



W.P. Nos.19625 to 19628 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 23.09.2025

Order pronounced on: 03.11.2025

**CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM**

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

**W.P. Nos.19625 to 19628 of 2008
and MP.Nos.1, 1 & 1 of 2008**

M/s.Light Roofings Ltd.,
Rep. by its Managing Director,
226, Avvai Shanmugham Road,
Chennai 86.

... Petitioner in all WPs.

Vs.

1. The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Branch,
Rep. by its Secretary,
City Civil Court Building,
Chennai 104.
2. The Appellate Assistant Commissioner (CT) IV,
VI Floor, Kuralagam Annex,
Chennai 108.
3. The Commercial Tax Officer,
Royapettah I Assessment Circle,
Chennai.
... Respondents in all WPs.

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in S.T.A.Nos.898/2001, 1532/2001, 1521/2001 and T.A.No.720 of 2001 and quash the impugned order dated 19.02.2008 as illegal and contrary to the law laid down by the Courts.



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For Petitioner(s) : Mr.P.Rajkumar
in all W.Ps.

For Respondent(s) : Mr.V.Prashanth
in all W.Ps. Government Advocate (Tax)

COMMON ORDER

MOHAMMED SHAFFIQ, J

The present Writ petitions have been filed seeking to quash the impugned proceedings of the first respondent dated 19.02.2008.

2. The short question that arises for consideration in all the four Writ Petitions challenging the common order of the Sales Tax Appellate Tribunal (hereinafter referred to as "Tribunal), is whether purchase tax is leviable under Section 7A of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as TNGST Act) on the premise that tax has not been paid/remitted by the seller/vendor.

3. Petitioner herein is engaged in the manufacture and sales of Asphalt Roofing Sheets. Petitioner was registered under the TNGST Act during the assessment years 1993-1994 to 1996-1997. There was inspection of petitioner's place of business by the Enforcement Wing on 21.03.1996. During the course of inspection, it was noticed that petitioner's effected purchases of Asphalt from Sri Vinayaga Agencies and Sri Mahalakshmi Agencies, however, the said sellers/vendors had not discharged the taxes on such sales. Petitioner



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used the Asphalt so purchased in the manufacture of other goods. The goods so manufactured was sold and appropriate taxes was paid by petitioner on manufactured goods sales which is not in dispute. The following Table would show purchases made by the petitioner during the relevant period from the above dealers namely Sri Vinayaga Agencies and Sri Mahalakshmi Agencies:

Sl.No.	Name of the vendor	Year	Turn over
1	M/s Sri Vinayaka Agencies	1993-1994	47,94,594/-
	Tvl. Sri Mahalakshmi Agencies		1,17,169/-
2	M/s Sri Vinayaka Agencies	1994-1995	53,09,502/-
	Tvl. Sri Mahalakshmi Agencies		14,51,801/-
3	M/s Sri Vinayaka Agencies	1995-1996	46,50,739/-
	Tvl. Sri Mahalakshmi Agencies		7,85,214/-
4	M/s Sri Vinayaka Agencies	1996-1997	24,97,505/-
	Tvl. Sri Mahalakshmi Agencies		16,71,458/-

4. An order of assessment came to be passed for the above years levying tax on the purchases made by the petitioner from the above two dealers under Section 7A of the TNGST Act. Assessments were made under Section 7A of the TNGST Act on the premise that the two sellers viz., Sri Vinayaga Agencies and Sri Mahalakshmi Agencies did not pay tax dues on the above sale nor claimed exemption as second or subsequent sale in the State of Tamil Nadu. Aggrieved petitioner preferred an appeal before the First Appellate Authority



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i.e., Appellate Assessment Commissioner.

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5. The Appellate Authority remanded the matter back after finding that the enquiries made by the Assessing Authority was inconclusive and inadequate, to support the conclusion, the relevant portion is extracted hereunder:

“.....(4) Though, the inspecting officials made detailed investigation and through enquiries, there is some force in the arguments and the plea of the Authorised Representative that either the Enforcement Wing Officials or the Assessing Officer had not verified the banking records and also not enquired the banking authorities to ascertain the address given by the above said two dealers while opened the Bank account whether the address given in the Form D Application vation for Registration and in the banking is were one and the same and also enquiries were not made from the Introducer who introduced the above two dealers for opening of Bank Account. Furthermore, they had not foundout the name of the Nominees of the above two dealers and no enquiries made with the nominees. On verification of all the records which not revealed, regarding the enquiries made from the persons who signed as "Witnesses" in the Form 'D' Application for Registration under TNGST Act.

(5) Based on the above facts and circumstances, no other alternative except remitted back the appeal to the Assessing Officer to make a fresh order.

(6) Consequent on the appeal is remanded, the tax, SC, ASC and



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AST levied will not stands holdgood.

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(7) As the appeal is remanded, the Penalty Levied will not stands holdgood.

(8) In the result, the appeal is remanded back to the Assessing Officer and the Assessing Officer is directed to make fresh order within eight weeks from the date of receipt of this appeal order."

6. Pursuant to the above order of remand, Assessing Authority confirmed levy of purchase tax under Section 7A of the TNGST Act on finding that petitioner's vendors were non-existent dealers. Aggrieved petitioners preferred appeal before the Appellate Assistant Commissioner in A.P.Nos.119 and 223 of 2000. Appellate Authority vide order dated 11.07.2000 allowed the appeal on finding that investigation to find existence or otherwise of a dealer much after the relevant assessment year is unjustifiable, further, Assessing Officer ought to have proceeded against the seller thus levy of purchase tax on the petitioner was unsustainable.

7. Aggrieved State carried the matter in appeal before STAT. STAT by way of a common order vide order dated 19.02.2008, set aside the order of the Appellate Authority and confirmed the levy of purchase tax under Section 7A of TNGST Act.



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8. The present Writ Petition is filed challenging the above order of STAT on the premise that Tribunal orders suffers from the following infirmities, viz.,

- a) Whether in view of the fact that tax payable to the State under Section 3(2) of the TNGST Act by seller was not been paid by seller, levy of purchase tax on the buyer/purchaser under Section 7A of TNGST Act would get attracted.
- b) Whether impugned order of STAT fails to apply its mind to relevant material records/documents in the form of sale bills, payment of sale consideration by way of cheques, transport documents etc.,

9. The learned counsel for petitioner would submit that merely because taxes were not paid by seller, levy of purchase tax under Section 7A of TNGST Act is unwarranted. Purchase tax under Section 7A of TNGST Act would get attracted only if purchase is made in circumstance in which no tax is payable and not when tax is not paid by seller though the sale was liable to tax. The order of Tribunal is wholly misplaced inasmuch as it fails to take into consideration of the factors that are relevant and places emphasis on factors not relevant.

10. To the contrary, learned counsel for respondent would submit that the tax payable under Section 7A of the TNGST Act pre-supposes the fact that the tax get paid at the very point of time when liability arises. The consequence of non payment of taxes by the seller/vendor under Section 3(2) of TNGST Act,



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would attract purchase tax under Section 7A of the TNGST Act. The Tribunal having found that the taxes had not been paid/discharged by the petitioner's vendor/seller challenge to levy of purchase tax is unsustainable.

11. Having heard both sides perused the material on record including the order of the lower authorities, we find that for the purpose of resolving the controversy it may be relevant to extract Section 7A of the TNGST Act, which reads as under:

“Section 7-A. Levy of Purchase Tax.

(1) Subject to the provisions of sub-section (1) of Section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase or which is liable to tax under this Act) in circumstances in which no tax is payable under Section 3 or 4 as the case may be, (not being a circumstance in which goods liable to tax under sub-section (2) of Section 3 or Section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule) and either,-

- (a) consumes or uses such goods in the manufacture of other goods for sale or otherwise; or*
- (b) disposes of such goods in any manner other than by way of sale in the State; or*
- (c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State*



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trade or commerce, shall pay tax on the turnover relating to the purchase as aforesaid at the rate mentioned in Sections 3 or 4, as the case may be,

(2) Notwithstanding anything contained in sub-section (1), the provisions of Section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods (the sale of which is liable to tax under sub-section (1) of Section 3 and whose total turnover for a year is not less than one lakh of rupees but not more than two lakhs of rupees and such a dealer may, at his option, instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of Section 7:

Provided that this sub-section shall not apply to the purchases made on or after the 1st day of April, 1990.

(3) Every dealer liable to pay purchase tax under sub-section (1). shall, for the purposes of this Act, be deemed to be a registered dealer"

12. It is trite that Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, is a separate charging section. It may be relevant to note that Hon'ble Supreme Court, in the case of the State of Tamil Nadu vs. M.K.Kandaswami and others (36 STC 191) had while examining Section 7A of TNGST Act, found that Section 7-A(1) can be invoked if the following ingredients are cumulatively satisfied:

(i) The person who purchases the goods is a dealer;



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- (ii) The purchase is made by him in the course of his business;
- (iii) Such purchase is either from "a registered dealer or from any other person";
- (iv) The goods purchased are "goods, the sale or purchase of which is liable to tax under this Act";
- (v) Such purchase is "in circumstances in which no tax is payable under section 3, 4 or 5, as the case may be"; and
- (vi) The dealer either
 - a) consumes such goods in the manufacture of other goods for sale or otherwise
 - b) despatches all such goods in any manner other than by way of sale in the State or,
 - c) Despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce.

13. It is clear that for levy of purchase tax to get attracted, purchase must be made "*in circumstance which no tax is payable*". The expression no tax is payable would not take with in its fold a transaction of sale on which tax is payable but not paid by the vendor. The following portion of the order of the STAT would show that the Tribunal looked to the factum of non payment of taxes by the petitioner's seller/vendor to levy purchase tax under Section 7A of TNGST Act. The following observations are relevant



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“18.....The consequential legal position will be that where the tax payable to the State under section 3(2) of the Tamil Nadu General Sales Tax Act were not paid in relation to the sales made by the vendors, which point of fact cannot be disputed by the assessee herein, the assessee having made such purchases upon which no tax was paid and having used such materials in the manufacturing of Asphalting Roofing Sheets, the liability spoken of in section 7A of the Tamil Nadu General Sales Tax Act gets attached with. We therefore have no hesitation in holding that the assessee's transaction of purchases, claimed to have been made from the above two vendors (Sri Vinayaga Agencies and Sri Mahalakshmi Agencies) upon which no taxes were paid to the State during the assessment years 1993-94, 1994-95, 1995-96 and 1996-97 have been correctly assessed to tax under section 7A of the Tamil Nadu General Sales Tax Act, 1959.”

14. The above reasoning of Tribunal is misconceived inasmuch as admittedly the goods in question are liable to tax at the 1st point of sale. The taxable person is petitioner's vendor. Importantly, petitioner's vendor's turnover is beyond and in excess of the threshold limit provided under Section 3 of TNGST Act, thus sale by petitioner vendors are liable to tax. In this regard, it may be relevant to refer to the judgment of Kerala High Court in the case of *The Kerala Premo Pipe Factory Ltd., v. State of Kerala*, reported in 57 STC 84, rendered in the context of provision relating to purchase tax under Kerala General Sales Tax Act which is *pari materia* to Section 7A of TNGST Act. The relevant portion of the judgment is extracted hereunder:

“2. Though the tax under section 5A relates both to purchase of river sand and charcoal the revision petitioner does not press his case with regard to the taxability of the turnover of charcoal. We are only concerned with river sand. It is said that the entire river



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sand is purchased from one contractor and the purchase turnover of Rs. 33,963.80 exceeds the minimum turnover which makes a dealer taxable during the relevant year. Consequently it is said that irrespective of the question whether the contractor who supplies river sand to the assessee was taxed or not, irrespective of even the question whether he had registered himself as a dealer or not there is no liability for the assessee under section 5A.

3. Section 5A is intended to drag into the net of taxation transactions of purchase where such transactions are not liable to suffer tax in the hands of the seller and the goods do not return to the commercial stream for the purpose of being taxed. If goods purchased by a dealer are consumed or used in the manufacture of other goods no doubt the goods so manufactured are subjected to tax, but if the components are not likely to suffer tax as such components they are taxable under section 5A. The question is not whether the sales tax authorities have imposed tax upon the transaction in the hands of the seller to the assessee, but whether that is liable to be so taxed. In this case it is very clear that the person who sold to the assessee had a turnover in excess of the minimum and irrespective of the question whether he was registered as a dealer or not he was liable to pay tax under the General Sales Tax Act. If so, it cannot be said that transaction of purchase by the assessee was under circumstances in which no tax was payable under section 5. Hence with regard to the turnover of river sand there will, be no liability in the assessee to pay tax. To that extent the revision petitioner succeeds."

15. On applying the ratio of the above judgment to the facts of this case, it leaves no room for doubt that turnover of petitioner's vendor being in excess of the threshold under Section 3(2) of TNGST Act, levy of purchase tax is impermissible. We say so, inasmuch as purchase tax under Section 7A of TNGST Act, gets attracted only if sale is made in circumstances in which no tax is payable, however, as seen supra sale by petitioner's vendor is liable to tax. Thus, levy of purchase tax under Section 7A of TNGST Act, cannot be



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sustained.

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16. Having found that the sale to petitioner is liable to tax in the hands of the petitioner's vendor, levy of purchase tax only on the premise that petitioner's vendor had not remitted tax cannot be sustained. If petitioner's vendor fails to remit appropriate tax, Revenue ought to proceed against the petitioner's vendor, instead any levy of purchase tax by the respondent would be bad for want of jurisdiction and cannot be sustained.

17. In the light of the above discussion, the impugned order of the Tribunal is set aside and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J] & [M.S.Q., J]

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

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Pre-delivery order in
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