

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4196 to 4200 of 2017 & 14023 to 14027 of 2017
W.M.P.Nos.4353 to 4357 of 2017 & 15237 to 15240 of 2017

JK Tyre & Industries Limited,
Rep. by its Regional Operating Manager,
Saroj Kumar Padhy,
SH-110, Sriperumbudur-Thambaram Road,
Kolathur Village, Sriperumbudur Taluk,
Kancheepuram District-602 105.

... Petitioner in
all W.Ps.

Vs.

The Deputy Commissioner-II (CT)(FAC),
Large Tax payers Unit,
No.34, Monteith Road,
Egmore, Chennai-600 008.

... Respondent in
all W.Ps.

Prayer in W.P.Nos.4196 to 4200 of 2017 : Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN:33250620075/2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively dated 31.01.2017 quashing the same.

Prayer in W.P.Nos.14023 to 14027 of 2017 : Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in 33250620075, dated 19.05.2017, quashing the same, while directing the respondent herein to revise the assessment in TIN:33250620075/2011-12, 2012-13, 2013-14, 2014-15 and

2015-16 respectively, dated 31.01.2017 after accepting the Industrial Input Certificate filed by the petitioners along with their application dated 17.04.2017, as reiterated on 19.05.2017 while applying Entry 67 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.N.Prasad
(in all W.Ps.)
For Respondent : Mr.S.Kanmani Annamalai
(in all W.Ps.) Additional Government Pleader

COMMON ORDER

Since the parties to all these writ petitions are one and the same and the issue involved is identical, these writ petitions were heard together and are disposed of by this common order.

2.The petitioner, a public limited company incorporated under the Companies Act, is engaged in the manufacture of tyres for chassis of automobile and particularly heavy vehicles such as buses and trucks. The petitioner has this manufacturing facility at Mysore, Karnataka. The subject matter of the present writ petitions pertains to interstate sales effected by the petitioner from its factory at Karnataka to their purchaser M/s. Ashok Leyland Limited (in short "ALL") at Tamil Nadu, which has been treated as local sales by the respondent. The case of the petitioner is that for the financial years 2006-07 to 2015-16, the petitioner effected sales to M/s.ALL, who are involved in manufacture of chassis for trucks and buses in their factories located at Ennore and Hosur in the State of Tamil Nadu. The sales of tyres were effected by the petitioner from their factory at Mysore. The

nature of the transaction adopted by the petitioner has been stated as follows:

"(i) The petitioners state that prior to the commencement of sales from their factory located at K.R.S.Road, Metagalli, Mysore-570 016, ALL placed purchase order. This purchase order is placed by ALL located at Ennore and Hossur, on the factory of the petitioners located at K.R.S.Road, Metagalli, Mysore-570 016. This purchase order mentions the model of tyre to be supplied. This purchase order also fixes the price for a given model of the tyre.

(ii) The petitioners state that when a new model of chassis is to be manufactured by ALL, the petitioners will provide drawings of the tyre to be manufactured to suit the specification of the chassis to be manufactured by ALL. Once this is approved, the manufacturing operations commences at the factory of the petitioners.

(iii) The petitioners state that, after receiving the purchase order, the tyres are manufactured to suit the specifications of the chassis being manufactured by ALL.

(iv) The petitioners state that the web portal of ALL contains a monthly schedule of tyres to be supplied by a given vendor. Every vendor of ALL of various

components to be supplied to them are given a pass word. This pass word is supplied by ALL to every vendor and therefore a pass word is also given to the petitioners which is unique to the petitioners.

(v) The petitioners state that when they log into the web portal of ALL, they have access to a monthly schedule of tyres to be supplied by them from their factories. The monthly schedule is accessed by the Marketing Division of the petitioners located at 42, Whites Road, Royapettah, Chennai. In addition to this, the monthly schedule of the tyres to be supplied model-wise to ALL is communicated by Marketing Division of ALL sitting at Chennai to the Marketing Division of petitioners sitting at Chennai. This monthly schedule/order is then communicated by the Marketing Division of the petitioners at Chennai to the Head office of the petitioners sitting at Delhi by e-mail. Thereafter, the Head Office communicates the schedule to the factory of the petitioners at K.R.S.Road, Metagalli, Mysore-570 016. The monthly schedule is a firm order by ALL. The monthly schedule specifies the quantities of a given model of tyres to be manufactured by the petitioners. The number of tyres sold to ALL has always been as per the quantum mentioned in the monthly schedule.

(vi) The petitioners state that based on the monthly schedule, the factory of the petitioners at K.R.S.Road, Metagalli, Mysore-570 016, invoices ALL. Accordingly, the tyres are appropriated to the contract

and set apart for ALL at the factory of the petitioners at K.R.S.Road, Metagalli, Mysore-570 016. Simultaneously, invoices are prepared on the factory of ALL at Tamil Nadu and dispatch made and put in the stream of inter-state sale. Every consignment is accompanied by a Central Excise/Commercial invoice mentioning the factory of the petitioners at K.R.S.Road, Metagalli, Mysore-570 016 and the consignee as ALL factory at Ennore or Hosur. Therefore, the appropriation in terms of Section 4 of the CST Act, 1956, is completed ex-factory of the petitioners located at K.R.S.Road, Metagalli, Mysore-570 016."

3.The petitioner's case is that invariably all the deliveries are effected to the factories of M/s.ALL without any interim storage, but on few occasions, due to inability of ALL to handle consignments continuously, at their request, the tyres which were invoiced and despatched from their factory at Mysore, were kept at the godown of the transporter, which have been hired by the transporter themselves. The petitioner's further case is that the web portal of M/s.ALL provides for a facility of periodical delivery at their request. While there is a monthly schedule and invoicing despatch as per monthly schedule, on account of the fact that M/s.ALL is not able to handle the consignments continuously and at their request, the title has passed in terms of Section 4 of the CST Act, 1956 in the State of Karnataka, the tyres are temporarily kept in the godown of the transporter. The web portal of M/s.ALL provides for downloading of a document called "Advance Shipping Notification (ASN)". M/s.ALL has a facility for placing periodical

indents to receive delivery from the godown of the transporter and these indents are titled as "Schedule-line Agreement (SA)". The web portal of M/s.ALL, apart from indicating the monthly schedule, in accordance with which goods are sold, also contains a web portal indicating the daily requirements and accordingly, as per daily requirements, which is SA, deliveries are made by the petitioner from the godown of the transporter.

4. Therefore, the petitioner's case is that while the sale has taken place in the course of interstate trade, the quantities to be delivered on a given day are fixed online and delivered as per online confirmation in ALL web portal. However, the true intent and purport of the contract has not been appreciated by the respondent, which has resulted in issuance of revision notice dated 13.10.2016. In the said notice, it was held that the tyres which were received from other State are not directly supplied to the buyers, but supply is made as and when the buyer made request to supply tyres. Therefore, the respondent proposed that it cannot be treated as a sale falling under Section 3(a) of the CST Act, but, it is a sale falling under the provisions of the TNVAT Act. The petitioner was called upon to submit their objections as to why tax should not be levied at 14.5% under the TNVAT Act. The petitioner submitted their objections on 07.11.2016, pointing out the modus operandi adopted by them as mentioned above. Therefore, they have stated that the tyres are unconditionally appropriated and earmarked for M/s.ALL either to their Ennore plant or Hosur at the time

of dispatch itself at their factories.

5.It was further stated that the ASN is generated by the plant and will indicate the truck, transporter and the number of tyres being transported from the plant located outside the State. Thus, the petitioner requested the respondent to decide the issue with regard to interstate sale as a preliminary issue and also to consider their explanation and if any further document is required they requested them to be put on notice and afford personal hearing. On receipt of the objections, notice for personal hearing was issued on 16.11.2016, fixing the date of personal hearing on 18.11.2016 at 02.30 p.m. The petitioner sought for deferment of the personal hearing on account of they being in the process of GST migration and as requested, the personal hearing was postponed to 28.11.2016, on which date, the petitioner appeared, followed by another reply submitted by them on 02.12.2016, in which also they supplied further details. In the said reply, the petitioner made an offer that if further document is required, they may be put on notice.

6.On receipt of the additional reply, the respondent issued notice dated 26.12.2016, calling for further details of values of supplies for the years 2006-07 to 2015-16. These details, as sought for were furnished by the petitioner vide their reply dated 30.12.2016, for the period from April 2015 to March 2016. Subsequently, by another letter dated 17.01.2017, the petitioner furnished details for the period 2012-13, 2013-14 & 2014-15 and

by letter dated 30.01.2017, the petitioner furnished the details for the period 2011-12.

7.However, the impugned assessment order dated 30.01.2017 was served on the petitioner on 01.02.2017. The petitioner, on going through the impugned order, found that the respondent has issued summons to their purchaser M/s.ALL to appear in person to explain the "supply chain management" and has recorded a statement from two officials of M/s.ALL. This according to the petitioner, was not informed to them and such statements were recorded behind them and the same cannot be pressed into service.

8.Further, the two documents, which are referred to in the impugned order viz., "Supplier Relationship Management (SRM)" and "Advance Shipping Notification (ASN)", were not at all referred to in the show cause notice and it was surprise for the petitioner to see from the impugned order, there were reference to these materials, which were not put to them in the show cause notice.

9.Therefore, the petitioner is before this Court challenging the assessment orders. In the meantime, without prejudice to the rights and contentions and under protest, the petitioner filed Industrial Input Certificate issued by their purchaser M/s.ALL confirming that they have purchased the

goods on CST basis for which C Forms have been issued during the relevant financial year and the goods purchased viz., tyres are used as inputs by them for manufacture of trucks and buses in the State of Tamil Nadu.

10. When the petitioner requested the respondent to consider these certificates without prejudice to other contentions raised by them, the respondent rejected the same by order dated 19.05.2017, on the only ground that certificate has been issued in the name of Mysore plant and not in the name of Chennai plant. The petitioner has challenged the assessment orders in W.P.Nos.4196 to 4200 of 2017, they have also challenged the order rejecting the industrial input certificate vide separate order dated 19.05.2017 in W.P.Nos.14023 to 14027 of 2017.

11. Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and carefully perused the materials placed on record and the common counter affidavit filed by the respondent in W.P.Nos.4196 to 4200 of 2017. The factual aspects as narrated above appears to give a complicated picture to the controversy before me. However, on a close scrutiny of the factual position, the issue which falls for consideration lies in a very narrow compass, that is to say that the issue to be considered is whether the respondent/assessing officer proceeded to travel beyond the scope of the proposal made in the show case notice. In

the show cause notice dated 13.10.2016, as pointed out, the allegation was that the tyres which were manufactured by the petitioner in their Mysore plant were not directly supplied to the buyers, but supply is made as and when the buyers made request to supply the tyres.

12.The respondent stated that the materials brought from the other States are being stored in the transporter's place and supplies are being made from their godown with a condition to supply the tyres "just in time". This, according to the respondent, has to be construed as local sale and taxable at higher rate of tax at 14.5% under the TNVAT Act. Thus, in the show cause notice, the respondent did not dispute the fact that the tyres were manufactured outside the State of Tamil Nadu and dispatched from the place of manufacturer and retained in the transporter's godown. The crucial question would be, for the transaction to qualify as an interstate sale, the test would be as to where the appropriation of goods took place. In fact, the proposal in the show cause notice does not seriously dispute or contest the place of appropriation, as there is no clear indication as to what has passed in the minds of the assessing officer.

13.However, the doubt, which appears to have arisen in the mind of the Assessing Officer is that the tyres are not supplied directly from the factory outside the State to the purchaser, but retained in the transporter's godown and supplied as and when required, which, according to the

respondent, amounts to local sale.

14.To examine the nature of transaction, the first requirement was to examine the nature of contract between the parties, how the supply is effected, payment are made and where appropriation takes place etc. In order to appreciate these aspects, one has to essentially go through the terms of contract and how the parties have understood the scope of the contract and what is the modus operandi adopted by them for all these years. This exercise should have been done by the assessing officer prior to issuance of the show cause notice dated 13.10.2016. Nevertheless, he did not do so, but the petitioner submitted their objections on 17.11.2016, which had clearly brought out as to what is the modus operandi adopted by them and how the transaction takes place. After which, additional details were called for, which were also furnished by the petitioner. At every stage, the petitioner had offered to produce additional documents undertook to clarify any queries and requested the respondent to put them on notice, after which the respondent issued notice on 26.12.2016 calling for the value of supplies for the years 2006-07 to 2015-16 and gave 15 days time. The petitioner furnished the information in three batches viz., for the period from April 2015 to March 2016 by their letter dated 30.12.2016, for the period from 2012-13, 2013-14 and 2014-15 by letter dated 17.01.2017 and for the period 2011-12 by letter dated 30.01.2017.

15. However the impugned order is dated 30.01.2017. The chain of events clearly show that the respondent obviously could not have appreciated the details placed by the petitioner, which he had called for vide notice dated 26.12.2016. Probably after all the details have been furnished, the assessing officer thought fit to summon the purchaser to understand the nature of transaction. While the move taken by the assessing officer is appreciable, but, the time at which he exercised such discretion is not the proper time as, by then, the respondent had already pre-concluded the matter. In other words, such exercise said to have been done by the respondent is much prior to forming any opinion on the nature of transaction between the parties. Nevertheless, the officials of the purchaser responded to the summon and have given statements.

16. Further, the gist of the statements having been referred to by the respondent in the impugned order, not even a copy has been given to the petitioner, but few observations stated to have been given by the officers of the purchaser have been referred to. This material, which has been relied on and referred to in the impugned order has not been taken note of by the assessing officer, when revision notice was issued to the petitioner, hence this could not be the basis for completing the assessment. Even assuming that the respondent was justified in calling upon the purchaser to appear before them and give statement., when the statement is said to be used against the dealer/petitioner, they are entitled to have an opportunity to purforth their objections or offer their clarification.

17. Thus the assessment order appears to have been completed in a very hasty manner, without analysing the nature of transaction as projected by the petitioner. As mentioned earlier, the respondent does not dispute the fact that the purchase order has been placed by the purchaser with the factory at Karnataka. The question would be as to whether merely because, the goods are transported and left to lie in the transporter's godown and later on, supplied, as and when required, would be a reason to deny the transaction status as an interstate sale and treat it as a local sale.

18. On this issue, useful reference can be made to the decision of the Hon'ble Supreme Court in the case of **IDL Chemicals Limited vs. State of Orissa** reported in (2007) 14 SCC 386. The question that arose in the said case was some what similar to the case on hand, wherein the purchase order was in pursuance to order of indents, which were issued by the collieries of CIL and the payment was made as per the said order and approximate quantity was fixed by this order. While examining the nature of transaction, the Hon'ble Supreme Court held that it is a purchase order issued by apex body, viz., CIL and in pursuance of this, indents were placed by the collieries and it was convenient mode of supply by the appellant therein, instead of directly supplying the goods from the factory and it was held not transfer of stock-in-trade to various branches and it was a firm

order of purchase and the goods were despatched from Rourkela to various consignment agents and from there it was supplied to various collieries.

19.Learned counsel for the petitioner took great pains to explain to this Court as to the modus operandi and in this regard, referred to the purchase order dated 01.11.2011 to show the model number, the quantity, rate etc. This purchase order is termed as the master purchase order, which contains the condition of purchase. It is further submitted that based on such purchase order, invoices are raised as per the advance shipping notification and invoice dated 22.12.2015 and 10.12.2015 respectively, were shown to demonstrate as to how the transaction takes place. Further, the webportal, which can be accessed only by the petitioner was also shown to establish their submission that the supplies were effected against the firm orders.

20.Therefore, it is submitted that if adequate opportunity had been granted by the respondent, the petitioner would have been in a position to explain the nature of transaction.

21.The learned Additional Government Pleader on the other hand would submit that the respondent has done a thorough exercise of the matter and has examined the concept of supply chain mangement followed by M/s.ALL issued notice to them to appear in person and after collecting

the full details and analysing the procedure adopted, held that by the time the valid agreement/contract is made, the tyres are made available from the transporter's godown within the State of Tamil Nadu. Therefore, it cannot be a CST transaction, but a local sale.

22. After elaborately hearing the learned counsels, this Court is fully convinced that there are serious flaws in the decision making process, which would render the impugned order not sustainable in law. Firstly, as pointed out, the impugned order has proceeded beyond the proposal made in the show cause notice. The endeavour made by the assessing officer during the assessment proceedings by issuing summons to the purchaser and obtaining certain details from them, without notice to the petitioner, is a serious error and amounts to a gross violation of principles of natural justice. The petitioner had no opportunity to rebut such stand or explain their position on the factual basis. Thus, this procedural error render the impugned proceeding as bad in law.

23. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of **Rallis India Limited v. State of Tamil Nadu** reported in **1994 vol.92 STC (325)**, which is also some what a similar transaction, where the parties claimed it to be an interstate sale and the Hon'ble Division Bench held as follows:

"14.We, therefore, hold that the assessing authorities and the Tribunal were not right in holding that the goods in question were transferred to Cochin in pursuance of contracts of sale. We hold that Section 3(a) does not come into play. It is the specific case of the petitioners that "C" forms were filed under protest reserving their right to press afterwards a case for reduced rate of tax. On the mere fact that "C" forms are available to cover th entire turnover relating to the transfer of goods from Uthagamandalam to Cochin describing M/s.RIL, Bombay, as purchasing dealer and the petitioner-company as seller, it cannot be presumed that the movement of goods from Uthagamandalam to Cochin was on the basis of the orders from M/s.RIL, Bombay. As we have already stated, the fact whether the assessee had sold ossein from the Cochin godown and whether such sales are assessable to tax in that State or not are beyond the scope of these tax cases."

24.The above reasons are sufficient to hold that the impugned proceedings are wholly unsustainable warranting interference at the hands of this Court. Accordingly, the impugned assessment orders dated 30.01.2017 are set aside and the matters are remanded to the respondent for fresh consideration, after affording an opportunity of personal hearing, in which the petitioner should be afforded full opportunity to explain the nature of transaction and the purchaser, M/s.ALL, shall be summoned and they shall be heard in the presence of the petitioner, after which assessment shall be re-

done in accordance with law.

25. In the other set of writ petitions, viz., W.P.Nos.14023 to 14027 of 2017, the petitioner has challenged the orders rejecting the industrial input certificates produced by the petitioner as issued by their purchaser M/s.ALL. In the light of the above orders passed in W.P.No. 4196 to 4200 of 2017, there may not be any necessity for this Court to go into the aspect as to whether Industrial Input Certificates should be gone into or not. These certificates were produced by the petitioner, without prejudice to their rights and contentions and under protest. Nevertheless, since the respondent has passed an order refusing to accept the certificate, this Court has to consider the correctness of said order. The only reason given in the said order is that the certificates were issued in the name of the Mysore plant and not in the name of Chennai plant. At the first instance, the respondent had failed to take into consideration that the allegation against the petitioner itself is that the tyres which were manufactured in the Mysore plant were brought into the State of Tamil Nadu as interstate sale, kept in the transporter's godown and supplied to the purchaser as and when required, which was said to be treated as interstate sale. Thus, for all practical purposes, if the purchaser has to issue industrial input certificate, obviously it shall be issued in the name of manufacturer at the Mysore plant, and not to the Chennai plant which came to be in existence only during the year 2012. On the issue, it is relevant to take note of the decision of the Delhi High Court in the case of

C.Jairam Pvt. Ltd. vs. Commissioner of Sales Tax, New Delhi reported in **1981 vol.52 STC 318**, wherein while considering a similar issue in respect of D forms under the Central Sales Tax Act, which were rejected by stating that it has been mentioned as Bombay instead of Delhi and therefore, it has to be amended, rejecting the contention raised by the Department was held as follows:

"That when once the D forms were produced it was not for the sales tax authorities to reject them on some ground, but it was the duty of the sales tax authorities to determine whether the exemption was to be granted on the basis of those forms.

That the branch or the head office or the other branch of the same dealer were not different entities but the same entity.

That, the purchase order in the case had been placed on the company in Bombay. As long as the sales were evidenced by the D forms the assessee was entitled to the concessional rate of tax. Therefore the D forms were not defective and the word "Bombay" occurring in the forms merely gave the address of the company at Bombay and not the place at which the forms had to be used. The applicability of the D forms did not depend on the address given, but depended on the place where the sale was included in the taxable turnover. In other words, the original forms were not defective.

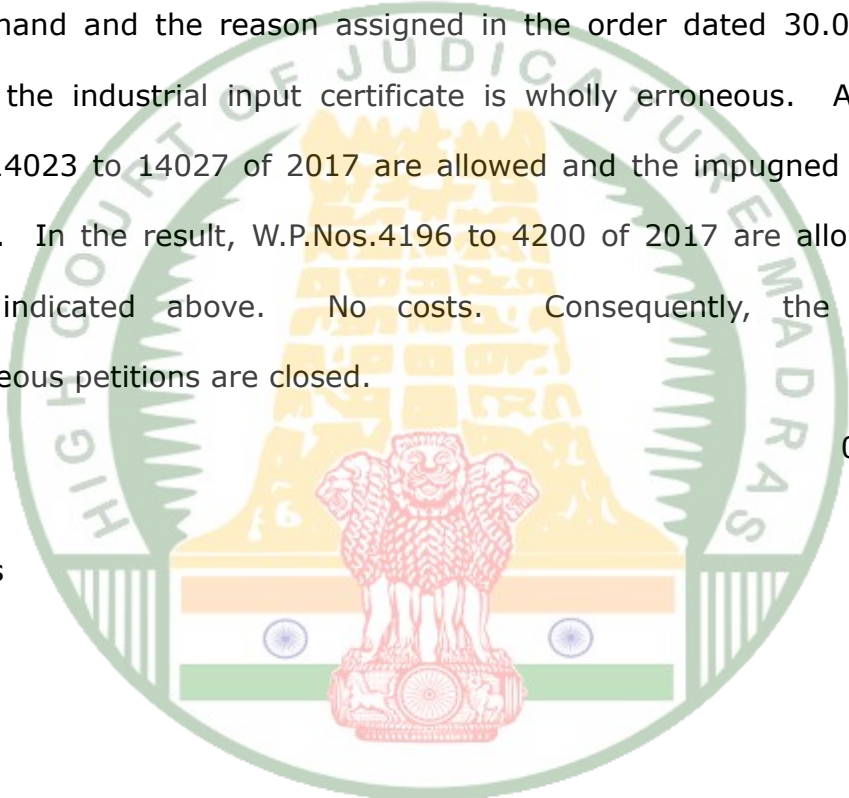
Also held, that the appellate or the revisional

authorities were not justified in refusing to entertain the certificates or the corrected D forms.”

26.The above legal position would be squarely applicable to the case on hand and the reason assigned in the order dated 30.01.2017 for rejecting the industrial input certificate is wholly erroneous. Accordingly, W.P.Nos.14023 to 14027 of 2017 are allowed and the impugned orders are set aside. In the result, W.P.Nos.4196 to 4200 of 2017 are allowed in the manner indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

04.09.2017

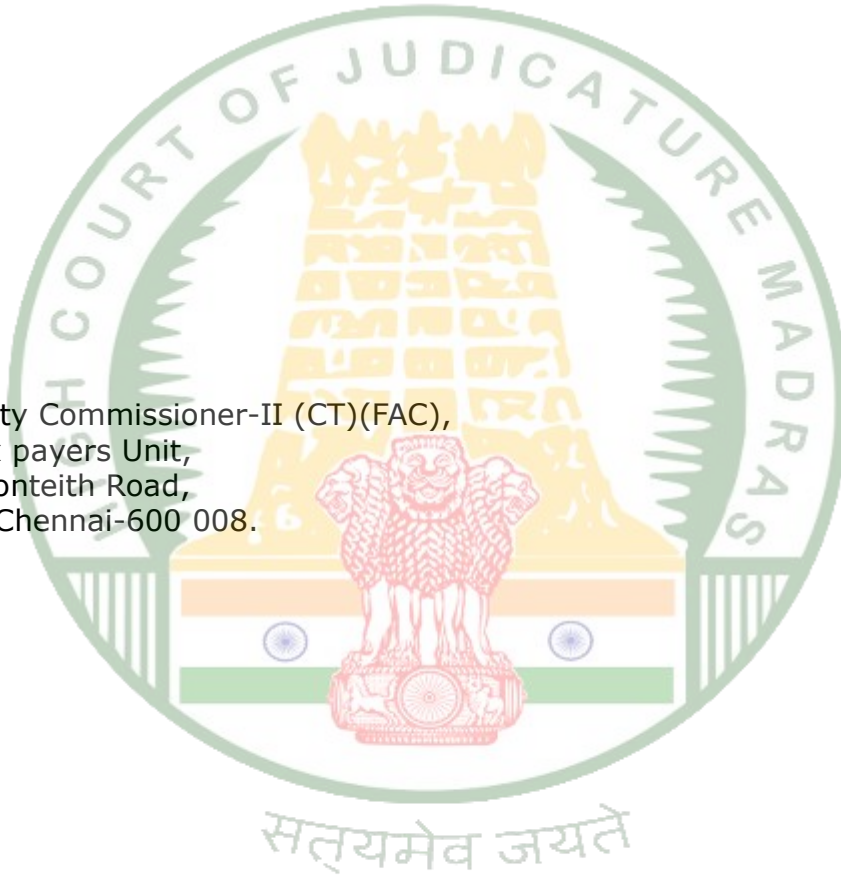
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The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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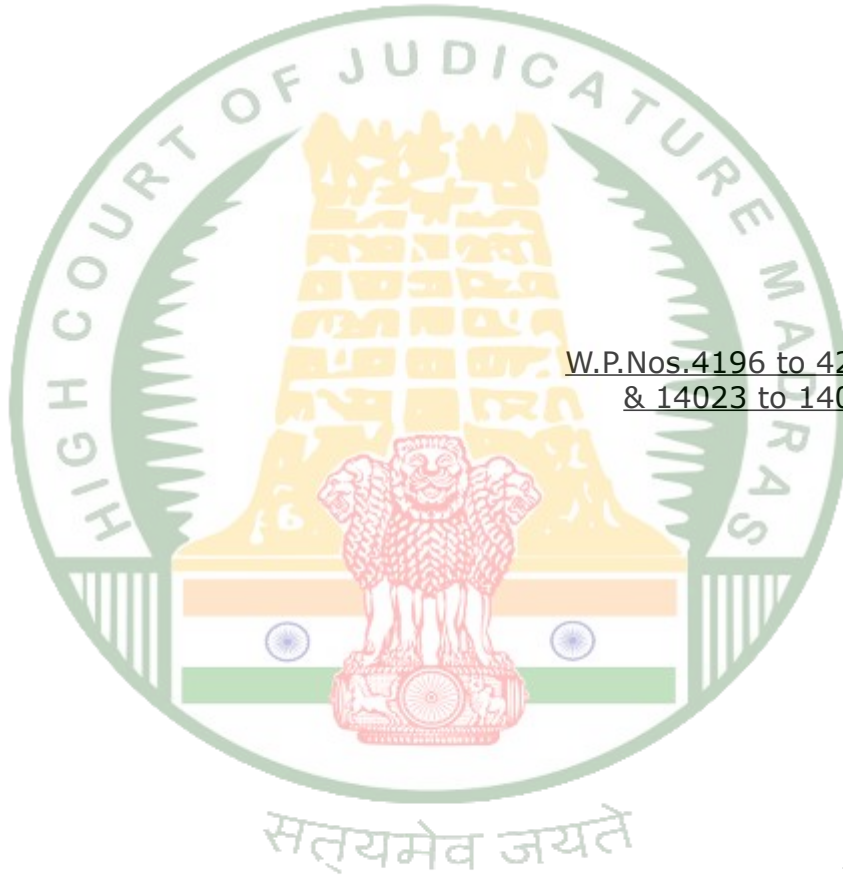
The Deputy Commissioner-II (CT)(FAC),
Large Tax payers Unit,
No.34, Monteith Road,
Egmore, Chennai-600 008.



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T.S.SIVAGNANAM, J.

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