity of TNCSC is to procure paddy (post harvesting materials) from the farmers through its Direct procurement Centres and store them in the SS Godowns. TNCSC was in the requirement of construction of SS Godown to support the procurement of paddy in the Districts of Tanjore, Thiruvarur, Nagapattinam, Pudukkottai, Karur and Trichy District. All these Godowns are sought to be set up as SS Godowns for the purpose of storing the agricultural produce procured by TNCSC from farmers. Towards construction of this SS Godown, as required under the statutory provisions like Transparency in Tenders Act, TNCSC had to engage private contractors. Various contracts were given to different contractors for construction of these SS Godowns at



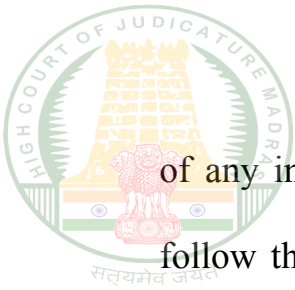
different places.

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3.4. On completion of the construction of these SS Godowns, payments were made by TNCSC to the respective contractors and the Service Tax Department, namely, the appellant falsely demands TNCSC to pay the service tax on the expenses incurred towards construction of SS Godown from TNCSC.

3.5 The demand of service tax from TNCSC upon the expenses incurred towards construction of SS Godowns by engaging private contractors on work contract basis was adjudicated by the appellant Department under two different orders, viz., Order in Original No.13/2018-ST dated 26.03.2018 for the period from April, 2012 to September, 2015 and another Order in Original No.18/COMMR/ST/2019 dated 19.02.2019 for the period from October, 2015 to June, 2017.

3.6. The earlier Order in Original No.13/2018-ST dated 26.03.2018 was the subject matter of an appeal in A.No.79/2018-TRY(ST), which came to be allowed in favour of TNCSC vide order dated 09.01.2019. The appellant Department claims to have challenged the same by way of further appeal. There is no interim stay in the said appeal in favor of the appellant and in the absence



of any interim protection, judicial discipline requires the second Appellant to follow the earlier order of the appellate Commissioner and he could not have taken a divergent view and for this sole reason the impugned order is liable to be set aside and in fact it was rightly struck down by the Writ court and it does not warrant any interference in this appeal.

3.7. Regarding the preliminary objection raised by the Senior Standing Counsel for the Appellant Department, the learned Additional Advocate General would invite our attention to a recent judgment of the Honourable Supreme Court of India in ***Godrej Sara Lee Limited Vs Excise and Taxation Officer -cum- assessing authority and others*** reported in (2025) 11 SCC 808 and reminded ourselves of the long settled proposition that the availability of an effective alternative remedy is only a self-imposed restriction and it is not an absolute bar for the writ court to entertain the writ petition.

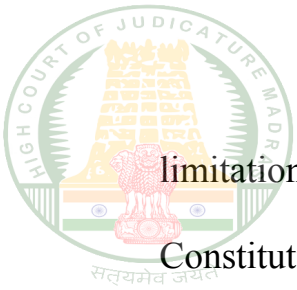
4. Heard the arguments advanced by Mr.R Gowri Shankar, learned senior standing Counsel appearing for the appellant and Mr B Saravanan the learned Additional Advocate General on behalf of the writ Petitioner, at length. We have perused the materials available on record.



5. We will take up the preliminary point argued by the learned senior standing counsel for the appellant that the writ court should not have entertained the writ petition in the light of the availability of an effective alternative appellate remedy against the order in original that was challenged before the single Judge.

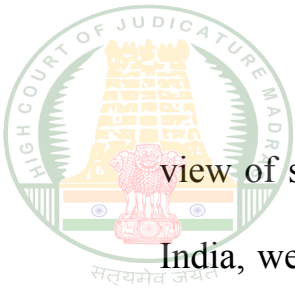
6. This argument was in fact raised as well before the learned single Judge of this Court and the learned single Judge had rejected the said argument on the conclusion that the order in appeal is operating against the writ appellant and they having failed to secure any interim order in their appeal pending before the CESTAT, they ought to have followed the dictum laid down in the order of the first appellate authority and therefore, the rejection of the objection/reply given by the writ petitioner by the second appellant in the order impugned is vitiated and hence, declined to non-suit the writ petitioner on the ground of availability of an alternative appellate remedy.

7. We are in complete agreement with the said conclusion of the learned single Judge. The honourable Supreme Court of India in ***Godrej Sara Lee Vs Excise and Taxation officer*** reported in (2025) 11 Supreme Court Cases 808 has categorically held that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and if at all there is any



limitation sought to be placed upon such power, it must be traceable to the Constitution itself and the mere fact that the writ petitioner before the High Court, in a given case, has not pursued the alternative remedy available to it, it cannot be mechanically construed as a ground for dismissal. The Apex Court as well held that one of the self – imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should not normally entertain a writ petition, where an effective and efficacious alternative remedy is available and then reminded that mere availability of an alternative remedy of appeal or revision, would not oust the jurisdiction of the High Court and render a writ petition “Not maintainable”.

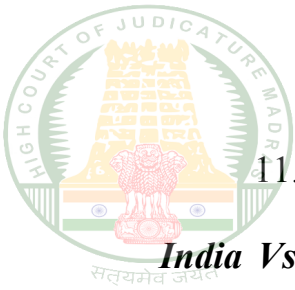
8. The Apex court held that the writ Court is justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute, in the case of existence of the exceptions like, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of the natural justice principles; (iii) where the orders or the proceedings are wholly without jurisdiction; or (iv) where the vires of the Act are under challenge. The Apex court also held that if the controversy is purely legal and does not involve disputed questions of fact, but only questions of law, then the case can be decided by the High Court and it need not be dismissed on the ground of availability of an alternative appellate remedy. In



view of such categorical pronouncement by the Honourable Supreme Court of India, we overrule the objection raised by the learned Senior Standing Counsel on the entertainability of the writ petition.

9. Further, we cannot remain oblivious to the long pendency of this litigation. The Order in Original was passed on 19.02.2019 and the writ petition filed in 2019 was disposed in 2021 and this writ appeal was filed in 2021 and it is pending since then. The writ petition and the writ appeal had taken more than 7 years to attain finality. Therefore, it may not be proper for us to relegate the writ petitioner to the original authority either by setting aside the Order impugned before the Learned single Judge or grant liberty to the writ Petitioner to pursue the appellate remedy.

10. The learned single Judge had held that the appellant Department is bound by the order it suffered before the Commissioner (Appeals), Coimbatore dated 09.01.2019. We are in agreement with the said conclusion of the learned single Judge, since it is an admitted fact that the said order in appeal is challenged by the Department before the CESTAT and it is pending in the said Tribunal in Appeal No.ST/40546/2019, without any interim stay in favour of the appellant department.

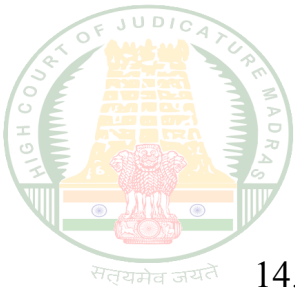


11. A three Judges' bench of the Hon'ble Supreme Court *in “Union of India Vs. Kamlakshi Finance Corpn.,”* reported in *1992 Supp (1) SCC 443*

held that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. It is held that the revenue officers are bound by the decisions of the appellate authorities, while disposing the quasi – judicial matters coming before them and it is held that the order of the appellate commissioner is binding on the subordinates working within his jurisdiction.

12. Thus the conclusion arrived by the learned single Judge that the appellant department, particularly, the second appellant who passed the order impugned before the learned single Judge is bound by the earlier order of the Commissioner (appeals) dated 9<sup>th</sup> January 2019, is perfectly valid, and the refusal of the Second appellant to follow the earlier order of the appellate Commissioner is contrary to the principles of judicial discipline, as recognised by the Apex court in the judgement mentioned supra.

13. The learned single Judge had not seriously tested the correctness of the order in original and had instead concluded the case, as discussed supra. Since extensive arguments were advanced on the merits of the case as well, we shall proceed to consider those primary issues as well.

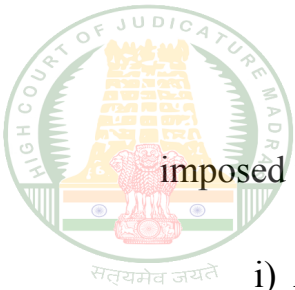


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14. The issue involved relates to the levy of service tax upon the payments made by the Tamil Nadu Civil Supplies Corporation (*herein after shortly called as TNCSC*) to private contractors, towards the works contract service of construction of SS Godowns.

15. The facts are not in dispute. TNCSC is seeking the benefit of exemption under 12-A(a) and 14(d). They would contend that TNCSC is a Governmental authority and services have been provided by the private contractors to TNCSC towards construction of civil structure, which was meant for use towards facilitating the Government Public Distribution System and it does not fall within the ambit of Commerce or Industry or any other business or profession and therefore, the services rendered by them are exempted under Section 12A(a). Similarly, TNCSC contends that it is eligible for exemption under Section 14(d), as it utilized the services of the private contractors towards construction of post-harvest storage infrastructure for agricultural produce, like paddy and other commodities and thus, their SS Godowns and its constructions will fall within the exemption.

16. In the Order in Original No.18/COMMR/ST/2019, which was impugned before the learned single Judge of this Court, the Commissioner had



imposed the following levy under the Finance Act, 1994 upon the TNCSC.

i) A demand of service tax of Rs.2,63,01,725/- upon TNCSC towards works contract services received by them from the individual contractors during the period from October, 2015 to June, 2017 under Section 73(1) of the Finance Act, 1994.

ii) Interest on the above amount of service tax under Section 75 of the Finance Act, 1994.

iii) A penalty of Rs.10,00,000/- under Section 76 for the failure of TNCSC to pay the service tax.

iv) A penalty of Rs.5,000/- under Section 77(1)(a) of the Finance Act, 1994 on TNCSC for their failure to take registration in accordance with the provisions of Section 69 of the Finance Act, 1994.

v) A penalty of Rs.5,000/- under Section 77(2) of the Finance Act, 1994 of TNCSC for the non-submission of ST-3 returns.

17. The subject compels our attention to the Mega Exemption Notification No.25/12 dated 20.06.2012, introduced by the Government, providing different kind of exemption for as many as 39 categories. The following are the relevant extracts: -

““*Clause. 12A. Services provided to the Government, a local*



*authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -*

*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

*(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*

*(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act; under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016.*

.....

*Clause 14. Services by way of construction, erection, commissioning, or installation of original works pertaining to, -*

*(a) railways, excluding monorail and metro;*



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*Explanation. -The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”. Substituted vide Notification 9/2016- Service Tax with effect from 1 March 2016.*

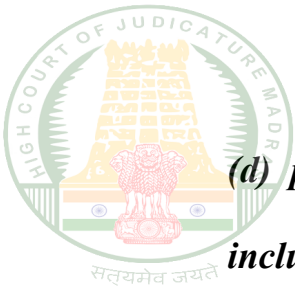
*(b) a single residential unit otherwise than as a part of a residential complex;*

*(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;*

*“(ca) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:*

*(i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;*

*(ii) any housing scheme of a State Government.”. Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016.*



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*(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or*

*(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;”*

18. We shall first take up the argument whether TNCSC is eligible for exemption under Clause 12A of the Mega Exemption Notification No.25/2012 dated 20.06.2012. To avail the said benefit, the entity like TNCSC should satisfy that it is a Governmental authority as prescribed under Clause 2(s) of the said Notification, which is extracted hereunder,

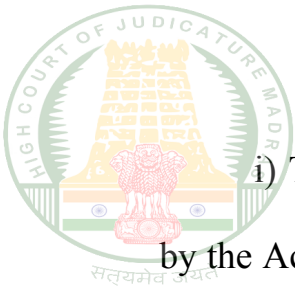
*(s) "governmental authority" means an authority or a board or any other body;*

*(i) set up by an Act of Parliament or a State Legislature; or*

*(ii) established by Government,*

*with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;*

19. To satisfy the same, the following factors should be established:-



i) The authority or the Board or any other body should have been set up by the Act of a Parliament or a State legislature or should have been established by the Government.

ii) In such entity, there should be 90% or more participation by way of equity or control by the respective Government.

iii) The entity should have been formed to carry out **ANY** functions entrusted to a Municipality under Article 243W of the Constitution of India.

20. TNCSC is admittedly established by the Government of Tamil Nadu; The Government of Tamil Nadu has more than 99% of participation by way of equity investment in TNCSC and thus, the first two factors are fully satisfied. With regard to the third factor as to whether TNCSC is established to carry out any function entrusted to a Municipality under Article 243W of the Constitution of India, we refer to Serial Nos. 3, 9 and 11 of the 12<sup>th</sup> Schedule under Article 243W of the Constitution of India.

21. Article 243W of the Constitution of India reads as under:-

***“243W. Powers, authority and responsibilities of Municipalities, etc. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--***

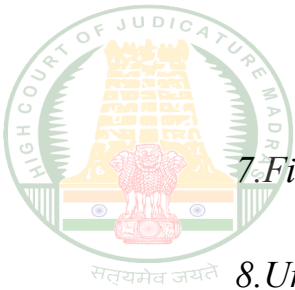


*(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—(i ) the preparation of plans for economic development and social justice;(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

*(b)the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”*

The 12<sup>th</sup> schedule, reads as under: -

- “1. Urban planning including town planning;*
- 2.Regulation of land use and construction of buildings;*
- 3.Planning for economic and social development;***
- 4.Roads and bridges;*
- 5.Water supply for domestic, industrial, and commercial purposes;*
- 6.Public health, sanitation, conservancy, and solid waste management;*



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*7. Fire services;*

*8. Urban forestry, protection of the environment, and promotion of ecological aspects;*

*9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;*

*10. Slum improvement and up-gradation;*

*11. Urban poverty alleviation;*

*12. Provision of urban amenities and facilities such as parks, gardens, and playgrounds;*

*13. Promotion of cultural, educational, and aesthetic aspects;*

*14. Burials and burial grounds, cremations and cremation grounds, and electric crematoriums;*

*15. Cattle ponds, prevention of cruelty to animals;*

*16. Vital statistics including registration of births and deaths;*

*17. Public amenities including street lighting, parking lots, bus stops, and public conveniences; and*

*18. Regulation of slaughterhouses and tanneries.”*

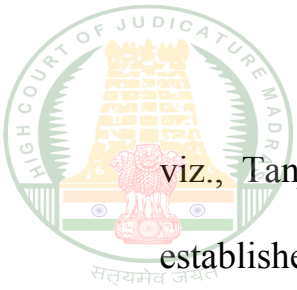
22. TNCSC is admittedly a public company registered under Section 25 of



the erstwhile Companies Act, 1956, with effect from 01.04.2010 and it is formed not for profit making but to aid the State in its endeavour to alleviate urban poverty; safeguard the interest of the weaker section of the society and also provide for Social and Economic Development Planning.

23. The activity of TNCSC is primarily to procure paddy from farmers through District Procurement Centres, store them and transfer them to the Fair Price Shops for distribution to the general public under the Public Distribution System at very low subsidised rates and it is also involved in the procurement of other commodities for distribution among the general public at a fair price and these are certainly towards achieving the object of poverty alleviation and social and economic development planning. Thus, TNCSC satisfies the third criteria as well and it is certainly discharging some of the functions vested with a body under Article 243W of the Constitution. TNCSC thus qualifies to be a Governmental Authority, as prescribed under Clause 2(s) of the Mega Exemption Notification and they are certainly eligible for the exemption under Clause 12-A of the said Mega Exemption Notification.

24. The other argument as to whether TNCSC is eligible for Clause 14(d) of the Mega Exemption Notification need not detain us any longer. Admittedly, the subject Godowns were constructed in the major paddy growing Districts,



viz., Tanjore, Thiruvarur and others (rice bowls of the STATE). These are established as SS Godown primarily for the purpose of storing the paddy procured from the farmers through District Procurement Centres. The possibility of the later usage of these Godowns for storage of other commodities to be distributed under the Public Distribution System through Fair Price Shops cannot be the determining factor to ascertain whether the exemption towards the expenses incurred by the TNCSC for constructing these SS Godowns, from service tax.

25. The primary test for eligibility to claim exemption from service tax is the objective, design and actual immediate use of the infrastructure at the time of its execution. If the SS Godowns are built specifically to house essential commodities/ agricultural produce (such as paddy or rice) for the public distribution system, they fulfil the criteria.

26. The appellant department cannot deny an exemption based on hypothetical, future alternate uses. As long as the infrastructure fits the definition of post-harvest storage at the time of the service provision, subsequent or auxiliary changes in utilisation do not retro-actively dissolve a valid statutory exemption. TNCSC has categorically stated in its reply that the storage of other commodities happens only in Taluk godowns and not in these

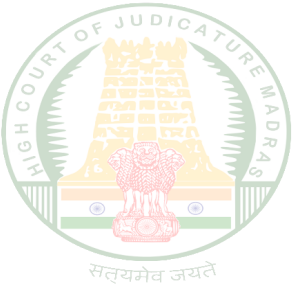


SS Godowns and these are used for the purpose of post-harvest storage of agricultural produce (such as paddy or rice). TNCSC operates under the control of the state government, primarily to execute public welfare functions such as food security and PDS distribution and this strongly supports the non – commercial, public utility nature of the construction and thus it is protected from being classified as a generic commercial warehouse. Thus TNCSC is eligible to claim exemption under Clause 14 [d] Of the mega exemption notification, insofar as the expenses incurred towards construction of these SS Godowns.

27. Accordingly, we uphold the conclusion of the learned single Judge to set aside the order in original No.18/COMMR/ST/2019 dated 19.02.2019 passed by the 2<sup>nd</sup> appellant. The Writ Appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**(M.D.I.,J.) (N.D.K.,J.)**  
**28-09-2026**

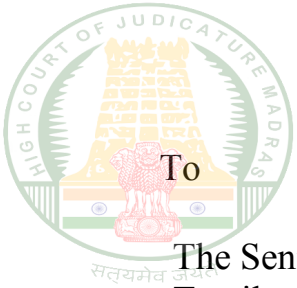
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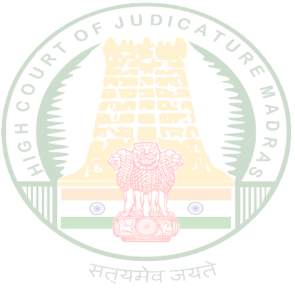




To

The Senior Regional Manager,  
Tamilnadu Civil Supplies Corporation, Thanjavur  
Region, Sachidanatha Moopanar Road, Thanjavur -  
613 001.

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**M.DHANDAPANI, J.  
AND  
N.DILIP KUMAR, J.**

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**order made in  
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