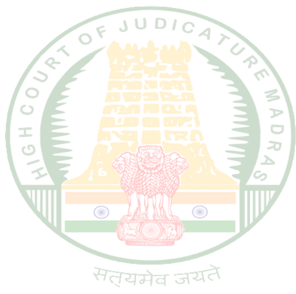
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2023

PRONOUNCED ON : 22.12.2023

CORAM

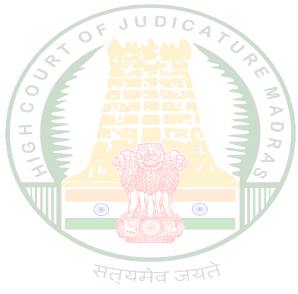
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.19287, 19410, 19513, 19764,
19765, 19777, 19783 & 20179 of 2023
and
W.M.P.Nos.18539, 18685, 18774, 19050,
19048, 19070, 19081 & 19516 of 2023

W.P.No.19287 of 2023:
M/s.Tamil Nadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai – 600 008.
Represented by its Managing Director,
Shri. Dr.S.Visakan .. Petitioner

Vs.

The Deputy Commissioner of Income Tax,
TDS Circle – 3(1),
Room No.114, BSNL Building,
No.16, Greams Road,
Chennai – 600 034. .. Respondent



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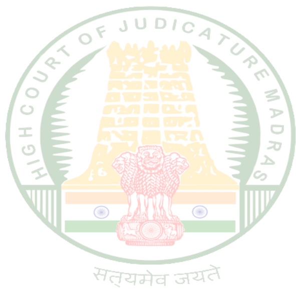
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in the impugned order dated 30.05.2023 in TAN:CHET07317C bearing DIN No: CHE/CT/153/1/30052023/00111 passed under Section 206C/206C(6A)/206C(7) of the Act for the Assessment Year 2016-17 and quash the same.

For Petitioner : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
& Ramamani

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

By this common order, impugned orders all dated 30.05.2023 passed by the respondent are being disposed of. These Writ Petitions have been filed for identical relief.



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2. In these Writ Petitions, the Petitioner has prayed that this Court may be pleased to issue a WRIT OF CERTIORARI to call for the records on the file of the Respondent in the Impugned Orders dated 30.05.2023 in TAN : CHET07317C bearing DIN No: CHE/CT/153/1/30052023/00111 passed under Section 206C/206C (6A)/206C (7) of the Act for the Assessment years between 2016-2017 and 2023-2024 and quash the same.

3. The petitioner has also prayed for interim stay of all further proceedings including recovery and penalty u/s.271CA of the Act pursuant to the Impugned Orders in DIN No: CHE/CT/153/1/30052023/00111 passed under Section 206C/206C (6A)/206C (7) of the Act dated 30.05.2023 for these Assessment years.

4. The impugned orders have been passed by the respondent under Section 206C, Section 206C(6A) and under Section 206C(7) of the Income Tax Act, 1961 seeking to impose tax.

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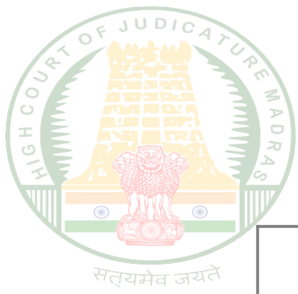
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	Provision	Failure
1	Section 206C(1)	Not collecting income-tax at the rate of one per cent from the buyer
2	Section 206CC	Not furnishing Permanent Account number by 'collectee'
3	Section 206CCA	Not furnishing the return of income for the assessment year preceding the financial year in which tax is required to be collected by 'specified person'

5. By the impugned orders dated 30.05.2023, the respondent has treated the petitioner as an "assessee in default" for failure to collect tax at source under Section 206C of the Income Tax Act, 1961 and has thus demanded tax for the aforesaid period in dispute together with interest under Section 206C(7) of the Income Tax Act, 1961. As mentioned above, tax has also been imposed under Section 206CC and Section 206CCA of the Income Tax Act, 1961 and further interest under Section 206C(7) of the Income Tax Act, 1961. Details of the impugned orders are as under:-

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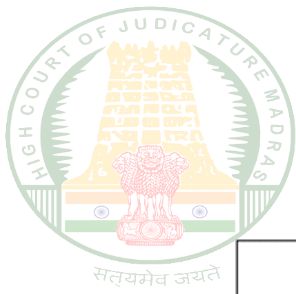

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W.P. No.	Assessment Year	No. of Buyers (Bar owners)	No. of Buyers (Bar owners) without PAN	Total Tender Amount (in Rs.)	TCS u/s 206C(1) @ 1% (in Rs.)	TCS u/s 206CC & u/s 206CCA @ 5%* (in Rs.)	TCS Default Interest u/s 206C(7) (in Rs.)	Total Default (in Rs.)
19287 of 2023	2016-2017	5505	5267	4,04,35,61,487	4,04,35,615	-	3,74,88,313	7,79,23,927
19783 of 2023	2017-2018	3611	3441	3,80,20,95,310	3,80,20,953	-	3,13,67,289	6,93,88,242
19410 of 2023	2018-2019	3341	2856	1,62,63,43,997	26,44,423	6,81,03,584	4,84,62,383	11,92,10,390
19513 of 2023	2019-2020	3121	2528	3,04,02,64,899	74,61,429	11,47,06,101	6,90,24,658	19,11,92,194
19777 of 2023	2020-2021	4890	3550	2,85,24,22,775	91,13,190	9,70,54,180	4,72,44,481	15,34,11,851
19765 of 2023	2021-2022	3709	2723	87,89,21,674	23,75,818	3,20,66,993	1,11,93,917	4,56,36,728
19764 of 2023	2022-2023	4933	2748	1,57,08,07,218	51,98,466	5,25,48,033	1,18,38,034	6,95,84,533
20179 of 2023	2023-2024	3981	3965	1,65,19,26,318	-	8,25,96,316	70,20,688	8,96,17,004

*[w.e.f. from 1-4-2017 & 1-7-2021 respectively]

6. Operative portion of each of the impugned orders read identically. For the sake of clarity, the conclusion in the impugned orders dated 30.05.2023 are reproduced below : -

Sl.No.	***Issue***	***Conclusion***
1	Whether "empty bottles" can be considered as scrap?	In view of the detailed analysis of the conditions mentioned below, it can be concluded that the empty bottles satisfy the conditions fit to be termed as 'scrap' as per Section 206(1) of the Act.
	1.1. Goods should be in the nature of waste and scrap	Empty liquor bottles have basic content value which is recoverable only through recycling. They are nothing but waste as they are definitely not usable as such and hence are in the nature of waste and scrap.
	1.2. Goods should be from manufacture or	The process of opening the bottled liquor involves being subjected to external force beyond yield strength in order to access the

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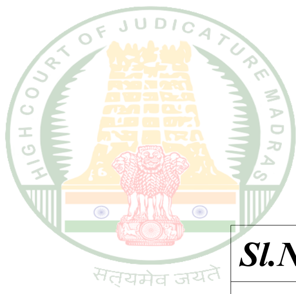
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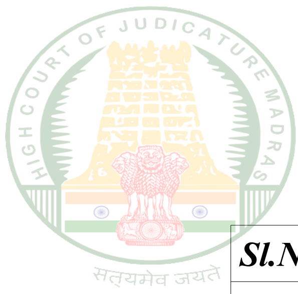
Sl.No.	Issue	Conclusion
	mechanical working	contents of the bottle which is nothing but a mechanical process.
	1.3. Goods should be definitely not usable as such due to breakage, cutting up, wear and other reasons	They can be made usable only after application of certain processes like rinsing, cleaning, sterilizing, etc. and hence are not usable as such
2	Whether TASMAC can be termed as a seller of scrap?	TASMAC is a corporation established through an Act of State Government having turnover of more than Rs. 1 crore year-on-year. Its revenue is on account of sale of eatables and collection of empty bottles. It continues to have rights over the empty bottles by giving tender for collecting and selling them. Thus, they are "sellers" as per Section 206C of the Act.
3	Whether the successful bidders of contract of running the bars can be termed as "buyers" of scrap?	Explanation to Section 206C(1) provides for the term "buyer".
	3.1. Buyer means a person who obtains in any sale, by way of auction, tender or any other mode	TASMAC bar contractors have obtained the right to sell eatables and to collect and sell empty bottles only through tenders. It is explicitly clear that bar contractors who get the benefit of collecting empty bottles are buyers in lieu of rights given to them by the seller, that is, TASMAC.
	3.2. Goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods.	By winning the tender through the bidding process, the bar contractor gets the right, inter alia, to collect and sell the empty bottles.
	3.3. Buyer does not	There is an implicit understanding that empty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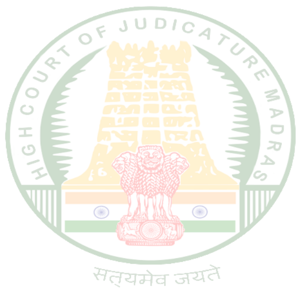
Sl.No.	Issue	Conclusion
	include a buyer in the retail sale of such goods purchased by him for personal consumption	bottles are sold by the successful bidder and are not used for personal consumption. The successful bidder collects the empty bottles and sells them to certain vendors who ultimately sell them back to the distilleries and breweries. Additionally, the successful bidder gets the inherent right to purchase empty bottles only by way of tendering process and obtains the goods in bulk through such tenders floated by TASMAC. There is therefore, no purchase made by the successful bidder through retail sale.
4	Whether only 1% of the license fee, i.e., the agency commission accrues as the income of TASMAC?	There is no condition stipulating TASMAC to collect by way of DD, 99% of the license fee favouring the State Government separately as per G.O. Ms. No. 20, Home P & E dated 29.3.2013. Therefore, it is the responsibility of TASMAC only to collect the tender amount from the successful tenderers and remit the same to the Government. Additionally, the liability to collect/ deduct TCS/ TDS does not have any bearing on whether the amounts received tantamount to income or not. The liability to collect or deduct TCS/TDS arises as the time of making certain specified receipts/ payments irrespective of whether any income is earned or not as per Chapter XVII of Income Tax Act, 1961.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7. Section 206C seeks to prevent evasion of taxes and therefore shifts the burden to pay tax on the seller. Section 206C was enacted in the year 1988 to ensure collection of taxes from persons carrying on particular trades in view of peculiar difficulties experienced by the Revenue in the past in collecting taxes from the buyer. It therefore needs to be construed strictly to achieve the purpose for which it was inserted in the year 1988 in the Income Tax Act, 1961.

8. The impugned orders have held that the petitioner, TASMAC, ought to have collected "Tax Collected at Source" (TCS) u/s 206C(1) of the Income Tax Act, 1961 on the amounts tendered by the successful bar licensee, *inter alia*, towards tax from sale of empty bottles by treating the sale of bottles as scrap.

9. The impugned orders precedes notices issued to the petitioner for the respective assessment years which called upon the petitioner to furnish the details of the bar licensees, including their PAN number, which were apparently not fully furnished by the petitioner. For the respective period, the petitioner was also issued with Show Cause Notices

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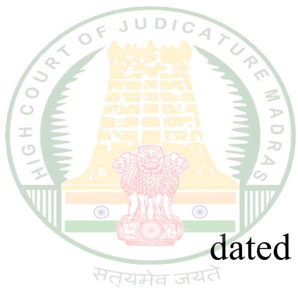
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dated 07.03.2023.

10. The common issues that arise for consideration in these Writ Petitions is as to whether the petitioner was required to collect "Tax at Source" from the bar licensees,who have been licensed to run bars under the license issued to them under Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, under Section 206C of the Income Tax Act, 1961.

11.The supplementary issue that arises for consideration is whether for the Assessment Years 2018-2019 to 2023-24, the petitioner was also liable to pay tax at 5% under 206CC of the Income Tax Act, 1961 and whether for the Assessment Years 2022-23 and 2023-24, the petitioner is also liable to pay tax under Section 206CCA of the Income Tax Act, 1961?

12.The petitioner is a company incorporated under the provisions of the Companies Act, 1956 in the year 1981. It is wholly owned by the Government of Tamil Nadu. It is a statutory body which under Section

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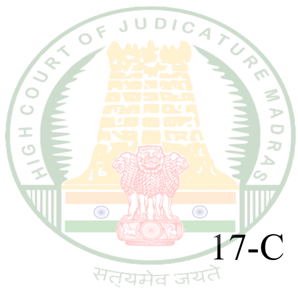
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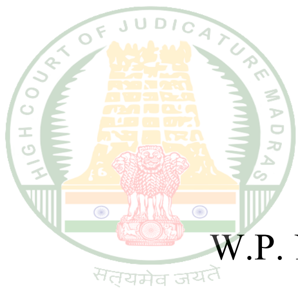
17-C (1-B) of the Tamil Nadu Prohibition Act, 1937 has been given an exclusive monopoly not only to control and effect wholesale, but also retail sale of Indian Made Foreign Spirits (IMFS) in the entire state of Tamil Nadu.

13. Wholesale and retail business is being carried out by the petitioner since 2003, pursuant to Tamil Nadu Prohibition Amendment Ordinance 08.01.2003 issued under Article 213 of the Constitution of India, pursuant to which Section 17-C (1-A) was inserted in the Tamil Nadu Prohibition Act, 1937.

14. The petitioner has been vested with the special and exclusive privilege of effecting wholesale supply of Indian Made Foreign Spirits in the entire state of Tamil Nadu under Section 17-C(1-A)(a) of the Tamil Nadu Prohibition Act, 1937.

15. Excerpt from **S.Jagannathan vs. The Managing Director** in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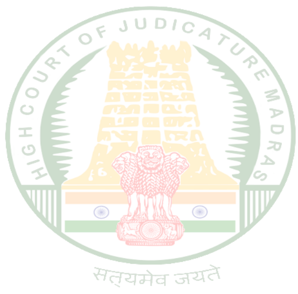
W.P. No. 27352 of 2021, vide order dated 31.01.2022, which sets out the history of prohibitive law in Tamil Nadu, is reproduced below to have a clear perspective of prohibitive law in Tamil Nadu: -

> 84. *In Tamil Nadu, law on Prohibition was enacted in 1937 with the enactment of the Madras Prohibition Act, 1937. It imposed a total prohibition. Late Shri C. Rajagopalachari (Rajaji), the then Chief Minister of Madras Presidency had introduced a total prohibition in the Salem District in the year 1937 under the Madras Prohibition Act of 1937. The name of Act was later renamed as The Tamil Nadu Prohibition Act, 1937 after reorganisation of the State in 1956.*
>
> 85. *The Tamil Nadu Prohibition Act, 1937 predates the Indian Constitution. It provides for complete prohibition. The Preamble to The Tamil Nadu Prohibition Act, 1937 (formerly The Madras Prohibition Act of 1937) as it stands even today clearly declares it as an Act to introduce and extend the prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs.*
>
> 86. *The preamble itself makes it clear that it is expedient as early as possible to bring about the prohibition,* ***except for medicinal, scientific, industrial or such like purpose, of the production, manufacture, possession, export, import, transport, purchase, sale and luncheon of intoxicating liquors and drugs in the State of Tamil Nadu. Ironically, practice and subsequent amendment to the Act is contrary to the preamble and Constitution of India.***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87. *The only exception that is discernible from the preamble to the Act makes it clear that there can be no prohibition only for medicinal, scientific, industrial or such like purpose. Thus, consumption of liquor for intoxication is not falling under the exceptions.*

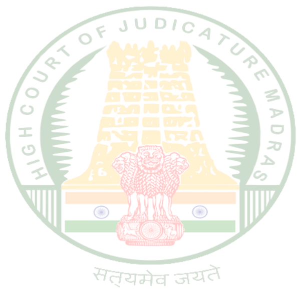
88. *It was later extended through out the Madras Presidency in 1948. In 1949, an exception was given to members of armed force. A provision was also made to exempt British officials from the Prohibition restriction. A system to grant permits to individuals who consumed foreign liquor was given to allow the Britishers to consume liquor.*

89. *The Governor had given an order that all Europeans who apply for liquor licence be granted one. Despite such restrictions, people could however travel to areas within the Presidency where the Prohibition was not in force for consumption of liquors.*

90. *A system was also devised to regulate licensed clubs for sale and consumption of wine for religious purposes in Churches and brandy in Hospital for Medical purposes. Licenses were also given for toddy tapping as it was accepted then.*

91. *A reading of the pre-amble of the Tamil Nadu Prohibition Act, 1937 makes it clear that the Act is in consonance with the Directive Principle of State Policy under Article 47 of the Constitution of India which enjoins State to endeavour to take steps to bring about a prohibition of intoxicating drinks and drugs which are injurious to health.*

92. *In 1971-72, prohibition was briefly lifted for the*



1st time. The sale of liquor and toddy through shops were thrown open to the public with the enactment of Tamil Nadu Prohibition (Suspension of Operation) Act, 1971.

93. *The operation of the provisions of the Tamil Nadu Prohibition Act, 1937 was suspended with the enactment of Tamil Nadu Prohibition (Suspension of Operation) Act, 1971. The prohibition imposed was however short lived.*

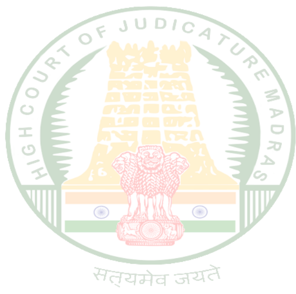
94. *Within three years, the Tamil Nadu Prohibition Act, 1937 was revived with the enactment of Tamil Nadu Prohibition (Revival of Operation and Amendment) Act, 1974 with effect from 20.08.1974.*

95. *In 1976, prohibition was once again briefly introduced. In 1981, Prohibition was again lifted and thus the public was once again allowed to purchase liquor from wine shops.*

96. *However, successive Governments appears to have reserved the power to grant exemption from the Act by permitting the manufacture, sale and consumption of liquor in order to generate and augment its finance. Number of bottling units and distilleries which have sprouted in the last two decades shows a demand and steady increase in the number of consumers and a business opportunity.*

97. *The Government is not only seen actively promoting the sale of liquor and intoxicating drinks but is actively encouraging the consuming public to consume the same in the confines of the so called "Bar" for which the impugned Notifications have been issued.*

98. *In 1981, few fundamental changes which were brought to the Act and slew of Rules were*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framed. TASMAC which was incorporated in 1981 was confined with the whole sale operations alone. Thus, the sale of liquor was permitted in bars and hotels. By Tamil Nadu Act 23, of 1981, Section 17-B and Section 17-C were introduced.

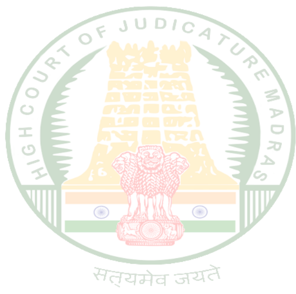
99.TASMAC was given the monopoly/exclusive privilege for effecting whole sale of Indian made Foreign Liquor and Foreign Liquor and that no other person other than TASMAC was entitled to any privilege of supplying and effecting whole sale of liquor in the whole or any part of the State.

100.TASMAC became a wholesale dealer and was thus given licence by the Commissioner of Prohibition and Excise subject to Such Rules to be framed by the State Government. Between the period from 1989 to 2003, private Bars were allowed to operate like in other States.

101. Sale of liquor in Bars attached to the shops was first introduced in the year 1989 under the Tamil Nadu Liquor (Retail Vending) Rules, 1989. It was allowed to facilitate consumption of liquor in the bars attached to private "wine shops". These bars were run by private persons under a license by the Commissioner of Prohibition and Excise.

102.On 21.04.1992, by G.O.Ms.90, the Government ordered the auction of retail vending shops throughout the State. In 1992-93, the Government of Tamil Nadu decided as a policy to give Bar licence to the retail shops in order to augment revenue from auctions of retail shops.

103.The then existing Tamil Nadu Liquor (Licence and Permit) Rules, 1981 was later repealed to facilitate the retail vending of IMFL and Beer in Bar. This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change in policy was notified before the auction for the year 1992-93 stating only retail vendors will be eligible for Bar licences.

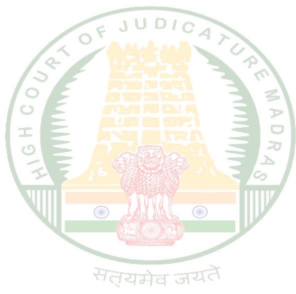
104.By G.O.Ms.No.99, Prohibition and Excise Department, dated 26th May, 1992, the Government of Tamil Nadu introduced the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 for regulating the issue of licence and the privilege of retail vending of liquor in the Bar. The Rules came into force on 1st June, 1992.

105.Under rule 4(a) of the aforesaid Rules, a person holding a licence granted under Rules 13 of Retail Vending Rules, 1989 was allowed to file an application for grant of privilege and licence for retail vending of liquor in the Bar. These bars are different from the bars attached to the hotels to whom licences are issued under the provisions of the Tamil Nadu Liquor (License & Permit) Rules,1981.

106.In 1993, G.O.Ms.No.44, Prohibition and Excise Department, dated 03.03.1993 was issued. The then Government decided to dis-continue the grant/renewal of licences for bars attached to the Indian Made Liquor Retail Vending Shops under the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 with effect from the excise year commencing from the 1st June, 1993.

107. Thus, Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 came to be rescinded with effect from 1st June, 1993. This was challenged both before the Madras High Court and the Hon'ble Supreme Court.

108.As per Rule 3 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, the privilege or selling liquor in licence shops was available only to a person by auction. The privilege amount was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determined in that auction. Rule 4(1) enabled to fix the maximum number of shops to be established in the State.

109.Under Section 17-B of the Act, a licence for manufacture, etc., of potable liquor for human consumption was introduced. Under Section 17-C, exclusive privileges for manufacture and sale of Indian made foreign spirits and selling of India made foreign liquor spirit was introduced.

110.The respondents TASMAC enjoys a State monopoly in wholesale and retail market in Tamil Nadu as far as sale of alcoholic beverages liquor are concerned. It enjoys an absolute monopoly in the State under the provisions of the Tamil Nadu Prohibition Act, 1937.

111.Though these amendments and new Rules were made to facilitate the sale of liquor by TASMAC both in wholesale and retail market, it should be noted that by Tamil Nadu Act 9 of 1979, Section 4(1)(j) and Section 4A were inserted to the Tamil Nadu Prohibition Act, 1937. They still remain in force.

125.The Government later framed the Tamil Nadu Liquor (Retail Vending in Bar, Renewal of Licence, Fixation of Privilege Amount and Refund) Rules, 1994 vide G.O.Ms.No.155 Prohibition and Excise (VI), dated 30.9.1994.

126. Under the aforesaid Rules, Bar Licence issued under Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 was deemed to have been renewed and privilege was granted for the period from 1st June, 1993 to 30th June, 1993. Where any licensee had paid an amount in excess of the privilege amount specified in Rule 4, such amount was to be refunded

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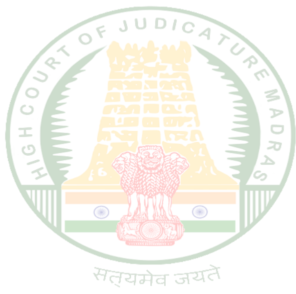
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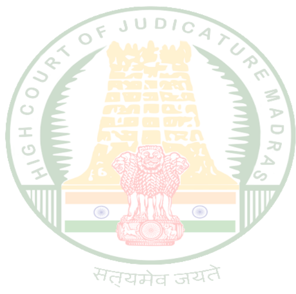
by the licensing authority to the licensee, after deducting the Government used if any, under the rescinded Rules. This was at the time when license and privileges were given to private persons to run wine shops & bars…

128.. In 2003, when Section 17-C (1-B) was introduced from the Tamil Nadu Prohibition Act, 1937 along and Section 22-D to the Tamil Nadu Prohibition Act, 1937, Section 4A was however not amended. As a result of above amendment, retail sale of liquor was also exclusively given to the respondents TASMAC.

129. In 2003, when Respondents TASMAC thus took over the business of retail business in the sale of liquor in the State with the insertion of Section 17-C (1-B), TASMAC became State monopoly. The then existing Tamil Nadu Liquor (Retail Vending) Rules, 1989 and Tamil Nadu Liquor (Retail Vending in Bar) Rules, 2000, were repealed.

16. It was further observed in **S. Jagannathan,***supra,* as follows:-

133. Sub Clause (1-A) and Section 17-C (1-B) of the Tamil Nadu Prohibition Act, 1937 which were inserted in the Act, merely allows TASMAC to do "wholesale" and "retail business", does not permit respondents TASMAC a right to confer privilege to a 3rd parties to render allied business of selling short eats and/ or support service to collect used bottle from premises used as a bar. If the Act does not permit a person to be in a state of intoxication in public place, TASMAC cannot be seen permitting consumption by consumers of liquor in pubic place. Even if bar is not a public place, person after consuming liquor in the so called bar will have to necessarily pass through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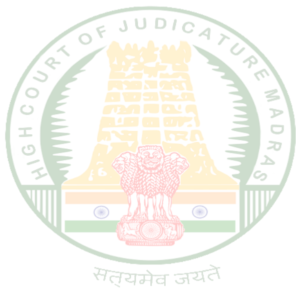
pubic place to return home. Therefore, what TASMAC cannot do directly, it cannot do indirectly…

137. The 2003 amendments to the Tamil Nadu Prohibition Act, 1937 which paved way for the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003 merely contemplates grant of an exclusive license to TASMAC for retail sale under Rule 4 of the aforesaid Rules under Section 17-C of the Tamil Nadu Prohibition Act, 1937.

138. Under Rule 4 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003, TASMAC has been licensed to sell liquor in retail market. Rule 4 reads as under:-

> *4. Grant of licence.— (1) On application, Commissioner of Prohibition and Excise shall grant licence in Form-I for the retail vending of liquor in shops and bars in the whole State. The licence shall be issued in the name of the Corporation. (2) The licence granted under this rule shall be subject to the provisions of the Act and Rules made thereunder. (3) The Corporation shall issue an authorisation in Form-I in respect of each shop where the business of retail vending of IMFS is to be carried on either directly by the Corporation or through the Co-operative Societies as agents of the Corporation. (4) The Corporation shall furnish the list of authorized retail vending shops located within each district to the Collector indicating the details of such shops run directly by the Corporation and the shops run by the Co-operative Societies as its agents. List of such shops shall be furnished by the Corporation to*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the Collector concerned within 10 days of the commencement of business".

139. The reality shows that respondent TASMAC merely leases a small portion of a building premisesfor its retail shops. In the retail shops, its staffs are stationed along with the stock of liquor/ alcohol for sale to the consumers and buyers. This activity falls within the four corners of law under the provisions of the Tamil Nadu Prohibition Act, 1937.

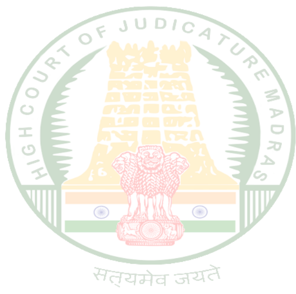
140. The respondents TASMAC has not entered into any separate lease agreements with the owners of premises for the balance area which arebeing used as "Bar" for the consumers to consume the liquor/alcohol purchased from the TASMAC Shops.

141. Instead, the respondents TASMAC has over a period of time encouraged the owners of the leased premises (which some times happens to be the Local and Municipal Authority) to develop the area adjacent to the leased retail shop as "a Bar" for being leased to the licencee's facilitate the buyers of liquor to consume the liquor/Alcohol purchased from the TASMAC Shops.

142. The purported exercise of auctioning rights under the impugned Tender Notifications as explained as having been issued under Rule 9A of the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003 cannot be countenanced under Rule 9A.

143. Rule 9A which was inserted to the Rules only in the year 2013 vide G.O.Ms.No.20, Home P & E dated 29.3.2013 reads as under:

"Rule 9-A.Grant of Privilege to run the bar:The privilege of running bars may be granted to private parties by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> *tender. The Board of the Corporation may decide the upset price and other terms and conditions of tender, from time to time, with the prior approval of the Commissioner of Probation and Excise. The Corporation, as agency shall collect the tender amount from the successful tenderers and remit the same to the Government on or before the 25th of the following month and the Corporation may retain 1% of the amount so collected as agency commission."*

> *144. The respondents TASMAC has however continued to auction such right to sell short eats to private parties and to collect used bottles ostensibly in line with the powers granted under Rule 9A of the aforesaid Rules in terms of the proceedings dated 27.09.2019 bearing reference Proceedings No.P&E.9(1)/17936/2012 of the Commissioner of Prohibition and Excise Department though even prior to insertion of Rule 9A in 2013 also such auction appears to have been conducted and granted permission to sell eatables (short eats) and to collect bottle".*

17. The petitioner runs a number of retail vending liquor shops across the State and as a policy decision it did not want to also get into the business of running bars. The petitioner has taken the responsibility of ensuring bars are located adjacent to its shop so that liquor sold in its shops are consumed in the licensed bars. It is intended to provide a safe heaven to tipplers to consumer liquor away from the gaze of the public

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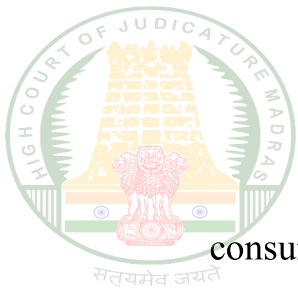
and their family members and to prevent any law and order problems by consumers. It indirectly promotes the consumption of liquor and is breaking the social fabric and taboo associated with the consumption of liquor and has thus habituated the youth to consume liquor.

18. The petitioner's Board of Directors consist of Senior Government Officials including Principal Secretaries to the Government of Tamil Nadu. The petitioner found it more practical to have the bars run by third-parties selected under an apparently transparent tender process without any involvement of middlemen. Thus, from 2005, the petitioner has been floating tenders to select third-party bar contractors (licensees) to sell eatables and collect empty bottles from bars situated adjacent to/within the petitioner's retail shops.

19. The petitioner sells liquor in its retail shops as per the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. The bar contractors have to establish the bar adjacent to the retail shop wherein the liquor bought from the petitioner's retail shop is permitted to be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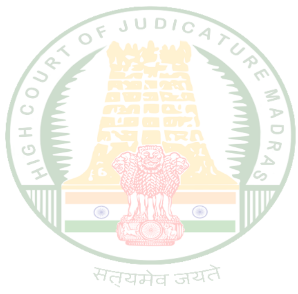
consumed by consumers. Eatables and water are permitted to be sold to these consumers by bar licensees for their safety and convenience. Bar licenses are auctioned by the petitioner under the provisions of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

20. For instance, the Board of petitioner vide Circular Resolution No.40/2019 dated 13.09.2019 resolved to approve the following proposals to call for tender under new a formula with effect from 01.10.2019. It reads as follows:-

> "*All the District Managers may be directed to call fresh tender during the month of September 2019 for granting permission to sell eatables and to collect empty bottles in the bars attached to the Retail Vending shops, as per below mentioned terms and conditions.*
>
> *a) The upset prices should be fixed at the rate of 1.80% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Corporation & Municipality areas.*
> *b) The upset prices should be fixed at the rate of 1.60% of average monthly sales of last financial year (2018-190 for the bars attached to the concerned Retail Vending shops*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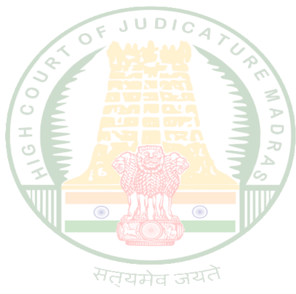
located in Town Panchayat areas.

c) The upset prices should be fixed at the rate of 1.40% of average monthly sales of last financial year (2018-190 for the bars attached to the concerned Retail Vending shops located in village Panchayat areas.

d) In respect of The Nilgiris District, the upset prices should be fixed at the rate of 1.50% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Municipality areas, 1.25% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Town Panchayat areas and 0.75% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Rural areas of The Nilgiris District.

e) In case of retail vending shops which are opened during the financial year 2018-19 (i.e., after 01.04.2018 but before 31.03.2019), the average sales should be calculated by totaling the cumulative sales value and divided by the number of working days which the shop was run in the financial year 2018-19 this average sales per day should be multiplied by 30 to arrive at the average monthly sales.

ii) In case of retail vending shops which have been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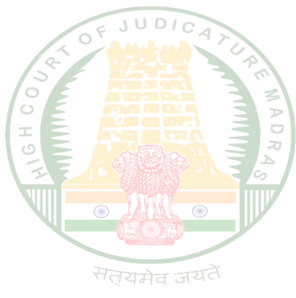
opened after the financial year 2018- 19 (i.e. On or after 1st April 2019) the average sales should be calculated by totaling the cumulative sales value and divided by the number of working days which the shop was run and this average sales per day should be multiplied by 30 to arrive at the average monthly sales.

iii) In case of retail vending shops which are functioning less than one month or new shops which would be opened in future, the average sales should be calculated by totaling the sales value for the total number of days during which the shop is working (this should be minimum of fifteen days) and divided by the number of days shop was run and multiply with 30 days (to convert it for one month average sales).

f) The tender period is for a period of two years. (upto 30.09.2021)

g) The monthly bar license fee will remain constant during the tender period of 24 months (i.e. Upto 30.08.2021)

h) The above changes have been incorporated in the bar terms and conditions and other existing terms and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conditions already approved by the Board of TASMAC may be approved by the Commissioner of Prohibition and Excise for granting permission for sale of eatables and collections of empty bottles in the bars that may be continued.

3) The Managing Director, TASMAC in his reference 4th cited has requested the Commissioner of Prohibition and Excise to approve the above New formula fixed by the board of TASMAC conditions, enclosing the copy of Board resolution as approved by the Board."

21. Upset price that is fixed by the petitioner for a person to offer a bid is on a fixed percentage of the retail sales made from the retail outlet. The upset price has varied from 1.4% to 1.80% of the average monthly sales of the previous Financial Year 2018-2019 from the retail vending shops of the petitioner allotted in the Corporation, Municipality or Panchayat areas. The successful bidder was required to pay 1% fee to the petitioner as agency commission and 99% to the Government.

22. Bar licenses are granted to licensees to sell eatables and for collection of empty bottles left by consumers. By the bar license, the bar licensees are entitled to monetise the left over bottles by consumers. Bar

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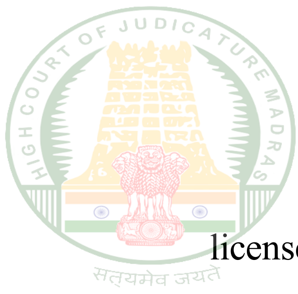

license is given as per Rule 9A of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

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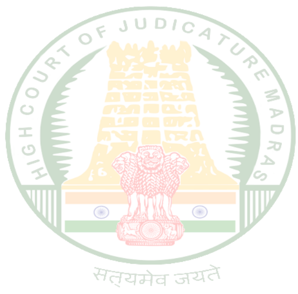
23. The petitioner as an agency merely collects the tender amount from the successful tenderer and remits the same to the Government on or before 25th date of the following month while retaining 1% of the amount so collected as its agency commission. In this connection, relevant clauses of the terms and conditions of the licenses issued to the licensees are referred to the activities relating to collection of the empty bottles. They read as under:-

> *"22.Whereas the license is granted only for the sale of eatables and collection of empty bottles in the Bar. Otherwise, the Bar will be under the full control of TASMAC. The staff appointed by the TASMAC will supervise the Bar and its activities. The key for the Bar shall be under the custody of TASMAC.*
>
> *24.**The contractor should collect only the empty bottles left behind by the customers of their own volition and not under compulsion**. If a customer takes the bottle with him, he*



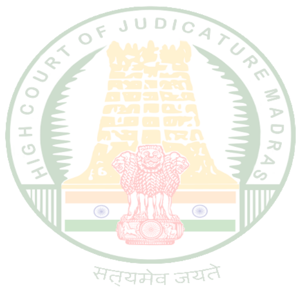
should not be asked to return the empty bottles for whatsoever reason.

*25.**Empty bottles should be collected and removed immediately. The collected empty bottles should not be kept inside the TASMAC Bar for whatsoever reasons**. Failing which the TASMAC has the right to collect the charges fixed by the District Manager towards the storage period of the empty bottles. The Contractor should remove the collected empty bottles from the Bar at least once a week.*

26.Persons who obtained licenses for the sale of eatables and collection of empty bottles from the Bar attached to the TASMAC shop should make entries in a separate register regarding whom the collected empty bottles were sold, how many empty bottles were sold each time, and to where the empty bottles were being taken by the purchaser of the empty bottles.

*27.**The complete information with the address of the purchaser to whom the gathered empty bottles are sold by the contractor, should be furnished to the District Manager now and then.***

28.The responsibilities of arranging necessary facilities for the sale of eatables and collection of empty bottles and engaging his employees are borne by the Contractor. The staff of the TASMAC should not be engaged for whatsoever reason. The employees engaged by the Contractor should not handle liquor bottles. Their jobs should be to sell the eatables and collection of empty bottles only.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No Child labor should be engaged for this work. Only males who have competed the age of 21 should be employed."

24. The license fee is payable by the bar licensee in proportion with the sale of liquor in the liquor shop to which a particular bar is attached. Bar licensees give two Demand Drafts to the petitioner TASMAC. For the services rendered by the petitioner TASMAC, 1% of the total license fee is retained by the petitioner TASMAC as its service charges (Agency commission) and balance 99% of the license fee is directly paid to the State Government.

25. This 1% of the fee retained is offered to income tax. Thus, there is clear split up of the license fee into 99% in favour of the Government and 1% in its favour as clarified by G.O.Ms.No.20 Home Prohibition and Excise (VI) department dated 29.03.2013.

26. It is submitted by the learned counsel for the petitioner that the Respondent's reasoning and conclusion in the impugned order that the

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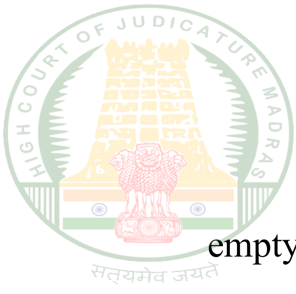
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empty bottles left over by the consumers in the bar clearly qualify as scrap arising from mechanical working of materials is incorrect and is as such erroneous.

27.It is submitted that the petitioner is not engaged in manufacture or generation of waste from mechanical working of materials from which scrap has arisen. It is submitted that the petitioner is merely selling liquor in its retail shops. The empty liquor bottles left by the consumers are in the bar and not the property of the petitioner and in any event not sold by it. It is further submitted that it would not come under the purview of the definition of "scrap" in Explanation to Section 206C of the Income Tax Act, 1961.

28. It is submitted that after effecting sales, the Petitioner has no right over the liquor bottles. The Petitioner has merely given the license to the independent Bar contractors through tender, *inter-alia*, to collect the empty bottles which are left by consumers in the bars which are

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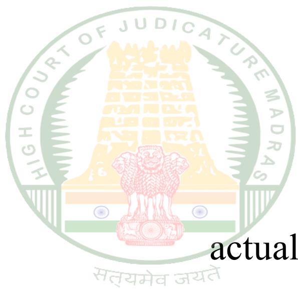
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actually sold by them on their own right and not for on behalf of Petitioner.

29. The learned Counsel for the petitioner submitted that in the case of **Navine Fluorine International Ltd. vs. ACIT,** (Ahmedabad ITAT) [2012] 14 ITR (T) 481, it was held that the scrap sold should arise out of manufacturing or mechanical working of material in the absence of which, there is no requirement to collect tax at source.

30. It is further submitted by the learned Counsel for the petitioner that the Hon'ble High Court in **CIT vs. Priya Blue Industries Pvt. Ltd,** [2015]381 ITR 210, held that a plain reading of the expression 'scrap' as envisaged under the provisions contained in clause (b) of the Explanation to Section 206C of the Act shows that any material which is useable as such, would not fall within the ambit of "scrap".

31. The learned counsel for the petitioner further made a reference to the case of **M/s. Bharti Auto Products v CIT** in ITA Nos.391 &

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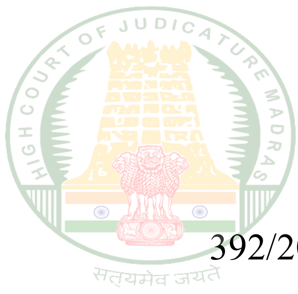
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392/2011 dated 06.09.2013 wherein the Special Bench decision of the Tribunal dealt with the terms manufacture and mechanical working of material as referenced under:-

> "*26. "Mechanical working of materials" refers to physical operations on materials. It signifies physical operations to bring about physical change to which the material is subjected in order to change its shape, properties or structure. In order to fall within the definition of "scrap", it is not necessary that the same should occur in the course of manufacture; it can also occur in the course of mechanical working of materials, i.e., operations/ processes, namely, the manufacture and mechanical working of materials, can give rise to scrap.*"

32. It is further submitted that it is clear that "mechanical working of materials" signifies physical operations to bring about physical change to which the material is subjected in order to change its shape, properties or structure.

33. It is further submitted by the petitioner that the understanding of the Respondent that the process of opening the bottled liquor is

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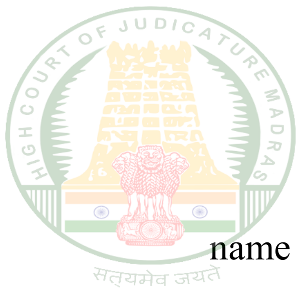
nothing but a mechanical process is absurd and unsustainable in law.

34. It is submitted by the petitioner that the Respondent's reasoning and conclusion in the impugned order that the petitioner TASMAC has satisfied the conditions of a "seller" of scrap to the winning bidders through the process of tendering is erroneous.

35. It is submitted that the Petitioner only sells bottled liquor procured from distilleries and breweries to ultimate customers through its retail shops and that there is no sale of empty bottles by the petitioner to the licensed bar owners. It is further submitted that the price of bottles is included in the sale price of the liquor and on the total price of bottled liquor. VAT (Value Added Tax) is paid and therefore, there is no question of separate sale of empty bottles by the Petitioner to the licensed bar owners.

36. It is further submitted that it is very clear that empty bottles are collected by the Bar contractors and sold by them in their own right and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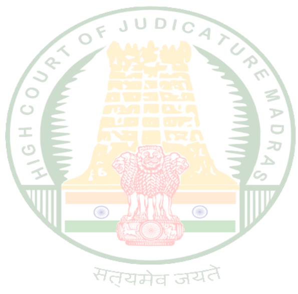
name and the sale consideration is retained by them as they are sellers. It is submitted that the Corporation at no point of time sells the empty bottles or realizes any revenue from sale of such empty bottles.

37. It is submitted by the learned counsel for the petitioner that the Respondent's reasoning and conclusion in the impugned order that successful bidders qualify as "buyers" of scrap from "seller" TASMAC is erroneous.

38. The learned counsel for the petitioner has placed reliance on the Hon'ble Supreme Court's decision in the case of **Union of India v Om Prakash S.S and Company**,[2000] 115 Taxman 325 (SC),wherein it was held as under:

> "*'Buyer' would mean where a person by virtue of the payment gets a right to receive specific goods and not where he is merely allowed/ permitted to carry on business in that trade… on licences issued by the Government permitting the licensee to carry on liquor trade the provisions of Section 206C are not attracted as the licensee does not fall within the concept of 'buyer' referred to in that Section. Buyer has to be buyer of goods and not merely a person who*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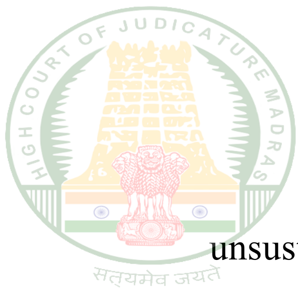
acquires a licence to carry on the business."

39. The learned counsel for the petitioner made a reference to the case of **CIT vs. District Excise Officer**,[2012] 20 Taxmann.com 213 (All), wherein it was held as under:-

> "*The aforesaid argument proceeds on a wrong footing. It ignores the fact that under the state excise law the state government permits a person to vend liquor. It has exclusive privilege to deal in it. It can part with the privilege in favour of a person and for that it charges certain amount called as license fees. Holding of license is a condition precedent before a person can vend liquor. The aim and object of the enactment of section 206C would show that the aforesaid section was enacted to collect the tax at source on the heads such as liquor contractors, scrap dealers, deals in foreign products etc. as defined therein. The aforesaid observation of the Apex Court clearly points out a distinction in between 'a mere right to carry on a business in a particular trade' and 'a right to receive specified goods'*".

40. It is submitted that the successful bidders of contract for running the bars can by no stretch of imagination be treated as "buyers" of scrap (empty bottles) from "seller" TASMAC and that the Respondent's understanding/interpretation of the term "buyer" is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unsustainable in law.

41. It is submitted by the petitioner that the Respondent's reasoning and conclusion in the impugned order that TCS need to be collected on the entire 100% of tender amounts at the time of receipt of such amounts is erroneous.

42. It is submitted that the Petitioner was solely collecting the license fee from bar contractors/licensees for the license by granting them permission to run the bars and passing it on to State Government of Tamil Nadu and that the amounts collected were not liable to service tax as it was only a devolution of the sovereign rights vested in it by the State.

43. It is further submitted that once the petitioner has paid Service Tax on the 1% of the Agency Commission, the same can be in no stretch of imagination or logic treated as sale consideration for empty bottles.

44. It is submitted by the respondent that TASMAC calls for tenders to operate bars adjoining the TASMAC retail outlets. It is further

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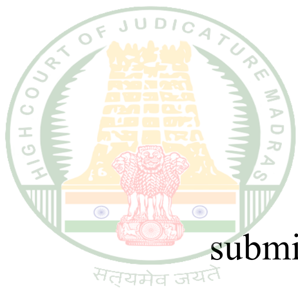
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submitted that as per the tender documents and the conditions stipulated therein, the benefits assigned to the winning bidders are only for the sale of eatables and the collection of empty bottles. It is further submitted by the learned counsel for the respondent that the base price fixed by TASMAC for the tenders is on the basis of liquor sales made in each of such outlets.

45. It is submitted that TASMAC is having control/ rights over the empty bottles which get confirmed by the fact that it alone has the right to award tenders and earn revenues through the sale of such empty bottles as is the case under consideration. It is submitted that TASMAC continues to have control over the empty bottles and that its responsibility does not cease once they are sold at the retail vending shops.

46.It is submitted by the respondent that TASMAC has fully satisfied the conditions of a 'seller' as per the explanation to Section 206C and that TASMAC is the seller of scrap to the winning bidders through the tendering process.

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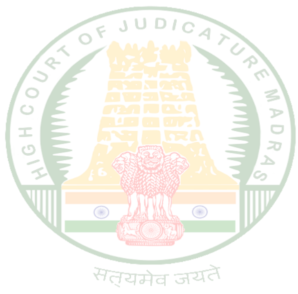
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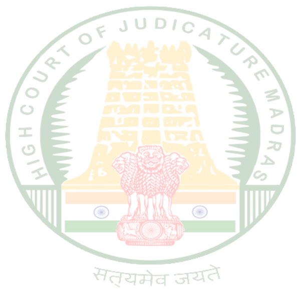
47. It is submitted that the various terms and conditions in the tender notification document issued by TASMAC make it explicitly clear that bar contractors who get the benefit of collecting empty bottles are buyers in lieu of rights given by the seller, TASMAC.

48. It is submitted that in the case of **Union of India v Om Prakash S.S and Company**, *supra*, the Hon'ble Supreme Court held that the payment made by the licensee by way of license fee does not *ipso facto* entitle the licensee to lift the goods and that buyer has to be buyer of goods and not merely be a person who occurs a license to carry on the business.

49. It is submitted that empty bottles are generated only when the bottled liquor is opened and consumed by the customers. It is submitted that the process of opening the bottled liquor involves being subjected to external force beyond yield strength in order to access the contents of the bottle, which is nothing but a mechanical process.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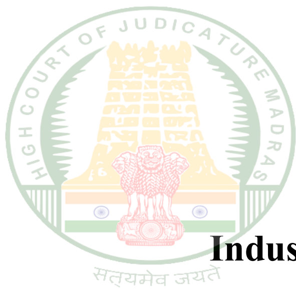
50. It is further submitted that scrap means waste that either has no economic value or only the value of its basic material content recoverable through recycling. It is submitted that the tenders floated in the public domain by TASMAC itself described that the tender is for disposal of empty bottles used by TASMAC customers and that the category of product is categorised as "Scrap/Disposables".

51. The learned counsels for the respondent submitted that as per the case of **M/s.Bharti Auto Products v CIT**, *supra*, since TASMAC itself has declared the empty bottles as scrap in the tender notice available in the public domain, it is bound by that declaration.

52.The counsel for the respondents also submitted that **Navine Fluorine International Ltd. vs. ACIT**, *supra*, is not applicable in this case because it is highlighted that there is a mechanical working when the liquor bottle is opened.

53.It is further submitted that the case of **CIT vs. Priya Blue**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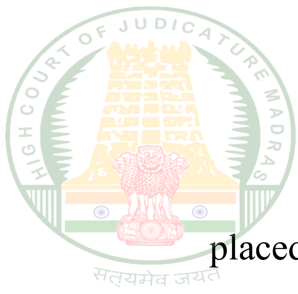
Industries Pvt. Ltd, *supra*,is not applicable to the present case under discussion since the scraps in question were usable items and thus do not fall within the purview of Section 206C.

54. It is submitted by the learned counsel for the respondent that there is no condition stipulated in the G.O. dated 29.03.2013 directing TASMAC to collect 99% of license fee favouring the State Government separately and, therefore, it is the responsibility of TASMAC only to collect the entire tender amount and remit the same to the government. It is further submitted that the liability to collect TCS on the entire license rests on TASMAC.

55**.** It is submitted by the respondent that it is well settled that in cases involving fiscal nature, availing of statutory appellate remedy has to be first exhausted and the party cannot come directly to the Hon'ble High Court and file a petition under Article 226 of the Constitution of India.

56. In connection to this, the learned counsel for the respondent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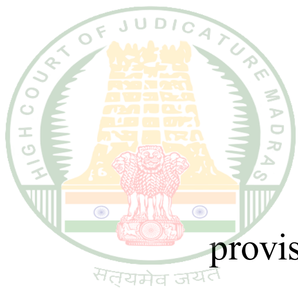
placed reliance on **Assistant Collector of Central Excise Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.,** [1985] 1 SCC 260 wherein the following was held:

> "*Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are facts of the case, in brief, are that the assessee entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question… But then the court must have good and sufficient reason to bypass the alternative remedy provided by statute.*"

57. I have considered the arguments advanced by the learned Counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have also perused the impugned orders passed by the respondent for the respective Assessment Years and the provisions of the Income Tax Act, 1961 which are relevant.

58. The respondent vide impugned orders dated 30.05.2023 has concluded that the petitioner has failed to collect tax and remit the same as is required under Section 206C of the Income Tax Act, 1961. The



provision itself was incorporated in the year 1988 with effect from

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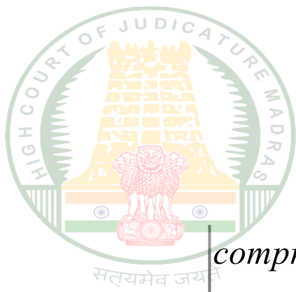
59. Section 206 of the Income Tax Act, 1961 casts a duty on person deducting tax to file prescribed return. Section 206C was incorporated in the Income Tax Act, 1961 in the year 1988. It had to be read along with Section 44AC as it stood then. Section 44AC was omitted by Finance Act, 1992 w.e.f. 1-4-1993. Section 206 of the Income Tax Act, 1961 has undergone a series of changes. Section 206C and Section 44AC prior to their amendment and omission respectively read as under:-

Section 206C	Section 44AC
Section 206C. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.—(1) Every person, being a seller referred to in section 44AC, shall, at the time of debiting of the amount payable by the buyer referred to in that section to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer, a sum equal to twenty per cent. of such amount as income-tax on income	***Section 44AC. Special provision for computing profits and gains from the business of trading in certain goods.*** — *(1) Notwithstanding anything to the contrary contained in sections 28 to 43B, in the case of an assessee, being a person (hereafter in this section referred to as the buyer) obtaining in any sale by way of auction, tender or any other mode, conducted by any other person or his agent (hereafter in this section referred to as the seller),—* *(a) the right to receive any goods in*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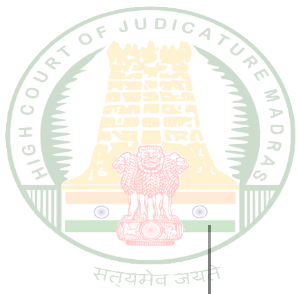
comprised therein. *(1) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode of recovery.* *(2) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.* *(3) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.* *(4) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from*	*the nature of alcoholic liquor for human consumption (other than Indian-made foreign liquor); or* *(b) any forest produce, scrap or waste, whether industrial or non-industrial, or such other goods as the Central Government may, by notification in the Official Gazette, specify in this behalf,* *a sum equal to sixty per cent. of the amount paid or payable by the buyer in respect of such sale shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head "Profits and gains of business or profession":* *Provided that nothing in this sub-section shall apply to any class of sale which the Central Government may, having regard to the smallness of the amount involved in such sales, the nature of the goods or other factors, by notification in the Official Gazette, specify.* *(8) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall not apply to a buyer in the further sale of any goods obtained under or in pursuance of the sale under sub-section (1).* *Explanation. —For the purposes of this section, "seller" means the*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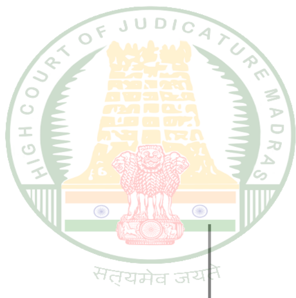
whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed. *(5) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).* *(6) Without prejudice to the provisions of sub-section (6), if the seller does not collect the tax or even after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two per cent. per month or part thereof on the amount of such tax on which such tax was collectable to the date on which the tax was actually paid.* *(7) Where the tax has not been paid as aforesaid, after it is collected, the amount of*	*Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company.*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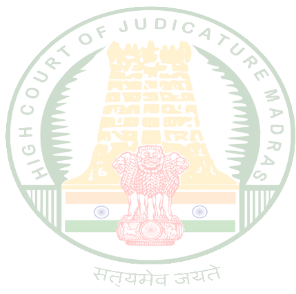
tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the seller.	

60.CBDT (Central Board of Direct Taxes) Circular No. 525, dated 24.11.1998 had clarified the object of Section 206C of the Income Tax Act, 1961. It reads as under:-

> *Considerable difficulty has been felt in the past in assessing income of persons who take contracts for sale of liquor, forest produce, etc. It has been the Department's experience that for taking such contracts, firms or associations of persons are specifically constituted and very often no trace is left of them or their members after the contract has been executed. Persons have also been found to have taken contracts in "benami" names by floating undertakings or associations for short periods. Since tax is payable in the assessment years on the incomes of the previous years, the time by which the incomes from such sources become assessable, such persons become untraceable. Moreover, at the time of assessment years in these cases, either the accounts are not available or they are mostly incorrect or incomplete. Thus, even if assessments could be made on ex parte basis, it becomes almost impossible to collect the tax found due, either because it becomes difficult to*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> *establish the identity of the persons and trace them or because of the fact that the persons in whose names contracts were taken are men of no means.* ***With a view to combating large scale tax evasion by persons deriving incomes from such business, the Finance Act, 1988, has inserted a new section 44AC to provide for determination of income in such cases. Further, with a view to facilitating collection of taxes from such assessees, the Finance Act, 1988, has inserted a new section 206C to provide for collection of such tax at source****."*

61. Section 206C was amended by Finance Act, 1992 w.e.f. 1-4-1992 and later amended in 1996 and 2003. The last amendment was made in 2012. For the sake of convenience, relevant part of Section 206C of the Income Tax Act, 1961 as it stands now is reproduced below:-

> ***Section 206C:Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.***
>
> *(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of*

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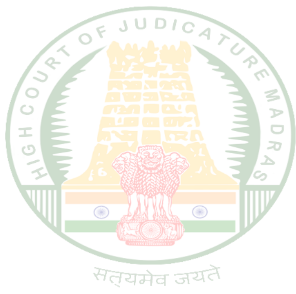
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any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:-

Sl.No.	Nature of goods	Percentage
(1)	*(2)*	*(3)*
(i)	*Alcoholic Liquor for human consumption*	*One per cent*
(ii)	*Tendu leaves*	*Five per cent*
(iii)	*Timber obtained under a forest lease*	*Two and one-half per cent*
(iv)	*Timber obtained by any mode other*	*Two and one-half per cent than under a forest lease*
(v)	*Any other forest produce not being*	*Two and one-half per cent timber or tendu leaves*
(vi)	***Scrap***	***One per cent***
(vii)	*Minerals, being coal or lignite or iron ore*	*One per cent*

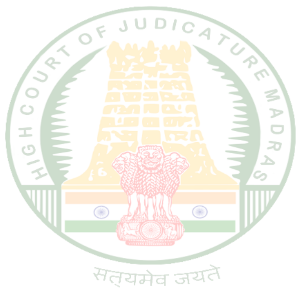
(2)…

(3)…

(4)…(5)…(6)…

(7) Without prejudice to the provisions of sub-section (6), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, ***he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3):***

Provided *that in case any person responsible for*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> *collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee:*

62. The expression 'Scrap' for the purpose of Sl.No.6 to table to Sub Section (1) has been defined in Explanation clause (b). Explanation (b) to Section 206C of the Income Tax Act, 1961 reads as under:-

> "***Section 206C:Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.***
>
> *Explanation – for the purposes of this Section -*
>
> *(a) .....*
>
> *(b) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;"*

63. Section 206C of the Income Tax Act, 1961 has to be read along with Rule 37CA of the Income Tax Rules, 1962. Rule 37CA of the Income Tax Rules, 1962 reads as under:-

> ***Rule 37CA: Time and mode of payment to Government account of tax collected at source under***

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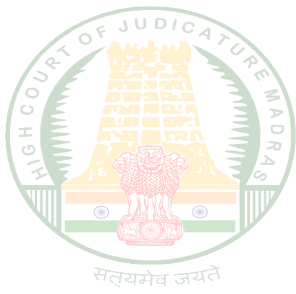


Section 206C.

(1) All sums collected in accordance with the provisions of section 206C by an office of the Government shall be paid to the credit of the Central Government—

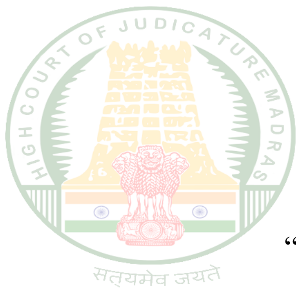
(a) on the same day where the tax is so paid without production of an income-tax challan; and

(b) on or before seven days from the end of the month in which the collection is made, where tax is paid accompanied by an income-tax challan.

(2) All sums collected in accordance with the provisions of section 206C by collectors other than an office of the Government shall be paid to the credit of the Central Government within one week from the last day of the month in which the collection is made."

64. Section 206C of the Income Tax Act, 1961 contemplates a seller of specified goods to collect tax from a buyer, a sum equal to the percentage specified entry in Col.3. There is no definition for the expression "buyer" in Section 206C of the Income Tax Act, 1961.

65. "Buyer" is defined in Section 2(1) of the Sale of Goods Act, 1930 as follows:-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"***2. Definitions.-****...*

(1) 'buyer' means a person who buys or agrees to buy goods"

The word "buyer" is defined in Black's Law Dictionary (10th Ed.) as follows:-

"Buyer: Someone who makes a purchase."

66. Definition of seller in Section 206 C of the Income Tax Act, 1961 reads as under:-

> [(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

67. Under Sub-Section (7) to Section 206C of the Income Tax Act, 1961, where a person responsible for collecting tax fails to collect it in accordance with Section 206C(1) of the Income Tax Act, 1961, shall be

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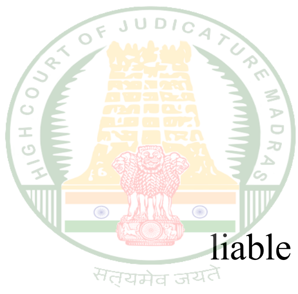
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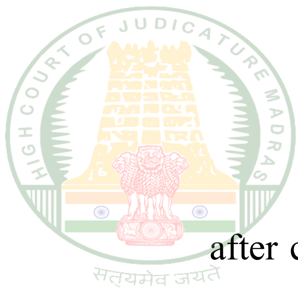
liable to pay tax to the credit of the Central Government in accordance with the provisions of Sub Section (3).

68. As per Sub-Section (3) to Section 206C of the Income Tax Act, 1961, any person collecting any amount under this Section shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs. Provided that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

69. As per Sub Section (7) to Section 206C of the Income Tax Act, 1961, a person responsible for collecting tax failing to pay tax to the credit of the Central Government on or before the date specified, either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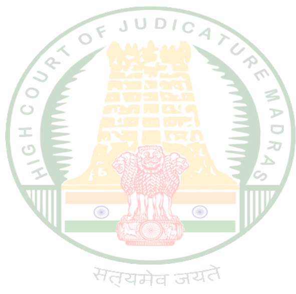
after collecting the tax or fails to collect tax, shall be liable to pay simple interest at the rate of 1% per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid or payable and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3).

70. Section 206CC was incorporated into the Income Tax Act, 1961 in the year 2017 vide amendment to the Income Tax Act, 1961 vide Finance Act, 2017 w.e.f. 1.4.2017. Section 206CC of the Income Tax Act, 1961 w.e.f. 1.4.2017 reads as under:-

> ***206CC. Requirement to furnish Permanent Account number by collectee.—***
>
> *(1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:—*
>
> *(i) at twice the rate specified in the relevant provision of this Act; or*
>
> *(ii) at the rate of five per cent:*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> *[Provided that the rate of tax collection at source under this section shall not exceed twenty per cent.]*

71. Thus, from the Assessment Years 2018-19 onwards, the collectee i.e. *per se* payer amount has to furnish his Permanent Account Number to the person responsible for collecting such tax, failing which tax shall be collected at the higher rates as mentioned above under Section 206CC of the Income Tax Act, 1961.

72. Section 206CCA of the Income Tax Act, 1961 was incorporated in the year 2021 vide Finance Act, 2021, w.e.f. 1.7.2021.Section 206CCA of the Income Tax Act, 1961 reads as under:-

> ***206CCA. Special provision for collection of tax at source for non-filers of income-tax return.—***
>
> *(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person from a specified person, the tax shall be collected*

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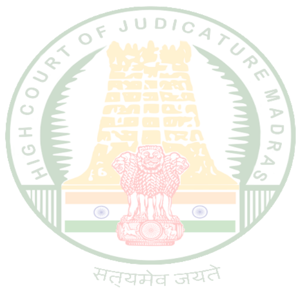
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at the higher of the following two rates, namely:—

(i) at twice the rate specified in the relevant provision of the Act; or

(ii) at the rate of five per cent:

[Provided that the rate of tax collection at source under this section shall not exceed twenty per cent.]

(2) *If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.*

(3) *For the purposes of this section "specified person" means a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be collected, for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in the said previous year…*

Thus, for Assessment Years 2022-23 and 2023-24, tax has been assessed under Section 206CCA of the Income Tax Act, 1961.

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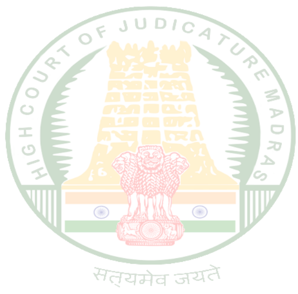
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73. As per sub-clause (1) of Section 206C of the Income Tax Act, 1961, every seller shall collect from the buyer of any goods specified in Col.2 to the table above, a sum equal to the amounts specified in Col.3 of the said table. In this case, the petitioner has awarded contracts to various bar owners to run the bar adjacent to the retail shows run by the petitioner.

74. As mentioned elsewhere above, the licensees who have been issued licenses to run the bar adjacent to the retail outlets/shops of the petitioner were required to offer their bid to run the bar under a tender process under Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. In the bar, the bar contractors (successful licensees) are entitled to sell food items (short eats) and collect the leftover bottles by the consumers, who after consuming liquor from the retail outlet leave it in the licensed premises *albeit* the 'bars' licensed under Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 to the bar licensees.

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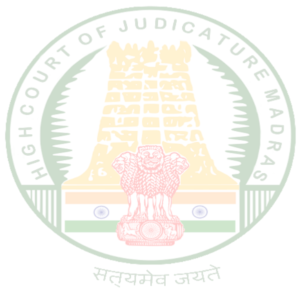
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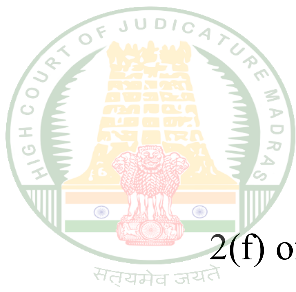
75. The contention of the respondent is that the left over bottles are "scrap" within the meaning of (vi) to table to Sub-Section (1) and Section 206C of the Income Tax Act, 1961.

76. To attract the liability under Section 206C of the Income Tax Act, 1961, it is incumbent on the part of the Department to establish that the bottles left by buyers of liquor who consume liquor in the bars attached to the petitioner TASMAC's retail shops satisfies the definition of 'Scrap' within the meaning of (vi) to table to Sub-Section (1) and Section 206C of the Income Tax Act, 1961. The expression 'Scrap' has been defined to mean waste and scrap from the "manufacture" or "mechanical working of materials" which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

77. The expression 'Scrap' would mean 'Waste' and 'Scrap from Manufacture' or 'Mechanical Working of Material'. The definition is furnished qualified. Such waste *is* definitely not usable as such because of breakage, cutting up, wear and other reasons. It has to take within its meaning those activities which will amount to manufacture under Section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2(f) of the Central Excise Act, 1944, r/w relevant Chapter notes.

78. Section 2(29BA) of the Income Tax Act, 1961, defined the expression " manufacture as follows:-

> [(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—
>
> (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
>
> (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;]

79. The expression "mechanical working of materials" in the definition of " scrap" in clause to explanation (b) to Section 206(c) has not been defined separately.

80. The Hon'ble Supreme Court had an occasion to deal with a similar occasion in the context of Central Excise Act, 1944 in **Commissioner of Central Excise, Cochin Vs. Appollo Tyres**, [2005] (184) ELT 115 (SC). There, Chapter Note 6 to Section XV of Central

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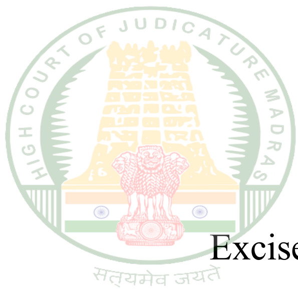
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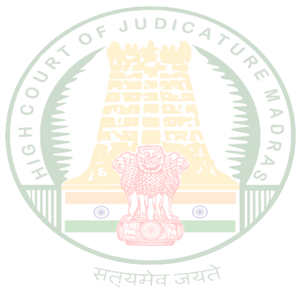
Excise Tariff Act, 1985 was referred to. It reads as follows:-

> "***8.****The respondents went in appeal to CEGAT. CEGAT has by the impugned judgment held that these products were to be classifiable under Tariff Item 4004. CEGAT has so held without at all considering the composition of the products. CEGAT has so held only on the basis of Chapter Note 6 to Chapter 40 which reads as follows:*
>
> > *"6. For the purposes of Heading 40.04, the expression 'waste, parings and scrap' means rubber waste, parings and scrap from the manufacture or working of rubber and rubber goods definitely not usable as such because of cutting-up, wear or other reasons."*
>
> *(emphasis supplied)*
>
> *CEGAT has also relied upon Note 8 to Section XV which reads as follows:*
>
> > *"8. In this section, the following expressions have the meanings hereby assigned to them:*
> >
> > *(a) Waste and scrap.—Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."*
>
> ***9.*** *We have heard the parties at great length. In our view CEGAT has completely misdirected itself. It is to be seen that the product to start with is admittedly a stainless steel wire. In fact at the*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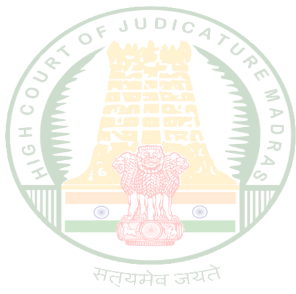
initial stage when it is cut and waste arises that waste is sold as scrap of stainless steel wire. Thereafter all that happens is that the stainless steel wire gets coated with rubber. Merely because it is coated with rubber does not mean that it loses its characteristic of stainless steel wire. The main item remains a stainless steel wire. When in the process of coating, some waste arises and that waste is sold, that waste would fall under Tariff Item No. 7204.90 by virtue of the fact that it is the waste predominantly of metal. ***Also this waste arises whilst mechanically working on metal and rubberising it****. Thus, Note 6 of Section XV would make this a waste and scrap of metal. Chapter Note 6 to Chapter 40 would have no application at all. Chapter Note 6 to Chapter 40 specifically provides that the waste and scrap must be rubber waste or scrap. The Tribunal has missed the crucial words "rubber waste ...... and scrap". Waste arising from the process of rubberising a stainless steel wire is not a rubber waste or rubber scrap.*

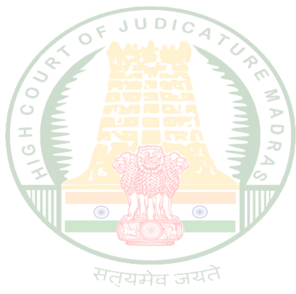
10. *The product taken out of defective tyre remains the same as what was available earlier. Thus, if the earlier product, waste or scrap of metal, this waste or scrap does not become anything else merely because it is taken out of a rubber tyre. That it remains waste and scrap of metal is clearly indicated by its composition which was noted by the Collector (Appeals). Unfortunately, the Tribunal did not take this aspect into account. In our view, the decision of the Tribunal cannot be upheld. The Collector (Appeals) had applied the correct principles and had correctly classified the product.*



> ***11.*** *Accordingly, the impugned Judgment is set aside and that of the Collector (Appeals) is restored. The Appeals stand disposed of accordingly. There will be no order as to costs."*

81. In **Grasim Industries Limited Vs. Union of India**, [2011] 10 SCC 653, the Hon'ble Supreme Court was concerned with MS scrap and iron scrap generated in a workshop. The court held that Section Note 8(a) to Section XV of the Central Excise Tariff Act, 1985 has a very limited purpose of extending coverage to the particular items of the relevant tariff entry in the Schedule for determining the applicable rate of duty and it cannot be readily construed to have any deeming effect in relation to the process of manufacture as is contemplated by Section 2(f) of the Central Exercise Act, 1944 unless expressly mentioned in the said Section Note.

82. Both manufacture and "mechanical working of material" can generate "scrap". Although, an activity may not amount to "manufacture" yet waste and scrap can be generated from "mechanical working of material".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83. The definition of "manufacture" in Section 2(f) of the Central Excise Act,1944 was expanded in 2003 with effect from 01.03.2003 vide Section 135 of the Finance Act, 2003(32 of 2003), read with clause 127 of the Finance Bill, 2003 (8 of 2003). We are not concerned with it in these writ petitions.

84. The expression "mechanical working" is not new to taxing enactments. It has been used in the Central Excise Tariff Act, 1985 and under the Customs Tariff Act, 1975. Section Note 8(a) to Section XV of the Central Excise Tariff Act, 1985 uses the expression 'waste generated during mechanical working of metal in the workshop'.

85. The test of manufacture under Section 2(f) of Central Excise Act, 1944 is well known. An activity which has to lead to emergence of a new product in the market is a manufacturing activity.

86. It was in this context, the Courts have held levy of Central Excise duty on various "scrap" generated from either manufacture or "

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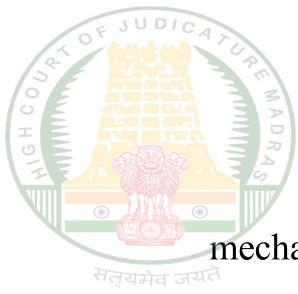
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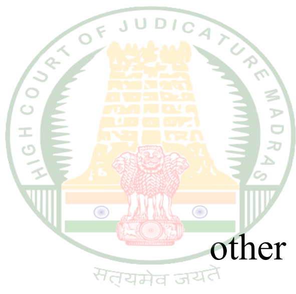
mechanical working of materials" are liable to tax provided such waste is also specified in the 1st schedule to the Central Excise Tariff Act, 1955.

87. "Scrap" was treated as "excisable goods" for the purpose of Section 2(f) of the Central Excise Act, 1944, for levy under Central Excise Act, 1944, provided it satisfied the above requirements.

88. Though the expression "manufacture" has been defined in Income Tax Act, 1961, the expression "mechanical working of material" has not been defined in Income Tax Act,1961. In the 9th Ed. of Oxford's Dictionary, the expression has been defined "mechanical" as follows:-

> *a) " operated by power from an engine;*
>
> *b) connected with machines and engines;*
>
> ...
>
> c)*connected with the physical laws of movement and cause and effect"*

89. However, dictionary meaning of the word "mechanical" by itself does not help in resolving the legal issue in this case. Therefore,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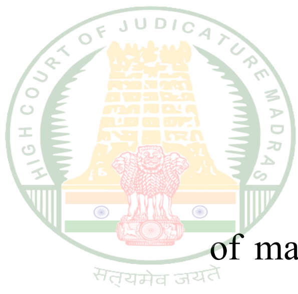
other rules of interpretation have to be looked for and applied.

90. In **Maxwell on the Interpretation of Statutes**(12th Edition) atpage 289, the doctrine of *nocitur a sociis* has been explained as follows:—

> "*Where two or more words which are susceptible of analogous meaning are coupled together,nocitur a sociis, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.*"

91. In **Prabhudas Damodar Kotecha v. Manhabala Jeram Damodar**, (2013)15 SCC 358, the Hon'ble Supreme Court held that the principle of *nocitur a sociis,* provides that words and expression must take colour from words with which they are associated.

92. In absence of definition for the expression "mechanical working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of materials” in Section 206C of the Income Tax Act, 1961, the above doctrine of *nocitur a sociis* can be usefully applied to the facts of the case to resolve the legal conundrum. Court is faced with.

93. The meaning of the expression “mechanical working of materials” in Section 206C of the Income Tax Act, 1961 can therefore to be gathered by applying the doctrine of *noscitur a sociis* from the meaning of the expression “manufacture” in Section 2(29BA) of the Income Tax Act, 1961.

94. The definition of the expression “manufacture” in Section 2(29BA) of the Income Tax Act, 1961 is similar to the definition of “manufacture” in Section 2(f) of the Central Excise Act, 1944. Therefore, for a “waste” or a “scrap” to be liable to excise duty under Section 3 of the Central Excise Act, 1944, such “waste” or “scrap” was also to be specified in the 1st Schedule to Central Excise Tariff Act, 1985.

95. Certain activity may amount to “manufacture” yet not liable to Central Exercise Duty. An activity may resemble to a “manufacturing

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activity", yet may not amount to "manufacture". Only those activity can came within the purview of the expression of "mechanical working of material".

96. In other words, only those activity which resemble "manufacturing activity", but are not a "manufacturing activity" can come within the purview of the expression of "mechanical working of material". Only such "scrap" arising of such "mechanical working of material"are in contemplation of Section 206 C of the Income Tax Act, 1961.

97. Only such "scarp" generated from such "mechanical working of material" which are not "manufacturing activity" but are akin to "manufacturing activity" can be said to be in contemplation of Section 206C of the Income Tax Act, 1961.

98. The expression "mechanical working of material" in Section 206C of the Income Tax Act, 1961 would apply only to such activity

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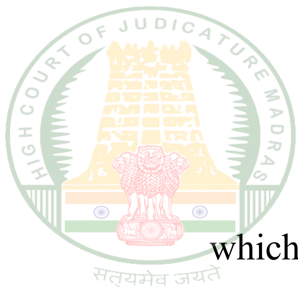

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which are akin to "manufacturing activity" but not "manufacturing activity". Only such "scrap" generated from such activity i.e. either "manufacturing activity" or from "mechanical working of material" can be construed to be in contemplation of Section 206C of the Income Tax Act, 1961.

99. Mere opening, breaking or uncorking of a liquor bottle by mere twisting the seal in a liquor bottle will not amount to generation of "scrap" from "mechanical working of material" for the purpose of explanation to Section 206C of the Act.

100. That apart, the activity of opening or uncorking of the bottle is also not by the petitioner. These are independent and autonomous acts of individual consumers who decides to consume liquor purchased from the Tasmac Shops of the petitioner which have a licensed premises (Bar) adjacent to them under the provisions of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

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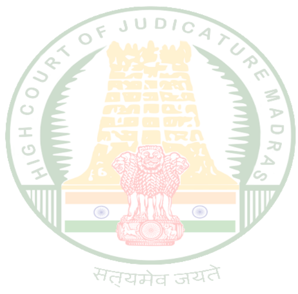

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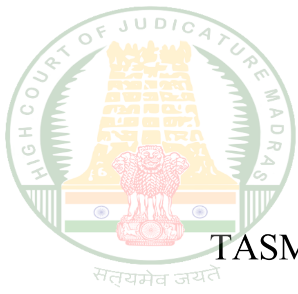
101. Further, no waste or scrap was generated by the petitioner for it to be sold by the petitioner. Scrap, if any, was generated at the licensed premises which was leased by the licensees from the provide owners of the premises.

102. That apart, left over bottles after consumption are not owned by the petitioner. Neither the petitioner nor the licensee are the owner of the waste bottles. What the respective bar licensees are permitted under the terms of the license under the provisions of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 is merely to sell food and water and clear the left over bottles more from the point of view of ensuring cleanliness. The bar owners incidentally monetize the left over boittles.

103. Rule 9(a) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 merely grants privilege to the respective bar owners only to run the bars to sell the eatables and to clear left over empty bottles. Bottles are neither "Scrap" nor a property of either the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TASMAC or Bar Licensee.

104. If at all, the ownership over the bottles at best would stand vested with the respective bar owners / licensees who have been licensed. Sale of left over bottles are merely regulated. Mere regulation of such sale would not render the petitioner sale of bottles A mere privilege is conferred on the respective bar owners / licensees to collect the left over bottles and sell them to the breweries and distilleries. There is no scope to conclude sale bottles by the petitioners to the respective bar owners / licensees.

105. To be a "seller" of used bottle, the petitioner should be the owner of the bottle. Neither the petitioner nor the Bar owners / licensees are the owners of the bottles left behind in the licensed premises (Bar).

106. The petitioner merely decides the upset price and other terms and conditions in the tender process with the approval of the Commissioner of Prohibition and Excise. Merely because used bottles are to be cleared which implies sale by them would not render the petitioner

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"seller" for the purpose of Section 206C of the Act.

107. There is neither a "manufacture" nor a generation of "scrap" from "mechanical working of materials", the liability under Section 206C of the Income Tax Act, 1961 is not attracted.

108. Suffice to state that the petitioner is neither the owner of the bottle nor generates scrap as is contemplated under the Income Tax Act, 1961. The activity of opening and uncorking is not a "mechanical working of material".

109. Therefore, invocation of Section 206 C, 206CC and 206CCA of Income Tax Act, 1961 was wholly misplaced and unwarranted under the circumstances against the petitioner for the alleged failure to collect tax at 1% on 99% of the license fee payable to the Government and 1% retained as agency commission. Therefore, there is no merits in the impugned order. Consequently, the question of paying simple interest under Section 206C(7) of the Income Tax Act, 1961 cannot be countenanced with.

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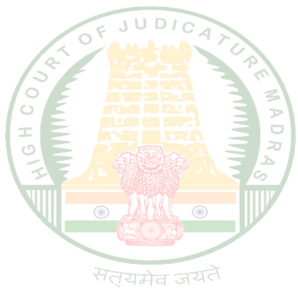

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110. Since Section 206C of the Income Tax Act, 1961 is not applicable, question of imposing liability on the petitioner to furnish the PAN Number of the Bar owners under Section 206CC of the Income Tax Act, 1961 cannot be countenanced with.

111. As a consequence, the question of invoking Section 206CCA of the Income Tax Act, 1961 cannot be countenanced with.

112. In the result, all these Writ Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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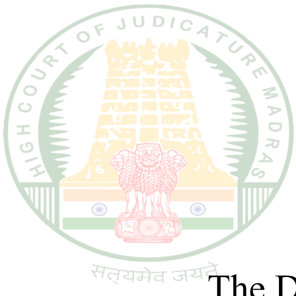
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No.16, Greams Road,
Chennai – 600 034.

C.SARAVANAN,J.

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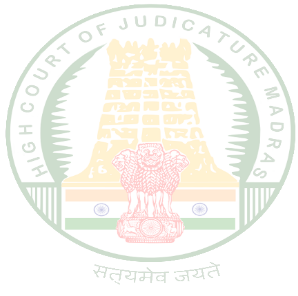
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Pre-delivery Common Order in
W.P.Nos.19287, 19410, 19513, 19764,
19765, 19777, 19783 & 20179 of 2023

22.12.2023