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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	**:**	**21.04.2026**
Pronounced on	**:**	**09.07.2026**

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

TCR(MD).Nos.23, 24, 25, 26, 27, 28 & 30 of 2024

TCR(MD).No.23 of 2024

The State of Tamil Nadu,
Represented by the Joint Commissioner (CT),
Madurai Division,
Madurai. ...Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
No.7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.492 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Section 7-A of the TNGST Act, 1959 and penalty levied by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

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For Appellant : Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent : Mr.Rajakarthikeyan

TCR(MD).No.24 of 2024

The State of TamilNadu,
Represented by the
Joint Commissioner (CT),
Madurai Division,
Madurai. ...Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.475 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Seciton 7-A of the TNGST Act, 1959 and penalty levid by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

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TCR(MD).No.25 of 2024

The State of TamilNadu,
Represented by the
Joint Commissioner (CT),
Madurai Division,
Madurai. ...Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.361 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Seciton 7-A of the TNGST Act, 1959 and penalty levid by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

TCR(MD).No.26 of 2024

The State of TamilNadu,
Represented by the

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Joint Commissioner (CT),
Madurai Division,
Madurai. ...Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.359 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Section 7-A of the TNGST Act, 1959 and penalty levied by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

TCR(MD).No.27 of 2024

The State of TamilNadu,
Represented by the
Joint Commissioner (CT),
Madurai Division,
Madurai. ... Revision Petitioner

vs.

I.Vetrivel,

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Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.358 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Section 7-A of the TNGST Act, 1959 and penalty levied by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

TCR(MD).No.28 of 2024

The State of TamilNadu,
Represented by the
Joint Commissioner (CT),
Madurai Division,
Madurai. ... Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.362 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Section 7-A of the TNGST Act, 1959 and penalty levied by the

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assessing officer under Section 27(3)(c) of the TNVAT Act 2006.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

TCR(MD).No.30 of 2024

The State of TamilNadu,
Represented by the
Joint Commissioner (CT),
Madurai Division,
Madurai. ... Revision Petitioner

vs.

I.Vetrivel,
Civil Contractor,
7/2, Thiruvalluvar Nagar,
Usilampatti. ...Respondent

PRAYER: Revision Petition has been filed under Section 38 of TNGST Act, to set aside the order passed by the TamilNadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA.No.360 of 2018 dated 15.03.2024 and to restore the purchase tax levied by the assessing officer at the rate of tax 4% under Section 7-A of the TNGST Act, 1959 and penalty levied by the assessing officer under Section 16(2)(b) of TNGST Act, 1959.

For Appellant :Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent :Mr.Rajakarthikeyan

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COMMON JUDGMENT

These following seven revisions have been filed by the Government against the common impugned order passed by the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai dated 15.03.2024 confirming the various orders of the Appellate Deputy Commissioner exonerating the assessee from making the payment of purchase tax levied under Section 7-A of the TNGST Act, 1959 and penalty levied under Section 16(2)(b) of TNGST Act, 1959 and the corresponding provision of Tamil Nadu Value Added Tax Act, 2006.

Sl. No	***TCR (MD).No***	***TNSTAT Madurai***	***Appellate Deputy Commissioner***	***Assessment order/year***
1	23 of 2024	M.T.S.A.No.492 of 2018 TNGST	A.P.No.6 of 2015	2003-2004
2	24 of 2024	M.T.S.A.No.475 of 2018 (TNGST)	A.P.No.1 of 2016	2005-2006
3	30 of 2024	M.T.S.A.No.360 of 2018 TNVAT Act 2006	A.P.No.94 of 2015	2012-2013
4	28 of 2024	M.T.S.A.No.362 of 2018 TNVAT Act 2006	A.P.No.91 of 2015	2009-2010
5	27 of 2024	M.T.S.A.No.358 of 2018 TNVAT Act	A.P.No.90 of 2015	2008-2009
6	26 of 2024	M.T.S.A.No.359 of 2018 TNVAT Act	A.P.No.93 of 2015	2011-2012
7	25 of 2024	M.T.S.A.No.361 of 2018 TNVAT Act	A.P.No.92 of 2015	2012-2013

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2. The respondent/assessee are civil contractors and registered dealers under the Tamil Nadu General Sales Tax Act, 1959 herein after called as "TNGST Act 1959"and Tamil Nadu Value Added Tax Act, 2006 hereinafter called as "TNVAT Act 2006". They purchased sand, gravel and jelly from unregistered dealers, and such goods were utilised in the execution of works contracts. Hence, the Department invoked *"Section 7-A of the TNGST Act, 1959"* and *"Section 12 of the TNVAT Act 2006"* for levy of purchase tax and penalty under Section 16(2)(b) of the TNGST Act, 1959 and Section 27(3)(c) of the TNVAT Act, 2006 and issued demand notices claiming the respective amounts.

3. The assessee filed the appeals before the Appellate Deputy Commissioner (CT), Madurai (South) and contended that they are not liable to pay purchase tax on sand, gravel and jelly, as the same would not fall within the purview of Section 7-A of the Act. According to them, the transactions do not come under any of the limbs of Section 7-A, and in particular, the word "otherwise" occurring therein would qualify only "sale" and not "consumption". In support of their contention, reliance was placed

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on a Division Bench judgment of this Court reported in 61 STC 337 (1986) and the Appellate Deputy Commissioner (CT), Madurai (South) vide order dated 30.08.2017 had ordered as "partly dismissed" and "partly allowed". The Appellate Deputy Commissioner (CT), Madurai (South) accepted the case of the assessee that the assessee is not liable to pay purchase tax either under Section 7-A of the TNGST Act, 1959 and Section 12 of the TNVAT Act 2006. Challenging the same, Government filed the various appeals before the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai in various numbers as stated above. The Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai also confirmed the order of the Appellate Deputy Commissioner (CT), Madurai (South) vide impugned common orders. Challenging the same, the present tax revision cases have been filed by the Government.

4. At the time of admission, this Court framed the following substantial question of law in TCR(MD).Nos. 23 and 24 of 2024:

a. Whether the Tribunal failed to consider the fact that the respondent had purchased the sand, gravel and jelly from an unregistered dealer and the goods did not suffer tax

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at the earlier stage and therefore, it will attract the purchase tax under Section 7-A(1)(a) of the TNGST Act?

b. Whether the Tribunal failed to take note of the judgment of this Court in Rajapalayam Cotton Pressing Factory vs. The State of Tamilnadu reported in 2000 118 STC 24 wherein this Court held that where the goods have been purchased from an unregistered dealer and did not suffer tax at the earlier stage, it will attract the purchase tax under Section 7-A(1)(d) of the TNGST Act?

5. At the time of admission, this Court framed the following substantial question of law in TCR(MD).Nos. 25, 26, 27, 28 and 30 of 2024:

a. Whether the Tribunal failed to consider the fact that the respondent had purchased the sand, gravel and jelly from an unregistered dealer and the goods did not suffer tax at the earlier stage and therefore, it will attract the purchase tax under Section Section 12 of the TNVAT Act 2006?

b. Whether the Tribunal failed to take note of the judgment of this Court in Rajapalayam Cotton Pressing Factory vs. The State of Tamilnadu reported in 2000 118 STC 24 wherein this Court held that where the goods have been purchased from an unregistered dealer and did not suffer tax

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at the earlier stage, it will attract the purchase tax under Section 12 of the TNVAT Act 2006?

6.Submission on the side of the Revenue:

6.1. The learned Government Advocate appearing for the Revenue submitted that the issue is no longer res integra, in view of the Constitution Bench judgment of the Hon'ble Supreme Court, wherein it was held that a works contractor purchasing materials such as sand, bricks and granite from unregistered dealers for execution of works contracts then he is liable for purchase tax. It was further submitted that Section 6-A of the Andhra Pradesh General Sales Tax Act is pari materia with Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, and therefore, the interpretation rendered by the Hon'ble Supreme Court squarely applies to the present case. It was contended that the authorities below failed to properly consider the said binding precedent.

7. **Submission on the side of the Assessee**:

7.1. The learned counsel for the assessee would primarily contend

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that, prior to the 46th Constitutional Amendment, there was no liability to tax in respect of works contracts, since such contracts were treated as indivisible contracts and no sales tax could be levied on the transfer of property involved therein. Consequently, works contractors were not liable to pay tax on the deemed sale value involved in the execution of works contracts, even though materials such as bricks, blue metal and other construction materials were purchased either from registered dealers or unregistered dealers for the purpose of construction activities.

7.2. According to the learned counsel, after the 46th Constitutional Amendment, Article 366(29-A) of the Constitution of India was introduced, whereby the concept of "deemed sale" came to be constitutionally recognised. Pursuant to the said constitutional amendment, the State Legislature incorporated Section 3-B under the Tamil Nadu General Sales Tax Act, providing for levy of tax on the transfer of property in goods involved in the execution of works contracts by treating the same as deemed sale.

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7.3. The learned counsel would therefore submit that once the assessee had already suffered tax under Section 3-B on the taxable turnover relating to the deemed sale value arising out of the works contract, there could be no further levy of purchase tax under Section 7-A of the Act. In substance, the contention of the assessee is that once Section 3-B is attracted, Section 7-A stands excluded. According to him, "when Section 3-B comes into operation, Section 7-A goes out of operation".

7.4. Elaborating the said submission, the learned counsel further contended that the judgment of the Honourable Supreme Court in ***Assistant Commissioner v. Nandanam Construction Company*** pertained to the assessment year 1977–1978, namely, a period anterior to the effective implementation of the constitutional scheme relating to deemed sale under Article 366(29-A). It is his submission that after the constitutional recognition of deemed sale and the corresponding incorporation of Section 3-B under the Tamil Nadu General Sales Tax Act, the legal position stood materially altered.

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7.5. The learned counsel would further submit that once the works contractor had discharged tax liability on the deemed sale turnover under Section 3-B, the Revenue cannot once again invoke Section 7-A under the guise of purchase tax in respect of the very same goods utilised in the execution of the works contract. According to him, such a levy would amount to double taxation, which is impermissible in law.

7.6. It is his further submission that once the goods had already suffered tax at the earliest point and the deemed sale value had also been subjected to tax under Section 3-B, there is no scope for imposing an additional levy under Section 7-A. Therefore, the learned counsel seeks interference with, and setting aside of, the concurrent orders passed by the authorities below, by accepting the legal contention founded upon the applicability of Section 3-B of the Act.

7.7. The learned counsel would further contend that both the Appellate Authority as well as the Tribunal confined their discussion only with reference to Section 7-A of the Act and failed to consider the applicability of Section 3-B. Hence, according to the assessee, he is entitled

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to canvass the additional ground relating to Section 3-B before this Court.

8. **Submission by way of reply on behalf of the Revenue**:

8.1. Per contra, the learned State Counsel appearing for the Revenue would submit that Section 3-B has absolutely no application to the present case. According to the Revenue, Section 3-B is intended only for taxation relating to transfer of property in goods involved in the execution of works contract by a registered dealer. On the other hand, Section 7-A was specifically introduced with the object of plugging escaped assessments and to levy purchase tax in circumstances where goods are purchased from unregistered dealers and subsequently consumed or used "in or for the manufacture of other goods for sale or otherwise".

8.2. It is the further submission of the learned State Counsel that Sections 3-B and 7-A operate in entirely different fields and are independent provisions. Therefore, the attempt made by the assessee to invoke Section 3-B so as to exclude the applicability of Section 7-A is wholly misconceived. The learned State Counsel also placed reliance upon the Constitution Bench

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judgment of the Honourable Supreme Court in Assistant Commissioner v. Nandanam Construction Company, wherein the Supreme Court interpreted the expression "or otherwise" occurring under Section 7-A and held that the provision would also take within its fold purchases such as sand, bricks and granite from unregistered dealers. Therefore, according to the Revenue, the present case is squarely covered by the law laid down by the Constitution Bench.

8.3. In such circumstances, it is contended that the authorities below failed to properly take note of the law declared by the Honourable Supreme Court and, consequently, this Court is required to interfere with the concurrent findings of the authorities below on the substantial questions of law involved in the present tax case appeal.

8.4. Per contra, the learned counsel appearing for the State Revenue would submit that the contention advanced on behalf of the assessee, namely that Section 3-B controls or excludes the operation of Section 7-A, is contrary to the law laid down by the Honourable Supreme

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Court. According to the learned State Counsel, the Honourable Supreme Court in State of Tamil Nadu v. M.K. Kandaswami categorically held that Section 7-A is an independent charging provision enacted to plug leakage and evasion of tax and that the said provision operates independently of the other charging provisions of the Act.

8.5. The learned State Counsel would further submit that the very object of Section 7-A is to prevent evasion and to ensure that goods do not escape the tax net merely because the transaction was effected through unregistered dealers. Reliance was also placed upon the judgment of the Honourable Supreme Court in Hotel Balaji v. State of Andhra Pradesh wherein the constitutional validity and the independent character of purchase tax provisions analogous to Section 7-A were upheld and the Honourable Supreme Court recognised the legislative competence to impose purchase tax where goods had escaped levy at the earlier point.

8.6. The learned State Counsel further relied upon the judgment of the Honourable Supreme Court in Assistant Commissioner v. Nandanam

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Construction Company and contended that the ratio laid down therein squarely applies to the facts of the present case. According to him, the provisions under Section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act are substantially similar to the corresponding provisions under the Andhra Pradesh General Sales Tax Act and considered by the Honourable Supreme Court. In the said decision, the expression “or otherwise” occurring in the provision was interpreted to include utilisation of goods purchased from unregistered dealers in the execution of works contracts, including purchase of sand and other construction materials from unregistered dealers.

8.7. The learned State Counsel would further submit that the expressions employed in purchase tax provisions such as “consumes”, “uses” and “otherwise disposes of” are required to receive a wide interpretation so as to effectuate the object of the enactment and prevent tax avoidance.

8.8. Refuting the contention regarding double taxation, the learned State Counsel would submit that the levy under Section 7-A and the

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levy under Section 3-B operate in entirely different spheres. According to him, Section 7-A relates to purchase tax, whereas Section 3-B relates to transfer of property in goods involved in execution of works contracts. Therefore, the nature, character and taxable event under both provisions are distinct and separate. In this regard, reliance was placed upon the Constitution Bench judgment of the Honourable Supreme Court in the case of ***Builders' Association of India v. Union of India*** wherein the Honourable Supreme Court held that after the Forty-Sixth Constitutional Amendment, tax on transfer of property in goods involved in works contracts constitutes a distinct species of levy traceable to Article 366(29-A) of the Constitution of India.

8.9. The learned State Counsel further contended that even after the introduction of Section 3-B pursuant to the Forty-Sixth Constitutional Amendment, Section 7-A continued to independently govern purchases effected from unregistered dealers where no tax had been suffered at the seller's point.

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8.10. According to the Revenue, in the present case, the controversy does not arise out of transfer of property by a registered dealer, but out of purchases effected from unregistered dealers for use in execution of works contracts. Hence, Section 7-A independently stands attracted. The learned State Counsel also relied upon various Division Bench judgments of this Court wherein it has been consistently held that utilisation of goods purchased from unregistered dealers in execution of works contracts would attract liability under Section 7-A, notwithstanding the levy under Section 3-B.

8.11. It is therefore contended that when the seller is a registered dealer and tax has already been collected at the seller's point, purchase tax under Section 7-A would not arise. However, where the purchases are effected from unregistered dealers and no tax has been paid at the seller's point, the liability to purchase tax automatically shifts upon the purchaser under Section 7-A. Since, in the present case, the purchases were admittedly made from unregistered dealers, the authorities below rightly imposed purchase tax under Section 7-A and correctly completed the assessment in

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accordance with law.

8.12. Insofar as the contention relating to deemed sale is concerned, Section 3-B would apply only when there is a taxable transaction involving transfer of property in goods. In the present case, the authorities have concurrently found that the purchases were made from unregistered dealers. Therefore, there is no question of application of Section 3-B, and the contention of the assessees that there was no loss of revenue cannot be accepted.

9. This Court considered the rival submissions and perused the records and also went through the impugned order and also the precedents relied on either side.

10. **Discussion**:

10.1. As per the finding of the assessing officer, first appellate authority and Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai, the assessee had purchased sand, gravel and jelly from unregistered dealers, and

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such goods were utilised in the execution of works contracts. The assessee neither disputed the said finding nor adjudicated said issue either before the Tamil Nadu Sales Tax Appellate Tribunal or this Court. This Court also finds no perversity in the said finding.

11. **Legislative history of imposition of Sales Tax on "*works contract*"**:

11.1. Prior to the Forty-Sixth Constitutional Amendment, the Government has no jurisdiction to impose the sale tax on "works contract" in view of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***State of Madras v. Gannon Dunkerley & Co.*** reported in ***(1958) 9 SCC 353***.

11.2. In view of the above decision no sales tax would be levied on the amount received under the work contracts by assessee like contractor even though it had supplied goods for construction of the building.

11.3. Thereafter, pursuant to the recommendations of the Law Commission of India, Parliament introduced the Forty-sixth Constitutional Amendment incorporating Article 366(29-A) w.e.f. 02.02.1983:

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"29-A " tax on the sale or purchase of goods" includes-(a) (.....)

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;"

11.4. The constitutional validity of the said amendment was subsequently challenged before the Supreme Court of India, and the Apex Court upheld its validity vide reported judgment in the case of ***Builders Association of India -vs- Union of India*** reported in ***(1989) 2 SCC 645.***

11.5. Thus, after the Forty-sixth Constitutional Amendment, the legal position stands altered and a works contract, which was earlier considered indivisible, has now become divisible for the purpose of taxation. Therefore, each state amended its sales tax laws and made provisions for the imposition of sales tax in relation to works contract. The Government of Tamil Nadu also brought the Section 7-A of Tamil Nadu General Sales Tax Act, 1959 *"to levy the purchase tax on works contract"*.

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11.6. The said Section 7-A is both charging as well as remedial provision, the very object of the provision is to plug the leakage of revenue and prevent the evasion of tax.

11.7. The constitutional validity of Section 7-A of the Tamil Nadu General Sales Tax Act, 1959 was initially challenged before the Full Bench of this Court in the decision reported in 1971 (28 STC 227). The Full Bench accepted the contention of the assessee and declared the provision ultra vires on the ground that Section 7-A was controlled by Section 3 of the Act. The said Full Bench judgment was challenged before the Supreme Court of India. The Hon'ble Supreme Court in the case of ***the State of Tamil Nadu -vs- M.K.Kandaswami and Others*** reported in ***(1975) 4 SCC 745*** overruled the judgment of the Full Bench and categorically held that Section 7-A is not subject to Section 3 of the Act. The Apex Court further held that Section 7-A itself is an independent charging provision, and therefore the authorities are empowered to levy purchase tax upon the assessee liable under the said provision and the relevant paragraph no.34 of the judgment reads as

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follows:

> *" 34. In our opinion, the Kerala High Court has correctly construed Section 5-A of the Kerala Act which is in pari materia with the impugned Section 7-A of the Madras Act. "Goods the sale or purchase of which is liable to tax under this Act in Section 7-A(1)" means 'taxable goods', that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of seller but the purchase of the same by a dealer in the course of his business may subsequently become taxable. We have pointed out and it needs to be emphasised again that Section 7-A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act, have not due to the circumstances of particular sales, suffered tax under Sections 3, 4 or 5, and which after the purchase, have been dealt by him in any of the modes indicated in clauses (a), (b) and (c) of Section 7-A(1)."*

11.8. That being the situation, the issue of sales tax liability on the purchase made on the sand, bricks, granite and other materials in execution of the building contract came before the Division Bench High Court of Andhra Pradesh and the High Court held that sand, blue metals, and similar

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materials purchased by the assessee were used only for construction purposes and not for manufacture of other goods for sale, and therefore were not liable to purchase tax vide reported judgment in the case of ***Nandanam Construction Company v. Assistant Commissioner*** judgment reported in ***1986 (61 STC 337)***. The said judgment was challenged before the Hon'ble Supreme Court.

11.9. Pending the same, the similar issue arose before the Division Bench of this Court in the case of State of Tamil Nadu -vs- East Coast Constructions and Industries reported in (1986) 61 STC 337 and the Division Bench of this Court upheld the view taken by the tribunal that Section 7-A(1)(a) of the TNGST Act will not apply to the assessee case, for the goods have been utilised for the construction of buildings and not in the manufacture of other goods for sale, has to be upheld as correct.

11.10. Subsequently, the said decision of the Division Bench of High Court of Andhra Pradesh in the case of ***Nandanam Construction Company v. Assistant Commissioner*** judgment reported in ***1986 (61 STC***

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337) was overruled by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Asstt. Commr. (Intelligence) v. Nandanam Construction Co.*** reported in ***(1999) 8 SCC 69*** and the relevant paragraph is as follows:

> "***11.*** *We are concerned in this case only with sub-clause (a) of clause (ii) of Section 6-A, that is, either consumption of such goods in the manufacture of other goods for sale or otherwise. Clause (ii) of Section 6-A of the Act postulates levy of tax on purchase of goods from a person other than a registered dealer for consumption or disposal or despatch of goods outside the State. So the scheme of clause (ii) of Section 6-A of the Act is that when the goods cease to exist in the original form or cease to be available in the State for sale or purchase, the purchasing dealer of such goods is liable to tax if the seller is not or cannot be taxed. To our mind, it appears that the object of Section 6-A(ii)(a) of the Act is to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise. If the view in Pio Food Packers [1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 3 SCR 1271] is accepted the result would be that the expression "otherwise" will qualify the expression "sale" and not the expression "manufacture", which appears to us to be erroneous on a*

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plain construction of the provision. The intention of the legislature, it appears to us, is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. Once the goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and, therefore, the correct meaning to be attributed to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Therefore, while agreeing with the view in Ganesh Prasad Dixit [(1969) 1 SCC 492 : (1969) 3 SCR 490] on this aspect, we overrule to this extent the view expressed in Pio Food Packers [1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 3 SCR 1271] ."

11.11. In view of the above statutory provisions and affirmative decision of the Hon'ble Constitution Bench judgment reported in ***(1999) 8 SCC 69,*** the sales tax authority has jurisdiction to impose the purchase tax on the purchase of bricks, blue metals, sand against the contractor, the authority issued the proceedings to levy the purchase tax against the assessee herein in the above mentioned various assessment year both under

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the "TNGST Act" and "TNVAT Act".

11.12. The assessee challenged the same before the sales tax appellate authority, the appellate authority had placed the reliance on the judgment of the Division Bench in the case of State of ***Tamil Nadu -vs- East Coast Constructions and Industries*** reported in ***(1986) 61 STC 337*** and accepted the case of the assessee that they are not liable to pay purchase tax as stated in the assessment of the purchase tax on purchase price of sand, blue metal, etc. and set aside the assessment order. The said order also was confirmed by the Sales Tax Appellate Tribunal with the following specific finding:

> *""The expression "otherwise" occurring in clause (a) will qualify only sale and not the expression "consumed". Therefore, that provision will come into play only when the purchasing dealer consumes the goods in the manufacture of other goods for sale or otherwise. Clause (a) obviously cannot apply when the purchasing dealer consumes the goods in the construction of buildings, which is an immovable property and can in no sense be called "other goods". In our view, clause (a) can be invoked only when the purchasing dealer consumes the goods purchased in the manufacture of other movable*

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properties and not when the goods purchased are in the construction of buildings, which cannot be held to be a movable property."

11.13. This Court is unable to concur with the finding of the both appellate authority and the tribunal that the authority has no jurisdiction to impose the sales tax under Section 7-A of the TNGST Act and Section 12 of the TNVAT Act in view of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***Asstt. Commr. (Intelligence) v. Nandanam Construction Co.*** reported in ***(1999) 8 SCC 69.*** Our view also is supported by the various Division Benchs of this Court in the cases of ***State of Tamil Nadu -vs- Pari Trading Co.*** reported in ***2010 SCC OnLine Mad 6578***, ***Ruchi Soya Industries Limited -vs- Commercial Tax Officer and Ors.*** reported in ***(2008) 12 VST 546 (Mad).***

11.14. A similar case under the provision under TNVAT Act was elaborately dealt by the Hon'ble Judge of this Court in the case of ***J.K.Traders -vs- Principal Secretary, Chepauk, Chennai and another*** reported in ***2023 SCC OnLine Mad 7914*** and it was held against the assesee

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and the relevant paragraphs 11.1 and 11.2 are as follows:

"11. Object of purchase tax :

11.1. It may be relevant to set out broadly the object and purpose of levying purchase tax. The provision levying purchase tax is by itself a charging provision as well as a remedial provision, the main object being to plug the leakage and prevent evasion of tax. In this context it is useful to refer to the judgment of the honourable Supreme Court in State of Tamil Nadu v. M. K. Kandaswami [1975] 36 STC 191 (SC) ; (1975) 4 SCC 745, wherein, the object of levy of purchase tax was explained. The relevant portion is extracted hereunder (page 198 in 36 STC) :

> *"It may be remembered that section 7A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken*

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by the High Court is repugnant to this cardinal canon of interpretation."

11.2. Purchase tax under the TNGST Act and the TNVAT Act--Comparison :

Single point levy under the TNGST Act has given way to value added tax which is a multi-point levy with the benefit of input-tax credit, of the tax paid on the purchases being available to be set-off against the out put tax liability, subject to complying with the conditions stipulated. However, the purpose and object of purchase tax has not undergone any change even under value added tax, but continues to remain the same viz., to plug loop holes and prevent evasion of tax and ensure that goods are subject to tax at least once before they cease to exist in the State. To appreciate the same, it may be relevant to contrast the provision relating to levy of purchase tax under the TNGST Act and the TNVAT Act respectively, the following table containing the provisions is set out below :

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The Tamil Nadu General Sales tax Act, 1959	***Tamil Nadu Value Added tax Act, 2006***
Section 7A. Levy of purchase tax.—(1) Subject to the provisions of sub-section (1) of section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, the sale or purchase of which is liable to tax under this Act in circumstances in which no tax is payable under sections 3 or 4, as the case may be, not being a circumstance in which goods liable to tax under sub-section (2), (2A) or (2C) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First, the Fifth, the Eleventh or the Second Schedule], respectively, and either,—	12. Levy of purchase tax.—(1) Subject to the provisions of sub-section (1) of section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act, and either—
(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise ; or	(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise ; or
(b) disposes of such goods in any manner other than by way of sale in the State ;	(b) disposes of such goods in any manner other than by way of sale in the State ; or
(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, or. ..	(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

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(e) installs and uses such goods in the factory for the manufacture of any goods shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3 or 4, as the case may be.	(d) installs and uses such goods in the factory for the manufacture of any goods, shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to this Act.
Section 7-A(2). Notwithstanding anything contained in sub-section (1), the provisions of section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods the sale of which is liable to tax under sub-section (1) of section 3 and whose total turnover for a year is not less than one lakh of rupees but not more than two lakhs of rupees, and such a dealer may, at his option instead of paying the tax in accordance with the provisions of subsection (1), pay tax at the rates mentionedin sub-section (1) of section 7 :	(2) Notwithstanding anything contained in clause (24) of section 2, the dealer who pays tax under sub-section (1) shall be entitled to input tax credit on the goods specified in the First Schedule.
Provided that this sub-section shall not apply to the purchase made on or after the 1st day of April, 1990.	
Section 7-A (3). Every dealer liable to pay purchase tax under sub-section (1), shall, for the purpose of this Act, be deemed to be a registered dealer.	

Though there are certain additions and omissions, I don't think that it would materially alter the object or the interpretation of the above section. Importantly in both the regimes the charges under sections 7A and 12 of the TNGST Act and TNVAT Act, would get attracted if goods liable to tax are purchased "in circumstances in which no tax is payable" and the goods so purchased are dealt within any of the manner or falls within the circumstances set out in clauses (a) to (d) to section 12 of the TNVAT Act,

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including goods so purchased being despatched to a place outside the State otherwise than by way of sale in the course of inter-State trade or commerce."

11.15.Both appellate authority and the tribunal failed to consider the above settled law. In view of the above law laid down by the Hon'ble Supreme Court that the assessees engaged in work contract namely construction work for which they buy the material such as sand and bricks from the persons other than the registered dealers are liable to pay purchase tax under the relevant provisions of the sales tax, this Court finds perversity in the impugned orders of both appellate authority and tribunal. In the result, the impugned orders are liable to be set aside and we hold the order of assessment is in accordance with law and within jurisdiction.

11.16. To consider the further submission of the learned counsel appearing for the assessee relating to the deemed sale under Section 3-B of the TNGST Act, it is relevant to look into the provisions of Sections 3-B(1) and 3-B(2)(b) of TNGST Act:

" Section 3-B. Levy of tax on the transfer of goods

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involved in works contract. –

(1) Notwithstanding anything contained in sub-sections (2-B), (3), (4), (7) and (8) of section 3, or section 7-A, but subject to the other provisions of this Act including the provisions of sub-section (1) of section 3, every dealer referred to in item (vi) of clause (g) of section (2) shall pay, for each year, a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned in [sub-section (2), (2-A) or (2-C)] of section 3 or, as the case may be, in section 4.

Explanation:- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each item of work.

(2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall, on and from the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer:-

(a) .....

(b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract in the same form in which such goods were purchased:"

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11.17. The validity of the Section 3-B(2)(b) of the TNGST Act was upheld by the Division Bench of this Court in the case of ***Apparels and Handloom Exporters Association and Others -vs- State of Tamil Nadu and Others*** reported in ***(2003) 129 STC 167.***

11.18. Considering the non-abstante clause in the Section 3-B and the provision of the 3-B(2)(b), in view of the finding of the authorities that assessee purchased the sand, bricks from unregistered dealers, the question of deemed sale will not arise and this Court is therefore unable to accept the argument of the learned counsel appearing for the assessee that there was already sufferance of tax in respect of the goods in question. Further, Section 3-B operates in a different field concerning the taxable turnover arising out of transfer of property involved in execution of works contracts namely construction contract where the purchase of materials like sand etc. was made through *"the registered dealer"*. On the other hand, Section 7-A specifically deals with purchases effected *"from unregistered dealers"* who had not suffered tax. Both provisions operate independently in their

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respective spheres.

11.19. Therefore, this Court holds that purchases made by a works contractor from unregistered dealers are exigible to purchase tax under Section 7-A of the Act.

11.20. In view of the above finding that the authority exercised the jurisdiction under Section 7-A in accordance with law, Section 12 (5) of TNGST Act is attracted as it is a case of incorrect and incomplete returns and therefore, this Court finds every justification in imposing the levy of sales tax and penalty against the assesee.

11.21. Some of the tax cases are relating to the assessment under the TNVAT Act and in view of the similar provisions, no further deliberations are necessary and hence, this Court also uphold that the authority has jurisdiction to impose the purchase tax along with penalty. Accordingly, the questions of law framed are answered against the assessee and in favour of the revenue.

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12. **Conclusion**:

In result, TCR(MD).Nos.24, 25, 26, 27, 28 & 30 of 2024 are allowed and the impugned orders are hereby quashed and the assessing authority is hereby directed to proceed further in accordance with law to recover the amount. There shall be no order as to costs.

[N.A.V, J.] & [K.K.R.K,J.]
09.07.2026

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbn/pal

To:

1. Tamil Nadu Sales Tax Appellate Tribunal (AB),
   Madurai.

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N.ANAND VENKATESH, J.
and
K.K.RAMAKRISHNAN, J.

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