

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.Nos.4240 and 4241 of 2017

And

W.M.P.Nos.4393 and 4394 of 2017

Tvl.Sri Meenakshi Enterprises
Represented by its Partner
S.Ramasamy

... Petitioner in both W.Ps.

Vs.

1.The Assistant Commissioner (CT) (FAC),
Namakkal (Town) Assessment Circle,
Namakkal.

2.The Appellate Deputy Commissioner (CT),
C.T.Building,
Salem.

... Respondents in both W.Ps.

Common Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in TNGST.A.P.Nos.18/2013 and 19/2013 respectively, dated 31.10.2016 and quash the same as being contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.R.Venkatesh
Government Advocate

COMMON ORDER

1.Issue Notice. Mr.R.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondents. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.These are writ petitions pertaining to assessment years 2002-03 and 2003-04. Qua, the said assessment years, two separate orders in appeal of even date i.e., 31.10.2016, have been passed.

3. Before the first Appellate Authority, two issues were raised.

3.1. First, with regard to levy of RST on resale of white kerosene.

3.2. Second, with regard to levy of penalty.

4. Insofar as levy of RST is concerned, the first Appellate Authority has disagreed with the petitioner and thus, sustained the levy of RST.

5. Insofar as levy of penalty is concerned, the first Appellate Authority has observed as follows:

"Instead of penalty, the assessing authority is instructed to levy interest u/s 24.

In final, the appeal stands dismissed."

6. Learned counsel for the petitioner says that while the appeal has been dismissed, the first Appellate Authority qua, imposition of penalty has observed that the assessing authority could levy interest under Section 24 of the TNGST Act.

7. It is, thus, the contention of the learned counsel for the petitioner that there is no clarity as to whether the first Appellate Authority has allowed the appeal with regard to levy of penalty.

8. Mr. Venkatesh, who appears on advance notice, submits that a clarification can be sought by the petitioner, as there appears to be a typographical error, in as much as the first Appellate Authority while dismissing the appeal, has observed that instead of levying penalty, interest may be imposed on the petitioner.

9. Having heard the learned counsel for the parties and perused the record, I am of the view that this clarification can be sought by the petitioner from the first Appellate Authority.

10. In case, the first Appellate Authority is moved for clarification, it will take a decision in the matter, as expeditiously as possible, though, not later than one (1) week from the date such an application is moved.

10.1. It is made clear, though, till such time a decision is taken on the application, no coercive measures will be taken against the petitioner qua, penalty.

11.The writ petitions are disposed of in the aforementioned terms. Consequently, the connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT) (FAC),
Namakkal (Town) Assessment Circle,
Namakkal.
2. The Appellate Deputy Commissioner (CT),
C.T.Building,
Salem.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.10995

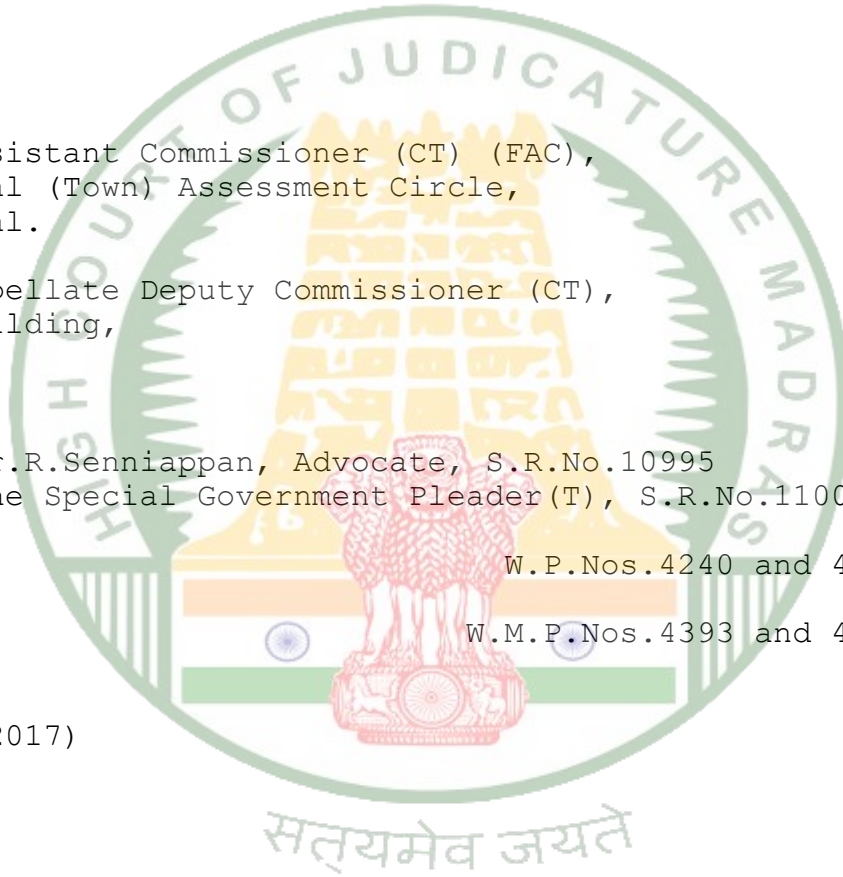
+1cc to the Special Government Pleader(T), S.R.No.11007

W.P.Nos.4240 and 4241 of 2017

and

W.M.P.Nos.4393 and 4394 of 2017

VSN(CO)
CA(22/02/2017)



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