

(2014) 11 MAD CK 0107

In the Madras High Court

Case No : Writ Petition Nos. 16166 to 16168 of 2008 and 17322 and 17323 of 2010 and Connected Mps.

Lion Dates (P) Ltd. and Others

APPELLANT

Vs

The Special Commissioner and Commissioner of Commercial Taxes and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37-B — Central Sales Tax Act, 1956 - Section 5(2) — Income Tax Act, 1961 - Section 119 — Tamil Nadu General Sales Tax Act, 1959 - Section 2(j), 28 A, 28- A, 28A, 28-A

Citation : (2015) WritLR 258

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Palani Selvaraj for R.G. Narendhiran, for the Appellant; S. Kanmani Annamalai, Addl. Govt. Pleader (Taxes), for the Respondent

Judgement

T.S. Sivagnanam, J.?Since the relief sought for in all these Writ Petitions are identical and pertains to the same Group of Companies relating to the same product and common questions have been raised, these Writ Petitions were heard together and are disposed of by this common order. W.P. No. 16166 of 2008 is taken as a lead case and the prayer sought for in W.P. Nos. 16166 to 16168 of 2008 are identical wherein the petitioner has sought for issuance of writ of declaration to declare the clarification issued by the first respondent in Clarification No. 40/2003 dated 27.01.2003, as being prospective in application from the Assessment year 2003-04, and consequently declare that the Assessment Orders passed by the second respondent are illegal and unsustainable.

2. In W.P. Nos. 17322 & 17323 of 2010, the petitioners seek for identical relief as in the other three writ petitions to declare the clarification No. 40 of 2003 dated 27.01.2003, as being prospective in application from the Assessment Order 2003-04, and to quash the consequential order of rejection of the application for

waiver as unjust, illegal and void ab initio, and refund the excess differential tax collected from the petitioners for the assessment year 2003-2004.

3(i) The petitioner is engaged in the business of purchasing, processing, packing and selling of "Dates" and "Date Syrups". The petitioner is said to have been purchasing "Dates" from dealers in other States, though the origin of the "Dates" may be outside the Country. The petitioner on such purchase of "Wet Dates", process, pack and sell the same under the registered brand name "Lion Brand", which is a registered Trade Mark of the petitioner.

(ii) The "Wet Dates" fall under Entry 11(ii) of Part D of First Schedule to the Tamil Nadu General Sales Tax Act, and taxable at 12%. The petitioner filed the monthly returns and remitted tax at 12% and the assessments were completed without any query upto the assessment year 2001-02.

(iii) The petitioner's case is that they do not directly import "Wet Dates" from abroad, but purchase the same from dealers in Bombay as Inter-State sales, the Dates are processed, packed and sold with their brand name "Lion Dates" and taxes are remitted at the rate of 12%. By virtue of Amending Act 22 of 2002, Section 3(2C) was inserted to the Tamil Nadu General Sales Tax Act ("Act"), by which for certain goods, the rate of tax were revised. The relevant Entry is Entry No. 9, which deals with import of cigarettes, medium density fibre boards, textile and other items falling in Parts D and E of First Schedule, the point of levy is first sales and the rate of tax is 20%.

(iv) On introduction of Section 3(2C) of the Act, the petitioner had a genuine doubt as regards the rate of tax payable by them on the sale of "Wet Dates", which they have purchased by way of Inter-State sale. Therefore, they sought for clarification from the first respondent. The first respondent by proceedings dated 13.08.2002 in Clarification No. 230 of 2002, stated that the "Wet Dates" purchased by the petitioner from Bombay are re-packed in small volumes with brand name "Lion" and sold locally are taxable at 12% under Entry 11(ii) in Part D of I Schedule to TNGST Act, 1959. Accordingly, the petitioner filed their returns. However, by another Circular dated 27.01.2003, bearing Circular No. 40 of 2003, addressed to the petitioner, which in fact is a suo motu action, the first respondent stated that the earlier Clarification dated 13.08.2002, was further examined and decided that "Wet Dates" of foreign origin, whether imported directly from other countries or purchased from other States would fall under Entry 9 of Eleventh Schedule of TNGST Act. Therefore, the Clarification dated 13.08.2002 was modified by stating that "Wet Dates" of foreign origin, whether imported directly from other countries or purchased from other States are liable to be taxed at 20% under Entry 9 of Eleventh Schedule of TNGST Act. The Clarification No. 40 of 2003 is impugned in all these five writ petitions.

(v) As stated above, the product which is the subject matter is "Wet Dates", in all the five cases and all the assessments are under the provisions of TNGST Act. The learned counsel for the petitioners submitted that the power of issuance of

Circular or Clarification under the provisions of the TNGST Act are traceable under section 28A of the Act and therefore the same are binding. The contention that the petitioner did not disclose that they were dealing with imported dates while they obtained the earlier Clarification dated 13.08.2002, is vague and unsustainable contention, since the petitioner clearly disclosed as to the nature of their business activity. Further, it is submitted that the impugned Circular is contrary to Clarification issued by the first respondent dated 24.5.2002, which clearly lays down guidelines for considering whether the goods are imported goods for the purpose of Entry 9 of Eleventh Schedule. It is submitted that the conditions except Condition No. 1 that the commodity falls under Part D, the other three tests/conditions, which have been laid down in the Circular are not satisfied in the case of the commodity dealt by the petitioner and therefore the question of treating the goods which have been purchased as Inter-State Sale, cannot be treated as imported goods going by the Clarification issued by the first respondent.

(vi) Even assuming that the first respondent was justified in issuing the impugned Clarification, such Clarification can only have prospective effect and cannot re-open past cases. Further, it is submitted that TNGST Act, defines goods under section 2(j) of the Act and there is no definition for "imported goods" under TNGST Act. In terms of Section 5(2) of the CST Act, the goods sold or purchased in the course of import are imported goods. Therefore, the expression imported goods used in Entry 9 of the Eleventh Schedule should be in consonance with Section 5(2) of the CST Act. Further it is submitted that the petitioner are not direct importers, from foreign countries, but, purchased the same from the dealers in Bombay by way of Inter State Sales. Further, it is submitted that insertion of section 3(2C) of the Act is not with an intention to tax Inter-State sales and it was only to cover imported goods and this is explicit from the clarification issued by the Commissioner/first respondent dated 24.5.2002. It is submitted that once the goods crossed the customs barrier and the import duty has been remitted, it becomes the absolute property of the importer, who is free to deal with the same by way of local sale or Inter State Sale and the petitioner being the purchaser from the said dealer at Bombay has to be treated as Inter State purchaser. Therefore, the question of determining tax at 20% that too retrospectively does not arise.

(vii) The learned counsel for the petitioner submitted that the Circulars issued by the first respondent in exercise of powers conferred under Section 28 A of the Act are binding and there is no power to retrospectively revise the Circular that too by exercising suo motu power, without notice to the petitioner. With regard to the binding nature of Circulars issued by the Statutory Authorities, reliance has been placed on the decisions of the Hon"ble Supreme Court, as detailed below:

"(A) Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another, ;

(b) The Paper Products Ltd. Vs. Commissioner of Central Excise, ;

(c) Keshavji Ravji and Co. etc., etc. Vs. Commissioner of Income Tax, "

(viii) The learned counsel further submitted that the Clarifications issued by the Revenue being executive in character, cannot alter the provisions of the Act, since they are in the nature of concession and they can be prospectively withdrawn. In support of the said contention, reliance has been placed on the decision of the Hon"ble Supreme Court in the case Devi Cine Projector Manufacturing Co., Vs. Commissioner of Income Tax, and Mohan Breweries and Distilleries Limited Vs. Commercial Tax Officer and Others, .

(ix) To support the contention that the Revenue can withdraw clarification only prospectively and not retrospectively, the learned counsel placed reliance on the decision of the Hon"ble Division Bench of this Court in Om Plastics v. Deputy Commercial Tax Officer, Konganur Assessment Circle, Tirupur and Another [6 VST- Page 100 (DB) Madras]. The learned counsel further submitted that when there are two interpretations possible, invariably the Court would adopt the interpretation favourable to the assessee, more particularly in Taxation Statutes. In support of the said contention, reliance has been placed on the decision of the Hon"ble Supreme Court in the case of Pradip J. Metha v. Commissioner of Income Tax, Ahmedabad [2008(14) SCC- page 282]. Further, it is submitted that at no point of time, a transaction between the importer and the local buyer can be regarded as a sale in the course of import and to support the said contention, reliance was placed on the decisions of the Hon"ble Division Bench of this Court in Blue Star Ltd. Vs. State of Tamil Nadu, ; Krishnados Kikani Vs. The State of Tamil Nadu, ; Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., .

(x) The learned counsel placed reliance on the decision in the case of Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, and contended that there was no privity of contract between the petitioner and the foreign seller and no contract has been entered into with the foreign seller through any agency of the petitioner and the movement of goods from the foreign country was not occasioned on account of the sales by the petitioner. To support the said proposition, reliance has also been placed on the decision of the Hon"ble Supreme Court in the case of Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd., .

On the above submissions, the learned counsel prayed for quashing the Circular and consequential orders of assessment and to direct refund of the excess tax collected.

4(a) Learned Additional Government Pleader (Taxes) appearing for the respondents after elaborately referring the factual averments, submitted that the petitioner while seeking clarification by representation dated 16.7.2012, had not disclosed the fact "Wet Dates" in question were of foreign origin. Hence, it was rightly clarified by the Special Commissioner and Commissioner of Commercial Taxes, the first respondent herein regarding its liability at 12% as it falls under

Item 11(ii) in Part D of First Schedule. The question as to the Dates in question were of imported origin or not was within the exclusive knowledge of the petitioner only and it has not been duly disclosed in the letter seeking clarification. When such an issue was brought to the notice of the first respondent, the earlier clarification has been suitably modified stating that "(1) wet dates purchased from Bombay, repacked in small volumes with brand name "Lion" and sold locally are taxable at 12% under entry 11(ii) in Part D of the First schedule to the TNGST Act, 1959, (2) "Wet Dates" of foreign origin whether imported directly from other countries or purchased from other States would fall under Entry No. 9 of the Eleventh Schedule to the TNGST Act, 1959. Aggrieved against this clarification, the petitioner filed an application before the first respondent seeking waiver of the difference of the tax i.e. (20% -12%) 8% for the period from 27.3.2002 to 31.3.2002 on the first sales of wet dates of imported origin. While rejecting the waiver claim for differential tax of 8%, the first respondent has discussed in detail the contingencies that led to the issue of clarification of his order in K. Dis Drafting Cell 2/45119/2003, dated 30.09.2003. While seeking the clarification in letter dated 16.7.2002, the petitioners had sought clarification on "Wet Dates" purchased directly from Bombay and hence the rate of tax was so clarified as 12%. Whether wet dates sold by the petitioner were of foreign origin or not was not at all disclosed by the petitioner in the letter seeking clarification. Further it is submitted that it is the bounden duty of the petitioner to furnish complete details while seeking a point of clarification. Subsequently, when in another case as to the liability of imported wet dates came up for examination, it was so clarified that wet dates of foreign origin whether purchased from other States or imported directly from other countries are taxable at 20%.

(b) It is further submitted that the Circular dated 24.5.2002, the first respondent has issued certain guidelines covering some of the points to identify the liability of the commodities as to the application of rate of tax at 12% or 20%. Accordingly, the dates sold by the petitioner falls squarely under point-I only and that the remaining other three points will operate on the commodities which are of manufactured category that are sold under brand name or trade mark and that which had undergone any form of processing, reassembling, reconstitution or repacking in India. Regarding the retrospective or prospective operation of clarification, it is submitted that a clarification has no operational date and that it is merely a clarification on a point sought to be clarified.

(c) It is further submitted that since the commodity dealt with by the petitioner squarely falls in Item No. I of the guidelines dated 24.5.2002, they are liable to be assessed to tax at 20% and as they have already paid 12%, they are bound to pay the differential tax of 8%. It is further submitted that the respondent after considering all the legal issues, rightly rejected the waiver application and demanded 20% Tax. Though rejection was made in 2003, they have belatedly approached this Court and filed the Writ Petitions.

5. Heard the learned counsel appearing on either side and perused the material placed on record.

6. Section 28 A of TNGST Act empowers the Commissioner to issue Circulars and Clarifications concerning the rate of tax under the Act. In the case of Mohan Breweries and Distilleries Limited (supra), one of the question which fell for consideration before the Hon''ble Division Bench was whether the purchase tax is leviable on the purchase turnover of the empty bottles purchased by the petitioner therein under section 7-A of the TNGST Act, 1959, inspire of the clarification issued by the Special Commissioner in the light of Section 28 A of the Act. The Hon''ble Division Bench after referring to Section 28 A of the Act, which reads as follows:

"section 28-A. Power to issue clarification by Commissioner of Commercial Taxes.--(1) The Commissioner of Commercial Taxes on an application by a registered dealer, may clarify any point concerning the rate of tax under the At. Such clarification shall be applicable to the goods specified in the application:

Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.

(2) The Commissioner of Commercial Taxes may, if he considers it necessary or expedient so to do, for the purpose of uniformity in the work of assessment and collection of tax, clarify any point concerning the rate of tax under this Act or the procedure relating to assessment and collection of tax as provided for under this Act.

(3) All persons working under the control of Commissioner of Commercial Taxes shall observe and follow the clarification issued under sub-section (1) and sub-section (2)."

The Hon''ble Division Bench referred to the various Judgments of the Hon''ble Supreme Court, while construing the Circulars issued in various other enactments, which were *pari materia* with Section 28 A of the Act, and held that the Circular were binding on the authorities till the concession given to the petitioner therein were withdrawn, which could be done only prospectively. The relevant portions of the Judgement are quoted herein below:

"8.6.2. The Apex Court in *State Bank of Travancore Vs. Commissioner of Income Tax, Kerala*, held that even though the clarifications issued by the revenue being executive in character cannot alter the provisions of the Act, since they are in the nature of concessions, they can always be prospectively withdrawn. In the instant case, even though the clarification dated 9.11.1989 is executive in nature, the concessions given to the assessee could be withdrawn only prospectively, but not retrospectively because, such executive circulars are binding on the authorities, as held by the Apex Court in *Keshavji Ravji and Co. etc., etc. Vs. Commissioner of Income Tax, . In Keshavji Ravji & Co. v. Commissioner of Income Tax*, referred supra, while dealing with Section 119 of

the Income Tax Act, which is *pari materia* to Section 28-A of the Tamil Nadu General Sales Tax Act, the Apex Court held that the benefits of such circulars to assesseees have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. That apart, the clarification dated 27.12.2000 gains a statutory force in view of Section 28-A of the Act, which was inserted by the Tamil Nadu Act 60 of 1997, which came into force with effect from 6.11.1997.

8.6.3. In *Collector of Central Excise, Patna Vs. Usha Martin Industries, etc.*, , three Judges of the Apex Court, held that when the Central Board of Excise and Customs made all others to understand a notification in a particular manner and when the latter have acted accordingly, it is not open to the revenue to turn against such persons on a premise contrary to such instructions, and such circulars would be binding on the department.

8.6.4. The Apex Court in *The Paper Products Ltd. Vs. Commissioner of Central Excise*, , while interpreting Section 37-B of the Central Excise Act, 1944 which is *pari materia* to Section 28- A of the Tamil Nadu General Sales Tax Act held that circulars issued by the Central Board of Excise and Customs are binding on the departmental authorities and they cannot take a contrary stand, and that the department cannot repudiate a circular issued by the Board on the basis that it was inconsistent with a statutory provision and further held that the assessee can contest the validity or legality of such Departmental Circulars or Instructions; the Department do not have a right to file an appeal against the correctness or binding nature of a circular; the Department's actions have to be consistent with the circulars; and that consistency and discipline are of far greater importance than winning or losing Court proceedings.

8.6.5. In *UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal*, , the Apex Court held that the circular issued by the revenue under Section 119 of the Income Tax Act are binding on the revenue and such circulars are meant for ensuring proper administration of the statute and they are designed to mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to the provision in question.

8.6.6. In *Commissioner of Sales Tax, U.P. Vs. M/s. Indra Industries*, , the Apex Court held that a circular issued by the Sales Tax authorities is binding on the taxing authorities and the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

8.6.7. In *Commissioner of Income Tax Vs. Kalvinator of India Ltd.*, , it was held that the Board has power to issue circulars under Section 119 of the Income Tax Act and it is trite that circulars which are issued by the Central Board of Direct Taxes are legally binding on the revenue.

8.6.8. The Constitution Bench of the Apex Court in *Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries*, , held that if there are circulars which have been issued by the Central Board of Excise and Customs which place a

different interpretation upon the said phrase, that interpretation will be binding upon the revenue. Similar view was taken by the Apex Court in Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries, .

8.6.9. In Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another, , the Apex Court held that the circulars issued by the revenue under Section 37-B of the Central Excise Act, 1944 (which is pari materia to Section 28-A of the Act) are binding primarily on basis of language of statutory provisions buttressed by need of adjudicating officers to maintain uniformity in levy of tax/duty throughout the country and not on the basis of promissory estoppel, and that when a circular remains in operation, the revenue is bound by it and cannot be allowed to plea that it is not valid nor that it is contrary to the terms of statute.

8.6.10. It is, therefore, clear that even though the clarification dated 9.11.1989 is executive in nature, the same is binding on the authorities till the concessions given to the petitioner under the clarification were withdrawn, which could be done only prospectively, viz., in the instance case, with effect from 28.1.2002, and the revenue could not refuse the benefit of the clarifications dated 9.11.1989 and 27.12.2000 in respect of levy of purchase tax under Section 7-A of the Act for the impugned assessment year 1996-97."

7. In the light of the above decision, there cannot be any dispute regarding the proposition as regards the validity of the Clarification issued by the first respondent. The clarification was sought for by the petitioner by Application dated 16.7.2002. It was clarified that the "Wet Dates" purchased from Bombay are packed in small volumes with brand name "Lion" and sold locally are taxable at 12% under Entry 11(ii) Part D of First Schedule to TNGST Act. The petitioner did not seek for any further clarification nor did the authorities issued any notice to the petitioner stating that the clarification dated 13.8.2002 was on a wrong premise or erroneous. Further more, the clarification dated 13.8.2002, was not withdrawn and allowed to operate till the end of the assessment year. The petitioner filed the returns and paid tax at 12% and such return was accepted. It is only on 27.2.2003, the impugned clarification has been issued.

8. As pointed out earlier, the impugned clarification does not withdraw the clarification dated 13.8.2002, but states that earlier clarification is modified to the effect that "Wet Dates" of foreign origin whether imported directly from other countries or purchased from other States are liable to be taxed at 2% in Entry 9 of Eleventh Schedule of TNGST Act. The modification on the impugned clarification was made without notice to the petitioner. Based on which notices were issued proposing to demand tax at 20%. The petitioner challenged the notices by filing W.P. Nos. 35326 and 36621 of 2005 and those Writ Petitions were disposed of by order dated 6.3.2007, permitting the petitioner to approach the Assessing Officer with all relevant materials and the Assessing Officer was directed to consider the objections and supporting materials including the clarification proceedings and pass orders after following due process of law and

in accordance with the available material. Thereupon, the Assessing Officer received the petitioner's objection as well as the request for waiver and called upon the petitioner to explain as to why tax should not be levied at 20% on first sale of imported "Wet Dates" as per Entry 9 of Eleventh Schedule for the year 2002-03. Similar notices were issued to all the three companies. The petitioner submitted their detailed objections for all the notices and pursuant to which orders of assessment have been passed.

9. On a reading of the impugned order it is seen that the petitioner's contentions have been rejected on two grounds. Firstly by stating that the Circular issued by the first respondent is only a Circular incorporating the executive instructions intended for the Department and it cannot have any bearing on the Statute.

10. As pointed out in the preceding paragraphs, the Hon'ble Division Bench of this Court examined the scope of the Circular issued under section 28-A of the TNGST Act and held that the circular is binding on the authorities and even if the authorities want to withdraw the same, it could be done prospectively. Therefore, the first ground for rejecting the petitioner's objection is held to be contrary to the decision of the Hon'ble Division Bench, which examined the very power of the first respondent to issue clarifications/circulars in exercise of power under section 28-A of the TNGST Act.

11. The second reason stated is that the petitioner at the time of obtaining Clarification dated 13.08.2002, did not disclose that the Dates were of foreign origin. By relying upon the subsequent clarification dated 27.1.2003, the petitioner's case has been rejected by stating that whether they are imported directly or purchased from other States, if it is on foreign origin, it would fall under Entry 9 of Eleventh Schedule of TNGST Act.

12. The question would be whether the impugned clarification dated 27.1.2003, is in consonance with Entry 9 of Eleventh Schedule of TNGST Act. For better appreciation, Entry 9 of Eleventh Schedule of TNGST Act, is extracted hereunder:

The Eleventh Schedule

From the above it is seen that the products which are covered are imported cigarettes, medium density fibre boards, textiles and other imported items falling in Parts D and E of the First schedule are liable for tax at 20%.

13. Part D of First Schedule alone would be relevant for the purpose of this case and it reads as follows:

11 (i) Dry fruits and nuts and kernal such as almond, pistha, dry grapes, figs, apricots, walnut, other than those specified elsewhere in this Schedule First Sale

(ii) Wet Dates

Note: Rate of tax reduced to four percent on the sale of wet dates by G.O.Ms. No. 45 (CT) (B2) dated 12-2-2004 "Note. No. 11(1) CT/12(A-I)/2004 "Gazette dated 12-2-2004" Effective from 12.2.2004."

It is to be pointed out that clarification or rate of duty was fixed at 20% only for re-assessment year i.e. for 2002-03 and thereafter irrespective of commodities whether directly imported or local purchases or Inter-State Sales, uniformly, they have been taxed at 4%. Therefore, the issues which arise in these Writ Petitions are not recurrent issues, but only for one assessment year that too based on the impugned clarification.

14. While issuing the impugned clarification, the respondent should not only bring the commodity purchased by the petitioner under Part-D, but should also satisfy the other conditions stipulated by the first respondent in Circular dated 24.5.2002. The said Circular has been issued to all Deputy Commissioners (Commercial Taxes) in the State of Tamil Nadu and there are four issues which have been clarified and issue No. 4 deals with imported goods and it reads as follows:

"(4) Imported Goods:

As per entry 9 of the Eleventh 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 Eleventh Schedule. Further guidelines will issue if required. Doubts, if any, can be referred for clarification.

(i) The commodity should be on items which has a specific mention in Part-D or E; In other words residuary items falling Under Entry 41 of part 8 are not liable for tax at 20%.

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

(iii) The commodity should not be on item sold under "Indian Brand Name" or "Trade Mark"

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

Items which do not satisfy any of the above conditions or whose country of origin is not marked on the product or where evidence of country of origin is unavailable or impossible to establish are to be assessed at the respective rates of 12% or 20%, as the case may be.

This may be brought to the notice of all the officers working under your control."

15. Thus, as per the above clarification, the first requirement is that the commodity should be an item which has a specific mention in Part-D. It is no doubt true the petitioner's commodity being "Wet Dates", falling within Part-D Entry 11(2) of the First Schedule to the Act. Apart from that there were three

other conditions to be fulfilled. It should have a foreign marking, it should not be sold in Indian brand name or trade mark and it should not be an item which had undergone any form of reprocessing, reassembling, re-constitution or repacking in India. Thus, going by the clarification issued by the first respondent, which is undoubtedly statutory, the commodities purchased by the petitioner by way of Inter-State sale could not be termed as imported goods.

16. That apart, the impugned clarification is beyond the scope of Entry 9 of the Eleventh Schedule. The impugned clarification states that foreign goods whether imported directly from other countries or purchased from other States, the expression "purchase from other States" is conspicuously absent in Entry 9 of Eleventh Schedule. Therefore, by virtue of clarification, the respondent cannot add any expression or phraseology, which is not contained in the Statute. Therefore, the impugned clarification has to be necessarily held to be bad in law. Further more, the Hon'ble Division Bench has observed that the said Clarification cannot be given retrospective effect, which is precisely what the respondents have done in the case of the petitioners. Therefore, such retrospective application of the clarification was also illegal. In the light of the above reasoning, it is held that the impugned clarification is illegal, unsustainable and contrary to the settled legal principles as stated above and accordingly, the same is quashed. Consequently, the impugned orders rejecting the petitioners Applications for waiver are set aside and the respondents are directed to consider the petitioners applications for waiver and grant of admissible waiver, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petitions are allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.