

M/s Tamil Nadu State Marketing Corporation Ltd. v. Union of India and others

Civil Appeal No. 3821 of 2020 (arising from SLP(C) No. 10613 of 2020)

No separate citation stated in the source | 2020-11-25

Whether the High Court could decline to entertain the constitutional challenge to section 40(a)(iib) merely because the related assessment matter was pending before the tax authority.

40(a)(iib)

Three-judge bench | Ashok Bhushan, J. | R. Subhash Reddy, J. | M. R. Shah, J.

Assessment years: 2017-18

01 FACTS OF THE CASE

For AY 2017-18, the Assessing Officer proposed disallowing TASMAC's VAT expenditure as an exclusive State levy under section 40(a)(iib), and passed an assessment on 30 December 2019. In a separate writ proceeding, the Madras High Court set that assessment aside to the extent of the disputed disallowance on natural-justice grounds, leaving the matter pending before the Assessing Officer. TASMAC then challenged the constitutional validity of section 40(a)(iib) in Writ Petition 6284/2020, invoking Articles 14, 19 and 265. It alleged discriminatory treatment compared with Central Government undertakings. On 11 March 2020, the High Court declined to entertain that challenge at that stage because the tax matter remained pending. TASMAC appealed; the discrimination allegation and asserted VAT deductibility were its contentions, not findings accepted on the merits by the Supreme Court.

Source: [official signed judgment / paragraphs 2-3.2 / PDF pages 1, 2, 3, 4 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court held that the High Court ought to decide the constitutional challenge under Article 226. The challenge went to the root of the matter and could not be left to the pending assessment proceeding as a reason to defer it. Once the Assessing Officer issued the show-cause notice proposing disallowance under section 40(a)(iib), a cause of action to challenge the provision had arisen. The assessee did not have to await completion of that assessment before bringing this vires challenge. The High Court's refusal to address it was therefore a failure to exercise the jurisdiction vested in it (paragraphs 4-5). This reasoning concerns a challenge to the statute's validity in the circumstances presented, not a universal requirement to entertain every interlocutory tax writ.

Source: [official signed judgment / paragraphs 4-5 / PDF pages 4, 5 / judgment](#)

03 JUDICIAL DECISION

The Supreme Court set aside the High Court's refusal and remitted Writ Petition 6284/2020 for a decision on the merits of the constitutional challenge. Paragraph 7 expressly states that the Court expressed no opinion on the legality or validity of section 40(a)(iib). The appeal was allowed with no order as to costs.

Source: [official signed judgment / paragraphs 6–8 / PDF pages 6 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, on access to High Court adjudication and remand only

High Court dismissal set aside; constitutional challenge remitted for decision on merits; no costs

Constitutional validity and underlying deduction entitlement expressly not determined

This judgment neither strikes down nor upholds section 40(a)(iib), and does not decide whether TASMAC's VAT expense is deductible. The outcome of proceedings after remand has not been verified.

Source: [official signed judgment / paragraphs 7–8 / PDF pages 6 / judgment](#)

05 AKHB REVIEW POINT

Separate a genuine challenge to the statute's constitutional validity from an objection to the Assessing Officer's application of it. Preserve the notice applying the challenged provision and the reasons the cause of action has arisen. The useful procedural holding is that this vires challenge was not premature merely because the assessment remained pending. Do not cite the remand as a ruling that section 40(a)(iib) is unconstitutional, that VAT is deductible, or that later proceedings reached any particular result. Verify the post-remand decision and applicable statutory text before reliance.

Source: [official signed judgment / paragraphs 5; 7 / PDF pages 4, 5, 6 / judgment](#)

OTHER PROVISIONS CONSIDERED

Constitution of India: Articles 14, 19 and 265 (grounds urged); Article 226 (High Court jurisdiction)

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 6 PDF pages; SHA-256

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[Open cited source rendition](#)

The earlier natural-justice order in Writ Petition 538/2020 is distinct from the constitutional-challenge writ remanded here.

The source's characterization of VAT as an exclusive levy belongs to the Assessing Officer's proposal; the Supreme Court does not adjudicate that characterization.

Articles 14, 19 and 265 are grounds urged, not successful constitutional holdings.

Paragraph 7's express merits reservation controls the outcome description.

No monetary disallowance amount or citation is invented; the expressly non-reportable label is preserved.

No reported or neutral citation printed in the reviewed original; none assigned.

STATUTORY SCOPE

Section 40(a)(iib) as the subject of the historical constitutional challenge; the substantive validity question was not decided

No automatic mapping to the Income-tax Act, 2025 and no claim about present validity, post-remand result or current deduction entitlement.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 6](#)

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