

## State of Tamil Nadu Vs National Time Co.

**Court:** Madras High Court

**Date of Decision:** July 8, 2010

**Acts Referred:** Tamil Nadu Additional Sales Tax Act, 1970 " Section 2, 2(1), 2(2), 2(3)

**Citation:** (2011) 39 VST 247

**Hon'ble Judges:** M.M. Sundresh, J; F.M. Ibrahim kalifulla, J

**Bench:** Division Bench

**Advocate:** Haja Naziruddin, Special Government Pleader Taxes, for the Appellant; P. Rajkumar, for the Respondent

### Judgement

„Rate of tax

(I), "Where the taxable turnover exceeds ten lakhs

of", 1.5 per cent of the

," rupees but does not exceed one crore of

rupees : Provided that no additional tax shall

be payable under this item for the first ten

lakhs of rupees of the taxable turnover.", taxable turnover

(ii), "Where the taxable turnover exceeds one

crore of", 2 per cent of the

," rupees but does not exceed five crores of

rupees", taxable turnover

(iii), "Where the taxable turnover exceeds five

crores of rupees but does not exceed ten

crores of rupees.", "2.25 per cent of

the taxable

turnover

(iv), "Where the taxable turnover exceeds ten

crores of rupees but does not exceed three

hundred crores of rupees", "2.5 per cent of the

taxable turnover

(v), "Where the taxable turnover exceeds three hundred cores of rupees", "3 per cent of the taxable turnover

„Rate of tax

(i), "Where the taxable turnover exceeds one

hundred", "2.5 per cent of

„crores of rupees but does not exceed three

hundred crores of rupees", taxable turnover

(ii), "Where the taxable turnover exceeds three

hundred", "3 per cent of the

„crores of rupees, taxable turnover

Section 2(1)(a) after its amendment has to be re-examined, we are of the view that such a question does not arise for consideration here, inasmuch", „

as, we are concerned with the assessment year 1996-97 and with reference to the said assessment year, it was never in dispute that the amended", „

Sections 2(1)(a) and 2(1)(aa) were effective from August 1, 1996. Therefore at the outset, we are not persuaded to consider the said submission", „

of the learned Counsel for the Respondent.. „

12. In the abovestated background, when we consider the respective sub-missions of the learned Counsel for the Petitioner as well as the", „

Respondent, we find that the definition of the expression ""year"" u/s 2(1)(t) of the Tamil Nadu General Sales Tax Act, 1959 will have no", „

implication, while applying the un-amended Section 2(1)(a) up to July 31, 1996 and the amended Section 2(1)(a) and 2(1)(aa) after August 1, ", „

1996.. „

13. The definition of the expression ""year"" which means the financial year, is only for the limited purpose of ascertaining what is the financial year", „

with reference to which the tax liability under the main Act as well as the additional sales tax under the Tamil Nadu Sales Tax Act is to be worked,,

out. The mere fact that u/s 2(1)(a), a reference is made to a ""year"", the same will not in any way create any different impact, while applying the", „

liability or the rate of tax to be worked out during the financial year. In other words, if in the very same financial year, different rates are to be", „

worked out by virtue of prescription of such different rates, due to statutory amendments, the only exercise to be carried out would be to ascertain", „

the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year", „

will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating",,

the financial year in the case of any Assessee, while applying the un-amended Section 2(1)(a) up to July 31, 1996 and the liability after its",,

amendment on and after August 1, 1996, for the purpose of calculating the additional sales tax liability.",,

14. In the case on hand, having regard to the decision of the Special Tribunal in Siemens" case (1998) 110 STC 313, the additional sales tax",,

liability up to July 31, 1996 is to be worked out based on the unamended Section 2(1)(a), which was prevailing up to that date. As per the",,

provision as it stood as on July 31, 1996, in the case of a dealer whose taxable turnover in that financial year up to July 31, 1996 exceeded ten",,

lakhs of rupees, up to one crore of rupees, his tax liability has to be increased by an additional sales tax at the rate of 1.5 per cent. ; where the",,

taxable turnover exceeded one crore of rupees up to five crores of rupees, it is two per cent.; where it exceeded five crores of rupees up to ten",,

crores of rupees, at the rate of 2.25 per cent. ; where it exceeded ten crores up to 300 crores of rupees at the rate of 2.5 per cent. and where it",,

exceeded 300 crores of rupees at the rate of three per cent. However, no additional tax could be levied for the first ten lakhs of rupees.",,

15. Having regard to the impact made in the amended provision, as per the judgment of the Special Tribunal in Siemens" case (1998) 110 STC",,

313 (TNTST) on and after August 1, 1996, the payment of additional sales tax would arise only if the taxable turnover for the whole of the",,

financial year exceeded one hundred crores of rupees and even in such a situation, while for the period up to July 31, 1996, the liability will have to",,

be worked out as per the provision which was prevailing up to that date, namely, the unamended Section 2(1)(a) and that for the period",,

subsequent to August 1, 1996 up to March 31, 1997 for the taxable turnover generated on and after August 1, 1996 alone, the applicable rate of",,

tax will have to be calculated.,,

16. To make the position more clear, for instance, in the financial year April 1, 1996 to March 31, 1997, for the period up to July 31, 1996, if the",,

taxable turnover was Rs. 50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the",,

liability by way of additional tax should be calculated at the rate of 1.5 per cent. and if for the whole of the financial year, the taxable turnover",,

exceeded Rs. 100 crores, for the remaining amount of Rs. 99.50 lakhs, i.e., excluding Rs. 50 lakhs, which is relatable to the period only up to July",,

31, 1996, the rate of tax as per the amended Section 2(1)(aa) will have to be worked out.",,

17. Keeping the above statutory implication relating to payment of additional sales tax as was applicable up to July 31, 1996 and after August 1, ",,

1996, when we examine the order of the assessing authority dated January 28, 1998, in the case on hand, we find that the taxable turnover of the",,

Respondent-Assessee was Rs. 54,97,880 up to July 31, 1996. The taxable turnover for the financial year is stated to have exceeded rupees one",,

crore. But for the purpose of calculation of additional sales tax, since for the whole of the financial year, the taxable turnover did not exceed one",,

hundred crores, there would be no necessity to make any further calculation for the period beyond July 31, 1996. The assessing authority",,

calculated the additional sales tax at the rate of two per cent. on the taxable turnover for the whole of the year.,,

18. The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force up to July 31, 1996,",,

the calculation of additional sales tax would have to be made by the assessing authority for the taxable turnover which was prevailing only up to the,,

period July 31, 1996 and for the period subsequent to August 1, 1996, the liability would have been assessed, if at all the taxable turnover up to",,

the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied, viz., two per cent.",,

was not in consonance with the statutory provision as was prevailing as on July 31, 1996. Since the taxable turnover did not cross Rs. 100 crores",,

during the said financial year, in the case of the Respondent-Assessee, the liability of additional sales tax will have to be calculated only for the",,

period up to July 31, 1996 and not beyond and that too, on the taxable turnover that was available up to that date, viz., July 31, 1996.",,

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the assessing authority are liable to be set aside. While",,

setting aside the order of the assessing authority, we direct the assessing authority to pass fresh orders by keeping the taxable turnover of the",,

Respondent-Assessee up to July 31, 1996 in a sum of Rs. 54,97,880 and calculate the tax at the rate of 1.5 per cent. on the sum of Rs.",,

44,97,880 (i.e.), after deducting the first ten lakhs as provided under the proviso to Sub-clause (i) of Section 2(1)(a).".,,

20. The learned Counsel for the Respondent states that a Samadhan Scheme has been announced and prevalent as on date and the same will be in,,

force up to August 15, 2010. The assessing authority, is therefore, directed to ensure that revised orders of assessment as directed in this order is",,

passed before August 10, 2010.".,,

21. The tax case (revision) is disposed of accordingly. No costs.,,