

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.6442 of 2004
and
W.P.M.P.No.7634 of 2004

Thambbi Modern Spinning Mills Ltd.,
No.4-B, Salai Road,
Salem-636 001.

... Petitioner

Vs.

The Commercial Tax Officer,
Bazaar Circle,
Salem.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for the records on the files of the respondent herein in TNGST Asst.No.2780166/2001-2002, dated 27.11.2003, quashing the proceedings of the respondent in TNGST Asst.No.2780166/2001-2002, dated 27.11.2003, in so far as it relates to imposition of penalty of Rs.18,57,342/- under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.Parthasarathy for
Mr.N.Inbarajan

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.Parthasarathy, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner has challenged the order of assessment passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959, for the assessment year 2001-2002, insofar as it levies penalty under section 12(3)(b) of the Act. Admittedly, turn over has been culled out from the books of accounts produced by the petitioner. This is admitted in the impugned order and more particularly in para 7, wherein the Assessing Officer admits that the documents such as the Cash Book, Ledger, Journals, DEPB Sales Register, Form XX, Form 'C' and Form 8 registers were produced by the petitioner. Further

more, there was no allegation in the pre-assessment notice that there was suppression on the part of the dealer with an intention to avoid payment of tax. Under such circumstances, Section 12(3)(b) cannot be invoked.

3. Hence, for the above reason, the writ petition is allowed and the impugned order is set aside. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk/tar

To

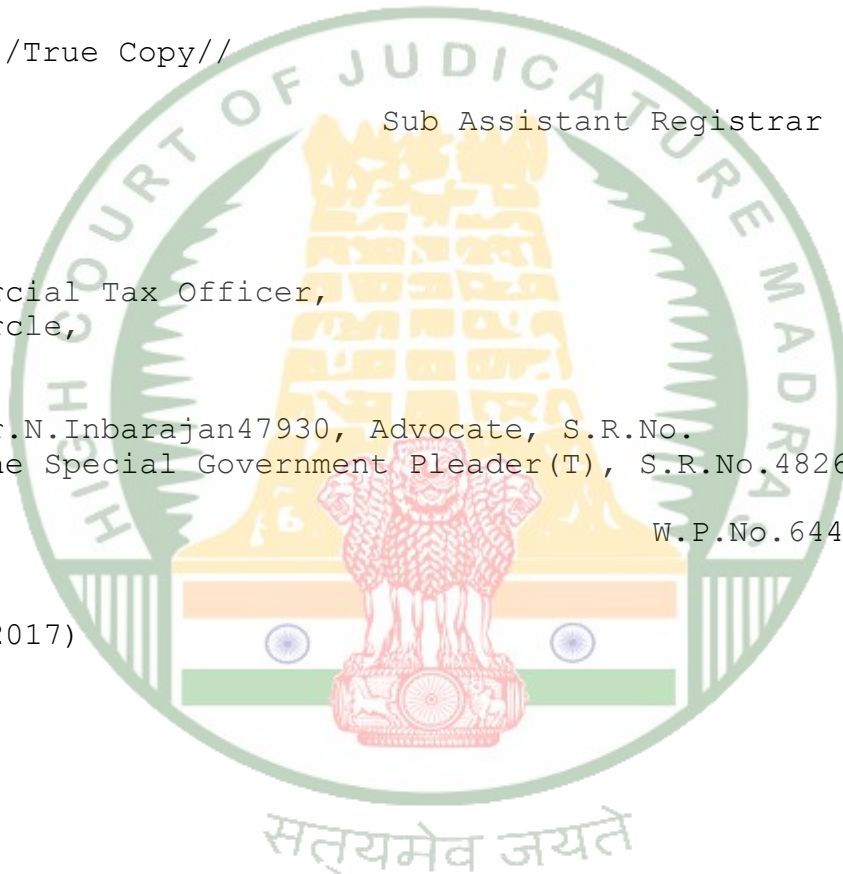
The Commercial Tax Officer,
Bazaar Circle,
Salem.

+1cc to Mr.N.Inbarajan47930, Advocate, S.R.No.

+1cc to the Special Government Pleader(T), S.R.No.48265

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SR(CO)
CA(07/08/2017)



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