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W.P.No.33265 of 2007

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM  
AND  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.33265 of 2007**

M/s.Sivakumar and Co.,  
Perundurai Road, Erode.

...Petitioner

Vs.

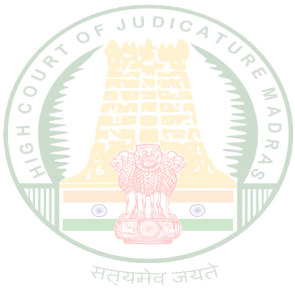
1.The Tamil Nadu Sales Tax Appellate Tribunal,  
(Additional Bench), Coimbatore,  
Rep. By its Secretary,  
Coimbatore.

2.The Appellate Assistant Commissioner (CT),  
Erode.

3.The Commercial Tax Officer,  
Erode (Rural).

...Respondents

**PRAYER:** This Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1<sup>st</sup> respondent in CTSA.No.421 of 2000 and quash the order dated 28.12.2006 passed therein and restore the order passed by the 2<sup>nd</sup> respondent in A.P.No.45 of 1997 dated 02.01.1998.



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For Petitioner : Mr.C.Subramanian

For Mr.K.J.Chandran

For Respondents : R1- Tribunal

Mr.C.Harsharaj,

Special Government Pleader for R2 & R3

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### **ORDER**

(Order of the Court was made by S.M.SUBRAMANIAM, J.)

The Writ on hand has been instituted to assail the order passed by the Tamil Nadu Sales Tax Appellate Tribunal in CTSA.No.421 of 2000 dated 28<sup>th</sup> December 2006.

2. The petitioner purchased gingelly seeds locally in the State of Tamil Nadu and those gingelly seeds suffered tax at the point of first sale in the State of Tamil Nadu. Therefore, when the petitioner effected inter-State sale of such tax suffered gingelly seeds, claimed exemption under G.O.No.3602, Revenue, dated 28.12.1963. During the assessment year 1994-95 the petitioner claimed exemption on inter-State sale of such tax suffered gingelly seeds in-line with the Government Order stated above on the turn over of Rs.40,48,080/- and submitted purchase bills and stocks book to prove the claim for exemption. The assessment order passed by the Commercial Tax Officer shows that the



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petitioner is not eligible to avail the benefit of exemption based on the inspection conducted on 20.07.1994 and the physical verification done.

3. The petitioner preferred an appeal before the Appellate Assistant Commissioner (Commercial Tax), who in turn reversed the order passed by the assessing Authority. Thus, the State preferred an appeal before the Sales Tax Appellate Tribunal. The Tribunal set aside the order of the Appellate Assistant Commissioner (Commercial Tax) by confirming the order of the assessing Authority. Thus, the present Writ Petition came to be instituted.

4. The learned counsel for the petitioner would mainly contend that the petitioner purchased the gingelly seeds both within the State and from other States. As far as the gingelly seeds purchased within the State, the goods suffered tax and therefore the petitioner is entitled to avail exemption in respect of the gingelly seeds purchased from other States in view of the G.O.No.3602 dated 28.12.1963. The said exemption since not granted by the assessing authority, the petitioner preferred an appeal before the Appellate Assistant Commissioner (Commercial Tax), who in turn rightly considered the claim of the appellant. The Appellate Tribunal has not considered the fact that the petitioner maintained books of accounts separately and goods purchased within



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the State and from inter-State are identifiable. That being so, there is no reasons to reject the claim of the petitioner by the Appellate Tribunal.

5. The learned Additional Government Pleader appearing for the respondents would oppose by stating that the petitioner admitted the fact that the goods were mingled and therefore it is impossible to segregate the gingelly seeds purchased from the State and inter-State. The Authorities during the inspection also found that the goods were mingled, which were not disputed by the petitioners during the relevant point of time. The inspection was conducted on 20.07.1994 and at that point of time the petitioner has not established that the gingelly seeds purchased from within the State and inter-State are maintained separately. That being so the petitioner is not entitled for exemption and the Appellate Tribunal rightly reversed the order of the Appellate Assistant Commissioner (Commercial Tax).

6. The Assessing Authority rejected the claim of the petitioner for grant of exemption. The Appellate Assistant Commissioner (Commercial Tax) allowed the claim. Let us consider the findings of the appellate Tribunal which would be of assistance to consider the issues. The Tribunal has considered the issues which were not taken into consideration by the Appellate Assistant



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Commissioner (Commercial Tax). Though the petitioner had maintained separate stocks account for outside State purchase and local purchase, whether it was kept separately or not has not been considered by the Appellate Assistant Commissioner (Commercial Tax) and thus the Appellate Tribunal has taken up that issue and considered elaborately. The Appellate Tribunal made a finding that mere maintenance of records would be insufficient as the sales would have been a mingled sales. This fact was not verified by the Appellate Assistant Commissioner (Commercial Tax) during the course of the hearing. The Appellate Assistant Commissioner (Commercial Tax) has considered the stock books separately maintained by the petitioner and not considered the inspection report of the assessing authority as well as the fact that the goods were mingled during the course of inspection. The inspecting officers also verified the stocks. Once the petitioner has disproved the mingling of stocks found during the course of inspection, the estimation of first sales accepted by the Appellate Assistant Commissioner (Commercial Tax) is found to be perverse. The Appellate Assistant Commissioner (Commercial Tax) has not considered this aspect in his order.

7. Even in the written submission made by the petitioner, he had not



highlighted the fact that he had maintained a separate stocks account for inter-

State purchase and local purchase. Even before the appellate Tribunal, the writ petitioner herein relied on the findings of the Appellate Assistant Commissioner (Commercial Tax), but not independently established the grounds raised. Therefore, the appellate Tribunal formed an opinion that the petitioner had not proved that the physical stock was maintained separately during the course of inspection by the competent authorities.

8. In the present case, the assessing authority has conducted a physical verification of stock which was found mingled and passed the assessment order. The Appellate Assistant Commissioner (Commercial Tax) order was elaborately considered and the findings for not accepting the Appellate Assistant Commissioner (Commercial Tax) also has been considered by the appellate Tribunal.

9. Therefore, it is unnecessary for the writ Court to re-appreciate or re-adjudicate the facts concluded before the Authorities. The power of the judicial review of the High Court under Article 226 of the Constitution of India is to ensure the process through which the decision has been taken in consonance with the rules and statute in force, but not the decision itself. When the facts are



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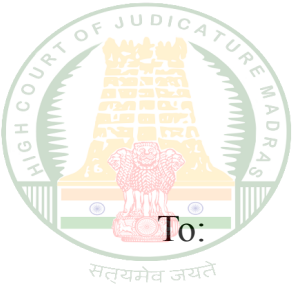
established in clear terms that the goods were found mingled during the course of physical verification / inspection, the decision of the assessing Authority and the appellate Tribunal that the petitioner is not entitled for exemption, in the opinion of this Court is correct and in consonance with the provisions of the exemption Order.

**10.** Thus, the orders passed by the assessing authority and the Tamil Nadu Sales Tax appellate Tribunal are confirmed. In result, the Writ Petition is dismissed. There shall be no order as to costs.

(S.M.S., J.) (C.S.N., J.)  
01.09.2025

dsa

Internet : Yes/No  
Index : Yes/No  
Neutral Citation : Yes/No  
Speaking/Non-speaking order



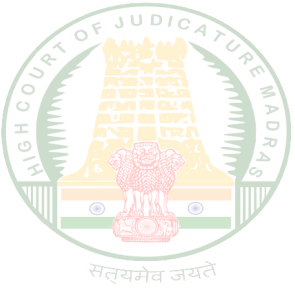
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To:

- 1.The Secretary,  
Tamil Nadu Sales Tax Appellate Tribunal,  
(Additional Bench), Coimbatore.
- 2.The Appellate Assistant Commissioner (CT),  
Erode.
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**S.M.SUBRAMANIAM, J.**  
**and**  
**C.SARAVANAN, J.**

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