
(2015) 01 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 21453 of 2008, W.P. No. 1304 of 2010, W.P. Nos. 13187 to 13190 of 2011, W.P. Nos. 18240 to 18242, 5187 to 5189, 1238 to 1241, 5471 and 5472 of 2012, W.P. Nos. 35239 to 35243, 16938, 4677 and 4678, 22810 and 22811, 6630 and 6631 of 2013,

Tulsyan Nec Limited

APPELLANT

Vs

The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 5(1)
Constitution of India, 1950 — Article 14, 366(29A)(b)
Special Economic Zones Act, 2005 — Section 2(13)(ii), 2(h), 2(m), 51
Tamil Nadu General Sales Tax Act, 1959 — Section 17
Tamil Nadu Special Economic Zones (Special Provisions) Act, 2005 — Section 12, 12(1), 12(1)(a), 12(2), 26(1)(g)
Tamil Nadu Value Added Tax Act, 2006 — Section 12, 12(1), 12(1)(a), 15, 17(1)

Citation : (2016) 332 ELT 634 : (2015) 82 VST 63

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

Bench : Single Bench

Advocate : N. Prasad for N. Inbarajan, for the Appellant; Anita Sumanth Assisted by Manokaran Sundaram, AGP, V. Haribabu and Cinbivishnu, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—The issue involved in all these cases being identical, they were heard together and are disposed of by this common order.

2. The matter arises under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), and the interpretation of Section 18 of the TNVAT Act, qua the transactions effected by the petitioners to units in Special Economic Zones. In majority of the cases the challenge is to the circular issued by the Commissioner of Commercial Taxes in Circular No. 9 of 2013, dated 24.07.2013 and the assessment orders passed by the respective Assessing Officers which were based on the impugned circular.

3. The facts in the lead case in W.P. No. 29450 of 2014, are taken into

consideration. The petitioner is a public limited company incorporated under the Companies Act, engaged in the manufacture of High Tensile Fasteners, Gear Shifters etc., and its factory located in Special Economic Zones (SEZ). The petitioner was awarded contracts for construction of their factory building and related infrastructure in the SEZ. According to the petitioner in terms of Section 18(1)(ii) of the TNVAT Act, any sale effected to a unit which will include a deemed sale in line with the definition of sale contained under Section 2(33) of the TNVAT Act, in terms of Article 366(29A)(b) of the Constitution of India. However, the Commissioner issued the impugned circular stating that works contracts executed for SEZ units cannot have the benefit of zero rating, since goods transferred by a contractor are neither exported as such or used in the manufacture of other goods which are exported. In the impugned circular, it has been stated that sale of goods, involved in the execution of works contract, to any other registered dealer located in SEZ in the State is not zero rate sale, as the goods are not exported as such or consumed or used in the manufacture of other goods that are exported, as required under Section 18(2) of the TNVAT Act. Consequent upon the circular, the Assessing Officer has taken a stand that no zero rating is permissible and issued notices/orders to reverse the input tax credit availed. In the said background, the petitioner has challenged the circular dated 24.07.2013, and the consequential action of the Assessing Officer stating that the transaction is not a zero rated sale.

4. The nature of transactions involved in few of the writ petitions in this batch are, in W.P. No. 21453 of 2008, the petitioner who are engaged in manufacture of iron and steel products have been effecting sales of the said goods to contractors and sub-contractors who have entered into agreement with a company for construction of their unit in a SEZ. In W.P. No. 11808 of 2014, the petitioner is engaged in the manufacture of construction machinery used for production of readymix concrete used for construction activities supplied to SEZ units. In W.P. Nos. 23673 and 23674 of 2014, the petitioners are executing works contract for SEZ units and developers in the State. In W.P. No. 16938 of 2013, the petitioner has effected sales to units located in SEZ. In W.P. Nos. 14847 and 14848 of 2014, the petitioner is a manufacturer and trader of measuring machinery and effected sales to units situated in the SEZ. In W.P. Nos. 6555 and 6556 of 2014, the petitioners are job work contractors who have done interior decoration work for units located in SEZ. The petitioners in W.P. Nos. 4677 and 4678 of 2013 and W.P. Nos. 16571 and 16572 and 15995 to 15997 of 2014, have executed works contract in interior decoration to SEZ and sold furniture to the SEZ or its Developer or Co-Developer. The petitioners in W.P. Nos. 22810 and 22811 of 2013, have executed civil work for a developer of SEZ. The Petitioners in W.P. Nos. 5187 to 5189 of 2012, have executed works contract for Special Economic Zone Customer. The petitioners in W.P. No. 15843 to 15848 of 2014, are engaged in the business of manufacture and supply of readymix concrete and effected sale to its customers located in SEZ. The petitioner in W.P. Nos. 5098 to 5101 of 2014, is a dealer in Iron and Steel and have effected sale

to units located in SEZ. In W.P. No. 35239 to 35243 of 2013, the petitioners have executed civil works contract for SEZ units. In W.P. Nos. 11808 to 11810 of 2014, the petitioners have executed interior decoration work for SEZ units. In W.P. No. 1304 of 2010, the petitioners are engaged in the business of civil construction and have executed works for SEZ units. The petitioners in W.P. Nos. 20682 to 20684 of 2014, are dealers and plywoods laminated sheets, doors and windows and have supplied to SEZ units located in the State of Tamil Nadu. The petitioner in W.P. Nos. 4128 to 4130 of 2014, are selling hot drinks such as tea, coffee, milk etc., to establishments in SEZ and other areas and claim exemption. The petitioner in W.P. Nos. 12994 and 12995 of 2014, have executed electrical works contract to SEZ units. The petitioner in W.P. No. 34862 of 2014, have effected sale of goods to SEZ units.

5. The above are some of the activities carried on by the petitioners. Though there may be a slight difference or distinction in the nature of the sale/supply effected essentially all the petitioners contend that the transaction effected by them for the SEZ units or its developers or co-developers are zero rated and entitled to the benefit of input tax credit under Section 18 of the TNVAT Act. Since the issue is common, the nature of activity done by the other Writ Petitioners have not been specifically set out.

6. I have elaborately heard the submissions of the learned counsels for the petitioners and their submissions could be summarized as follows:-

6.1 That the Parliament enacted the Special Economic Zones Act, 2005, an Act to provide for establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto. Section 2(za) defines "Special Economic Zone", Section 2(zc) defines "units", Section 2(j) defines entrepreneur. Section 3 deals with the procedure for making proposals to establish a special economic zone. Section 15 deals with setting up of units and Section 26 deals with exemptions, draw backs and concessions to every developer and entrepreneur. It is submitted that the Tamil Nadu Government enacted the Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005, and in terms of Section 12(1)(a) of the State Act, every developer or entrepreneur shall be entitled to various exemptions and one such exemption is from levy of tax on the sale or purchase of goods under the TNGST Act, if the goods are meant to carry on the authorised operations by the developer or entrepreneur. Therefore, by virtue of both the Central Act and in particular the State Act exemption is granted on the sale or purchase of goods, if the goods are meant to carry on authorised operations. It is submitted that Section 18 of the TNVAT Act provides for zero rating consisting of two sub-sections; under Section 18(1) there are three sub-clauses and by virtue of sub-clause (ii) of Section 18(1) sale of goods to any registered dealer located in SEZ, if such registered dealer has been authorised to establish such unit by the authority specified by the Central Government in this behalf shall be entitled for input tax credit or refund of the amount of tax paid on the purchase of goods

specified in the first schedule including capital goods. Therefore, it is submitted that the requirement contained in sub-clause (ii) in Section 18(1) is with regard to sale of goods to any registered dealer located in SEZ. By referring to the definition of sale under Section 2(33) of the TNVAT Act, it is submitted that it includes transfer of property in goods involved in the execution of a works contract and therefore, works contract executed is to be treated as a "sale". It is submitted that the impugned circular is wholly without jurisdiction, since on a plain reading of Section 18(1)(ii) of the TNVAT Act, there is no condition as stipulated in the circular stating that sale of goods involved in the execution of works contract to a dealer located in SEZ is not a zero rated sale as the goods are not exported as such or consumed or used in the manufacture of other goods that are exported as required under Section 18(2) of TNVAT Act. It is further submitted that Section 18(2) of the TNVAT Act, will have no applicability to a case falling under Section 18(1)(ii) of the TNVAT Act and will apply only in case involving export where refund is granted. In this regard, Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007, was referred and that Form W prescribed under the Rules refers only to export transaction and there is no reference to a case falling under Section 18(1)(ii) of TNVAT Act. Therefore, it is submitted that the benefit under Section 18(1)(ii) is independent and the contractors who have done work or effected sales to SEZ or developer, co-developer or contractor of SEZ cannot be denied the benefit of input tax credit under Section 18(1)(ii) of the TNVAT Act, which is an independent scheme governed entirely by Section 19(2) of the TNVAT Act. It is further submitted that the impugned circular suffers from error of law apparent on the face of the record as it introduces a new condition under Section 18(1)(ii) of the TNVAT Act that goods sold to SEZ units must be exported as such or used in the manufacture of other goods which are exported.

6.2 It is reiterated that Section 18(2) of the TNVAT Act will apply only to a sale as specified in clause (i) of Section 18(1) of the TNVAT Act and has no application to cases/contracts/works falling under clauses (ii) and (iii) in Section 18(1) of TNVAT Act. Further, it is submitted that without prejudice to the contracts under Section 18(1)(ii) of TNVAT Act, they are independently governed by notification in G.O. Ms. No. 193, dated 30.12.2006, issued under Section 17(1) of the erstwhile Tamil Nadu General Sales Tax Act, which continues to have binding effect by virtue of Section 88(3)(i) of TNVAT Act. It is further submitted that the Commissioner while issuing circular has lost sight of Section 12(1) of the Tamil Nadu Special Economic Zones (Special Provision) Act 2005, (TNSEZ Act), which provides that subject to the provisions of the sub-section (2) of Section 12, every developer or entrepreneur shall be entitled for exemption from the levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales Tax Act, if such goods are meant to carry on the authorised operations by the developer or entrepreneur. It is submitted that TNSEZ Act is an act to make special provision in relation to SEZs in State of Tamil Nadu and for matters connected therewith and incidental thereto. In terms of Section 2(f), all other words and expression

used and not defined in TNSEZ, but defined in the Central Act viz., the Special Economic Zones Act, 2005, (CSEZ Act) shall have the meaning respectively assigned to them in that Act. Further, in terms of Section 28, the provisions of the TNSEZ Act shall be in addition to and not in derogation of the CSEZ Act and shall have effect notwithstanding anything inconsistent therewith contained in any other State law for the time being in force. It is further submitted that Section 19(5)(a) and Section 15 of TNVAT Act refer only to exemption with respect to sale of goods specified in IV Schedule and goods exempted by notification. It is submitted that the phrase "goods exempted by notification" occurring in Section 15 of TNVAT Act come within purview of clauses (a) and (c) of Section 30(1) of TNVAT Act only and does not cover transactions described in clause (b) of Section 30(1) of TNVAT Act. It is further submitted that proviso 1, to Rule 10 of The Special Economic Zones Rules 2006, states that exemption and concession on the goods and services allowed to developer or co-developer shall also be available to the contractors including sub-contractors appointed by such developer or co-developer. Therefore, it is submitted that the term expression applicable to SEZ units which includes developers and works contractors executing works in SEZ has emanated from the SEZ enactments and has no relation to the term exemption or exempt sale as defined under Section 15 of the TNVAT Act. It is further submitted that the Gujarat High Court while dealing with a similar issue with reference to the Gujarat VAT Act and the Gujarat SEZ Act in the case of Torrent Energy Limited Vs. State of Gujarat, , held that the provisions of the SEZ Act will have an overriding effect on the provisions of the Gujarat VAT Act and purchase tax could not be levied. The said analogy will apply to the provisions of the Section 28 of the TNSEZ Act vis-?-vis the provisions of the TNVAT Act. Further, it is submitted that the term "sale" as defined under Section 2(33) of the TNVAT Act includes a deemed sale and in respect of sales to SEZ units/developers, by virtue of the overriding effect of the SEZ Act, the term "export" has to be given the meaning as defined under Section 2(13)(ii) of the CSEZ Act, 2005, which defines exporters supplying goods or providing services from domestic tariff area to a unit or developer. Therefore, it is submitted that deemed sale or works contract executed by the petitioners are also an export transaction falling under Section 18(2) of the TNVAT Act and benefit of ITC cannot be denied. It is further submitted that in all cases apart from directing reversal of ITC, heavy penalty has been levied which is untenable and unwarranted.

6.3 It is further submitted that the nature of activity done by the petitioners have not been disputed by the department and the works contract performed by the petitioners are to be treated as zero rated. In W.P. Nos. 6555 and 6556 of 2014, it is submitted that the input tax credit has only been shown in the books and no credit has been availed by the petitioner and hence, the question of reversal does not arise and no penalty can be levied.

6.4 Reliance was placed on the decision of the Division Bench of the High Court Chhattisgarh in the case of Union of India Vs. Steel Authority of India Ltd., ,

wherein the scheme of the SEZ Act has been elaborately discussed and it is pointed out that the SEZ Act has overriding effect over any other law and in the case of conflict the SEZ Act is to prevail and that the SEZ is within the territorial limits of the country, the goods supplied to the unit or to the developer in SEZ do not go outside the country, yet, in view of the definition of Section 2(m) of the SEZ Act, they are to be treated as "export" and all benefits given to export under any other law should be given. It is further submitted that the Chhattisgarh High Court pointed out that SEZ Act, treats the units as well as the developers on the same footing and they have the same liabilities and same benefits. Reliance was also placed on the decision of the High Court of Andhra Pradesh in the case of Flowmore Limited and Another Vs. Deputy Commercial Tax Officer, , wherein it was held that Section 51 of the SEZ Act, gives overriding effect over other laws and therefore, Section 7A of the A.P. VAT Act which deals with exemption of tax on the sale of goods for certain purposes to unit located in any SEZ is construed as exempting the sale effected by a registered dealer alone to another registered dealer in SEZ, it would render the very provision ineffective.

6.5 With regard to the transaction relating to supply of hot milk and beverages, it is submitted that the hot milk is exempted from tax as per the clarification issued by the Commissioner and inspite of the petitioners furnishing all the breakup details, the Assessing Officer stated that petitioners have not furnished details. On the above submissions, the learned counsels for the petitioners prayed for setting aside the impugned circular and the orders of assessment made by the respective Assessing Officers.

7. The learned Special Government Pleader appearing for the respondents submitted that Section 18(1) and (2) cannot be dissected as two provisions as both the sub-sections form a complete code to be read together and an assessee should satisfy the conditions cumulatively. It is further submitted that all the three sub-clauses contained in Section 18(1) of the TNVAT Act, are targeted for supplies outside the country. Further, the intention behind enacting the CSEZ Act (Central Act) is clear from the preamble of the Act i.e., to increase exports, even though at present SEZ can transfer 25% to the domestic tariff area that does not dilute the object of the Act. It is further submitted that the notification issued under the provisions of the TNGST Act speaks of exemption and Section 15 of the TNVAT Act deals with exemption. Therefore, the goods which are exempted from tax in terms of Section 15 of the TNVAT Act or as specified in the IV Schedule and the transactions relatable to infrastructural support would fall only under Section 15 of the TNVAT Act in contra distinction to the transactions relating to goods that are to be exported as such or used or consumed in the manufacture for export which will attract Section 18 of the TNVAT Act. Further, it is submitted that Section 18(2) of the TNVAT Act has to be read along with Section 18(1)(ii) of the TNVAT Act, otherwise the inclusion of the words "input tax credit" or "refund" in Section 18(1) of the TNVAT Act loses significance. By referring Section 12(1)(a) of the TNSEZ Act, it is submitted that the authorised operation referred to therein are relatable to export activity as required under

Section 18(2) of the TNVAT Act. Further, it is submitted that Rule 5(5) of the SEZ Rules 2006, states that before recommending any proposal for setting up of SEZ, the State Government shall endeavour that the requirements spelt out in clauses (a) to (h) are available in the State and undoubtedly, there is an endeavour and therefore, reliance on Rule 5(5) cannot in any manner advance the case of the petitioners. With regard to the decision of the Gujarat High Court in the case of Torrent Energy Pvt. Ltd., (supra) it is submitted that the same is clearly distinguishable on facts. The scope of the Gujarat SEZ Act was interpreted and Section 21 of the Gujarat SEZ Act is entirely different and it is not couched as Section 12(2) of the TNSEZ Act. Further, it is submitted that in Section 12(1) of the TNSEZ Act is reflected in Section 18(1) and (2) of the TNVAT Act and the same is not the case with regard to the Gujarat VAT Act. Further, it is submitted that the statutory provision has not been challenged and the provisions cannot be read in the manner done by the petitioners and the impugned circular states the statutory provision clearly to serve as a guideline for the Assessing Officers and the same is valid.

8. In reply the learned counsels for the petitioners submitted that Section 18(2) of the TNVAT Act cannot read into or superimposed into Section 18(1)(ii) of the TNVAT Act and a person who supplies to SEZ cannot be worse of than a dealer who supplies to a DTA unit, who will be entitled to credit under the TNVAT Act. Therefore, it is submitted that construction of a statute if irrational cannot be accepted and to support such proposition reliance has been placed on the decision in the case of State of Maharashtra vs. Milind reported in (2004) 4 SCC 105. Further, it is submitted that Section 18(2) there is no reference to credit and it only speaks of refund. Further, it is submitted that the interpretation given by the petitioners, stating that the SEZ Act and the TNVAT Act are parallel schemes and the concession granted in Section 18(1)(ii) of TNVAT Act is in tune with the purpose for enacting the SEZ Act and they are parallel benefits. Further, it is submitted that the benefit under Section 12(1) of the TNSEZ Act is not subject to Section 12(2) of the said Act and in terms of Rule 5(5) of the SEZ Rules, it is a mandate given by the Central Government. Further, reference has been made to the clarification issued in 2007 and the same having not been withdrawn till date, and the dealers have acted based on clarification and therefore, it is binding on the respondent. To support such proposition, reliance was placed on the decision in the case of Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another, and State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another, .

9. By way of reply the learned Special Government Pleader submitted that the scheme under the TNVAT Act and TNSEZ Act are distinct and the petitioners cannot have the benefit of both the schemes. Further, the manner in which the petitioners have interpreted Section 18 of the TNVAT Act is not sustainable, since the Act has to be read as a whole and the legislature has intended Section 18 of the TNVAT Act to be a complete in all respects. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in Kerala State Co-

operative Marketing Federation Ltd. and Others Vs. Commissioner of Income Tax, . Further, it is submitted that infrastructure is also necessary and that is why exemption is provided for under Section 15 of the TNVAT Act. It is further submitted that the refund which is provided for under Section 18(2) of the TNVAT Act is the input tax credit. Further, no clarification has been issued and those are in the nature of letters and the authorities cannot override the statutory provision.

10. Heard the learned counsels appearing on either side and perused the materials placed on record.

11. The petitioners have challenged the circular issued by the Commissioner in Circular No. 9 of 2013, dated 24.07.2013 and the assessment orders passed by the respective Assessing Officers reversing the input tax credit availed by the petitioners and levying penalty. In certain cases, the challenge is only to the assessment orders, but in the grounds raised in the Writ Petitions, the petitioners have contended that the assessments could not have been made by relying on the circular and the circular is contrary to the statutory provisions. The controversy raised in this Writ Petitions revolves on the interpretation of Section 18 of the TNVAT Act, which reads as follows:-

"Section 18:-Zero-rating.-(1) The following shall be zero-rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:-

(i) A sale as specified under sub-section (1) or (3) of Section 5 of the central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organisations listed out in the Fifth Schedule.

(2) The dealer, who makes zero-rate sale, shall be entitled to refund of input tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

(3) Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of accrual of such input tax credit, such credit shall lapse to Government."

12. Section 18 of the TNVAT Act, deals with zero rating, subsection (1) defines what are zero rated sales for the purposes of the TNVAT Act and shall be eligible for input tax credit or refund of the amount of tax paid on the purchase of goods

specified in the first schedule including capital goods, by a registered dealer in the State as prescribed in clauses (i) to (iii) under Section 18(1) of the TNVAT Act subject to condition and restriction as may be prescribed. Zero rated sale as defined under Section 2(44) of the TNVAT Act means sale of any goods on which no tax is payable, but credit for the input tax related to that sale is admissible. Sub-section (2) of Section 18 deals with the entitlement of refund of input tax credit paid or payable by the dealer on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-Section (1) of Section 18, subject to restrictions and conditions as may be prescribed. Sub-Section (3) of Section 18 deals with the period of limitation within which refund claim has to be made, failing which such credit shall lapse to Government. In the case of *M/s. Interfit Techno Products Ltd. vs. Principal Secretary* in W.P. No. 13901 of 2008 etc batch this Court examined as to the nature of benefit accruing to a dealer under Section 18 of the TNVAT Act. In the said batch of cases, a contention was raised that Section 18 of the TNVAT Act is an "island" by itself not subject to the conditions prescribed under Section 19(9) of the TNVAT Act. While on that issue, it was pointed out that Section 19 of the TNVAT Act deals with input tax credit, Section 2(24) of the TNVAT Act, defines "input tax" and this tax paid by the registered dealer to another registered dealer on the purchase of goods is entitled to avail as credit termed as input tax credit provided that the registered dealer, who claims credit shall establish that the tax due on such purchases has been paid by him in the manner prescribed. Therefore, it was pointed out that amount which is to be refunded in the case of zero rated sale by filing application under Section 18(2) is that input tax paid by the dealer for the purchase of the goods and Section 18 gives such benefit to the registered dealer despite the fact, no tax is payable by him on the export sale. It was pointed out that the expression "input tax credit" cannot be divested from Section 18 of the TNVAT Act, and what is enjoyed by the dealer as credit is granted as a refund, since there is no tax liability. Further it was held that for all practical purposes the benefit which accrues to the registered dealer is in effect the input tax credit which ripens into the refund claim under Section 18(2) of the TNVAT Act. Therefore, it was held that such input tax credit shall be available to the dealer subject to the restrictions and conditions stipulated under Section 19 of the TNVAT Act.

13. In the light of the said finding, the contention raised by the petitioner that Section 18(1) contemplates two categories of benefit namely input tax credit and refund, is a submission to be rejected. Having held so, it has to be examined as to whether the case of the petitioners who are suppliers/works contractors/contractors to SEZ unit, its developers, contractors or sub-contractors would fall within clause (ii) of Section 18(1) and whether clause (i) and (iii) under Section 18(1) are relatable only to transactions which are contemplated under Section 18(2) of the TNVAT Act. On a plain reading of Section 18 of the TNVAT Act, it is seen that the provision deals with zero rating. Sub-section (1) of Section 18 states what are all zero rate sale for the purpose of the Act which shall be eligible

for input tax credit or refund, which are subject to restrictions and conditions as may be prescribed. Three such types of sale have been listed out under Section 18(1) of the TNVAT Act, they are (i) sale as specified under Section 5(1) or (3) of the Central Sales Tax Act, 1956; (ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and (iii) Sale of goods to International organisation listed out in the fifth schedule. Therefore, to be considered as a zero rated sale and to be eligible for input tax credit or refund the sale should fall within one of the three categories mentioned above. Sub-Section (2) has to be read along with sub-section (1) of Section 18, and cannot be divested or segregated to be read only with clauses (i) and (iii) of sub-section 18(1), the statute does not made any such distinction between the transactions mentioned in clauses (i) (ii) and (iii) in Section 18(1) all being classified as a zero rated transactions. Therefore, to state that sub-section (2) of Section 18 will not apply to clause (ii) of Section 18(1) amounts to inserting a new provision to the statute when the statute does not contemplate of such situation/contingency.

14. In Maxwell's Interpretation of Statutes, 10th Edition at page 162, while dealing with the cardinal rule of construction of the provisions of a Section with proviso is elucidated as under:-

"The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail"

15. As already held the refund claim which the dealer is entitled to under Section 18(2) is that amount which he enjoys as a credit which ripens into a refund claim because the transaction at his hands is not taxable. Therefore, the interpretation given by the petitioners, if accepted would tantamount to rewriting the statutory provision. Subsection (2) of Section 18 is not a proviso to clauses (i) and (iii) of Section 18(1). In fact, it is a substantive provision and shall be read into all contingencies contemplated in Section 18(1) of the TNVAT Act. The word "or" is conspicuously missing in between clauses (i) to (iii) in Section 18(1) of TNVAT Act and therefore, the three clauses are not disjunctive. Therefore, the endeavour made by the learned counsel for the petitioners to state that sub-section (2) of Section 18 could be applied only to transactions covered under clause (i) and (iii) of Section 18(1) of the TNVAT Act, does not merit consideration. Having come to such a conclusion the other issues raised by the petitioners are taken up for considerations.

16. It is submitted that the Special Economic Zone Act, (Central Act), (CSEZ) is a special enactment to provide for the establishment development and

management of SEZ for promotion of exports and for matters connected therewith or incidental thereto and the State Government has also enacted, the TNSEZ Act as an Act to make certain special provisions in relation to special economic zones in the State of Tamil Nadu and the matter connected therewith and incidental thereto. The State Act is not in derogation to the Central Act in terms of Section 28. The argument of the petitioners is based on Section 12 of the State Act, TNSEZ Act, which reads as follows:-

12. (1) Subject to the provisions of sub-section (2), every developer or entrepreneur shall be entitled to the following exemptions, namely:-

(a) exemption from the levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales Tax Act, 1959, if such goods are meant to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from the tax payable under the Tamil Nadu Additional Sales Tax Act, 1970;

(c) exemption from the tax payable under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990;

(d) exemption from the tax payable under the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001;

(e) exemption from the tax payable under the Tamil Nadu Tax on Luxuries Act, 1981;

(f) exemption from the tax payable under the Tamil Nadu Entertainments Tax Act, 1939;

(g) exemption from the tax payable under the Tamil Nadu Advertisement Tax Act, 1983;

(h) exemption from the tax payable under the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 for electricity sold or consumed in a Special Economic Zone.

(2) The Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer or entrepreneur under sub-section (1).

17. It is submitted that in terms of clause (a) of Section 12(1) every developer or entrepreneur shall be entitled for exemption from the levy of taxes on the sale or purchases of goods under the TNGST Act, if such goods are meant to carry on authorised operations by the developer or entrepreneur.

18. The contention of the petitioners is that they being contractors or works contractors for developers or contractors/subcontractors of developers who are authorised to carry on such operation by the Development Commissioner as defined under Section 2(h) of the CSEZ Act are entitled to exemption. The fundamental error in such submission is that the scope of the provisions of

TNVAT Act and the scope of the benefits accruing under the CSEZ and TNSEZ Act have been completely lost sight of. It has to be pointed out that the Special Economic Zones Act, both the Central as well as the State Act and the TNVAT Act operate in a different field. It is relevant to take note of sub-section (2) of Section 12 of TNSEZ Act which states that the Government may prescribe the manner in which and the terms and conditions subject to which the exemption shall be granted to the developer or entrepreneur under sub-section (1) of Section 12. The expression used in sub-section (1) of Section 12 is "exemption". There is a marked distinction between "exemption" and "credit". This important distinction assumes significance and brings about the manner in which the statutes operate. Section 12(2) of TNSEZ Act provides for exemptions which are contemplated under Section 12(1) of the Act and the manner in which and the terms and conditions subject to which such exemption should be granted may be prescribed by the Government. Therefore, Section 12(1) is an enabling provision to be implemented by the State Government prescribing the manner and terms and conditions subject to which exemption be granted. Therefore, the contention raised by the petitioners, that the benefit of exemption automatically flows from Section 12 is an incorrect submission. In any event, the exemption provided for is not akin to the benefit which is granted under Section 18 of the TNVAT Act. Therefore, the contention raised by the petitioners, to read clause (ii) of Section 18(1) of the TNVAT Act, as a separate compartment and for which purpose relying upon the provisions of the CSEZ Act and TNSEZ Act is devoid of merits. This conclusion is further fortified if we examine Section 15 of the TNVAT Act. The said provisions deals with exempted sale and states that sale of goods specified in IV Schedule and the goods exempted by notification by the Government by any dealer shall exempt from tax. Further, the contention that exemption under TNSEZ Act has no relation to exemption under Section 15 of TNVAT Act does not merit acceptance in the light of the clear language of Section 12(2) of the TNSEZ Act.

19. As noticed above, Section 12(1)(a) of the TNSEZ Act speaks of an exemption. Though the SEZ Act provides for exemption in certain contingencies such exemption is available as the Government may prescribe and subject to terms and conditions in terms of sub-section (2) of Section 12 of the TNSEZ Act.

20. The concession granted under Section 18 of the TNVAT Act, is a special benefit given to exporters and such concession which is in the nature of input tax credit which may ripen into a refund claim, is subject to restriction and conditions contained under Section 19(9) of the TNVAT Act. If the sales effected by the petitioners to the SEZs are exempted from tax, then the dealers are not eligible to claim input tax credit as per Section 19(5)(a) of the TNVAT Act. Therefore to enjoy the benefit granted under Section 18, it is necessary for the dealer to establish that the input tax paid or payable by him on the purchase of those goods which were exported as such or consumed or used in the manufacture of other goods that are exported as specified in subsection (1) of Section 18 subject to such restrictions and conditions as may be prescribed.

21. It was argued that the petitioners have effected sale or performed works contract to Developers/Entrepreneur who have been authorised under the provisions of the SEZ Act and in terms of Section 26(1)(g), they are exempt from levy taxes in sale or purchase of goods, Rule 9 of the CSEZ Rules, 2006, deals with grant of approval for authorised operations. In terms of the said Rule, the Developer is required Form C7 furnishing several details, in particular, details of the activities in the processing area for which approval is sought for, and details of the activities in the non-processing area with appropriate undertaking as regards the correctness of the information furnished. In terms of Rule 22 of the CSEZ Rules 2006, grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to conditions contained therein. Therefore, the scheme of the CSEZ Act, TNSEZ Act and the Rules make the position clear that benefit is intended to the SEZ unit for "the authorised operations" which essentially is the export activity for which approval has been granted. Hence, the contention raised by the petitioners is not tenable.

22. In the case of Torrent Energy Ltd. (supra), the petitioner is a power generation unit established in an SEZ. The question which fell for consideration was whether they were liable to purchase tax on capital goods and fuel used in power generation under the Gujarat VAT Act. The other petitioner was a unit in a SEZ engaged in the manufacture of printing ink and purchase tax was demanded on the zero rated goods purchased by them and consumed in its SEZ unit. The petitioners contended that Section 21 of the Gujarat SEZ Act provides for total exemption from payment of various State taxes of units situated in SEZ area; Section 22 of the Gujarat SEZ Act contains a non-obstante clause; the SEZ Act would have overriding effect over the State fiscal statutes. The Revenue took a stand that Section 22 of the Gujarat SEZ Act gives overriding effect only to existing state laws and not to Section 5A and Section 9(5) of the Gujarat VAT Act, which was introduced subsequently that is w.e.f., 01.04.2008; non-obstante clause be given effect only to the extent the legislation intended. It is to be pointed out that it was not in dispute that the petitioners therein were not required to pay any taxes under Gujarat VAT Act [but for the newly introduced provisions, Section 5A and 9(5)]. Therefore, the question which was considered was whether immunity enjoyed was curtailed by subsequent law inserted w.e.f., 01.04.2008. Considering these facts the Court held that the provisions of Section 21 of the Gujarat SEZ Act had primacy and purchase tax cannot be demanded. At the outset, it has to be pointed out that Section 21 of Gujarat SEZ Act and Section 12 of TNSEZ Act are not *pari materia* and the Revenue herein does not admit the position that the petitioners herein are not liable to pay tax, but would seriously dispute the same. Further, the petitioners herein claim ITC on the sales effected to SEZ's or its developers. That apart, there is marked and material difference with regard to zero rated sale as per under Section 5A in the Gujarat VAT Act with that of Section 18 of the TNVAT Act. The provisions are not *pari materia*. Furthermore, the factual background of the case was entirely different and therefore, the decision does not render support to the case of the

petitioners. The interpretation of the petitioners, if accepted, it would render the statute futile. The intention of the legislation is clear from the language of Section 18 of TNVAT Act specifies the benefit for zero rated transactions.

23. The contention that the phrase "goods exempted by notification" occurring in Section 15 of TNVAT Act would not cover transaction under clause (b) of Section 30(1) of TNVAT Act, does not merit acceptance for the following reason. Section 15 of TNVAT seeks to define what is exempted sale in the absence of any definition in Section 2 of TNVAT as Section 2(20) only defines exempted goods. For the purpose of TNVAT, sale of goods specified in the fourth schedule and goods exempted by notification by the Government are exempted sale. Section 30 of TNVAT is in pari materia with Section 17 of TNGST Act dealing power to notify exemption or reduction of tax. Clauses (a) or (b) or (c) under Section 30(1) TNVAT circumscribes the power of government to notify exemption/reduction of tax in specified contingencies and would fall within the ambit of exempted sale as defined under Section 15 of TNVAT. Hence, no exception could be carved out as contended by the petitioner, as it would amount to rewriting the statute.

24. As far as the decision of the Chhattisgarh High Court in the case of Union of India Vs. Steel Authority of India Ltd., , it arose out of a tax appeal under the provisions of the Central Excise Act, 1944, with regard to benefit provided by Rule 6(6)(i) of the Cenvat Credit Rules 2004 could be availed by the assessee on a date prior to substitution and whether substituted rule is retrospective or not. Under the substituted rules not only clearance to unit, but clearance to a developer was also exempted from operation of Rule 6(1) to 6(4) of the CENVAT Credit Rules 2004. In the background of those facts, the Court proceeded to examine the SEZ Act and held that the said Rule was only clarificatory and the substituted Rules were to come into force from when the rules were enforced. The findings/observations made by the Hon"ble Court as regards the effect of the SEZ Act cannot be interpolated into the facts of the present case. Further, Section 2(m) of the CSEZ Act defining export cannot be read in isolation while claiming benefit of ITC under Section 18 of the TNVAT and essentially satisfy the conditions in clauses (i) to (iii) of Section 18(1) of TNVAT Act.

25. Similarly the decision of the High Court of Andhra Pradesh in the case of Parke-Davis Employees Union and Others Vs. A.P. Industries Infrastructure Corporation Limited and Others, , also deals with the SEZ Act and does not pertain to any decision with regard to the VAT Act.

26. In the case of Emerald Stone Export Vs. The Assistant Commissioner (CT), FAC, Pudukkottai I Assessment Circle, Pudukkottai, , the petitioner therein established that the sale to 100% EOU was in the course of export supported by documents such as bill of lading export invoice etc., and therefore, this Court held that Section 18 of the TNVAT Act, would apply and the dealer was entitled to refund of the input tax. In the cases on hand no such attempt has been made by any of the petitioners to produce any such document rather it is a admitted case

that the nature of sale effected by them was neither exported as such or consumed or used in the manufacture of other goods that are exported as specified in Section 18(1) of the TNVAT Act.

27. In the case of Innanuri Gopal vs. State of A.P., reported in 1964 14 STC 742, pertain to a notification issued under Section 9 of the AP General Sales Act exempting from tax the sale or purchase of certain goods. The claim for exemption by the appellant was denied and the reasoning given by the department was disapproved by the Hon''ble Supreme Court. Interpreting the exemption notification and pointing out that if the intention can be gathered from the construction of the statute or the rule or by the necessary implication therefrom, the matter is different and in the said case, the position was contrary. The said decision cannot be applied to the facts of this case in the light of the clarity as found in the Section 18 of the TNVAT Act.

28. It is to be once again pointed out that the plea raised by the petitioner seeking for exemption by relying on notifications issued under Section 17 of the TNGST Act is of little avail and if according to the petitioners, the sales are exempt then they have to seek umbrage under Section 15 of the TNVAT Act, and placing reliance on Section 18 and interpreting that Section 18 has to be read in a truncated manner does not merit acceptance. It is beneficial to refer to the decision of the Hon''ble Supreme Court in the case of Kerala State Co-operative Marketing Federation Ltd. and Others Vs. Commissioner of Income Tax, , wherein the Hon''ble Supreme Court pointed out that it is a clear rule of statutory construction that, in trying to interpret a statutory provision, attention should be given to the setting in which the provision occurs and regard must be had to the language of an entire group of connected provisions which may form an integral whole. It is a settled rule of interpretation that in a taxing statute one has to look merely what is clearly stated, there is no room for any intendment, there is no equity about tax, there is no presumption as to tax, nothing is to be read in, nothing is to be implied and one can only look fairly to the language used. (see "Principles of Statutory Interpretation by Justice G.P. Singh, Sixth Edition quoted by Hon''ble Supreme Court in COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD., .

29. For the reasons assigned, it is held that impugned Circular No. 9 of 2013, dated 24.07.2013, sets out the statutory provision and the benefit which accrues to the dealer under Section 18 of the Act and the circular is neither contrary nor ultra vires of the provisions of the TNVAT Act, not is it violative of Article 14 of the Constitution of India or irrational.

30. In the upshot, the prayer to quash the impugned circular is rejected and the Writ Petitions filed challenging the circular, are dismissed.

30.1 As noticed above, in several Writ Petitions in this batch of cases apart from challenging the impugned circular, the petitioners have challenged pre-revision notices and assessment orders, which are consequent to the impugned circular.

In the pre-revision notices, there is a proposal to levy penalty. In the impugned assessment orders, the respective Assessing Officers have levied penalty. On a perusal of the impugned pre-assessment notices as well as the impugned assessment orders, it is seen that no specific reason has been assigned as to under what circumstances, penalty is leviable. In fact, mechanically there is a proposal to levy penalty. It is a settled legal principle that when there is a proposal to levy penalty, the Assessing Officer has to specifically record a finding that the conduct of the dealer was deliberate and the suppression was wilful with an intent to avoid payment of tax. No such conclusion has been arrived at by the Assessing Officers while proposing to levy penalty or while imposing penalty in the assessment orders. Therefore, in all the impugned pre-assessment notices, wherever penalty has been proposed, the same shall stand set aside. In respect of the penalty levied in the impugned assessment orders, the same shall stand vacated.

30.2 In two cases, namely, W.P. Nos. 6555 and 6556 of 2014, the petitioners have contended that the question of reversal of ITC does not arise, since they have shown the ITC in their books but they have not availed the credit. Therefore, in the said cases, the petitioner is directed to file a petition under Section 84 of the TNVAT Act, seeking for reversion of assessment and on such application being filed, the Assessing Officer shall consider the same after affording an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law.

30.3 In W.P. Nos. 4128, 4129 and 4130 of 2014, the petitioners have taken a stand that hot milk is exempted from tax relying on a clarification issued by the Commissioner and in spite of records having been produced the Assessing Officer has failed to consider the same and mechanically pass the order. In the light of the above submission the impugned assessment orders are set aside on the ground that the petitioners have not been afforded reasonable opportunity to put forth their contentions and the matter is remanded to the Assessing Officer for fresh consideration in accordance with law and after affording an opportunity of personal hearing to the petitioner.

30.4 In respect of the other cases, as this Court has held that the impugned circular is valid and proper and the assessment orders having been passed, the petitioners are given liberty to file appeal as against the assessment orders before the Appellate Authority and if such appeal is filed within a period of 8 weeks from the date of receipt of a copy of this order, the Appellate Authority shall entertain such appeal without rejecting the same on the ground of limitation and deal with the matter in accordance with the provisions of the TNVAT Act. In the Writ Petitions where pre-revision notices are impugned, the petitioners are directed to submit their objections to the respective Assessing Officers and on receipt of the same, the Assessing Officers shall afford an opportunity of personal hearing to the petitioners and pass a reasoned order on merits and in accordance with law. The objections shall be filed by the petitioners

within a period of 30 days from the date of receipt of a copy of this order.

In the result:-

(i) The impugned circular No. 9 of 2013, dated 24.07.2013, is held to be valid and not contrary or ultra vires to the provisions of the Tamil Nadu Value Added Tax Act and it is not violative of Article 14 of the Constitution of India or irrational.

(ii) The proposal to levy penalty in the impugned pre-revision notices are set aside.

(iii) The penalty levied in the impugned assessment orders are set aside.

(iv) The petitioners who have challenged the pre-revision notices shall submit their objection in writing to the respective Assessing Officers, within a period of 30 days from the date of receipt of a copy of this order and on receipt of the same, the Assessing Officer shall afford an opportunity of personal hearing to the petitioners and pass a reasoned order on merits and in accordance with law.

(v) In cases where the petitioners have challenged the assessment orders, they are given liberty to file an appeal before the Appellate Authority, within a period of eight weeks from the date of receipt of a copy of this order and the Appellate Authority shall entertain such appeal and decide the matter in accordance with the provisions of the Tamil Nadu Value Added Tax Act, without rejecting the same on the ground of limitation.

(vi) In W.P. Nos. 6555 and 6556 of 2014, the petitioners are directed to file a petition under Section 84 of the Tamil Nadu Value Added Tax praying for revision of assessment and on such application being filed, the Assessing Officer shall consider the same after affording an opportunity of personal hearing to the petitioners and pass orders on merits and in accordance with law.

(vii) In W.P. Nos. 4128 to 4130 of 2014, the petitioners have taken a stand that "hot milk" is exempted from tax based on a clarification issued by the Commissioner, the impugned orders are set aside and the matters are remanded to the Assessing Officer for fresh consideration after affording an opportunity of personal hearing to the petitioners.

No costs. Consequently, connected miscellaneous petitions are closed.