



W.A.No.474 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.474 of 2021
and C.M.P.No.1877 of 2021

Tai Industries Ltd.,
rep. by it Power of Attorney Holder R.Ramesh,
6th Cross Street,
Now at No.40/140, Kanchi Natarajan Street,
Vasudevan Nagar, Ashok Nagar,
Chennai-600 083
Now at:
No.52/41, 1st Main Road,
New Colony, Chrompet,
Chennai-600 044.

.. Appellant

VS

- 1.The State of Tamilnadu,
rep. by its Secretary to the Government,
Commercial Taxes Department,
Fort St. George, Chennai-600 009.
- 2.The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai-600 083.



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3.The Union of India,
rep. by its Secretary,
Department of Trade and Commerce,
Parliament Street,
New Delhi.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.05.2020 passed by the learned Single Judge in W.P.No.35865 of 2004.

For Appellant	: Mr.V.Sundareswaran
For Respondents	: Mr.Haja Nazurudeen Addl. Advocate-General assisted by Mr.TNC Kaushik Addl. Government Pleader for respondent Nos.1 and 2
	: Mr.G.Babu Sr. Panel Counsel for respondent No.3

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

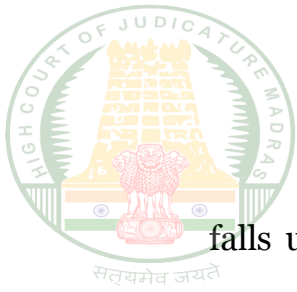
Appellant has filed this appeal impugning an order and judgment pronounced on 19th May, 2020 by a learned Single Judge of this Court.



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2. At the outset, appellant's counsel stated that he was restricting his prayer now only to the second part of the original prayer made in the petition i.e., “ ... *the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 1959 (Act 18 of 2022) dated 26.05.2022, w.e.f. 01.04.2022 inserting the imported goods from the Government of Kingdom of Bhutan dated 28.02.1995 as item (8) of Part G to the First Schedule which was consequently substituted by Tamil Nadu General Sales Tax (Seventh Amendment) Act, (Act 22 of 2002) inserting Section 3(2-C) and Eleventh Schedule (Item 9) to the Tamil Nadu General Sales Tax Act, 1959 date 26.05.2022 w.e.f. 01.07.2022 ... in any event as not applicable to the petitioner in view of the Agreement on Trade and Commerce between the Government of Kingdom of Bhutan and the 3rd respondent Union of India dated 28.02.1995*”.

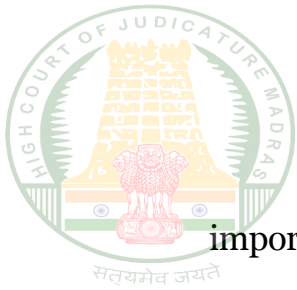
3. Appellant is a dealer having its office at Calcutta. Appellant is registered with the Commercial Tax Officer, Saligramam Assessment Circle, Chennai, i.e., second respondent. Appellant states that it has been importing from the Kingdom of Bhutan food products like Sherbet, which



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falls under Part B, Item 4(vi) of the First Schedule and do not fall under Parts D and E of the First Schedule, along with other goods such as mixed fruit juice, orange juice, etc.

4. Shri Sundareswaran submitted that appellant imports goods into Calcutta and from there the goods are moved to be sold in Tamil Nadu. Shri Sundareswaran submitted that the goods are imported free of duty as per the agreement on Trade and Commerce between the Government of Kingdom of Bhutan and the Government of the Republic of India. Shri Sundareswaran submitted that appellant would fall under Section 3(2-C) of the Tamil Nadu General Sales Tax (Seventh Amendment) Act, 2002. Appellant's goods are covered by the Eleventh Schedule. Shri Sundareswaran submitted that Eleventh Schedule, Serial No.9 provides that for imported cigarettes, medium density fibre boards, textiles and other items falling in Parts D and E of the First Schedule, at the point of first sale, tax at the rate of 20% is levied. Counsel submitted that so far as non-imported goods covered under Eleventh Schedule, Parts D and E of the First Schedule are concerned, tax at the rate of 12% or 16% is levied at the point of first sale. Counsel submitted that this is discrimination because



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imported goods tax at the rate of 20% is levied, whereas for local goods tax at the rate of 12% or 16% is levied and appellant is deprived of a level playing field. The only submission of counsel for appellant is that in view of Article-I read with Article-V of the said Trade agreement, for goods imported by appellant, tax cannot be levied at a differential rate.

5. Article-I and Article-V of the Trade agreement read as under:

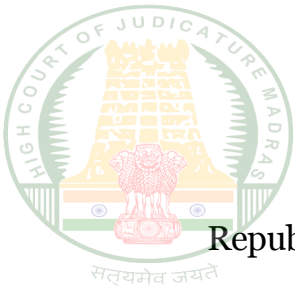
ARTICLE-I

There shall, as heretofore, be free trade and commerce between the territories of the Government of the Kingdom of Bhutan and the Government of the Republic of India.

ARTICLE-V

All exports and imports of Bhutan to and from countries other than India will be free from and not subject to customs duties and trade restrictions of the Government of the Republic of India. The procedure for such exports and imports and the documentation which are detailed in the Protocol to this Agreement, may be modified by mutual agreement from time to time.

6. Article-I provides that there shall be free trade and commerce between the two countries. Article-V provides that all exports and imports of Bhutan to and from countries other than India will be free from and not subject to customs duties and trade restrictions of the Government of the

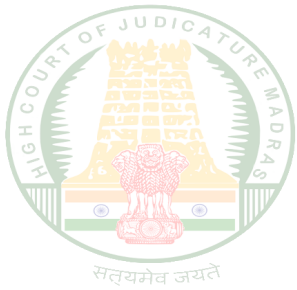


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Republic of India. In effect, Article-V applies only to those goods which come from outside India or leave Indian territories and would not apply to those goods which are consumed within India. This is clear from the Protocol to the Agreement on Trade and Commerce relied by appellant and it says that the following shall be exit/entry points in India for the imports into and exports from Bhutan for the duration of the agreement:

- | | | |
|--------------------------|---|-------------------|
| 1. Jaigaon | - | (road route) |
| 2. Chamurchi | - | (road route) |
| 3. Ulta Pani | - | (road route) |
| 4. Hathisar (Gaylegphug) | - | (road route) |
| 5. Darranga | - | (road route) |
| 6. Calcutta | - | (air & sea port) |
| 7. Haldia | - | (sea port) |
| 8. Dhubri | - | (riverine route) |
| 9. Raxaul | - | (road/rail route) |
| 10. Panitanki | - | (road route) |
| 11. Changrabandh | - | (road route) |
| 12. New Delhi | - | (air route) |

7. Therefore, appellant's submission relying on Article-V itself falls flat. Relying on the Protocol with reference to Article-I, appellant submitted that the goods includes sale of lottery also. We do not have any disagreement on that, but only feel that it has no applicability at all to the case at hand.



8. Counsel for appellant then placed reliance on a judgment of the

Apex Court in the case of ***State of Kerala and others v. Fr. William Fernandez and other¹***. Paragraph 125 of the said judgment reads as under:

“125. In view of the foregoing discussions, we conclude that goods imported after having been released from customs barriers are not immune from any kind of State taxation, which falls equally on other similar goods and the submission of the learned counsel for the petitioner that immunity from State taxation shall continue till it reaches in the premises where it is to be taken for consumption, sale and use cannot be accepted.”

9. It is quite clear from the said judgment that the goods imported after having been released from customs barriers are not immune from any kind of State taxation. In fact, this judgment therefore clearly says that the States are free to levy taxes on goods imported into the State.

10. Counsel thereafter relied upon Article 304 of the Constitution of India to suggest that this kind of differential rates cannot be levied.

11. Article 304 of the Constitution of India is of no help because that applies only to goods imported from other States or Union Territories and

¹ (2021) 11 SCC 705



not to goods imported from outside India.

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12. In these circumstances, the appeal is dismissed. There shall be no order as to costs. Consequently, interim application is closed.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

15.04.2025

Index : Yes/No
NC : Yes/No
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To

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State of Tamilnadu,
Commercial Taxes Department,
Fort St. George, Chennai-600 009.

2.The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai-600 083.

3.The Secretary,
Union of India,
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Parliament Street,
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