IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 25TH DAY OF APRIL, 2024

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BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.67670 OF 2010 (T-EYT)
C/W
WRIT PETITION NO.104278 OF 2014 (T-EYT)
WRIT PETITION NO.103670 OF 2017 (T-EYT)
WRIT PETITION NO.103671 OF 2017 (T-EYT)

IN WRIT PETITION NO.67670/2010

BETWEEN:

M/S GHODAWAT INDUSTRIES (INDIA) PVT. LTD.
(FORMERLY KNOWN AS M/S GHODAWAT PAN
MASALA PRODUCTS (INDIA) PVT. LTD.)
NO.5 & 6, RAGHAVENDRA COLONY
KHASBAG, BELGAUM-590 004.
REPRESENTED BY ITS LEGAL DIRECTOR
SRI. RAGHAVENDRA VISHNUTHIRTH BELGAUMKAR
AGED ABOUT 48 YEARS
S/O SRI. VISHNUTHIRTH VASUDEV BELGAUMKAR
....PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE FOR
SRI. PRAVEEN P. TARIKAR, ADVOCATE)

AND:

1 . ADDITIONAL CHIEF SECRETARY
AND PRINCIPAL SECRETARY
TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA

VIDHANA SOUDHA
BANGALORE-560 001.

2 . COMMISSIONER OF COMMERCIAL TAXES
VINIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009.

3 . JOINT COMMISSIONER OF
COMMERICAL TAXES (ENFORCEMENT)
NORTH ZONE, SUMAULYA SOUDHA
CLUB ROAD, BELGAUM-590 001.

4 . ADDITIONAL DEPUTY COMMISSIONER
OF COMMERCIAL TAXES (ASSTS.)-2
SUMAULYA SOUDHA, CLUB ROAD
BELGAUM-590 001.

5 . ASSISTANT COMMISSIONER OF
COMMERICAL TAXES (ENFORCEMENT)-1
SUMAULYA SOUDHA, CLUB ROAD
BELGAUM-590 001.

....RESPONDENTS

(BY SRI. K. SHASHIKIRAN SHETTY, AG ALONG WITH
SRI. MALHA RAO, AAG ALONG WITH
SRI. S. SUDHARSAN, AGA FOR R1 TO R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE WORDS "PREVAILING MARKET PRICE OF SUCH GOODS INTO LOCAL AREA" IN THE DEFINITION OF "VALUE OF THE GOODS" IN SECTION 2(A)(8-a) OF KARNATAKA TAX ON ENTRY OF GOODS ACT, 1979, IS UN-CONSTITUTIONAL, AND IS BEYOND THE COMPETENCE OF THE STATE LEGISLATURE UNDER ENTRY NO.52 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA, AS FAR AS THE PETITIONER IS CONCERNED AND ETC.

IN WRIT PETITION NO.104278/2014

BETWEEN:

M/S GHODAWAT INDUSTRIES (INDIA) PVT. LTD.
NO.5 & 6, RAGHAVENDRA COLONY
KHASBAG, BELGAUM-590 004.
REPRESENTED BY ITS LEGAL DIRECTOR
SRI. RAGHAVENDRA VISHNUTHIRTH BELGAUMKAR
AGED ABOUT 52 YEARS
S/O LATE SRI. VISHNUTHIRTH VASUDEV BELGAUMKAR

....PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE FOR
SRI. PRAVEEN P. TARIKAR, ADVOCATE)

AND:

1 . ADDITIONAL CHIEF SECRETARY
AND PRINCIPAL SECRETARY
TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560 001.

2 . COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009.

3 . JOINT COMMISSIONER OF COMMERICAL TAXES/
DVO (ADMINISTRATION)
BELGAUM DIVISION, CLUB ROAD
BELGAUM-590 001.

4 . COMMERCIAL TAX OFFICER (AUDIT)-3
SUMOULYA SOUDHA
CLUB ROAD
BELGAUM-590 001.

....RESPONDENTS

(BY SRI. K. SHASHIKIRAN SHETTY, AG ALONG WITH
SRI. MALHA RAO, AAG ALONG WITH
SRI. S. SUDHARSAN, AGA FOR R1 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE AND HOLD THAT THE WORDS "PREVAILING MARKET PRICE OF SUCH GOODS INTO LOCAL AREA" IN THE DEFINITION OF "VALUE OF THE GOODS" IN SECTION 2(A) (8-A) OF KARNATAKA TAX ON ENTRY OF GOODS ACT, 1979, IS UN-CONSTITUTIONAL, AND IS BEYOND THE COMPETENCE OF THE STATE LEGISLATURE UNDER ENTRY NO.52 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA, AS FAR AS THE PETITIONER IS CONCERNED AND ETC.

IN WRIT PETITION NO.103670/2017

BETWEEN:

M/S GHODAWAT INDUSTRIES (INDIA) PVT. LTD.
NO.5 & 6
RAGHAVENDRA COLONY
KHASBAG
BELGAUM-590 004.
REPRESENTED BY ITS LEGAL DIRECTOR
SRI. RAGHAVENDRA VISHNUTHIRTH BELGAUMKAR
AGED ABOUT 55 YEARS
S/O LATE SRI. VISHNUTHIRTH VASUDEV BELGAUMKAR

....PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE FOR
SRI. PRAVEEN P. TARIKAR, ADVOCATE)

AND:

1 . ADDITIONAL CHIEF SECRETARY
AND PRINCIPAL SECRETARY
TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560 001.

2 . COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009.

3 . COMMERCIAL TAX OFFICER (AUDIT)-3
SUMOULYA SOUDHA
CLUB ROAD
BELGAUM-590 001.

....RESPONDENTS

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SRI. MALHA RAO, AAG ALONG WITH
SRI. S. SUDHARSAN, AGA)

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IN WRIT PETITION NO.103671/2017

BETWEEN:

M/S GHODAWAT PAN MASALA
PRODUCTS (INDIA) PVT. LTD.
EARLIER KNOWN AS M/S GHODAWAT
INDUSTRIES (INDIA) PVT. LTD.
NO.5 & 6, RAGHAVENDRA COLONY
KHASBAG, BELGAUM-590 004.
REPRESENTED BY ITS LEGAL DIRECTOR
SRI. RAGHAVENDRA VISHNUTHIRTH BELGAUMKAR
AGED ABOUT 55 YEARS
S/O LATE SRI. VISHNUTHIRTH VASUDEV BELGAUMKAR

....PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE FOR
SRI. PRAVEEN P. TARIKAR, ADVOCATE)

AND:

1 . ADDITIONAL CHIEF SECRETARY
AND PRINCIPAL SECRETARY
TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560 001.

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VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009.

3 . COMMERCIAL TAX OFFICER (AUDIT)-3
SUMOULYA SOUDHA

CLUB ROAD
BELGAUM-590 001.

....RESPONDENTS

(BY SRI. K. SHASHIKIRAN SHETTY, AG ALONG WITH
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SRI. S. SUDHARSAN, AGA)

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THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.04.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petitions are filed by the petitioner/company challenging the Constitutional validity of Section 2A(8-a) of the Karnataka Tax on Entry of Goods Act, 1979 and assailing the assessment notices dated 13.10.2010 and 19.03.2014 issued by respondent no.5 proposing to pass reassessment orders and orders levying penalty for the years spanning from 2002 to 2009. Additionally, the petitioner/company is also aggrieved by the assessment orders dated 31.03.2017 issued by respondent No.5 for the year 2009-2010, pursuant to notice dated 28.01.2017.

2. Petitioner is a company registered under the Companies Act, 1956 and is engaged in the business of manufacture and sale of pan masala containing tobacco known as guthka. Petitioner/Company earlier used to manufacture goods from its manufacturing unit located in Kolhapur

District, later it was relocated at Belgaum district. The goods manufactured are then subsequently transferred to sale depot located within the same district on stock transfer basis.

3. Petitioner/company claims that the declarations made in the returns submitted by the petitioner for the payment of entry tax was examined by the Deputy Commissioner of Commercial Tax/respondent No.4 and has accordingly, proceeded to finalize the assessments relating to assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10.

4. The grievance of the petitioner/company is that respondent No.5, on instructions and assignment by Joint Commissioner of Commercial Tax, inspected the petitioner's premises and while reversing the original assessment order has come to the conclusion

that the entry tax paid by the petitioner company on the stock transfer value was not in compliance with the provisions of The Karnataka Tax on Entry of Goods Act, 1979(for short "KTEG Act"). Respondent No.5 taking cognizance of Section 2A(8-a) of KTEG Act, held that the tax should have been paid on the basis of the "prevailing market price of such goods in the local area" and not on the value of the goods in terms of charging Section 3(1) of KTEG Act and accordingly, has issued the impugned assessment orders and consequent, demand notices calling upon petitioner/company to pay differential tax between the stock transfer value and the sale price.

5. Learned Senior Counsel Sri. G. Shivadas, while questioning the constitutional validity of the words "prevailing market price of such goods in the local area" in the definition of "Value of the goods" in Section 2A (8-a) of KTEG Act, would vehemently

argue and contend that for the purpose of levy of entry tax, the value should be the purchase price of such goods entered into the local area and any subsequent rise or fall in price is of no consequence and has no relevancy. Reliance is placed on the judgment rendered by this Court in the case of ***State of Karnataka and others .vs. Hansa Corporation[1].*** Therefore, he would point out that as the goods are brought into the local area as a result of stock transfer, without affecting the sales, the entry tax will have to be levied on prevailing market value of such goods brought into local area and not on the prevailing market price as indicated in the definition.

6. He would further point out that charging section cannot over-ride by the definition clause. Reliance is placed on the clarifications issued by the

[1] AIR 1981 SC 463

Government of Karnataka relating to stock transfer and the entry tax payable on the stock transfer value.

7. While questioning the validity and the value of the goods indicated in Section 2A(8-a) of KTEG Act, he has placed reliance on the judgment rendered by the Apex Court in the case of ***Commissioner of Central Excise, Pandicherry .vs. M/s. Acer India Private Limited*** [2]. While buttressing his arguments on this point, he would vehemently argue and contend that definition clause cannot run contrary to the charging provisions. Reliance is placed on the judgments in the case of ***Commissioner of Central Excise, Indore .vs. Grasim Industries Limited***[3], ***Commissioner of Central Excise, Pandicherry .vs. M/s. Acer India Private Limited*** *(supra)*, ***BPL Limited .vs. State of Karnataka and others***[4],

[2] 2004 137 STC 596
[3] 2018(360) E.L.T. 769 (S.C.)
[4] MANU/KA/0625/2004

Voltas Limited .vs. State of Karnataka[5]***, M/s.Castrol India Limited .vs. Commercial Taxes Department, the Commissioner of Commercial Taxes, Madhya Pradesh***[6] **and** ***M/s.Mangalam Cement Limited .vs. Commissioner of Commercial Tax***[7]***.*** Referring to these judgments, he would contend that sale price cannot be the basis for levy of entry tax. He would further point out that in case of stock transfer, the authorities have to act under Section 3(1) of the Act and therefore, there can be no levy of entry tax on the sales price.

8. The second limb of argument canvassed by the learned Senior Counsel relates to reassessment done by respondent No.5. He would vehemently argue and contend that, in the present case, respondent No.4 accepted the declarations made in

[5] MANU/KA/0488/2004
[6] 2019-VIL-601-MP
[7] 2019-VIL-483-ALH.

the returns filed by the company for the assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 and proceeded to finalize the assessments. Therefore, he would contend that the excise undertaken by respondent No.5 in reassessing, is clearly based on change in opinion and therefore, it is bad in law and contrary to Section 6(2) of the Act. He would vehemently argue and contend that in all these petitions, reassessment notices and assessment Orders are issued based on subsequent change in opinion. He would further contend that the assessments were undertaken by respondent No.4 by taking note of the value declared in the return i.e. stock transfer price and the same was taken as the value for the purpose of levy of entry tax. After 16 to 18 years of the 1992 amendment wherein the expression 'value of the goods' was substituted w.e.f. 1.5.1992 in Section 2A and the same was substituted

by the wordings 'the prevailing market price of such goods in the local area', respondent No.5 placing reliance on this amended provision has proposed to demand differential tax by adopting the sale price and the notices are issued under Section 6(1) and 6(2) of the KTEG Act.

9. Therefore, learned Senior Counsel would contend that respondent No.5 has reassessed the tax liability not in consonance with Section 6(2) of KTEG Act. He would point out that the grounds mentioned in the reassessment order is not one of the grounds mentioned in Section 6(2) of KTEG Act. Referring to the law laid down by the Apex Court in the case of ***Commissioner of Income Tax, Delhi .vs. Kelvinator India Limited***[8]***,*** he would contend that reassessment has to be based on fulfillment of certain pre-conditions. The Assessing Officer has power to

[8] (2010) 2 SCC 723

reassess and has no power to review provided that there is tangible material.

10. While countering the contention of the State regarding the maintainability of the writ petition, learned Senior Counsel has contended that the writ petitions are maintainable in the light of the law laid down by the Apex Court in the case of ***Magadh Sugar & Energy Limited .vs. State of Bihar and others***[9]***.*** He would contend that the order passed by respondent No.5 is wholly without jurisdiction and therefore, petitioner cannot be relegated at this juncture to avail the remedy of an appeal. Reliance is placed on the judgment rendered by the Apex Court in the case of ***Bal Krishna Agarwal .vs. State of UP and others***[10] to substantiate that some of the petitions are pending for almost 14 years and therefore, the same cannot be dismissed on the

[9] MANU/SC/0706/2021
[10] [1995] 1 SCR 148

ground of alternate remedy. Even if the petitioner is relegated to the original authority for reconsideration, the Officer is bound by the language of the provisions of the Act and therefore, no purpose will be served in remanding the matter to the original authority.

11. Per contra, learned Advocate General reiterating the grounds urged in the statement of objections would place reliance on the notification dated 30.3.2002. He has further placed reliance on para 3 of the written submissions:

> *"3.* ***Charging Section:*** *Section 3 of the Karnataka Tax on Entry of Goods Act, 1979 provides for levy of Entry Tax on any notified goods listed in the First Schedule of the said Act, on Entry into a local area for consumption, use or sale therein at the notified rates on the value of goods as may be specified. Gutkha and Pan Masala are taxable at the rate of 4% as per Notification-I No. FD 11 CET 2002, dated 30th March 2002. Therefore, the ingredients required for levy of Entry tax are:*
>
> 1) *Entry of notified scheduled goods from one local area to another local area is a '**Taxable event**'.*
>
> 2) *The person causing entry of such notified scheduled goods is a '**Taxable person**'.*

> *3) The '**Rate of tax**' as notified in the notification is applicable for the levy of Entry tax.*
>
> *4) Value of goods as defined under the Act, is the '**Measure of tax**'."*

Referring to the written submissions, he would contend that there is no dispute with regard to taxable event, taxable person and rate of tax. Learned Advocate General argues that the dispute is with regard to measure of tax which is the value of the goods as defined under Section 2A(8-a) of the KTEG Act. Referring to the above said definition, he would point out that there is absolutely no conflict or inconsistencies between the charging provision and the definition clause. Taking this Court through the definition, he would point out that the "value of the goods" as defined under clause (8-a) of sub-section(A) of Section 2 of the KTEG Act shall be understood as purchase value of such goods. Therefore, he would contend that it is the purchase

price at which a dealer has purchased the goods inclusive of charges borne by him and the cost of transportation which would be the relevant consideration. He would vehemently argue and contend that the petitioner is selectively quoting a portion of the said Section and ignoring the latter portion of the Section where there is a reference that, when the goods are not purchased, the tax has to be levied on the prevailing market price of such goods in the local area. He further submits, the wordings "value of the goods" as indicated in the definition clause is nothing but the prevailing market price and it does not represent the sale price and therefore, there is no conflict of Entry No.52 with Entry 54 of List-II of VII Schedule to the Constitution of India. To support his arguments, the learned Advocate General has referred to the definition of prevailing market price under Section 225 of Karnataka Value Added Tax Act,

2003 which means wholesale price in force in the market.

12. While countering the petitioner's reliance on the Apex Court judgment in ***M/s.Hansa Corporation's*** case (supra), learned Advocate General has placed reliance on the Division Bench judgment rendered in ***Voltas'*** case. Therefore, the learned Advocate General would point out that the petitioner's reliance on charging Section 3(1) of the KTEG Act as it existed before amendment dated 1.5.1992 does not have any bearing on the provision of Section 2-A(8-a). The Apex Court has rendered the judgment in ***Hansa Corporation's*** case in 1981 and therefore, the principles laid down by Apex Court in the case of ***Hansa Corporation*** are not applicable to the present case on hand. He would contend that charging Section 3(1) and Section 2A(8-a) defining the value of the goods are not competing each other.

While the former prescribes the event attracting levy and incidence of tax, latter prescribes the value of the goods liable for tax. He would further point out that both Sections are inclusive of each other and therefore, the question of charging section prevailing over definition clause may not arise for consideration.

13. On reassessment notices, learned Advocate General would point out that these notices are not violative of clarifications issued by the Commissioner of Commercial Tax. Learned Advocate General would point that the assessing authority had no opportunity to act as per the clarifications issued by the Commissioner of Commercial Taxes. While seriously contesting the petitioner's claim that reassessment is purely based on change of opinion, reliance is placed on 12(2) of the Act to justify the action of the Assessing Officer on the ground that State Government or the Commissioner may, by

notification, authorize officer to exercise powers. Therefore, he would contend that the re-assessment orders and consequent demand notices in regard to differential tax is in accordance with law and does not warrant any indulgence at the hands of this Court. The learned Advocate General has also brought to the notice of this Court that in these batch of petitions, the petitioner/company in W.P.No.67670/2010 and W.P.No.104278/2014, has challenged the show-cause notices for assessment and therefore, no interference is warranted at this juncture. It is also contended that these impugned orders are appealable under Section 13 of KTEG Act, 1979 and therefore, it is contended that the writ petition is premature and misconceived.

14. Heard the learned counsel on record. I have given my anxious consideration to the

judgments cited by the learned counsel for the parties.

15. The following points would arise for consideration:

> *"(1)Whether the inclusion of the term "prevailing market price of such goods in the local area" within the definition of "value of the goods" under clause 2A(8-a), in instances where goods are not purchased, conflicts with the charging provision outlined in section 3(1) of the Act. Specifically, does this deviation from the charging provision, which mandates the levy and collection of tax on the value of goods, render the language used in the definition clause ultra vires, as it constitutes a substantive provision imposing the tax?*
>
> *(2) Whether re-assessment notices in W.P.Nos.67670/2010 as per Annexures-J, K and L for the assessment years 2002-03, 2003-04 and 2004-05 issued by respondent No.5 after a significant lapse of time from the*

original assessments are valid under Section 6(2) of KTEG Act and assessment orders dated 31.3.2017 in ***W.P.Nos.103670/2017 and 103671/2017*** *for the assessment year 2009-10 passed by respondent No.5 in terms of the wordings "prevailing market price of such goods in local areas" under clause 2A(8-a) of KTEG Act are valid?*

(3) Whether differential tax amount determined by respondent No.5 based on mere change of opinion are in contravention of Section 6(2) of the KTEG Act?

(4) Whether petitioner/company needs to be relegated to avail remedy of appeal on the ground of alternate remedy?"

16. **FINDING REGARDING POINT No.1:**

In the context of tax statutes such as the Karnataka Tax on Entry of Goods Act, it is essential to understand the interplay between the charging

provision and definition clause. The complexities surrounding the interpretation of entry tax laws particularly in the context of stock transfers, necessities a meticulous examination of relevant legal principles and the judgments rendered by Apex Court and this Court on this issue.

17. Before I advert further, I deem it fit to refer to the definition clause under Section 2A(8-a) of KTEG Act, which reads as under:

> *"'Value of the goods' shall mean the purchase value of such goods, that is to say, the purchase price at which a dealer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing market price of such goods in the local area."*

Charging Section 3(1) of KTEG Act reads as under:

> *"There shall be levied and collected a tax on [entry of any goods specified in the FIRST SCHEDULE] into a local area for consumption, use or sale therein, at such rates not exceeding five percent of the value of the goods as may be specified [retrospectively or prospectively by the State Government by Notification, and different dates] and different rates may be specified in respect of different goods or different classes of goods or different local areas."*

18. The definition clause defines the term value of goods for the purpose of the Act. It states that the value of the goods shall mean the purchase value of the such goods, inclusive of various charges borne by the dealer. The conflicting clause in the definition is in relation to goods which are not purchased by the dealer. The entry tax has to be paid on the prevailing market price of such goods in the local area. The wordings 'prevailing market price of such goods in the local area' indicated in the definition of clause 2A(8-a) needs to be examined in the context of

charging provision of Section 3(1) of the Act. The charging provision under Section 3(1) of the Act establishes the fundamental basis for levying entry tax. This Section stipulates that tax should be levied based on the value of the goods when they enter the local area.

19. On the other hand, the definition clause under Section 2A(8-a) introduces additional criteria for determining the value of the goods including factors like prevailing market price, if such goods are not purchased. This clause as per the petitioner's contention if interpreted in isolation leads to ambiguities and conflicting interpretations particularly in cases involving stock transfers.

20. Therefore, this Court needs to examine the law on this point. In ***State of Karnataka .vs. Hansa Corporation,*** the Apex Court held that entry tax is

levied based on purchase price of goods when they enter the local area. The Apex Court emphasized that any subsequent raise or fall in the price of goods does not affect the levy of entry tax.

21. This Court in the case of ***BPL Limited .vs. State of Karnataka and others***[11] ruled that for the purpose of levying entry tax, the value of goods should be determined at the time when they enter the local area. This principle underscores the importance of assessing the value of the goods accurately when they cross the local jurisdictional boundaries.

22. Another significant judgment rendered by this Court in the case of ***Voltas Limited .vs. State of Karnataka***[12]***,*** this Court highlighted that assessing officers cannot levy entry tax based on the prevailing market price of goods. This judgment emphasizes the

[11] WP.Nos.13516-13519/2001
[12] (2008) 11 VST 267(Karn.)

need for clarity in determining the taxable value of goods to avoid arbitrary assessments.

23. The Apex Court in the case of ***Moriroku U.T. India(P) Limited .vs. State of Uttar Pradesh and others***[13] was examining the excise duty payable on manufacture of goods. Apex Court while examining the excise duty and liability on manufactured goods held that excise duty is levied based on the value of the manufactured goods, irrespective of their sale price. This principle reinforces the idea that the value at the time of manufacture or entry is crucial for tax assessment.

24. The Apex Court in the case of ***State of Rajasthan and others .vs. Rajasthan Chemists Association***[14] held that tax cannot be charged on a transaction that is not completed or based on a likely

[13] (2008) 4 SCC 548
[14] AIR 2006 SC 2699

price of sale. It emphasizes the need for a completed transaction and actual value assessment for tax imposition.

25. Drawing from the principles established in the aforementioned judgments, it becomes evident that the charging provision under Section 3(1) of the KTEG Act serves as the foundational framework for levying entry tax. This provision mandates that the tax should be based on the value of goods entering the local area. However, the definition clause under Section 2A(8-a) introduces additional criteria, such as the 'prevailing market price,' which can potentially lead to conflicting interpretations, especially in cases involving stock transfers. In situations where there is a conflict between the charging provision and the definition clause, the Court's duty is to interpret these provisions in a manner that upholds the legislative intent behind the charging provision. The charging

provision, being the substantive section imposing the tax, holds primacy over other provisions of the statute.

26. Applying the principle of 'reading down,' the definition clause's wording in Section 2A(8-a), such as 'prevailing market price,' should be interpreted in alignment with the charging section. This approach ensures consistency and coherence in the application of entry tax laws, particularly in cases of stock transfers. The principle of statutory interpretation mandates that statutes should be construed harmoniously to give effect to the legislative intent. When there is a conflict between the charging provision and the definition clause, the Court's role is to reconcile these provisions to ensure coherence and consistency in the application of the law. Applying the principle of 'reading down,' the definition clause's wording in Section 2A(8-a), such as

'prevailing market price,' should be interpreted in a manner that aligns with the charging provision under Section 3(1). This interpretation ensures that the taxable value of goods, especially in stock transfers, is determined based on the value at the time of entry into the local area, as mandated by the charging provision.

27. Stock transfers present a unique challenge in the application of entry tax laws. Unlike sales transactions, stock transfers involve the movement of goods within the same corporate entity or group without an actual sale. Therefore, determining the appropriate taxable value becomes crucial to prevent double taxation and ensure fairness in tax imposition. In line with the judgments like ***Voltas Ltd v. State of Karnataka (supra),*** where this Court emphasized that entry tax cannot be levied based on the prevailing market price, it becomes clear that the

assessing officers must adhere to the principles laid down in the charging provision when assessing tax on stock transfers.

28. The primary objective behind the imposition of entry tax is to tax the entry of goods into the local area for consumption or use. The legislative intent, therefore, is to levy tax based on the value of goods at the time of their entry. Any interpretation deviating from this principle would defeat the legislative intent and undermine the objectives of the entry tax laws.

29. In light of the comprehensive legal analysis and principles discussed above, the definition clause under Section 2A(8-a) of the KTEG Act must be construed harmoniously with the charging provision under Section 3(1) of the KTEG Act. The charging provision, being the substantive section imposing the

tax, should hold primacy in determining the taxable value of goods, especially in cases of stock transfers.

In elucidating these provisions, it becomes apparent that the crux of Section 3(1) lies in anchoring tax assessment to the value of goods at the time of their entry. Therefore, any reference to prevailing market price in Section 2A(8-a) should be construed as pertaining to the market value of goods contemporaneous with their entry into the local area. This interpretation harmonizes the definition clause with the charging provision by ensuring that tax liability is determined based on the inherent worth of goods upon entry, rather than their subsequent market fluctuations or sale prices.

30. In light of the foregoing analysis and in adherence to the principles of statutory interpretation, particularly the principle of 'reading down,' the

definition clause under Section 2A(8-a) of the KTEG Act shall be construed as follows:

The term 'value of such goods' as mentioned in Section 2A(8-a) of the KTEG Act shall be interpreted to mean the value of goods at the time of their entry into the local area, consistent with the charging provision under Section 3(1) of the KTEG Act. This interpretation ensures harmonization between the charging provision and the definition clause, eliminating any potential conflicts or inconsistencies.

31. ***My finding regarding Point Nos.2 and 3:***

Before I proceed further, Section 6 of KTEG is reproduced as under:

> *"6. Re-assessment of tax.-(1) Where the Assessing Authority has grounds to believe that any return furnished which is deemed as assessed or any assessment issued under Section 5-B understates the correct tax liability of the dealer, it,-*
>
> *(a) may, based on any information available, re-assess, to the best of its judgment, the*

additional tax payable and also impose any penalty under sub-section (2) of Section 20-B and demand payment of any interest; and

(b) shall issue a notice of re- assessment to the dealer demanding that the tax shall be paid within thirty days of the date of service of the notice after giving the dealer the opportunity of showing cause against such re-assessment in writing.

(2) Where after making a re-assessment under this Section.-

(a) any further evidence comes to the notice of the assessing authority; or

(b) if the assessing authority has reason to believe that the whole or any part of the turnover of a dealer or the value of taxable goods brought or caused to be brought into a local area by a dealer whether on his own account or on account of his principal or any other person or who has taken delivery or is entitled to take delivery of such goods on its entry into local area in respect of any tax period has escaped re-assessment to tax; or

(c) tax has been under re-assessed; or

(d) has been re-assessed at a rate lower than the rate at which it is assessable under this Act; or

(e) any deductions or exemptions have been wrongly allowed in respect thereof,

The assessing authority may, notwithstanding the fact that whole or part of such escaped turnover or value of taxable goods as the case may be, was already before the said authority at the time of assessment or reassessment, proceed to make assessment or any further re-assessments in

addition to such earlier assessment or re-assessment"

Now, let me examine whether the impugned assessment orders in two petitions and reassessment notices in three petitions are beyond the permissible limit prescribed under Section 6(2) of KTEG Act. The above said section lays down conditions under which reassessment can be undertaken. Section 6(2) of the KTEG Act requires valid grounds and strict adherence to the statutory limits. The petitioner's company's assessment for the year 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 2008-09 and 2009-10 were accepted by respondent No.4 through assessment orders dated 21.10.2004, 30.8.2006, 11.2.2008, 25.06.2008, 25.08.2009, 7.4.2010.

32. The fundamental principle guiding the reassessment process is to ensure that it is not initiated on the mere change of opinion by the

Assessing Authority. The Apex Court in ***Commissioner of Income Tax, Delhi .vs. Kelvinator India Limited***[15] has laid down this principle clearly. The Apex Court emphasized that reassessment should be made on tangible material that indicates an escape of income or any other legitimate reason to believe that income has been under assessed. In the current case, respondent No.5 has initiated reassessment by taking cognizance of definition clause at Section 2A(8-a) of the KTEG Act. Respondent No.5 while passing assessment orders and reassessment notices has relied on the term 'prevailing market price of such goods in the local area' as incorporated in Section 2A(8-a) of the KTEG Act. Therefore, it is borne out from records that this is a clear case of change of opinion and therefore, does not meet the requisite criteria enumerated in Section 6(2) of the KTEG Act. The Apex Court in

[15] (2010) 2 SCC 723

various landmark judgments has emphasized the importance of legal certainty and the need to avoid vague and arbitrary provisions in the Act so as to avoid potential misuse of power by the Assessing Authority. The amendment to definition clause was brought in on 1.5.1992. The expression 'value of the goods' in the definition clause was substituted w.e.f. 1.5.1992. The petitioners have been discharging entry tax in respect of goods, stock transferred into the local area on the basis of the stock transfer value which was computed as a sum of cost of production, special excise duty, additional excise duty, national calamity duty and cost of freight and applicable entry tax. Respondent No.4 has examined the books of accounts and found that the declarations made in the returns filed by the petitioner for payment of entry tax was in accordance with law and accordingly, proceeded to finalize the assessments relating to

assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. It is also relevant to note that these assessment orders were passed as late as 2004 to 2010, almost 12 years to 18 years after the amendment made in 1992. Therefore, respondent No.5 taking cognizance of 1992 amendment could not have initiated reassessment process.

33. Given this statutory mandate under the charging Section 3(1) of the KTEG Act, any subsequent attempt by the Assessing Officer to revise the assessment and base it on the prevailing market price of the goods would deviate from the established principles and legislative intent.

34. Upon thorough examination of relevant legal provisions, the assessment orders in W.P.Nos.103670 and 103671/2017 and reassessment

notices issued by respondent No.5 in W.P.Nos.67670/2010 and 104278/2014 are solely grounded on a change of opinion without providing any fresh material or evidence to suggest any under assessment. Furthermore, it is clearly evident from the records that respondent No.5 being a new Officer has conducted reassessment as opposed to the original assessing Officer who had accepted the returns submitted by the petitioner's company indicating that there is entry tax compliance by the petitioner company strictly in terms of the charging Section 3(1) of the KTEG Act. The power to reassess is vested with the original assessing officer. Therefore, reassessment done by respondent No.5 merely on the ground of change of opinion does not adhere to the compliance of mandate contemplated under Section 6(2) of the KTEG Act.

35. The assessment orders and reassessment notices issued by respondent No.5 are based on change of opinion and therefore, the impugned assessment orders and reassessment notices are not sustainable and would warrant interference at the hands of this Court. Initiating reassessment purely on the grounds of change of opinion without substantive new material is impermissible under the law and therefore, liable to be quashed.

36. The impugned assessment orders dated 31.3.2017 which is subject matter of W.P.103670/2017 and W.P.103671/2017 are not sustainable in the light of findings recorded supra. The Assessing Officer has to pass fresh assessment orders by not referring to prevailing market price in Section 2A(8-a) of the KTEG Act but in terms of the charging provisions under Section 3(1) of the KTEG Act by ensuring that tax liability is determined based

on the value of the goods upon entry rather than prevailing market price. Accordingly, point No.2 is answered in the negative and point No.3 is answered in the affirmative.

37. **My finding regarding Point No.4:**

The judicial rule of convenience serves as the foundation for the doctrine of exhaustion of alternatives. It says that a litigant should approach the forum that is closest to them in the judicial hierarchy and that valuable judicial resources shouldn't be squandered as a result of forum shopping, both at the lower, possibly specialized level and at the higher level. This doctrine becomes crucial in the modern era, when there is an enormous backlog of cases and an explosion of litigation in the courts. Numerous cases that the Supreme Court decided resulted in the development of the jurisprudence supporting this idea. In the case of

Union of India v. T.R. Verma[16], the Apex Court stated: "It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ." However, this rule is not an 'Absolute Rule of Law' and there are certain valid exceptions where the writ petitions are maintainable in the High Court and in such cases, the petitioner ought not to be relegated to alternative remedy. The Apex Court in the case of ***Whirlpool Corporation v Registrar of Trademarks***[17], Mumbai held that the under Article 226 of the Constitution, the High Court has discretion in regard to the matter of entertaining a writ petition and the existence of alternative remedy has been consistently held by this Court not to

[16] AIR 1957 SC 887
[17] AIR 1999 SC 22

operate as a bar in at least three contingencies namely:

(i) The writ petition has been filed for the enforcement of any of the Fundamental Rights protected by Part III of the Constitution.

(ii)There has been a violation of the principle of natural justice.

(iii) The order or proceedings are wholly without jurisdiction or the vires of an Act is challenged

38. A similar view was adopted by the Hon'ble Supreme Court in the case of ***Harbanslal Sahnia v Indian Oil Corpn. Ltd***[18]. Thereby the Apex Court upheld that the availability of alternative remedies is not an absolute bar to the granting of writs under Article 226. In ***Rajasthan State Electricity Board v. Union of India***[19], the Apex Court observed that "now it is a well-settled principle of law that the availability

[18] AIR 2003 SC 2120
[19] 1967 AIR SC 1857

of alternative remedy is not an absolute bar for granting relief in the exercise of power under Article 226 of the Constitution". On the grounds that the appellants' writ petition was dismissed by the Bombay High Court and that the Railway Claims Tribunal offered better remedies, an appeal was preferred before the Hon'ble Supreme Court against this decision. However, the Hon'ble Supreme Court ruled that the High Court cannot reject the writ petition or order the appellants to pursue an alternate remedy because the respondent had acknowledged liability.

39. In the present batch of petitions the These batch of petitions are filed challenging the vires of Section 2A(8-a) of KTEG Act. This Court while answering point No.1 has held as under:

> "In the light of the foregoing analysis and in adherence to the principles of statutory interpretations, particularly, the principle of

'reading down', the definition clause under Section 2A(8-a) of the KTEG Act, shall be construed as follows:

> *"The term 'prevailing market price of the goods in the local area' as mentioned in Section 2A(8-a) of the KTEG Act shall be interpreted to mean the value of the goods at the time of their entry into local area, consistent with charging provision under Section 3(1) of the Act".*

40. In the specific context of the case, it becomes evident that the challenge raised by the petitioner pertains directly to the interpretation and application of the term "prevailing market price of such goods in the local area" as delineated in Section 2A(8-a) of the KTEG Act. This interpretation forms the crux of the petitioner's grievance, as it directly impacts their legal rights and obligations under the statute. Crucially, the petitioner's challenge to this specific provision of the KTEG Act represents a fundamental aspect of their legal argument. Without

addressing and resolving this challenge, any appeal before the statutory authorities would lack a substantive basis. In essence, the petitioner's ability to effectively pursue relief hinges upon the resolution of the disputed interpretation of the statutory provision.

41. In this case, the petitioner's challenge to the statutory provision goes beyond mere statutory interpretation and involves significant legal and constitutional implications, warranting this Court's intervention. Therefore, in light of the unique circumstances and the centrality of the disputed statutory provision to the petitioner's case, the writ petition represents not only the most efficacious but also the most equitable remedy available. By allowing the petitioner to directly address the substantive legal issues before this Court, justice can be served

promptly and fairly, aligning with the overarching objectives of the legal system.

42. This Court is inclined to hold that the petitioner at this stage cannot be relegated to avail the alternative remedy of an appeal, in light of law laid down by the Apex Court in ***Bal Krishna Agarwal's*** case *(supra),* where the Apex Court was of the view that the Court was not right in dismissing the writ petition on the ground of alternate remedy having found that the writ petition is found pending since 1998, i.e. more than five years. In the present cases on hand, the petitions are pending for almost 14 years. The impugned assessment orders and reassessment notices issued by respondent No.5 are one without jurisdiction. Therefore, this Court under writ jurisdiction has ample powers to examine the validity of assessment orders and also reassessment notices. Any indulgence at this juncture at the

instance of respondent/State would seriously prejudice the rights of the petitioner/company. Therefore, even on this count, this Court is not inclined to relegate the petitioner/company to avail the remedy of an appeal and if permitted would lead to miscarriage of justice. Accordingly, point No.4 is answered in the negative.

43. For the aforesaid reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petitions are allowed in part.

(ii) The term "prevailing market price of such goods in the local area" as delineated in Section 2A(8-a) of KTEG Act should be interpreted to mean the value of the goods at the precise moment of their entry into the local area as envisaged by the charging provision under Section 3(1) of the KTEG Act.

(iii) The re-assessment notices dated 13.10.2010 and 19.3.2014 in

W.P.Nos.67670/2010 and W.P.Nos.104278/2014 respectively are quashed.

(iv) The assessment orders dated 31.03.2017 in W.P.No.103670 and 103671/2017 being contrary to Section 3(1) are not sustainable. Accordingly, stands quashed.

(v) Liberty is reserved to the authorities to assess the petitioner's returns for the assessment years 2009-10 (01.04.2009-13.10.2009) and 2009-10(14.09.2009-31.03.2010) strictly in terms of Section 3(1) of the KTEG Act.

Sd/-
JUDGE

*alb/-