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Relevant portion of it read as under:-

Turmeric finger/powder with no ingredients, chilly whole/powder with no ingredients, cumin seeds/powder with no ingredients, fennel seeds/powder with no ingredients, black pepper/whole/powder with no ingredients-

The sale of the above 5 items by a dealer whose total turnover in a year is less than Rs.300 crore is not liable to tax under Item 16 in Part B of the 3<sup>rd</sup> Schedule to the T.N.G.S.T Act, 1959 is eligible for exemption from tax. (to check)

56.As mentioned above, the above clarifications of the Government of Tamil Nadu was considered by a Division Bench of this court in **Hotel Shri Kannan versus State of Tamil Nadu** [2007] 8 VST 97 (Madras).

57.The Division Bench of this court there had set aside the assessment orders impugned therein as the orders were passed without reference to the above clarification.

58.The above clarification was issued under Section 28A of the TNGST Act, 1959. When the above rulings was given, as per decision of the Hon'ble Supreme Court, the clarifications of the Government were binding on the Revenue and as long as such clarifications of the Revenue were in force, it was held that the Revenue cannot plead or be heard to take a stand contrary to the same.

59.However, the position is now slightly different in the light of the decision of the Hon'ble Supreme Court in Commissioner of **Central Excise versus Ratan Melting and Wire Industries** (2008) 13 SCC 1. Clarifications of the Boards are not binding on the Courts though the revenue cannot take a stand contrary to such clarifications.

60.Further, a provision similar to Section 28A of the TNGST Act, 1959 is conspicuously absent in the Tamil Nadu Value Added Tax Act, 2006. Under the latter enactment, a dealer could approach only before the State-Level Authority for a clarification under Section 48A of the Act for such clarification. Such clarification is not only binding on the assessee's

but also on the Commercial Tax Department. Therefore, the 1999 Government Clarification as amended in 2000 cannot be relied upon starightaway.

61.That apart, the above clarification was issued in the context of TNGST Act, 1959 whereas the dispute in the present case is under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

62.Though under Section 88(3)(i) of the Tamil Nadu Value Added Tax Act, 2006, clarification issued under the provisions of the TNGST Act, 1959 continue to be force unless are cancelled or are inconsistent with the provisions of the Act. Therefore, the impugned orders cannot be set aside and the case be remanded back to the original authority merely because under an identical situation the Division Bench had earlier relegated the parties to alternate remdey with few observations.

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63.A solitary view taken by a single judge of this Court in a Batch of W.P(MD).No.11425 of 2016 vide common order on 6.12.2018 in the

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case of **M/s. NVR & Co. Vs The Asst. Commissioner (CT) Virudhnagar and others** in the context of Section 12 of the Tamil Nadu Value Added Tax Act, 2006 upholding the demand under similar circumstances has also been set aside by a Division Bench of the Madurai High Court in W.A (MD) No.557 of 2019 in its order dated 31.10.2019. A similar order passed in W.A (MD) No.558 of 2019 8.11.2019 arising out of the common order of the learned single judge.

64. The learned single judge was influenced by the decision of the Hon'ble Division Bench in the case of **Ruchi Soya Industries** and the decision of the Hon'ble Supreme Court in **K.N.Kandaswami case** (2015)15S CC 98 and accepted the views of the commercial tax department that there was a larger object behind incorporation of Section 12 of the Tamil Nadu Value Added Tax Act, 2006 to ensure that the State will not lose its revenue atleast at one stage.

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65. The Hon'ble Division Bench however set aside the said order on



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the existence of alternate remedy by asking the petitioner to file an appeal taking note of the observation made in order passed in W.A (MD) No. 557 of 2019. In W.A (MD) No. 557 of 2019 though in paragraph 17 of the said order it was observed that “.....**In any event we have held that the writ petitions were premature, we have to necessarily vacate the findings rendered by the learned single judge on the taxable issue leaving it open to the Assessing Officer to consider the individual case of the dealers individually and independently**”. There appears to be some inconsistency between the above observation in para 17 and the ultimate direction to the petitioner therein to file an appeal before the appellate authority in those cases. Thus, the Hon’ble Division Bench has also not answered the question of law.

66. Therefore, I am inclined to dispose these writ petitions on merits as I do not see any point in remitting the case back without any observation. as considerable time has lapsed since these writ petitions were admitted in 2016.

67.I am further of the view that there is no point in directing the petitioner to either approach the appellate authority or to relegate the petitioner to the original authority by simply setting aside the impugned orders without discussing the law on the subject in absence of a clear precedent on the law. A mere remand without any obseravtion also would servcie no purpose but would only result in further delay in resolution of dispute and lead to another rounds of litigation and would serve no purpose.

68.Both Section 7-A of the TNGST Act 1959 and Section 12 of the Tamil Nadu Value Added Tax Act, 2006 are the charging Sections for levy and collection of purchase tax under the respective enactments. They read almost identically. For a better appreciation of the dispute, both the provisions are reproduced below:-

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<b>Section 7-A of the Tamil Nadu General Sales Tax Act, 1959.</b>	<b>Section 12 of the Tamil Nadu Value Added Tax Act, 2006.</b>
<p><b>Levy of Purchase Tax.</b>                      1 . Subject to the provisions of subSection (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 of which is liable to tax under this Act) in circumstances in which [no tax is payable under Section s 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, –</p> <p>(a) [consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or]</p> <p>(b)disposes of such goods in any manner other than by way of sale in the State, or</p> <p>(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 trade or commerce,</p> <p>shall pay tax on the turnover relating to the purchase aforesaid at the <b>rate mentioned in [Section s 3 or 4], as the may be.</b></p>	<p><b>Levy of Purchase Tax.</b>                      (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 of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act, and either–</p> <p>(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or</p> <p>(b) disposes of such goods in any manner other than by way of sale in the State; or</p> <p>(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 trade or commerce or in the course of export of the territory of India; or</p> <p>(d) installs and uses such goods in the factory for the manufacture of any goods,</p> <p>shall pay tax on the turnover relating to the purchase aforesaid <b>at the rate specified in the Schedules to this Act.</b></p> <p>(2)Notwithstanding anything contained in clause (24) of Section 2, the dealer who pays tax under sub-Section (1) shall be entitled to input tax credit on the goods specified in the First Schedule.</p>

69. While under Section 7A of the TNGST Act,1959, tax was payable at the rate mentioned in Section 3 or 4 as the case may be of the Act. However, under Section 12(1) of the Tamil Nadu Value Added Tax Act,2006, tax is payable at the rate specified in the Schedules to this Act.

70. Both Section 8 of the TNGST Act, 1959 and Section 15 of the Tamil Nadu Value Added Tax Act, 2006 provide for exemption. They exempted a dealer from payment of tax whose turnover in respect of items mentioned does not exceed Rs. 300 crores in a year.

71. Merely because they read identically, the interpretation given by the Courts earlier for levy of purchase tax under Section 7A of the TNGST Act, 1959 and exemption cannot be straight away imported for levy of purchase tax under Section 12 of the Tamil Nadu Value Added Tax Act,2006 in view of few differences in the language in Item 16,III Schedule to the TNGST Act, 1959, and Item 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006.

72.Item 16,III Schedule to the TNGST Act, 1959 was to be read along with Section 8 of the TNGST Act, 1959. Similarly, Item 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006 has to be read along with and Section 15 of the said Act, 2006. Though they gave to dealers of the goods enumerated therein exemption from payment of tax upto Rs 300 Crores, yet the consequence under the respective enactments are different as far as levy of purchase tax are concerned. Both the Items are reproduced below for comparison:-.

<b>ITEM: 16,III Schedule to the TNGST Act, 1959</b>	<b>ITEM: 18, Part B IV Schedule to the Tamil Nadu Value Added Tax Act, 2006.</b>
Chilies, tamarind, coriander and <b>turmeric</b> and shikakai <b>sold by any dealer whose turnover in respect of these items does not exceed Rs. 300 crores in a year*</b> .	Chillies and chilly powder, coriander and coriander powder, <b>turmeric and turmeric powder</b> , shikakai and shikakai powder, tamarind and asafetida (Hing) <b>sold by any dealer whose total turnover in respect of those item does not exceed rupees 300 crores in a year.</b>

\*(Shikakai powder was exempt from tax in terms of entry/item No 49)

73.There are few but very important differences in the Tamil Nadu

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Value Added Tax Act, 2006 which distinguishes the levy under Section 12 of the Act from levy under Section 7A of the TNGST Act, 1959. Though the levy under Section 7A of the TNGST Act, 1959 and 12 of the Tamil Nadu Value Added Tax Act, 2006 get attracted under similar circumstances, the rate of tax are different.

74. Under Section 7A of the TNGST Act, 1959 tax is payable at the rate prescribed in Section 3 and 4 of the said Act. Where as, under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 tax is payable at the rate specified in the Schedules to the Act. Therefore, the Petitioner would be liable to pay tax only at the rate specified in the Schedules to the Tamil Nadu Value Added Tax Act, 2006.

75. Normally, a dealer is liable to pay tax on the sale and pass on the incidence of such tax to the dealer/consumer who purchases such goods. If the goods are purchased by registered dealer within the State, such dealer would be entitled to input tax credit under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 10 of the Tamil Nadu Value



Added Tax Rules, 2007.

76.If the taxable goods do not suffer tax at the time of purchase for the reasons stated in Section 12 of the Tamil Nadu Value Added Tax Act, 2006, the dealer who purchases such goods is liable to pay tax on the turnover relating to the aforesaid purchase at the rate specified in the schedule to the Act.

77.Purchase tax paid by such dealer under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is available by way of input tax credit under sub-Section (2) to Section 12 read with Section 19(3)(c) of the said Act.

78.Further, under the Tamil Nadu Value Added Tax Act, 2006 a dealer who installs and uses such goods in the factory for the manufacture of any goods is also liable to pay purchase tax. This was not there under the Section 7-A of the TNGST Act,1959.

79. Further, tax under TNGST Act, 1959 was by and large at first point of sale. Whereas, under Tamil Nadu Value Added Tax Act, 2006, the tax is payable at every point of sale within the State. Under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006, tax is payable at multiple point of sale within the State with provision for input tax credit and such tax is payable is at the rate specified in the Schedule to the Act.

80. Thus, there was a paradigm shift from TNGST Act, 1959 when Tamil Nadu Value Added Tax Act, 2006 was enacted. The tax regime was altered to levy tax on value addition at every point of sale within the State with a corresponding provision for input tax credit for being set off. It not only rationalised the rate of tax but also rendered tax paid at every point of sale within the State to be set off as input tax credit.

81. Thus, the reasons given in **Ruchi Soya Industries Case** in the context of Section 7A of the TNGST Act, 1959 to uphold the levy of purchase tax is not applicable to levy under Section 12 of the Tamil Nadu Value Added Tax Act, 2006.



82.I am therefore of the view, that under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006, petitioner who is also a dealer is liable to pay purchase tax at the rate specified in the Schedules.

83.To the extent the petitioner had purchased turmeric from dealers who were eligible for exemption under Section 15 Read with Item 18, Part B, IV to the Tamil Nadu Value Added Tax Act, 2006, levy under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is attracted at rates specified in the “**Schedules**” to the Act.

84. To the extent the petitioner had purchased turmeric from dealers who were otherwise liable to tax in terms of Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 but were exempted from payment of tax under Section 15 of the Tamil Nadu Value Added Tax Act, 2006, the levy under Section 12 of the Tamil Nadu Value added Tax Act, 2006 is not attracted if the petitioner's turn over was also below Rs 300 Crores during the ear. This would require verification.

85. Further, Section 12(1) is subject to Section 3(1) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, to the extent the petitioner had purchased turmeric from a dealer whose total turnover for the year was less than Rs.5lakhs, purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is not attracted as such purchase will be outside the purview of purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006.

86. In my view, the phrase “**rates specified in the Schedules to this Act**” in Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 would include the rates in both the entries namely **Item 52, Part B, I Schedule** and **Item 18, Part B, IV Schedule** to the Tamil Nadu Value Added Tax Act, 2006.

87. If the total turnover of the petitioner during the relevant year did not exceed Rs. 300 crores as per Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 the Tax payable by the petitioner would be at the

rates specified in the “**Schedules to this Act**”which would mean the rate specified in **Entry 18, Part B, IV Schedule** to the Tamil Nadu Value Added Tax Act, 2006.

88.If however on the other hand, the turnover of the petitioner had exceeded Rs.300 crores, the petitioner would be liable to pay tax at the rate prescribed in **Item 52, Part B, I Schedule** to the Tamil Nadu Value Added Tax Act, 2006 as that would be the rates specified in the “**Schedules to this Act**”. This is a factual matter which would require a proper determination by the respondent.

89.Since the impugned orders also deal with other issues. I am therefore inclined to quash the impugned orders and remit the case back to the respondent with the direction to the respondent to pass a speaking order within a period of 3 months from date of receipt of this order in terms of the above observation as far as levy of purchase tax under Section 12 (1) of the Tamil Nadu Value Added Tax Act, 2006 is concerned.

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90. Accordingly, the impugned orders are quashed. The respondent is therefore directed to pass a fresh order on merits after giving the petitioner an opportunity of hearing either in person or through video-conference in view of the risk on account of the threat of Covid19 pandemic. The remand proceeding shall be confined to purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 alone. The demand confirmed on other issues are not disturbed.

91. Petitioner is therefore directed to furnish necessary information to facilitate hearing of the case in the de-novo proceeding through video-conference to the respondent within a period of 2 weeks from date of receipt of this order, if the situations so warrant on account of continuance of Covid19 pandemic. The respondent shall thereafter take the case and pass orders in the light of the above observations.

92. These writ petitions stand disposed with the above observation.

Connected miscellaneous applications are closed. No cost.

19.05.2020

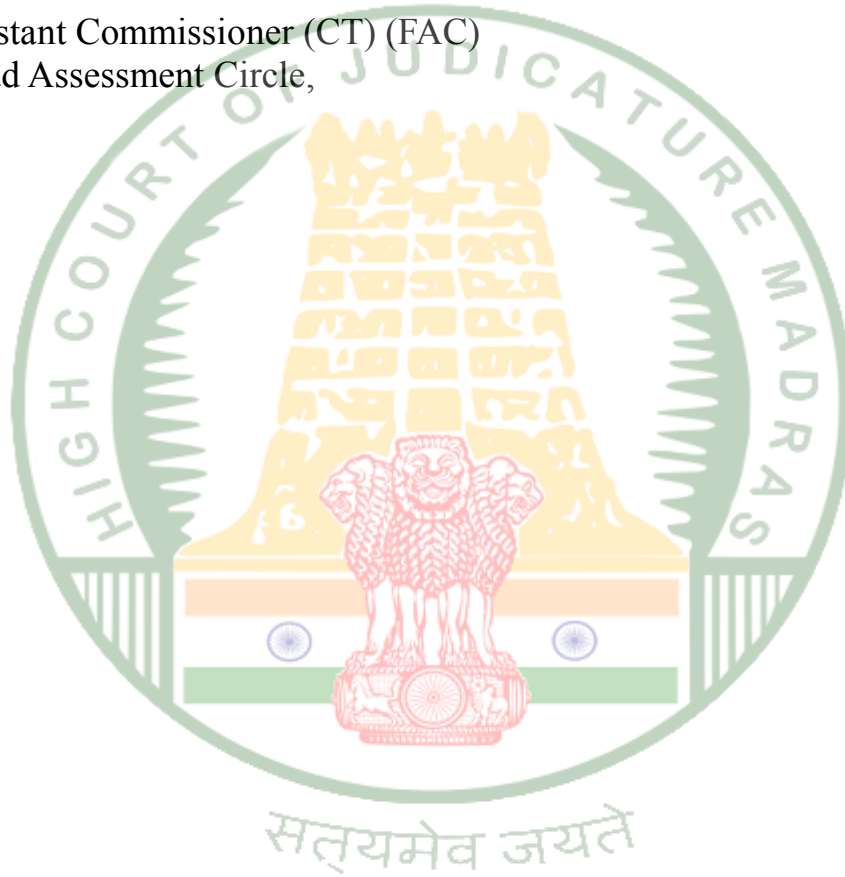
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Index :Yes/No

Internet: Yes/No

To

The Assistant Commissioner (CT) (FAC)  
Park Road Assessment Circle,  
Erode.

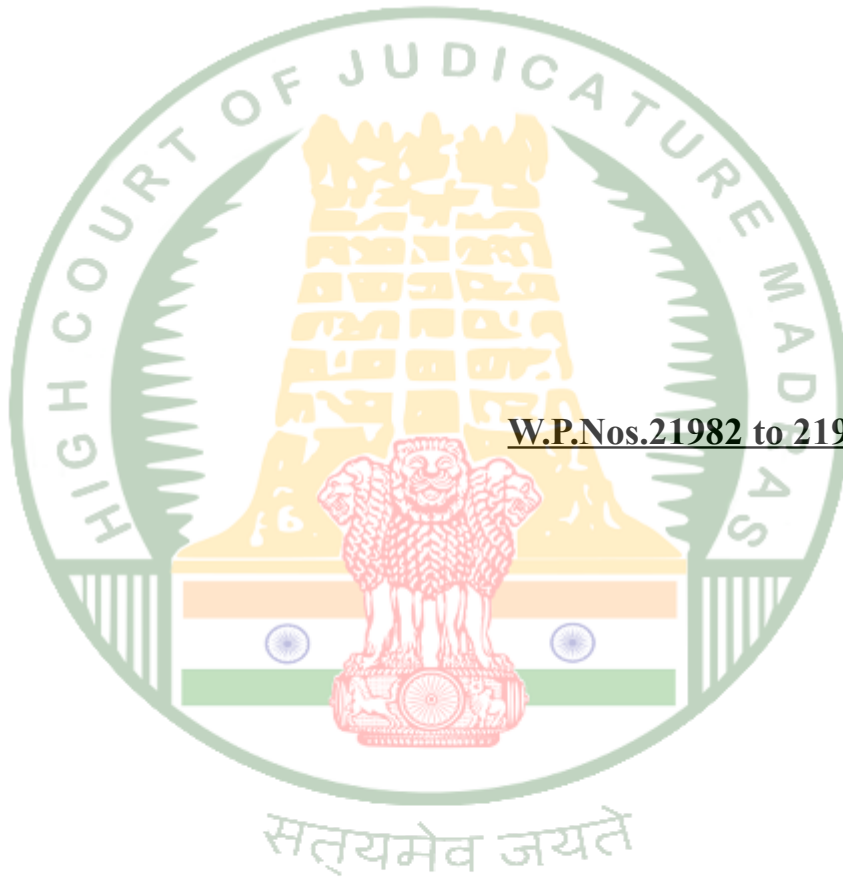


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**C.SARAVANAN.J.**

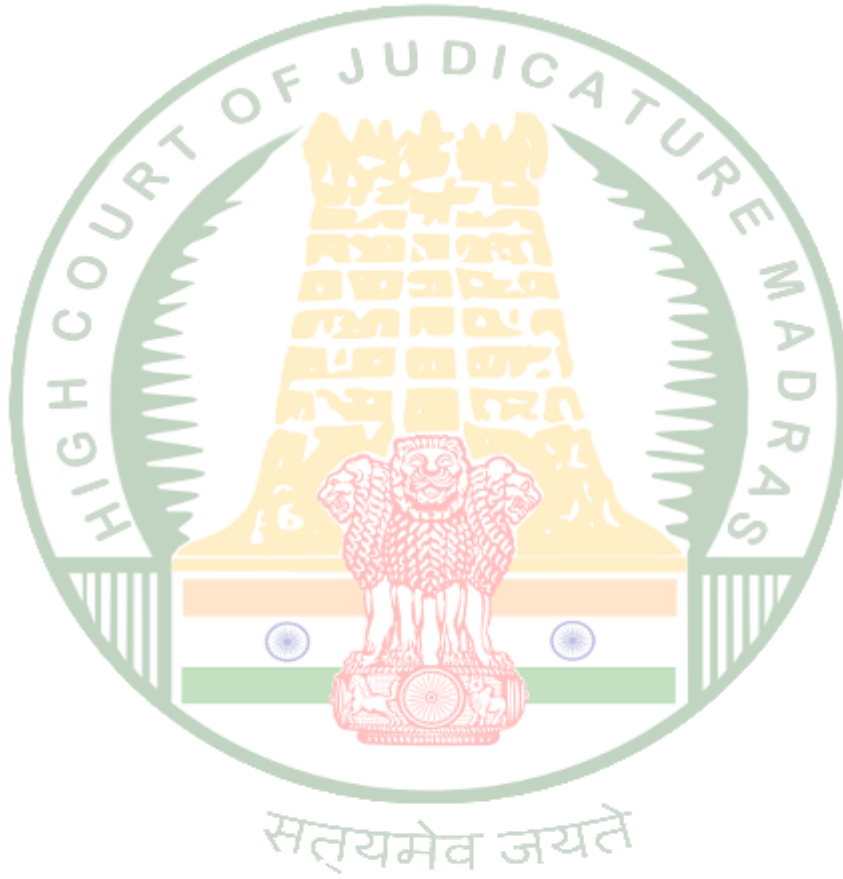
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