(2015) 325 ELT 259

Madras High Court

Case No: Writ Petition Nos. 21265 & 21266 of 2014

Nokia India Sales Private Ltd.	APPELLANT
Vs	
Assistant Commissioner (CT) Sriperumbudur Assessment Circle and Others	RESPONDENT

Date of Decision: July 15, 2015

Acts Referred:
Central Sales Tax Act, 1956 - Section 6(A)#Constitution of India, 1950 - Article 226#Customs Act, 1962 - Section 7#Tamil Nadu Special Economic Zones (Special Provisions) Act, 2005 - Section 12, 12(1), 15, 2, 2(c)#Tamil Nadu Value Added Tax Act, 2006 - Section 12, 18, 18(1), 2(1(b), 2(1)(b)

Citation: (2015) 325 ELT 259

Hon'ble Judges: S. Vaidyanathan, J

Bench: Single Bench

Advocate: Aravind P. Datar, SC for Arun Karthik Mohan, for the Appellant; Anitha Sumanth, assisted by Manoharan Sundaram, Kanmani Annamalai, V. Haribabu, Cibi Vishnu and A.N.R. Jaya Pratap, Advocates for the Respondent

Judgement

S. Vaidyanathan, J
Being aggrieved over the orders, dated 25.6.2014 passed by the first respondent, in and by which, while revising the

assessments for the years 2012-13 and 2013-14, levy of purchase tax on the Inter State stock transfer effected from warehouse located in SEZ

under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 (in short, TNVAT Act, 2006) has been imposed, the petitioner has filed the

present writ petitions. The petitioner has also challenged the consequential notices of assessment and demand, dated 25.6.2014 issued by the first

respondent.

2. It is pertinent to note that as against the above said orders, dated 25.6.2014, the petitioner has filed rectification petitions under Section 84 of

the TNVAT Act, 2006 before the first respondent, which came to be rejected by orders, dated 30.07.2014, holding that the first respondent is

not having jurisdiction to re-open the assessment under Section 84 and that the revised orders, dated 25.6.2014 hold good and the petitioner have

to seek remedy by way of an appeal. These orders also were challenged in the present writ petitions.

3. M/s. Nokia India Sales Private Limited, dealers in Mobile Phones, is a company incorporated under the Companies Act, 1956 and it has

reported a total cum taxable turnover of Rs. 218,89,36,541 and Rs. 2,17,11,37,117 for the assessment year 2012-13 and Rs. 827,50,85,371

and Rs. 825,44,43,497 for the assessment year 2013-14 respectively. Since certain defects were found by the Assessing Officer, it was proposed

to revise the assessments for the years 2012-13 and 2013-14 under Section 27 of the TNVAT Act, 2006. Accordingly, notices, dated

29.5.2013, 28.6.2013, 23.7.2013, 10.09.2013 and 10.01.2014 & 25.04.2014 were issued to the petitioner, calling upon them to file their

objections for the above said proposal. Pursuant to the same, it appears that the petitioner had filed their objections, which were duly considered

by the first respondent and passed the impugned orders, dated 25.6.2014. Hence the Writ Petitions.

4. The issue for consideration in these writ petitions is, whether the first respondent is right in imposing of purchase tax on the Inter State stock

transfer effected from warehouse located in SEZ under Section 12 of the TNVAT Act, 2006 read with Section 15 of the Tamil Nadu SEZ Act?

5. Separate counter affidavits in both the writ petitions were filed on behalf of the respondents, wherein, it is stated that the writ petitions are not

maintainable since the petitioner has challenged the orders of assessment dated 25.6.2014 as well as orders of rectification dated 30.7.2014 in the

same writ petitions, which is wholly impermissible and as two different cause of actions arose, the petitioner has necessarily to file two separate

writ petitions. It is stated that the levy of purchase tax on SEZ unit is in accordance with law and in terms of the provisions of the TN SEZ Act and

TN VAT Act, 2006 and there is a statutory appeal remedy available as against the impugned orders, however without exhausting the same, the

petitioner has filed the present writ petitions. It is further stated that the petitioner approached the State Government for setting up of a unit in the

Special Economic Zone at Sriperambudur and pursuant to negotiation, a Memorandum of Understanding was entered into by the petitioner with

the State Government in terms of which, various benefits have been extended to the petitioner by the State and concessions by way of levies and

duties as well as the benefits of deferment of taxation has been provided by the State to the petitioner company. The letter of approval dated

7.3.2011 issued by the Development Commissioner, MEPZ granted to the petitioner to carry on authorized operations subject to various terms

and conditions both in regard to the export of the goods/services as well as clearances and supply of goods/services in the domestic tariff area.

6. It is further stated that by virtue of Section 12 of the Tamil Nadu Special Economic Zones Act, 2005 (in short, TNSEZ Act, 2005), goods

sold/cleared by the SEZ unit of the petitioner are exempted from levy of purchase tax only in respect of exports and in respect of clearances from

the SEZ unit to the domestic tariff area, are liable to purchase tax in terms of Section 15 of the TNSEZ Act. The intention behind the enactment of

SEZ Act is to encourage manufacture and exports as well as increase the inflow of foreign exchange and therefore, exemption is provided from the

levy of tax on transactions between units within SEZ as well as exported, however, turnover from local clearances and removals from SEZ to

domestic tariff area are not intended to be offered protection or exemptions. The petitioner cleared goods from SEZ unit to domestic tariff area

and such clearance of goods is claimed as branch transfers under Section 6(A) of the CST Act, exempt from tax, however, domestic tariff area

clearances consequently attract the provisions of Section 15 of the TNSEZ Act that provide for the levy of TNVAT on goods removed from SEZ

to domestic tariff area and thus, Section 2(1)(b) of the TNVAT Act stands attracted justifying the levy of purchase tax. However, input tax credit

is available and will be set off against tax remitted on intra state/CST sales. The petitioner has only remitted an amount of Rs. 159.49 crores only

with respect to intra and interstate sales, but claims exemption in relation to the bulk of its turnover, of an amount of Rs. 776.87 crores relating to

SEZ clearances to branches in other states. Thus, while utilizing the hospitality and resources of the State of Tamil Nadu, a significant part of the

turnover of the petitioner stands diverted to other states for taxation. This cannot, by any stretch of imagination, be in tandem with the object of the

TNSEZ Act and it is contrary to the provision of Section 15 of TNSEZ Act, which charges tax on any goods removed from SEZ to domestic tariff

area. Therefore, the impugned orders dated 25.6.2014 were rightly passed by the first respondent in terms of Section 22 (3) of the TNVAT Act.

7. As regards the challenge to the orders, dated 30.7.2014 passed by the first respondent in rectification applications, it is stated that the petitions

filed under Section 84 of the TNVAT Act, seeking a rectification of an alleged error apparent of mistakes is wholly misplaced and the first

respondent has rightly rejected the same. With these averments, the respondents sought for dismissal of the writ petitions.

8. The issue involved in these writ petitions, is whether the petitioner company, being a SEZ unit, is entitled to exemption from levy of purchase tax

on the interstate stock transfer effected from warehouse located in SEZ?

9. Mr. Arvind P.Datar, learned senior counsel appearing for the petitioners would contend by virtue of Section 12 of the TNSEZ Act, the goods

purchased by the warehouse of the petitioner in the SEZ are exempted from levy of purchase tax. According to him, the petitioner company is

entitled to exemption from levy of purchase tax, in the following analysis, viz.,

10. Section 12(1) of the TNSEZ Act refers to exemption from levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales

Tax Act, 1959, which Act has been later repealed by the TNVAT Act, by virtue of said TNVAT Act, tax on sale and purchase of goods is being

levied and collected. However, there is a saving clause provided in Section 87 of the TNVAT Act, which provides that reference to the Tamil

Nadu General Sales Tax Act would be construed as a reference to the TNVAT Act and therefore, by virtue of Section 87 of the TNVAT Act,

Section 12(1) of the TNSEZ Act has to be read as granting exemption from levy of tax on sale or purchase of goods under the TNVAT Act.

Since the Section 12(1) grants exemption from the levy of taxes on the sale or purchase of goods to SEZ units if they were meant to carry on the

authorized operations of the unit, it is to be noted that the terms ''entrepreneur'' and ''authorized operations'' are not defined in TNSEZ Act and

Section 2(f) of the TNSEZ Act provides,

All other words and expressions used and not defined in this Act but defined in the Special Economic Zones Act, 2005 shall have the meaning

respectively assigned to them in that Act.

Therefore, the definitions of ''entrepreneur'' and ''authorized operations'' contained in the SEZ Act, 2005 apply mutatis mutandis to the TNSEZ Act

and the term ''entrepreneur'' has been defined in Section 2(j) of SEZ Act as,

a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of Section 15.

11. The term ''authorized operations'' has been defined under Section 2(c) of the SEZ Act to include operations which may be authorized under

sub-section (2) of Section 4 of sub-section (9) of Section 15 of the SEZ Act. Under Section 15 of the SEZ Act, the Development Commissioner

has the power to grant a Letter of Approval for setting up of a unit in a SEZ and to authorize the operations to be undertaken by such unit. The

petitioner was granted a Letter of Approval, dated 7.3.2011 by the MEPZ Special Economic Zone Authority for setting up of a unit for the

purpose of "trading & warehousing services for mobile phone handsets and mobile phone parts and accessories". In the present case, the goods in

question were purchased by the warehouse of petitioner company located in Nokia SEZ from another company located in Nokia SEZ and the

said goods were used for carrying out the authorized operations of the petitioner company, viz., for the purpose of trading and warehousing of

Mobile phone handsets and mobile phone parts and accessories.

12. In any case, Section 15 of TNSEZ Act cannot be interpreted to operate as a charging section to create levy of tax on a transaction which is

otherwise not exigible to VAT/CST, viz., branch transfer to other branches of the same entity. VAT/CST are taxes on sale of goods, and are not

attracted on transactions which do not qualify as sale. Sale by its very basic nature requires three essential conditions, viz., transfer of property in

goods, existence of two persons and valuable consideration and these conditions are encapsulated in the definition of "sale" in Section 2(33) of the

TNVAT Act, which defines sale to mean transfer of property in goods by one person to another for cash, deferred payment or other valuable

consideration. When goods are removed for stock transfer to the branches of the petitioner in other states, none of these conditions are satisfied.

Therefore, since stock transfers to other branches of the same person do not satisfy the essential requirements of a sale, such transfers do not

attract levy of VAT/CST. Hence, when sale itself was not involved in such transfer, purchase tax cannot be levied.

13. Therefore, based on the above analysis, the learned senior counsel would contend that the terms of Section 12(1) are clear and unambiguous

and hence by virtue of Section 12 of the TNSEZ Act, the goods purchased by the warehouse of the petitioner company in the SEZ are exempted

from levy of purchase tax. He would also contend that the Government of Tamil Nadu had announced its SEZ Policy, wherein, it has been

expressly stated that the industrial units and other establishments within the SEZs would be exempted from all local taxes and levies, including sales

tax, VAT and purchase tax or any other cess or levy of state government in respect of all transactions between the units/establishments within the

SEZs and hence, there is no justification on the part of the first respondent in levying purchase tax on inter-state stock transfer effected from the

warehouse located in the SEZ that too while dropping the proposal for levy of purchase tax on the entire purchases effected from SEZ unit.

14. The learned senior counsel also contended that in view of the exemption granted by Section 12 of the TNSEZ Act read with non obstante

provisions of Section 28 of the Act, no tax can be levied on sale and purchases made within SEZ. He relied upon a decision of Five Judge Bench

of Hon''ble Supreme Court in Kailash Nath and Another Vs. State of U.P. and Others, AIR 1957 SC 790 : (1957) 8 STC 358 that if an

exemption applies, the tax levied is without jurisdiction. He also relied upon a decision of the Gujarat High Court in Torrent Energy Limited Vs.

State of Gujarat, (2014) 71 VST 582 , wherein, the Division Bench of Gujarat High Court has held that the over-riding effect given to Gujarat

SEZ Act by virtue of Section 22 would mean that the exemption from purchase tax granted by Section 21 would continue to have effect

notwithstanding anything to the contrary contained in Sub Section 9(5) of the Gujarat VAT Act. Relying on this decision, he would contend that in

Section 12 of TNVAT Act, there is no such provision similar to sub section 9(5) of the Gujarat VAT Act, therefore, unlike the Gujarat VAT Act,

the TNVAT Act does not provide for levy of purchase tax where goods were purchased in a zero rated sale (e.g. purchase by a SEZ unit from a

unit outside the SEZ) and hence, when compared to pari materia exemption under the Gujarat SEZ Act, the learned senior counsel would contend

that the petitioner company is entitled to exemption from levy of purchase tax under Section 12.

15. As regards the alternative remedy, the learned senior counsel would contend that although the remedy of statutory appeal to the Appellate

Deputy Commissioner is provided under Section 51 of the Act, however, it is subject to making deposit of 25% of the difference of the tax

assessed by the assessing authority and the tax admitted by the petitioner as a condition precedent to entertain the appeal and when the impugned

orders are per se illegal and being contrary to law, certainly, a petition would lie to the High Court under Article 226 of the Constitution.

16. With the above contentions, the learned senior counsel sought for setting aside the impugned orders.

17. On the other hand, the learned counsel appearing for the respondents would contend that by virtue of Section 12 of the TNSEZ Acct, goods

sold/cleared by the SEZ unit of the petitioner are exempted from levy of purchase tax in regard to the turnover pertaining to exports alone,

however, the petitioner had cleared the goods from SEZ unit to the domestic tariff area, which are liable to tax in terms of Section 15 of the

TNSEZ Act. It is contended that the provision of Section 12(1) cannot be read or interpreted in isolation as it grants exemption from the levy of

sales/purchase tax relating to authorized operations carried on by the developer/entrepreneur and in the present case, the authorized operations

were clearly elaborated in terms of Letter of Approval dated 7.3.2011, wherein, Section 3(v) specified subjects clearances from SEZ to the

domestic area to tax in terms of the provisions of the TN VAT Act. Therefore, according to the learned counsel, the first respondent levied

purchase tax in respect of clearances effected by the petitioner to the domestic tariff area in terms of Section 12(1) read with Section 15 of the

TNSEZ Act.

18. Heard the learned senior counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the entire

materials available on record.

19. The Government of India had announced a Special Economic Zone Scheme in April 2000 with a view to provide an internationally competitive

environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties

supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to

attract foreign and domestic investments for promoting export-led growth. To instill confidence in investors and to impart stability to the SEZ

regime thereby generating greater economic activity and employment through the establishment of SEZs, a comprehensive draft SEZ Bill was

prepared in consultation with the stakeholders. The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 and received

Presidential assent on the 23rd of June, 2005. After extensive consultations, the SEZ Act, 2005, supported by SEZ Rules, came into effect on

10th February, 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to Central as well as

State Governments.

20. 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 authorized operations.

21. The petitioner company sent a proposal for setting up a unit in the Nokia Special Economic Zone by making an application dated 17.2.2011 to

MEPZ Special Economic Zone, which accorded approval for the same by proceedings, dated 7.3.2011 subject to the provisions of the Special

Economic Zones Act, 2005 and the rules and orders made thereunder for undertaking authorized operations, namely, trading and warehousing

services for mobile phone handsets and mobile phone parts and accessories. Thus, the petitioner company became a part of larger scheme of

operation by the NOKIA group in the State. The above said approval dated 7.3.2011 is subject to various terms and conditions both in regard to

the export of the goods/services as well as clearances and supply of goods/services in the domestic tariff area. The relevant terms and conditions

specified in the approval letter, dated 7.3.2011 are extracted hereunder:

You (the petitioner) shall export the goods manufactured/goods imported/procured for trading and services, including items of trading, as per

provisions of the Special Economic Zones Act, 2005 and Rules made thereunder for a period of five years from the date of commencement of

production/service activities. For this purpose, you shall execute the Bond-cum -Legal Undertaking as prescribed under the Special Economic

Zone Rule, 2006.

You (the petitioner) may supply/sell goods or services in the domestic tariff area in terms of the provisions of the Special Economic Zones Act,

2005 and rules and orders made thereunder.

22. It is the specific case of the department that the petitioner company had effected inter state stock transfer from warehouse located in SEZ

which attracts levy of purchase tax in terms of Section 12 of the TNVAT Act, 2006 read with Section 15 of the TNSEZ Act.

23. It is to be noted that the petitioner had accepted the terms prescribed in the approved letter dated 7.3.2011 for its setting up in SEZ unit, of

which, one of the conditions is that the petitioner can supply/sell the goods or services in the domestic tariff area in terms of the provisions of the

Special Economic Zones Act, 2005 and rules and orders made thereunder. In this regard, it is relevant to extract Section 30 of the Special

Economic Zones Act, 2005, which deals with ''Domestic clearance by units, which reads as under:

30. Domestic clearance by Units.-

Subject to the conditions specified in the rules made by the Central Government in this behalf:- (a) any goods removed from a Special Economic

Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the

Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and (b) the rate of duty and tariff valuation, if any,

applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and

where such date is not ascertainable, on the date of payment of duty.

24. A perusal of the above, it is explicit that if any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable

to duties of customs including anti-dumping, countervailing and safeguard duties. Further, it is also relevant to extract Section 15 of the TNSEZ

Act, which deals with domestic clearances by Units, reads as under:

15. Domestic Clearance by Units.-

Subject to the conditions specified in the rules made by the Government in this behalf.-

a) Any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to sales tax and additional sales tax under

the Tamil Nadu General Sales Tax, 1959 and the Tamil Nadu Additional Sales Tax, 1970 and the entry tax under the Tamil Nadu Entry of Motor

Vehicles into Local Areas Act, 1990 and the Tamil Nadu Entry Goods into Local Areas Act, 2001 where applicable, as leviable on such goods

when imported; and

b) The rate of sales tax, additional sales tax and entry tax, if any, applicable to goods removed from a Special Economic Zone shall be at the rate

in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of tax.

25. A perusal of the above provision, it is clear that if the goods are removed from SEZ to the domestic tariff area, such transaction is liable to

sales tax.

26. In both the writ petitions, it is not in dispute that the petitioner company effected Inter State stock transfer from warehouse located in SEZ for

Rs. 776,87,15,603/- and for Rs. 533,18,47,466/- respectively. The first respondent, by proceedings, dated 25.6.2014, purchase tax on the

above said amounts at 14.5% has been confirmed by invoking Section 12 of the TNVAT Act, 2006. It is relevant to extract Section 12 of the

TNVAT Act, 2006, which reads as under:

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

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) dispatches 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

(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.

27. According to the learned senior counsel, the petitioner company is entitled to the benefit of exemption from levy of purchase tax by virtue of

Section 12(1) of the TNSEZ Act, which provides 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 authorized operations by the Developer or entrepreneur. He pointed out that by

virtue of Approval Letter granted by the MPEZ to the petitioner to authorize the operations, viz., trading and warehousing services for mobile

phone handsets and mobile phone parts and accessories'' and the goods which were subjected to purchase tax are actually meant to carry on the

authorized operation, viz., trading & warehousing of mobile phone handsets and parts and accessories thereof.

28. Section 12 of TNSEZ Act provides exemption from the levy of taxes on the sale or purchase of goods subject to the condition that such goods

are meant to carry on the authorized operations by the Developer or entrepreneur. It is to be noted that the definitions ''authorized operations'',

''developer'' and ''entrepreneur'' have not been defined in TNSEZ Act, 2005. However, we can find definitions of these words in Section 2 of

Special Economic Zones Act, 2005 as under:

2(c) ""authorized operations"" means operations which may be authorized under sub-section (2) of section 4 and sub-section (9) of section 15;

2(g) ""Developer"" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-

section (10) of section 3 and includes an Authority and a Co- Developer;

2(j) ""entrepreneur"" means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section

15;

2(i) ""Domestic Tariff Area"" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the

Special Economic Zones;

29. Section 2(f) of TNSEZ Act envisages that the expressions used and not defined in TNSEZ Act but defined in the Special Economic Zones

Act, 2005 have the meanings respectively assigned to them in the said Act. Therefore, the expressions, ""developer"", ""entrepreneur"" and ""domestic

tariff area"" defined in the Special Economic Zones Act, 2005 would apply to TNSEZ Act.

30. As per Section 2(c), authorized operations means the operations which were authorized by the Development Commissioner by granting a letter

of approval to the Developer to undertake in a special economic zone. In the present case, the petitioner was granted a Letter of Approval, dated

7.3.2011 by the MEPZ Special Economic Zone Authority for undertaking authorized operations, namely, ""trading and warehousing services for

mobile phone handsets and mobile phone parts and accessories.

31. As per SEZ scheme, the SEZ area is deemed to be a foreign territory for the purposes of trade operations and levy of various taxes and

duties. As per the provisions of Sec 53 of the Special Economic Zone Act 2005 SEZ area is deemed to be foreign Territory. The relevant

provision reads as under (1) ""A Special Economic Zone shall, on and from the appointed day, be deemed to be territory outside the customs

territory of India for the purpose of undertaking the authorized operations. 2) A Special Economic Zone shall, with effect from such date as the

Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may

be under section 7 of the Customs Act, 1962 (52 of 1962). Provided that for the purposes of this section, the Central Government may notify

different dates for different Special Economic Zones."" ""'Domestic Tariff Area has been defined in sec 2(j) of the SEZ Act 2005 which means the

whole of India but does not include the areas of the SEZ."" The term export has been defined in sec 2(m) of the SEZ Act 2005, Export means (i)

Taking goods, or providing services, out of India from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or

otherwise; or (ii) Supplying goods, or providing services, from the Domestic tariff Area to a Unit or Developer; or (iii) Supplying goods, or

providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone, The term import has been defined

in Sec 2(o) of the SEZ Act which reads as under ""'Import"" means (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit

or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or (ii) receiving goods, or

services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone. The

supply of goods by the dealer of Domestic tariff area to SEZ unit is treated as export of the dealer and import of the SEZ unit vice versa the sale of

goods by SEZ unit to a dealer of Domestic tariff area will be import of the dealer and export of the SEZ unit. Thus all sales effected by SEZ unit to

a dealer situated anywhere in India is export sales of SEZ unit because SEZ territory is deemed to be a foreign territory. The petitioner cleared the

goods from SEZ unit to domestic tariff area and such removal of goods claimed as branch transfers under Section 6(A) of the CST Act, exempt

from tax, however, such domestic tariff area clearances consequently attract provisions of Section 15 of TNSEZ Act. Therefore, Section 2(1(b) of

the TNVAT Act stands attracted justifying levy of purchase tax. In fact, the proposal for levy of purchase tax on the entire purchase effected from

SEZ to SEZ, viz., Tvl.Nokia India Private Limited to the petitioner (Tvl.Nokia India Sales Private Limited) has been dropped, however,

considering the fact that the petitioner effected stock transfer to other states having imported the goods from outside India to its warehouse located

in SEZ area, which is nothing but domestic tariff area sales and such transaction is liable to sales tax, as if the goods are imported goods and in

terms of Section 15 of the TNSEZ Act, the first respondent has confirmed the liability of purchase tax under Section 12 of the TNVAT Act at

14.5%. As already stated that Section 12 of TNSEZ Act provides exemption from the levy of taxes on the sale or purchase of goods subject to

the condition that such goods are meant to carry on the authorized operations by the Developer or entrepreneur. The purchase tax was imposed

on the inter state stock transfer and the petitioner cannot seek exemption thereof since effecting inter state stock transfer has not been authorized

by the Development Commissioner nor it would fall within the definition of "authorized operations". The authorized operations at best can be

construed that they should achieve the object of the SEZ Policy. In fact, only with a view to attract larger foreign investment in India, the Special

Economic Zones (SEZs) Policy was announced by the Government of India. This policy was intended to make SEZs an engine for economic

growth supported by quality infrastructure and by an attractive fiscal package, both at the Centre and the State level, with the minimum possible

regulations in order to promote export and to achieve the target of economic growth at desired level. In the present case, it is contended by the

learned senior counsel that the sales made by Nokia India Private Limited to the Nokia India Sales Private Limited are zero rated by virtue of

18(1) of the TNVAT Act and for levying the purchase tax, it is essential that the goods purchased should be disposed/dealt with in any one of the

clauses specifically mentioned under (a) to (d) of Section 12(1) of the TNSEZ Act and the clauses (a), (b) and (d) are not attracted since the

petitioner had neither consumed or used the purchased goods in or for the manufacture of other goods for sale or otherwise nor disposed such

goods in any manner other than by way of sale in the State nor installed and used such goods in the factory for the manufacture of any goods. He

further contended that as regards the consignment sales, i.e. interstate stock transfer from warehouse located in SEZ, goods would be sent to

depots in other States and VAT would be paid when the goods are sold in other States. The contentions raised by the learned senior counsel, in

my opinion, do not merit acceptance and if the version of the petitioner is accepted, the resultant position is, a) no tax is levied in regard to

purchase for manufacture of goods by Nokia India Private Limited SEZ Unit; b) No tax is levied on intra SEZ sales effected between Nokia India

Private Limited and the petitioner; c) Out of total turnover of Rs. 4676.35 and 1635 crores (both writ petitions), the petitioner has exported

goods/services of an amount of Rs. 1759.32 and 674.24 crores respectively and claimed exemption thereon; d) the petitioner has remitted tax of

an amount of Rs. 159.49 and Rs. 45.96 crores only in respect of intra and inter-state sales and e) the petitioner claims exemption in relation to the

bulk of its turnover, of amount of Rs. 776.87 crores and Rs. 533.18 crores relating to SEZ clearances to branches in other States, of course, sales

of such goods are thereafter liable to tax in respective States. However, it is very deplorable to note that being a SEZ unit, having availed the

hospitality and resources of the State of Tamil Nadu, the petitioner had diverted significant part of the turnover to other States by effecting

interstate stock transfers which would not only defeat the very object of the SEZ Policy but also would have a considerable impact both on the

revenue and economic growth of State of Tamil Nadu. In order to avoid these kind of repercussions, Section 15 has been brought into TNSEZ

Act, which specifically insists that any goods removed from SEZ to domestic tariff area, shall be chargeable to tax. Further, Section 30 of the SEZ

Act also provides specifically that any goods removed from a SEZ area to Domestic Tariff area shall be liable for import duty as is leviable on

import of such goods as per the provision of Custom Tariff Act. It is admitted fact that the petitioner had accepted the terms prescribed in the

approved letter dated 7.3.2011 for its setting up in SEZ unit, of which, one of the conditions is that the petitioner can supply/sell the goods or

services in the domestic tariff area in terms of the provisions of the Special Economic Zones Act, 2005 and rules and orders made thereunder.

Therefore, levy of purchase tax confirmed by the first respondent on the interstate stock transfer effected from warehouse located in SEZ by the

petitioner, in my opinion, is perfect in order.

32. As regards the reliance placed by the learned senior counsel appearing for the petitioner in ""Torrent Energy Ltd., reported supra, does not

come to the rescue of the petitioner in the given facts and circumstances of the case. In this regard, it is relevant to refer a decision of this Court in

Tulsyan Nee Limited versus The Assistant Commissioner (CT)"" rendered in a batch of writ petitions in W.P. Nos. 21453 of 2008, etc., wherein,

in similar circumstances, this Court has held as under in para 22:

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 statue futile. The intention of the legislation is clear from the

language of Section 18 of TNVAT Act specifies the benefit for zero rated transactions.

33. Therefore, having held that Section 21 of Gujarat SEZ Act and Section 12 of TNSEZ Act as well as the provisions thereof are not pari materia

and the interpretation of the petitioners therein, if accepted, it would render the statute futile, this Court has observed that the decision in ""Torrent

Energy Pvt.Ltd.,"" does not render support to the case of the petitioners. The above said observation of this Court, in my opinion, will hold good in

the facts and circumstances of the present case.

34. As regards the impugned orders, dated 30.7.2014 passed by the first respondent while rejecting the rectification petitions filed by the petitioner

under Section 84 of the TNVAT Act, 2006, are concerned, I do not find any irregularity or illegality therein in order to interfere with the same.

Admittedly, as against the original orders, dated 25.6.2014, the petitioner is having efficacious remedy by way of appeal and without resorting to

the same, the petitioner has filed the rectification petitions and again canvassed the issue which was already dealt with in a well considered manner

by the first respondent and in those circumstances, the first respondent has held that the orders dated 25.6.2014 hold good. Therefore, I do not

find any infirmity in the impugned orders, dated 30.7.2014.

For the foregoing discussion, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected MPs are closed.