

WEB COPY

W.P.Nos.30090 & 30091 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.Nos. 30090 & 30091 of 2010
and
M.P.Nos. 1 & 1 of 2010

M/s. Chaitanya Builders & Leasing (P) Ltd.,
Rep. by its Authorised Signatory Mr.Arror S.Dinesh
No.15, Khader Nawaz Khan Road,
Chennai – 600 006.

.. Petitioner
in both WPs

vs

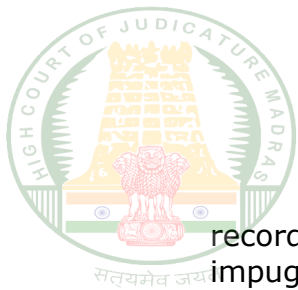
1.The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
2nd Floor, Taluk Office Building,
Chetpet, Chennai – 600 031.

2.The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George, Chennai – 600 009.

.. Respondents
in both WPs

Prayer in W.P.No. 30090 of 2010 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that the proviso to Section 3-B (2)(d) of the Tamil Nadu General Sales Tax Act, 1959 as ultra vires Article 366 (29-A)(b) and beyond legislative competence of the State and Sl.No.54 List II of the Seventh Schedule to the Constitution of India being unenforceable and resultant levy and collection of sales tax from the petitioner as unreasonable, violative of Article 265, amounting to double taxation, arbitrary and repugnant to Article 14 and Article 19(1)(g) of the Constitution of India.

Prayer in W.P.No. 30091 of 2010 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the



W.P.Nos.30090 & 30091 of 2010

records of the first respondent in TNGST/0460229/2001-02 quash the impugned proceedings dated 29.11.2010.

WEB COPY

For Petitioner : Mr.V.Sundareswaran
(in both petitions)

For Respondents : Mr.Prashanth Kiran
Government Advocate
(in both petitions)

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The prayer in this writ petition is for a declaration challenging the proviso to the effect that proviso to Section 3-B(2)(d) of the Tamil Nadu General Sales Act, 1959 is ultra vires the Constitution of India as well as beyond legislative competence of the State.

2. An identical issue has come up for consideration in the case of *Larson & Tourbo Limited v The Assistant Commissioner(CT), Zone XI, Chennai* in W.P.No. 11126 of 2005 and by order dated 23.04.2024, the First Bench has allowed the writ petition. The Bench has referred to and relied upon the judgment of the Supreme Court in the case of *Larsen & Tourbo Ltd., v Additional Deputy Commissioner of Commercial Taxes*, [2016 96 VST 512(SC)], which in turn had relied upon the landmark judgment in the case of *Builders Association of India v Union of India* [1989 73 STC 370].

3. In the ultimate, the prayer for Declaration had been accepted in part, and the proviso to Section 3-B(2) that stated '*and that the turnover of such amounts is included in the return filed by such sub-contractor*' was read down to read as '*not to apply to the contractor who*



W.P.Nos.30090 & 30091 of 2010

has assigned the work to a sub-contractor who is a registered dealer'.

WEB COPY

4. In the present case, learned counsel for petitioner would submit that both the petitioner as well as the sub contractor are registered dealers. This factual detail is not relevant for the purpose of answering the declaration as we are only concerned with the legal challenge laid before us.

5. W.P.No. 30090 of 2010 is allowed to the extent indicated above. No costs. Connected miscellaneous petition is closed.

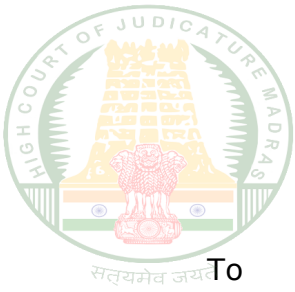
6. As far as prayer in W.P.No. 30091 of 2010, in light of the discussion in W.P.No. 30090 of 2010, order of the assessment dated 29.11.2010 by the Department is set aside to the file of the assessing officer to be redone in light of the above order.

7. To facilitate this exercise, the writ petitioner shall appear before R1 on 02.05.2011 at 11.00 am without anticipating any further notice and orders shall be passed de novo taking note of the order passed in W.P.No. 30090 of 2010 within a period of four weeks from the date of personal hearing.

8. W.P.No. 30091 of 2010 is allowed by way of remand. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [C.K., J]
24.04.2025

Index:Yes/No
Neutral Citation:Yes
ssm

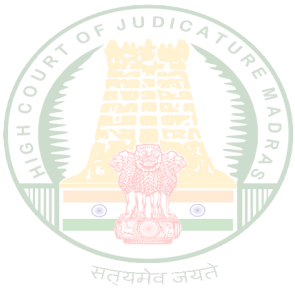


W.P.Nos.30090 & 30091 of 2010

To

WEB COPY

- 1.The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
2nd Floor, Taluk Office Building,
Chetpet, Chennai – 600 031.
- 2.The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George, Chennai – 600 009.



WEB COPY

W.P.Nos.30090 & 30091 of 2010

DR. ANITA SUMANTH.,J.
and
C.KUMARAPPAN.,J.

ssm

W.P.Nos.30090 & 30091 of 2010

24.04.2025