

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6284 of 2020
and W.M.P.No.7472 of 2020

M/s. Tamil Nadu State Marketing Corporation Ltd.,
Represented by its Managing Director,
Shri R.Kirlosh Kumar
4th Floor, CMDA Tower - II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600008.

... Petitioner

-VS-

- 1.Union of India,
Represented by its Secretary,
Ministry of Finance, North Block, New Delhi.
- 2.The Chairman,
Central Board of Direct Taxes, New Delhi.
- 3.The Principal Commissioner of Income Tax-3,
121, Mahatma Gandhi Road,
Chennai - 600034.
- 4.The Additional Commissioner of Income Tax,
Corporate Range - 3,
121, Mahatma Gandhi Road,
Chennai - 600034.

5.The Deputy Commissioner of Income Tax,
Corporate Circle - 3(1),
121, Mahatma Gandhi Road,
Chennai - 600034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare the impugned provision in sub-clause (iib) of Clause (a) to Section 40 of the Income Tax Act, 1961, as inserted by Finance Act 2013 [No.17 of 2013 Assented by the President of India on 10.05.2013] w.e.f. 01.04.2014 as null and void and *ultra vires* the Constitution of India and/ or be pleased to strike down the said provisions as *ultra vires*, discriminatory, arbitrary, unreasonable and violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

For Petitioner : Mr.Vijay Narayan (Advocate General)
for Mr.Subbaraya Aiyar Padmanabhan

For Respondents : Mrs.Hema Muralikrishnan
Senior Counsel (Income Tax)

ORDER

(Delivered by *The Hon'ble Chief Justice*)

A challenge to the validity of Section 40(a)(iib) of the Income Tax Act, 1961, has been raised by the petitioner Corporation, contending that the amount which is deductible in computing the income chargeable in terms of the Income Tax Act is not being allowed under the garb of the aforesaid provision and for which learned Advocate General appearing for

the petitioner / TASMAL has invited the attention of the Court to the order passed by the Assessing Authority dated 30.12.2019.

2. Learned Advocate General contends that the Income Tax Authority has erroneously construed the Value Added Tax (VAT) to be falling within the definition of a "charge" as contained in the impugned Section, and has therefore arrived at an incorrect conclusion. He, however, informs that the order dated 30.12.2019 being in violation of principles of natural justice, was challenged and has been quashed and the matter has again been remitted to the Income Tax Authority for deciding afresh.

3. The principal argument of the learned Advocate General while assailing the said provision is that it is discriminatory and violative of Article 14 of the Constitution of India, inasmuch as there are many Central Government undertakings which have not been subjected to any such computation of Income Tax and are enjoying exemption. He, therefore, submits that the very object of the Income Tax Act to tax assesseees, who are similarly situated, is being violated by granting exemption to them, whereas, imposing the same on the petitioner.

4. Apart from this, there are certain other fees which have not been made deductible under the impugned Section and which also deserve exemption as claimed by the petitioner, for which, he contends that such issues had been raised, but the Income Tax Authorities on a total misconception and incorrect understanding of the position of law, have not allowed any such leverage and to the contrary have issued notices calling upon the petitioner to bear the liability of tax.

5. He, further, submits that it is not only the petitioner Corporation, but there are large number of State Government undertakings that would face a similar financial crunch inspite of the fact that they are entitled to such exemption and therefore, it has become imperative for the petitioner Corporation to challenge the validity of the aforesaid Section. He, also contends that there is no rational basis for incorporating the said Section in the Income Tax Act nor there is any intelligible differentia, on the basis whereof, the State Government undertakings are being denied such deductions. Consequently, he submits that it ultimately amounts to interference with the fundamental rights of carrying on trade and business, as guaranteed under Article 19(1)(g) of the Constitution of India. The contention therefore, is that the constitutional validity, which is being questioned is based on a sound footing and therefore, this Court should

entertain the writ petition, questioning the *vires* of the said provision.

6. Learned counsel appearing for the Union of India, however, opposes the petition, firstly on the ground that there is no immediate cause of action inasmuch as the learned Single Judge has already remitted the matter back to the Income Tax Authority and in the absence of any such liability having been imposed or sought to be realized as on today, it would be preempting the decision of the Income Tax Authority or even otherwise, raising a premature challenge to the provision.

7. Learned counsel further invites the attention of the Court to the Explanatory Note preceding the introduction of the aforesaid provision to contend that the calculative method adopted by the respective State Governments for appropriating the amounts so collected indicated a loss of revenue to the Central Government and also depleting the tax base of the State Government undertakings. Hence, it is in order to protect the tax base of the State Government undertakings that the provision came to be introduced. She has further narrated as to the manner in which the State Government by issuing retrospective Government Orders, had appropriated the amount as a privilege fee and therefore, in such circumstances, it had become imperative to introduce the aforesaid

provision, which is ultimately to the benefit of the State Government undertakings and also ensures the correct appropriation of revenue to the Central Government.

8. Having considered the submissions raised, the issue of raising a challenge to the *vires* of the provision at this stage, need not be entertained by us, as the matter is still sub judice before the Income Tax Authority even though, it is open to the aggrieved party to question the same at the appropriate moment.

9. In the present case, we are not inclined to entertain the writ petition at this stage without prejudice to the rights of the aggrieved parties to approach the appropriate forum in accordance with law in the event the occasion so finally arises.

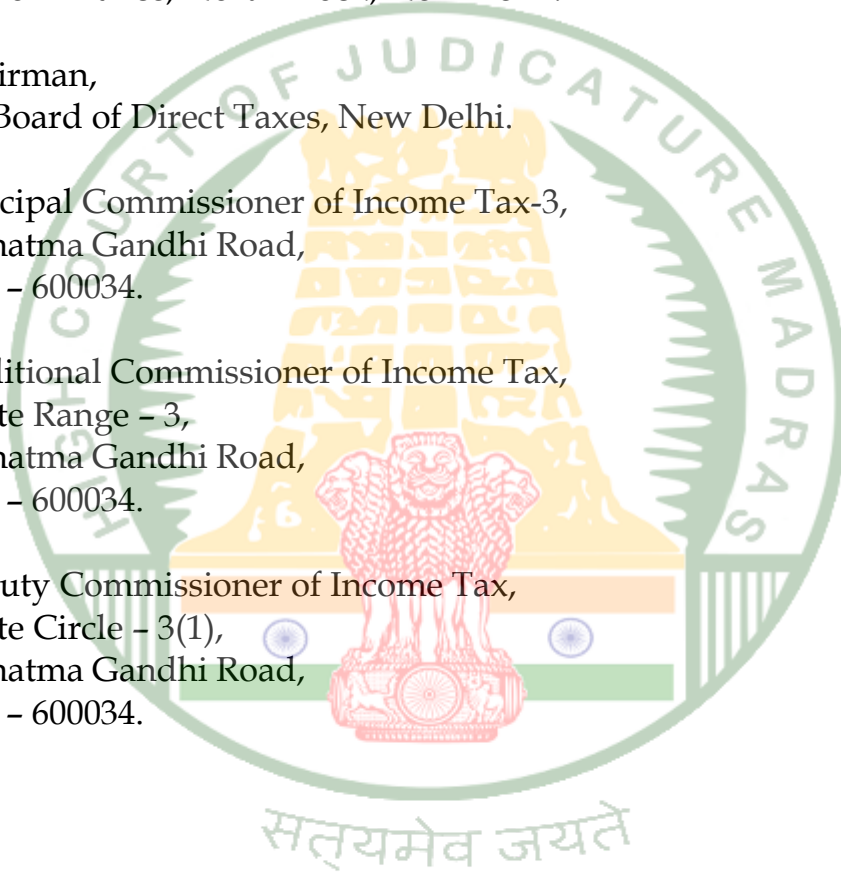
10. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

(A.P.S., CJ.) (S.P., J.)
11.03.2020

Index : Yes/No
Internet : Yes/No
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To

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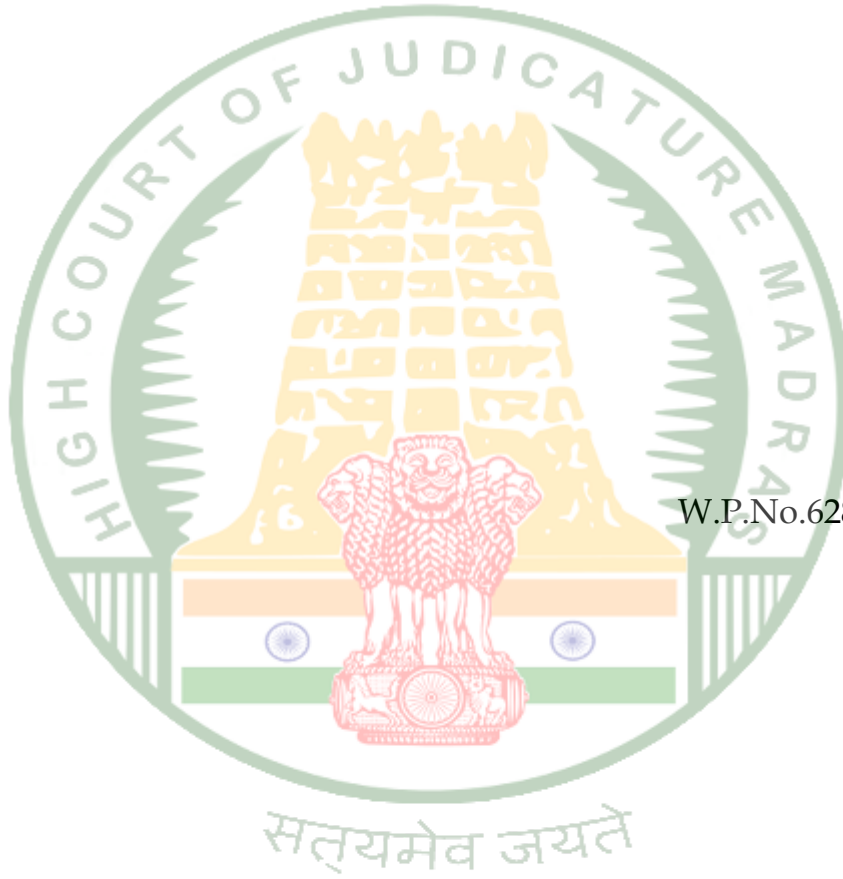


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The Hon'ble Chief Justice
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