

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MRS.JUSTICE R.BANUMATHI

W.P.Nos.8740 to 8742 of 1998, 6376 to 6379 of 1998,
8777 to 8781 of 1998,
7614 of 2004 and 29912 of 2005

W.P.No.8740 of 1998:

The Pondicherry Generators Manufacturers'
Association, rep.by its President J.C.Kohli
No.3, Clifton Plaza, Saram
Pondicherry 605 013. ... Petitioner

Vs.

1. The Union of India
rep.by its Secretary to Government
(Local Administration Department)
Pondicherry.
2. The Director
Local Administration Department
Pondicherry
3. The Pondicherry Municipality
rep.by its Special Officer
Pondicherry
4. The Commissioner
Pondicherry Municipality
Pondicherry .. Respondents

The Pondicherry Generators Manufacturers'
Association, rep.by its President J.C.Kohli
No.3, Clifton Plaza, Saram
Pondicherry 605 013.

.. Petitioner in
W.P.8741, 8742/98, 8777/98
to 8781/98

M/s. Shriram Honda Power Equipments Ltd,
rep by its Authorised Signatory
Mr. Unnikrishnan Nair,
No.1, First Cross Street,
Rajaji Nagar, Pondicherry.

... Petitioner in W.P.6376
and 6378/98

M/s. H.A. Kader,
Pondicheery rep by its Partner
C.M.Syed
No.69 Kazi Street,
Pondicheery.

.... Petitioner in W.P.6377/98
and 6379/98

M/s. Crompton Greaves
Rep by G. Vijay Kumar
Manager,
No.3 Dr. M.G.R. Salai,
Nungambakkam, Chennai-34.

.... Petitioner in W.P.7614/04 and
29912/05

Vs.

1. The Union of India
rep.by its Secretary to Government
(Local Administration Department)
Pondicherry.

2. The Director
Local Administration Department
Pondicherry

... 1 and 2 Respondents in
W.P.Nos.8741, 8742/98, 6376 to
6379/98, 8777 to 8781/98

3. The Karaikal Municipality
rep by its Special Officer
Karaikal.

4. The Commissioner
Karaikal Municipality
Karaikal

... Respondent in W.P.8741/98

The Oulgaret Municipality
rep by its Special Officer
Oulgaret.

The Commissioner
Oulgaret Municipality
Oulgaret.

... 3 and 4th Respondents in
W.P.8742/98, 6376/98

Pondicherry Municipality
rep by its Special Officer,
Pondicherry.

The Commissioner
Pondicherry Municipality
Pondicherry.

... 3 and 4th Respondents in
W.P.6377/98

Villianur Commune Panchayat
represented by its Special Officer
Villianur, Pondicherry.

The Commissioner
Villianur Commune Panchayat
Pondicherry.

... 3 and 4th Respondent in
W.P.6378/98 and 8781/98

Oulgaret Municipality
rep by its Special Officer
Pondicherry

The Commissioner
Oulgaret Municipality
Pondicherry

... 3 and 4th Respondents in
W.P.6379/98

The Special Officer
Ariankuppam Commune Panchayat
Ariankuppam, Pondicherry

The Commissioner
Ariankuppam Commune Panchayat
Ariankuppam, Pondicherry

... 3 and 4th Respondents in
W.P.8777/98

The Special Officer
Bahour Commune Panchayat
Bahour, Pondicherry.

The Commissioner
Bahour Commune Panchayat
Bahour, Pondicherry

... 3 and 4th Respondents in
W.P.8778/98

The Neravy Commune Panchayat
rep by its Special Officer
Neravy, Karaikal.

The Commissioner
Neravy commune Panchayat
Neravy, Karaikal

... 3 and 4th Respondents in
W.P.8779 /98

The Kottucherry Commune Panchayat
Rep by its Special Officer
Kottucherry, Karaikal.

The Commissioner
Kottucherry Commune Panchayat
Kottucherry, Karaikal

... 3 and 4th Respondents in
W.P.8780/98

1. The Union of India
Rep by its Secretary to Government
(Local Administration Department)
Pondicherry.

2. The Director
Local Administration
Pondicherry.

3. Thavalakuppam municipality Panchayat
Pondicherry-7.

4. The Commissioner/ Special Officer
Thavalakuppam Municipality/ Panchayat
Pondicherry-7.

... Respondents in W.P.7614/04

The Commercial Tax Officer-II
Pondicherry.

... Respondents in W.P.29912/05

Prayer in W.P.8740 of 1998.

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records leading to the issue of the Pondicherry Municipalities (Tax on Procurement of Goods) Rules, 1997 of the first respondent published in the Gazette of Pondicherry bearing G.O.Ms.No.237/97/LAS dated 29.12.1997 and the Notification No.38-30/PM/CS/98 dated 31.03.1998 of the fourth respondent and published in the Extraordinary Official Gazette No.66 dated 31.03.1998 of Government of Pondicherry and to quash the same as unconstitutional and ultra vires and void abinitio.

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified Mandamus to calling for the records leading to the issue of the Pondicherry Municipalities (Tax on Procurement of Goods) Rules, 1997 of the first respondent published in the Gazette of Pondicherry bearing G.O.Ms.No.237/97/LAS dated 29.12.1997 and the Notification No.48-KM/Rev/97-98 dated 31.3.1998 (W.P.8741/98) Notification NO.1-16/Estt (1) OM/98 dated 31.3.1998 (W.P.8742/98) Notification F.No.20.3.1998 Rev/ACP/CS dated 30.3.1998 (W.P.8777/98) Notification No.1-25/BCP/97-98 dated 31.3.1998 (W.P.NO.8778/98) Notification NCP/B1/8/98 dated 30.3.1998 (W.P.8779/98) Notification No.274/KCP/Rev./97-98 dated 30.3.1998 (W.P.8780/98) notification No.F.223/98/VCP dated 31.3.1998 (W.P.8781/98) of the Fourth respondent and published in the Extraordinary Official Gazette No.66 dated 31.03.1998 (W.P.8741 and 8742/98) of the fourth respondent and published in the Extraordinary official Gazette No.67 dated 31.3.1998 (W.P.NO.8777 to 8781/98) notification No.1-16/Estt (1)/OU1. Mty/98 dated 30.3.1998 (W.P.6376/98) Notification No.38-30/PM/C-3/98 dated 30.3.1998 (W.P.6377/98) Notification No.223/98/ VCP dated 30.3.1998 (W.P.6378/98 notification No.1-16/Estt (1) Oul/Mty-98 dated 30.3.1998 (W.P.6379/98) published in Pondicherry edition of Malaimalar dated 31.3.1998 of the fourth respondent and quash the same and unconstitutional and ultra vires and void abinitio.

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration that the tax on Pondicherry Municipalities (Tax on procuroment of Goods) rules 1997 (1) of the Ist Respondent is unconstitutional ultra vires void in so far as the petitioner is concerned (W.P.7614/04) (2) as unconstitutional ultra vires void in so far as the petitioner is concerned (W.P.29912/05)

For Petitioner : Mr.R.Krishnamurthy,
Senior Counsel
for Mr.Perumbulavil Radhakrishnan
in all the Wps

For Respondents : Mr.T.Murugesan,
Govt.Pleader, Pondicherry
assisted by
Mr.K.K. Sasidharan A.G.P.
in all the Wps

COMMON JUDGMENT

P.K. MISRA, J

Challenge in this batch of writ petitions is against the Notification dated 29.12.1997 issued by the Government of Pondicherry. Under such Notification, the Government of Pondicherry has purported to frame rules, viz., the Pondicherry Municipalities (Tax on Procurement of Goods) Rules, 1997 (hereinafter referred to as "the Rules"). Such rules have been framed in exercise of powers conferred by clause (d) of Sub Section (2) of Section 118 read with Section 440 of the Pondicherry Municipalities Act, 1973, (hereinafter referred to as "the Act").

2. The petitioners have raised two contentions in support of the various writ petitions. The first contention is that by virtue of such Rule, the constitutional right envisaged under Article 301 of the Constitution of India is being violated. The second contention is that such tax cannot be imposed and the power conferred under the Act to the rule making authority to frame rules, delegating the power to impose taxation, by framing rules to that effect, must be taken to be invalid.

3. Several counter affidavits have been filed in different writ petitions. The main contention raised in the counter affidavit is to the effect that by virtue of the amendment effected in the Constitution, 73rd and 74th amendments to Article 243-G and Article 243-H have been incorporated, which intend to confer the right of imposing tax on the local bodies such as the Municipalities and Panchayats and therefore, it cannot be said that the Municipality or the local body has the power to impose tax. It is also indicated that in the Statute, provisions have been made empowering the Government to frame rules with prior approval of the Assembly and therefore, it cannot be said that there is no authority to impose tax by virtue of the rules. So far as violation of Article 301 is concerned, it is contended that the provisions are saved by virtue of Article 304 of the Constitution.

4. The latter contention relating to violation of Article 301 has engaged the attention of the Court not only in this case, but in several cases throughout the country. The provisions contained in Article 301 and 304 being relevant are extracted hereunder:

"Article 301: Freedom of trade, commerce and intercourse - Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Article 304 : Restrictions on trade, commerce and intercourse among States--

Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law:--

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President."

5. As early as 1961, in the decision reported in AIR 1961 SC 232 (Atiabari Tea Co., vs. State of Assam), the relative scope of Article 301 and Article 304 received the attention of the Supreme Court. In the said decision, it has been indicated that even though under Article 301 it has been stated that trade, commerce and intercourse throughout the territory of India shall be free, such provision as apparent from the very opening expression is subject to other provisions of part XIII of the Constitution of India. However, Article 304(a) has an important bearing on the matter, which envisages the authority of legislature to impose by law, any tax on goods imported from other States or the Union Territories to which similar goods manufactured or produced in that State are subjected to. Article 304 (a) also envisages that while imposing such tax, there cannot be any discrimination between goods imported from outside and goods manufactured or produced within the State. These aspects had been clearly recognised in AIR 1961 SC 232 referred to above. Subsequently, in the decision of the Supreme Court reported in AIR 1962 SC 1406 (Automobile Transport (Rajasthan) Ltd., vs. State of Rajasthan), it was made clear that Article 301 did not prohibit the imposition of any regulatory/compensatory tax. Subsequently, it appears that in 1995

Supplement (1) SCC 73 (Bhagatram Rajeevkumar vs. CST) and 1996 (9) SCC 136 (State of Bihar vs. Bihar Chamber of Commerce), the Supreme Court introduced a discordant note by expanding the concept of regulatory/compensatory tax, which necessitated rethinking in the matter and ultimately the Constitution Bench of the Supreme Court in the decision reported in 2006 (7) SCC 241 (Jindal Stainless Ltd., vs. State of Haryana) appears to have clarified the entire position. It would be fruitful to extract the relevant observations made by the Supreme Court in the aforesaid case.

6. After referring to almost all the decisions on the points and analysing the provisions of Articles 301, 302, 303 and 304, the Constitution Bench ultimately held as follows:

"35. Broadly, the above analysis of the scheme of Articles 301 to 304 shows that Article 304 relates to the State Legislature while Article 302 relates to Parliament in the matter of lifting of limitation, which, as stated above, flows from the freedom of trade and commerce guaranteed under Article 301. Article 304 also confers upon the State Legislature power to lift the limitations imposed on it by Article 301 and clause (1) of Article 303. This aspect is important because the doctrine of "direct and immediate effect" which is mentioned in *Atiabari Tea Co.*, emerges from the concept of "limitation" embodied in Article 301. It is this doctrine of direct and immediate effect which constitutes the basis of the working test propounded vide para 19 (of AIR) in *Automobile Transport*. Therefore, whenever the law is impugned as violative of Article 301, the Courts will have to examine the effect of the operation of the impugned law on the inter-State and the intra-State movement of goods, which movement constitutes an integral part of trade.

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Burden on the State:

46. Applying the above tests/parameters, whenever a law is impugned as violative of Article 301 of the Constitution, the Court has to see whether the impugned enactment facially or patently indicates quantifiable data on the basis of which the compensatory tax is sought to be levied. The Act must facially indicate the benefit which is quantifiable or measurable. It must broadly indicate proportionality to the quantifiable benefit. If the provisions are ambiguous or even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense

for the quantifiable/measurable benefit provided or to be provided to its payer(s). As soon as it is shown that the Act invades freedom of trade it is necessary to enquire whether the State has proved that the restrictions imposed by it way of taxation are reasonable and in public interest within the meaning of Article 304 (b).

Scope of Articles 301, 302 and 304 vis-a-vis Compensatory Tax:

47. As stated above, taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedom guaranteed to trade under Part XIII of the Constitution. This principle is well settled in *Atiabari Tea Co.* It is equally important to note that in *Atiabari Tea Co.*, the Supreme Court propounded the doctrine of "direct and immediate effect". Therefore, whenever a law is challenged on the ground of violation of Article 301, the Court has not only to examine the pith and substance of the levy but in addition thereto, the Court has to see the effect and the operation of the impugned law on inter-State trade and commerce as well as intra-State trade and commerce.

48. When any legislation, whether it would be a taxation law or a non-taxation law, is challenged before the Court as violating Article 301, the first question to be asked is: what is the scope of the operation of the law? Whether it has chosen an activity like movement of trade, commerce and intercourse throughout India, as the criterion of its operation? If yes, the next question is : what is the effect of operation of the law on the freedom guaranteed under Article 301? If the effect is to facilitate free flow of trade and commerce then it is regulation and if it is to impede or burden the activity, then the law is a restraint. After finding the law to be a restraint/restriction one has to see whether the impugned law is enacted by Parliament or the State Legislature. Clause (b) of Article 304 confers a power upon the State Legislature similar to that conferred upon Parliament by Article 302 subject to the following differences:

(a) While the power of Parliament under Article 302 is subject to the prohibition of preference and discrimination decreed by Article 303 (1) unless Parliament makes the declaration under Article 303 (2), the State power contained in Article 304 (b) is made expressly free from the prohibition contained in Article

303 (1) because the opening words of Article 304 contain a non obstante clause both to Article 301 and Article 303.

(b) While Parliament's power to impose restrictions under Article 302 is not subject to the requirement of reasonableness, the power of the State to impose restrictions under Article 304 is subject to the condition that they are reasonable.

(c) An additional requisite for the exercise of the power under Article 304 (b) by the State Legislature is that previous Presidential sanction is required for such legislation."

7. It may be pointed out that subsequently a Division Bench of this Court had tested the validity of the Tamil Nadu Tax on Entry of Goods in to the Local Areas Act, 2001 which included levy of tax on entry of schedule goods into local area. Such Act has been found invalid in 2007 (2) CTC 577 (ITC Limited vs. The State of Tamil Nadu), obviously, in view of the decision of the Supreme Court in Jindal Stainless Ltd. case (cited supra).

8. In the light of the principles enunciated in the Constitution Bench noticed above, the provisions contained in the Act and the rules may be analysed to find out whether there has been any violation of Article 301 or whether the provisions can be saved by invoking Article 304 (a).

9. Section 118 of the Act, empowers the Municipality to impose property tax, professional tax, tax on advertisements, duty on transfers of immovable property in the form of additional stamp duty and tax on entertainments. Relevant provisions of Section 118 (2) of The Pondicherry Municipalities Act, 1973 is extracted hereunder:

"Section 118 (2): Subject to the previous sanction of the Government and to any general or special order which the Government may make in this behalf, every municipal council may levy for the purposes of this Act, any of the following taxes namely:

(d) any other tax which the Legislature of the Union territory has power to impose in the Union territory."

Sub section 3 envisages that the taxes specified in sub sections 1 and 2 shall be assessed and levied in accordance with the provisions of the Act and the rules made thereunder.

Section 440 contains the rule making power and authorise the Government, by Notification, to make rules to carry out all or any purposes of the Act.

Section 440 (2) lays down and that in particular and without prejudice to the generality of the foregoing power, the rules may provide for or regulate -

(a) All matters expressly required or allowed by the Act to be prescribed.

10. In exercise of such power conferred under Section 118 (2) (d) read with Section 440 of the Act, the Lieutenant-Governor of Pondicherry has framed the Pondicherry Municipalities (Tax on Procurement of Goods) Rules, 1997.

As per Rule 2 (v) "Goods" means goods mentioned in the schedule appended to these rules. In the schedule it has indicated three entries, which are (1) Cigarettes, Air conditioners and their spare parts/components (3) Generators and their spare parts/components.

As per rule 2 (x) "Tax" means "Tax on Procurement of Goods and as per rule 2 (ix) "Tax on procurement of Goods" means the tax leviable on goods, which are procured or brought outside the Union territory of Pondicherry and brought into the Municipal limit for the purpose of sale, lease, consumption manufacturing, assembling, packing, re-packing for the purpose of sale or transfer otherwise than by way of sale.

Rule 3(1) authorises the Municipal Council to levy tax on procurement of any goods mentioned in the schedule appended to these rules, procured from or brought from outside the Union Territory of Pondicherry and brought into a Municipal limit for the purpose of sale lease, consumption, manufacturing, assembling, packing and re-packing for the purpose of sale or transfer otherwise than by way of sale.

As per 3 (2) such tax shall be levied at 1% on the value or cost price of the goods shown in the invoice/ delivery challan.

Rule (4) imposes the liability on every person except procurement mentioned in the schedule from outside the Union territory of Pondicherry and brings into municipal limit for the purpose of sale or transfer otherwise than by way of sale to pay the tax to the Municipality as may be levied under Rule 3 (2).

Rule 8 envisages passing of resolution by the Municipal Council to specify the rate of tax and date from which it shall be levied.

11. A bare reading of the aforesaid rules makes it clear that tax is sought to be levied on import of certain specified goods from outside the union territory of Pondicherry to any Municipal area. On the face of it imposition of tax is in

contravention of the provisions contained in Article 301. The Government of Union Territory of Pondicherry has not sought to justify the imposition of such tax on the footing that such tax is compensatory in nature in the sense that such tax is collected to upset any service to be provided to the persons importing such goods.

12. The Government has sought to justify imposition of such tax by seeking inspiration from Article 304(a). In this context, it is submitted by the Government Pleader, Pondicherry Union Territory that since the goods indicated in the schedule viz., Cigarettes, Air Conditioners and their spare parts/components and Generators and their spare parts/components are not produced or manufactured within the Union Territory of Pondicherry, it cannot be said that there is any discrimination regarding the rate of tax imposed on the importers, the purchasers or the manufacturers of such goods within the territory. It is submitted that only when the purchasers and manufacturers of goods within the territory of Pondicherry are subjected to tax at a lower rate and the importers of such goods are subjected to tax at a higher rate, it can be said that there is any discrimination. However, since no tax is being imposed because there are no producers or manufacturers of such goods, there is no embargo on the State Legislature to impose any tax on the specified goods imported from outside.

13. Even though such a proposition may appear to be too simplistic as well as attractive in nature and worthy of acceptance, we do not think such doctrine advanced by the State can be accepted.

14. A careful reading of Article 304 (a) makes it clear that notwithstanding the provisions contained in Article 301, the State legislature by law, may impose any tax on goods brought from outside on par with tax imposed on such goods which are produced or manufactured inside the State. Where there is no tax on the goods of a particular type either because such goods are not produced or manufactured within the State or because the State in its wisdom does not intend to levy any tax, it has no power to tax goods imported from outside. The absence of any production or manufacture of a particular good within the State does not empower the State to impose tax on goods imported from outside as such tax would be in violation of Article 301, unless such tax is found to be compensatory in nature. Only if there is existence of any tax on particular goods produced or manufactured within the State, the State would be authorised to impose similar tax on such goods brought from outside. The further restriction at that stage is that the State cannot discriminate in the matter of rate of taxation.

15. The above position receives considerable sustenance from the decision of the Supreme court reported in AIR 1966 SC 1686, Kalyani Stores vs. State of Orissa. In the said decision, the Supreme Court was examining the validity of levy of tax on Indian Made Foreign Liquors brought from outside the State of Orissa. The contention was raised to the effect that since there was no production or manufacture to Indian Made Foreign Liquors within the State of Orissa, such tax can be levied by virtue of provisions contained in Article 304 (a). This contention was repelled in following words:

"3. From the affidavits filed in this Court by the parties, it is clear that no "foreign liquor" was being produced in the State at the material time; nor was any such liquor produced at any time after the Constitution was brought into force. Counsel for the State, has, therefore, very fairly not supported this part of the reasoning of the High Court."

"4. It seems, therefore, that countervailing duties are meant to equalise the burden on alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquors manufactured or produced in the State. If no alcoholic liquors similar to those produced or manufactured imported into the State are produced or manufactured, the right to impose counterbalancing duties of excise levied on the goods manufactured in the State will not arise. It may therefore be accepted that countervailing duties can only be levied if similar goods are actually produced or manufactured in the State on which excise duties are being levied.

7. Exercise of the power under Art.304(a) can only be effective if the tax or duty imposed on goods imported from other States and the Tax or duty imposed on similar goods manufactured or produced in that State are such that there is no discrimination against imported goods. As no foreign liquor is produced or manufactured in the State of Orissa the power to legislate given by Art.304 is not available and the restriction which is declared on the freedom of trade, commerce or intercourse by Art.304 of the Constitution remains unfettered."

16. In our considered opinion, the aforesaid observations made by the Supreme Court is a complete answer to the contention raised by the learned Government Pleader.

17. The latter, however, has sought to strengthen his submission by relying upon the decision of the Supreme Court in

(1980) 4 SCC 697 (State of Karnataka and another vs. Hansa Corporation).

18. We have carefully gone through the aforesaid decision. In the said case, the tax was found to be valid. The tax challenged in the said case was levied on scheduled goods either manufactured or produced in the State or imported from outside and there was no discrimination. We do not think the ratio of the said decision can be made applicable to the facts of the present case.

19. Similarly in the decision reported in AIR 1970 SC 1912 (State of Kerala vs. A.B.Abdul Khadir), in the observation of the Supreme Court relied on in Kalyani Stores' case, had been distinguished, is also not applicable to the present case.

20. In the present case, we are not concerned with any law of Parliament imposing reasonable restrictions as envisaged in Article 304 (b). Similarly, we are not concerned with any Legislation of the State which has the effect of imposing tax on goods produced and manufactured inside the State as well as the goods imported outside the State. In the absence of protective umbrella available in Article 304 (a) or 304 (b) we have no hesitation to hold that the imposition of tax in the present case contravenes Article 301. The impugned Rules are, therefore liable to be quashed on the ground of violation of Article 301.

21. The other contention of the learned counsel for the petitioners is to the effect that in the present case, the tax is sought to be imposed is by virtue of delegated legislation and not by virtue of law enacted by the State legislature. It is submitted by the learned Senior Counsel that under part XIII of the Constitution, the tax can be imposed by law made by the Legislature and a delegated Legislation, such as Statutory Rules cannot be considered as "law enacted by Legislature".

22. The learned Government Pleader appearing for the Pondicherry Government, on the other hand, submitted that by virtue of provisions introduced under 73rd and 74th amendment, power to levy tax has been conferred on the local authorities such as Municipalities and Panchayats and such purpose can be achieved through the delegated Legislation, as the Act itself envisages framing of rules and the Rules having been framed only after obtaining the prior sanction of the Legislature, must be taken to have become part of the Statute itself.

23. In view of the conclusion already reached regarding the invalidity of the provisions, on account of Article 301, it is not necessary to delve further into the above aspect.

24. In the writ petitions relating to challenge to imposition of tax on import of Cigarettes, learned counsel appearing for the petitioner has raised an additional contention that such provision is violative of Article 286 of the Constitution. As already indicated, since the Rules are found to be invalid by invoking the provisions contained under Article 301, it is not necessary to deal with such contention.

25. In the writ petitions challenging the validity of imposition of tax in respect of goods imported to a Panchayat, the relevant Rules are contained in the Pondicherry Village Panchayats (Tax on Procurement of Goods) Rules, 1997. According to the learned Government Pleader, the origin is in Article 243-H and rule making power is envisaged under Section 127 r/w Section 118 of Pondicherry Village and Commune Panchayat Act, 1973 and by virtue of such provisions, Rules have been framed on 29.12.1997. The provisions containing such rules are similar to the corresponding provisions contained in the Pondicherry Municipalities (Tax on procurement of Goods) Rules, 1997. In fact, both the Rules were framed on the very same day. Therefore, the analysis already made in respect of the provisions, contained in the Municipal Act and the Rules is also applicable to such matters and therefore, it is not necessary to embark upon any separate discussion and such provision containing such rules are also liable to be quashed for the very same reason.

26. For the aforesaid reasons, these writ petitions are allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vj2/dpk

To

1. The Secretary to Government
Union of India
(Local Administration Department)
Pondicherry.

2. The Director
Local Administration Department
Pondicherry

3. The Special Officer,
Karaikal Municipality
Karaikal.

4. The Commissioner
Karaikal Municipality
Karaikal

5. The Special Officer
Oulgaret Municipality
Oulgaret.

6. The Commissioner
Oulgaret Municipality
Oulgaret.

7. The Special Officer
Pondicherry Municipality
Pondicherry

8. The Commissioner
Pondicherry Municipality
Pondicherry

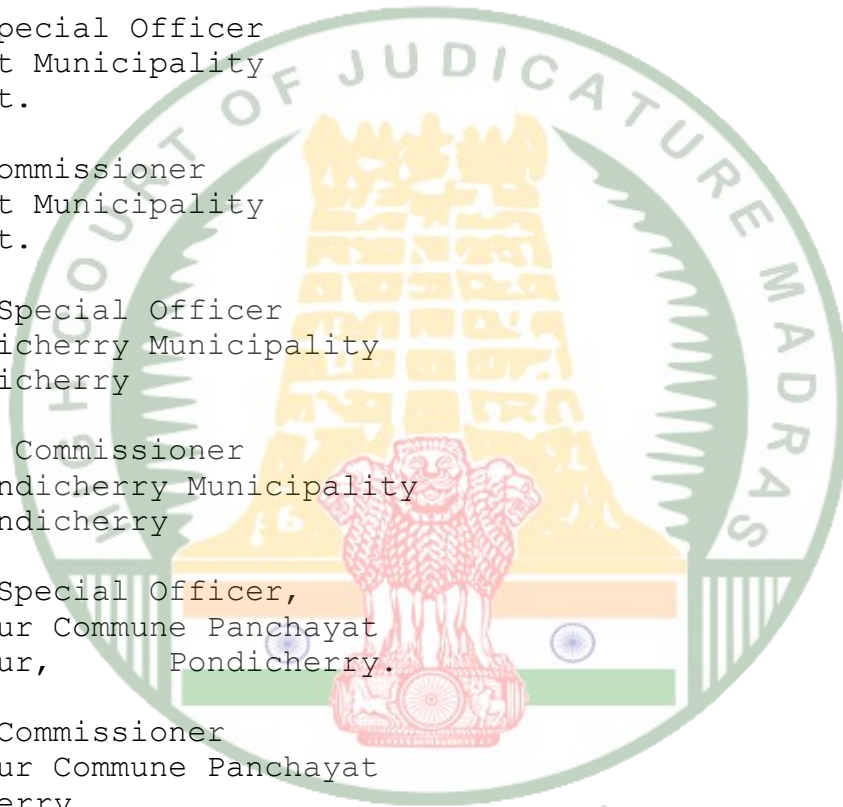
9. The Special Officer,
Villianur Commune Panchayat
Villianur, Pondicherry.

10. The Commissioner
Villianur Commune Panchayat
Pondicherry.

11. The Special Officer
Ariankuppam Commune Panchayat
Ariankuppam, Pondicherry

12. The Commissioner
Ariankuppam Commune Panchayat
Ariankuppam, Pondicheery

13. The Special Officer
Bahour Commune Panchayat
Bahour,



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14.The Commissioner
Bahour Commune Panchayat
Bahour, Pondicherry

15.The Special Officer,
Neravy Commune Panchayat
Neravy, Karaikal.

16.The Commissioner
Neravy commune Panchayat
Neravy, Karaikal

17.The Special Officer,
Kottucherry Commune Panchayat
Kottucherry, Karaikal.

18. The Commissioner
Kottucherry Commune Panchayat
Kottucherry, Karaikal

19. Thavalakuppam municipality Panchayat
Pondicherry-7.

20.The Commissioner/ Special Officer
Thavalakuppam Municipality/ Panchayat
Pondicherry-7.

21.The Commercial Tax Officer-II
Pondicherry.

2 ccs to Mr. Senior Government Pleader, SR. 47465, 47466

2 ccs to Mr.S.N. Kirubandam, Advocate, Sr. 47387 and 47388

5 ccs to Mr.Perumbulavi Radhakrishnan, Advocate, Sr. 47368, 47369,
47370, 47371 and 47372

सत्यमेव जयते

W.P.No.8740 of 1998
and etc.,batch

KK (CO)
kk 21/8

WEB COPY