

M/S. TECHNOGLOBE

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v.

STATE OF TAMIL NADU & ORS.

(Civil Appeal No. 1809 of 2003)

NOVEMBER 16, 2010

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[D.K. JAIN, DR. MUKUNDAKAM SHARMA AND
R.M. LODHA, JJ.]

Tamil Nadu General Sales Tax Act, 1959 – ss. 3 and 17A – Deferment of sales tax by Government Notification for a period of five years – On purchase for a particular project – Revenue denying the tax concession for two assessment years – Taxation Tribunal as well as the High Court upholding the order of Revenue – On appeal, held: The tax incentives were given by the Government Notification – State Government was competent to issue the Notification – Since the authorities below did not examine the scope and implication of the Notification, matter remanded to the Tribunal to examine all the aspects of levy of tax – G.O.M. No. 169 Information and Tourism Department, dated 27th June, 1994.

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Practice and Procedure – New plea, based on evidence – Raising of, for the first time before Supreme Court – Held: Ordinarily, such plea is not entertainable – However, if the plea is based on a public document, the same can be taken into consideration.

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Respondent No. 2-Corporation, a nodal agency for administering and implementing a 'Film City Project', awarded the contract to the appellant. The Corporation issued various purchase orders to the appellant, accompanied by Certificates of Sale, certifying that the sales tax for the equipments purchased for the Film City Project was exempted by the State Government.

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A The Commercial Tax Officer (CTO) denied the exemption to the appellant and subjected the entire sales turnover to sales tax under Tamil Nadu General Sales Tax Act, 1959 creating an additional tax demand and also imposed penalty.

B The appellant approached the Taxation Special Tribunal seeking direction to the Corporation to pay the arrears of sales tax, surcharge and penalty levied on the appellant. The Tribunal rejected the petition. The writ
C petition filed against the order of the Tribunal was dismissed by the High Court. Therefore, the instant appeal was filed.

Allowing the appeal and remitting the matter to the Tribunal, the Court

D HELD: 1. Under certain circumstances, the State Government has the power to issue Notification for deferment of payment of the whole or any part of the tax payable in respect of any period. The State Government
E in exercise of its jurisdiction u/s. 17-A of the Tamil Nadu General Sales Tax Act, 1959 was competent to issue G.O.M. No. 169 Information and Tourism Department dated 27th June, 1994. The Notification defers payment
F of sales tax by the proposed 'Film City Project' for a period of five years. The State Government had acceded to the request of the 'Film City' for granting it various
G concessions, incentives etc. with the concurrence of different departments, which included the Department of Commercial Taxes as well. [Paras 15 and 16] [82-B; 81-C]

2. All the authorities below, particularly the Tribunal, have proceeded on the premise that no Notification u/s. 17 of the Act, which clothes the State Government with the power to notify exemptions and reductions of tax in
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respect of any tax payable under the Act, had been issued. The Notification dated 27th June, 1994, contemplates deferment of sales tax for a period of 5 years wherever sales tax levy is applicable on the purchases for the film city project. *Prima facie*, there is force in the stand of the appellant that the Notification would cover the sales made by them to the Corporation in the years 1994-95 and 1995-96 which fall in the stipulated period of five years. [Para 19] [83-D; 84-B]

3. Ordinarily the Supreme Court would be loathe to examine contentions of facts based on evidence, advanced for the first time before the Supreme Court without there being any adjudication by the High Court on the same. However, in the instant case, the Notification dated 27th June, 1994 being a public document, produced by one of the contesting respondents, it would be travesty of justice if the said document is not taken into consideration for determining the issue, which admittedly surrounded the same Notification. [Para 19] [84-C-D]

Sardar Govindrao Mahadik and Anr. vs. Devi Sahai and Ors. (1982) 1 SCC 237 – relied on.

4. Since none of the authorities below had examined the scope and implication of the Notification dated 27th June, 1994, the case is remanded back to the Tribunal, to examine all the aspects of levy of sales tax on the subject sales, in the said two years, keeping in view the scope and ambit of the said Notification as also the fact that the period for which the payment of sales tax was deferred has also expired. [Para 20] [84-E-F]

American Remedies Pvt. Ltd. and Anr. vs. Government of Andhra Pradesh and Anr. (1999) 113 STC 400 (SC) , relied on.

- A **5. Under Section 3 of the Act, the liability to pay sales tax in accordance with the provisions of the Act is cast on the dealer, irrespective of the fact whether he has collected it from the consumer or not. Therefore, the plea of the appellant that they had not charged and collected**
- B **any sales tax from the Corporation is of no consequence. [Para 18] [83-B]**

Case Law Reference:

- (1999) 113 STC 400 (SC) **relied on. Para 13**
- C (1982) 1 SCC 237 **relied on. Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1809 of 2003.

- D From the Judgment & Order dated 1.8.2000 of the High Court of Judicature at Madras in Writ Petition No. 12798 of 2000.

Rajiv Mehta, Biswanath Agrawalla for the Appellant.

- E TLV Iyer, T. Harish Kumar, Prasanth P., V. Vasudevan, R. Nedumaran, C.K.R. Lenin Sekar for the Respondents.

The Judgment of the Court was delivered by

- F **D.K. JAIN, J. 1. Challenge, in this civil appeal, is to the judgment and order dated 1st August 2000, delivered by the High Court of Judicature at Madras in W.P. No. 12798 of 2000, whereby the High Court has affirmed the levy of sales tax on the appellant on sale of goods made by it to respondent No.2 herein, in the assessment years 1994-95 and 1995-96.**

- G **2. Briefly stated, the facts necessary for the disposal of this appeal, are as follows :**

In the year 1992, respondent No. 1, the State of Tamil Nadu

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sanctioned a "film city" project, for which respondent No. 2 viz. A
the Tamil Nadu Film Development Corporation, (for short "the
Corporation") a public sector undertaking, was designated as
the nodal agency, responsible for administering and
implementing the said project. Pursuant thereto, a tender was
floated by the Corporation for supply of various equipments for B
the said film city project. After a successful bid, the appellant
was awarded the contract. In furtherance thereof, on 28th June,
1994, the Corporation issued various purchase orders to the
appellant, accompanied by Certificates of sale which, *inter-*
alia, stated: C

"This is to certify that the Sales Tax for the equipments
purchased for the Film City Project at Madras has been
exempted by the Tamil Nadu Government."

3. Vide assessment order dated 31st January 1996, the D
Commercial Tax Officer (for short "CTO") exempted the sales
made by the appellant to the Corporation in the assessment
year 1994-95 from the levy of sales tax.

4. However, in relation to the assessment year 1995-96, E
the CTO, vide his order dated 26th June 1997, rejected the
appellant's claim of exemption on similar sales made by them
to the Corporation, holding that:

"There is no exemption granted in the G.O. cited as stated
by the dealers for claiming exemption to the sales turnover F
made to the Film Development Corporation. Hence the
objection-filed by the dealers are not accepted."

5. Accordingly, the CTO included the entire sales turnover
made by the appellant to the Corporation in the taxable turnover G
for the said year and subjected the same to sales tax under
Tamil Nadu General Sales Tax Act, 1959 (for short "the Act"),
thereby creating an additional tax demand of Rs. 26,57,388/-.
In addition the CTO also imposed a penalty of Rs. 39,86,082/
- under Section 12(5)(b)(v) of the Act. H

A 6. Additionally, vide order dated 29th August 1997, the
CTO revised the assessment under the Act in respect of the
year 1994-95, thereby disallowing the exemption on the goods
sold by the appellant to the Corporation, which resulted in
B additional demand of tax of Rs. 29,75,983/-. A penalty of Rs.
44,60,901/- was imposed together with a penalty of Rs. 3,127/
- under Section 12(3) read with Section 24(3) of the Act was
also levied.

C 7. Faced with the threat of recovery of the aforesaid tax
demands, the appellant issued a legal notice to the three
respondents herein on 1st February 1999, requesting, inter alia,
the Corporation to furnish the Government Order granting sales
tax exemption, as mentioned in their purchase orders and, in
the alternative to pay the sales tax, penalty and surcharge levied
on the appellant by the CTO. However, there was no response
D to the said notice from any of the respondents.

E 8. On 1st December 1999, the CTO served a legal notice
on the appellant, stating that since the arrears of sales tax had
not been paid, the house property of the proprietress was being
attached, and would be brought to public auction.

F 9. The appellant, thereafter, approached the Tamil Nadu
Taxation Special Tribunal (for short "the Tribunal") praying that
the Corporation be directed to pay the arrears of sales tax,
surcharge and penalty levied on them. The Tribunal, vide its
order dated 6th July 2000, rejected the petition of the appellant,
observing that:

G "As the petitioner themselves are not able to mention that
there is any Government order available granting
exemption it appears that there is no such exemption
granted by the Government. Under those circumstances
there is no question of exemption."

H 10. Being aggrieved by the said order, the appellant
preferred a writ petition before the High Court. As afore-

mentioned, the High Court has rejected the writ petition of the appellant, inter alia, holding that: A

“On consideration, we find that admittedly, no notification under Section 17 of the Tamil Nadu General Sales Tax Act has been issued. Therefore, in the absence of any such notification issued, the petitioner-firm being an assessee is liable to pay the sales tax and it cannot take advantage of the alleged certificate issued by the 2nd respondent.” B

11. Hence the present appeal. C

12. Mr. Rajiv Mehta, learned counsel appearing on behalf of the appellant, while assailing the impugned judgment, strenuously contended that in view of G.O.M. No. 169 dated 27th June 1994, issued by the Government of Tamil Nadu, the appellant cannot be made liable for payment of Tax under the Act in respect of sales to the Corporation. Learned counsel contended that if at all sales tax is leviable under the Act, it is the Corporation which is liable to pay the same as in the purchase order issued by them to the appellant it was clearly stated that “Film City project has been exempted from the payment of Sales Tax by issuing a separate G.O. (copy will be sent separately). The particulars to that effect is enclosed with this purchase order.” Relying on the said representation which had been made by a public sector undertaking of the State Government, the supplies were made by the appellant without charging any sales tax. It was also urged that in light of Section 26(1) of the Act, the CTO was competent to recover sales tax from the Corporation, notwithstanding the fact that it is a public sector undertaking. D E F

13. *Per contra*, Mr. TLV Iyer, learned senior counsel appearing for the respondents contended that G.O.M. No. 169 Information and Tourism Department, dated 27th June, 1994 was not issued by the Commercial Taxes Department, and therefore, the dealer-appellant cannot claim exemption on the basis of the said G.O.M. Learned counsel contended that under G H

- A the Act, it is the dealer who is liable to pay the sales tax, and if there is any contract or understanding between the dealer and the purchaser regarding payment of tax dues, the Commercial Taxes Department is not bound by it. If the appellant, so desires, it may recover the amount so paid by them from the Corporation. Commending us to the decision of this Court in *American Remedies Pvt. Ltd. & Anr. Vs. Government of Andhra Pradesh & Anr.*,¹ learned counsel contended that it is a settled proposition of law that the dealer is liable to pay sales tax, and it is immaterial whether or not, he has collected the same from the consumer. Learned counsel, however, submitted that the Commercial Taxes Department will have no objection if this Court, in exercise of its jurisdiction under Article 142 of the Constitution, is inclined to pass an order, directing the Corporation to discharge the sales tax liability under the Act on the purchases made from the appellant during the years 1994-95 and 1995-96.

14. Before we advert to the rival submissions, it would be expedient to extract relevant portions of G.O.M. No. 169 Information and Tourism Department dated 27th June 1994, filed before us by learned Counsel for the Corporation. The G.O.M. issued under the order of the Governor of Tamil Nadu, declares the "Film City Project" as a Tourism project and grants certain "incentives, concessions and subsidies for Tourism promotion projects and activities." It reads:

- "3. The Government after careful consideration of the proposal submitted by Special Officer, Film City, declare the 'Film City Project' as 'tourism project' for purpose of extending various concessions, incentives and subsidies as applicable to other industries. The Government also direct that the following concessions, incentives and subsidies shall be made available to Film City Project :-

1. [1999] 113 STC 400 (SC).

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iii) Deferral of sales Tax for a period of 5 years wherever Sales Tax levy is applicable. A

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6. This order issues with the concurrence of Industries Commerical Taxes and Religious Endowments, Energy and Finance Departments vide their U.O. Nos. 12959A/MIG2/94-1 dt.2.5.94, 26/Secy/Per/94-1 dt.3.5.94, 4554/A2/94-1 dt.9.5.94 and 2677/FS/P/94 dt. 2.6.94." B

(Emphasis supplied by us) C

15. It is manifest that the said G.O.M. defers payment of sales tax by the proposed "Film City Project" for a period of five years. It is also plain that the Government of Tamil Nadu had acceded to the request of the "Film City" for granting it various concessions, incentives etc. with the concurrence of different departments, which included the Department of Commercial Taxes as well. D

16. At this juncture itself, it will be useful to refer to Section 17-A of the Act, which empowers the State Government to notify deferred payment of tax for new industries etc. The Section reads as under: E

"17-A. Power of Government to notify deferred payment of tax for new industries, etc: (1) The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification issued whether prospectively or retrospectively, defer the payment by any new industrial unit or sick unit or sick textile mill of the whole or any part of the tax payable in respect of any period: F

Provided that such retrospective effect shall not be earlier than the 9th May, 1988. G

(1-A) The Government may, by general or special order, authorize the Territorial Assistant Commissioner to exercise such of their powers specified in sub-section (1). H

A (2) Notwithstanding anything contained in this Act, the deferred payment of tax under sub-section (1) or sub-section (1-A) shall not attract interest under sub-section (3) of section 24 provided the conditions laid down for payment of the tax deferred are satisfied.”

B Thus, it is clear that under certain circumstances the State Government has the power to issue notification for deferment of payment of the whole or any part of the tax payable in respect of any period. It bears repetition that the State Government in exercise of its jurisdiction under Section 17-A of the Act was
C competent to issue G.O.M. No.169 dated 27th June, 1994. It is also evident from the notification that it was issued with the “concurrence” of Commercial Taxes and Finance Departments, besides others.

D 17. Section 3 of the Act provides for the levy of sales tax on sales or purchase of goods by a dealer. The relevant part thereof reads as under:

“3. Levy of taxes on sales or purchases of goods.-

E (1)(a)(i) Every dealer, other than the dealer, casual trader or agent of a non-resident dealer referred to in clause (ii), whose total turnover for a year exceeds three lakhs of rupees ; and

F (ii) every dealer in bullion, gold, silver and platinum jewellery including articles thereof and worn-out or beaten jewellery and precious stones and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay tax for each year in accordance with the provisions of this Act ;

G (1)(b) Notwithstanding anything contained in clause (a), every dealer (other than a dealer in bullion, gold, silver, platinum jewellery including articles thereof and worn-out or beaten jewellery and precious stones and a casual trader or agent of a non-resident dealer) whose total
H turnover for a year exceeds three lakhs of rupees but does

not exceed ten lakhs of rupees shall not be liable to pay tax on the first three lakhs of rupees of his total turnover, provided that no amount by way of tax or purporting to be by way of tax has been collected by him under this Act in respect of that first three lakhs of rupees.” A

18. It is abundantly clear that under Section 3 of the Act, the liability to pay sales tax in accordance with the provisions of the Act is cast on the dealer, irrespective of the fact whether he has collected it from the consumer or not. Therefore, the plea of the appellant that they had not charged and collected any sales tax from the Corporation is of no consequence. However, the issue for consideration in the present case relates to the effect of the deferral scheme envisaged in G.O.M. No. 169 on the liability of the appellant to pay sales tax on the sales made by them to the Corporation for the assessment years 1994-95 and 1995-96. B C D

19. It is evident from the afore-extracted orders that all the authorities below, particularly the Tribunal, have proceeded on the premise that no notification under Section 17 of the Act, which clothes the State Government with the power to notify exemptions and reductions of tax in respect of any tax payable under the Act, had been issued. Therefore, according to the Tribunal, in the absence of such a notification, the appellant could not take advantage of the Certificate allegedly issued by the Corporation, certifying that sales tax on the equipment purchased for the film city project had been exempted by the Tamil Nadu Government and avoid payment of sales tax on the sales made to them in the years 1994 and 1995. It is quite intriguing as to why, in response to the legal notice issued by the appellant to the three respondents, the Corporation, in particular, did not furnish a copy of the said notification to them or produce it before the Tribunal where it was represented by a Government pleader. At the same time, it is equally surprising as to why the appellant did not make any effort to produce a copy of the notification, a public document when they were visited with huge sales tax demands and were threatened with E F G H

- A auction of their immovable property. Be that as it may, we are of the opinion that notification dated 27th June, 1994, placed on record by the respondents has a significant bearing on the aforestated issue before us. As noticed above, the notification contemplates deferment of sales tax for a period of 5 years
- B wherever sales tax levy is applicable on the purchases for the film city project. *Prima facie*, there is some force in the stand of the appellant that the notification would cover the sales made by them to the Corporation in the years 1994-95 and 1995-96 which fall in the stipulated period of five years. We are conscious
- C that ordinarily this Court would be loathe to examine contentions of facts based on evidence, advanced for the first time before this Court without there being any adjudication by the High Court on the same. (See: *Sardar Govindrao Mahadik & Anr. Vs. Devi Sahai & Ors.*²). However, in the present case, the said
- D notification being a public document, produced by one of the contesting respondents, it would be travesty of justice if the said document is not taken into consideration for determining the issue, which admittedly surrounded the same notification.

20. In light of the aforestated factual scenario, we are of
- E the opinion that since none of the authorities below had examined the scope and implication of the said notification, it would be expedient and just to remand the case back to the Tribunal, to examine all the aspects of levy of sales tax on the subject sales, in the said two years, keeping in view the scope
- F and ambit of the said notification as also the fact that the period for which the payment of sales tax was deferred has also expired.

21. For the foregoing reasons, the appeal is allowed; the impugned judgment is set aside and the matter is remitted back
- G to the Tribunal for fresh consideration, particularly in light of the notification dated 27th June, 1994. The parties are left to bear their respective costs.

K.K.T.

Appeal allowed.