

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.21924 of 2004 and
W.P.M.P.No.26476 of 2004

Sree Kumaran Thanga Maligai,
Rep. By its Partner K.Sivalingam,
No.133, New Market Street,
Tirupur 641 604.

... Petitioner

Vs.

1.Deputy Commissioner (CT) (Designated Authority),
Coimbatore.

2.The Commercial Tax Officer,
Tirupur South, Tirupur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order passed by the 2nd respondent in his Order No.TNGST No.2321662/96-97 dated 10.06.2004 quash the same.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2.The petitioner has filed this writ petition challenging a notice issued by the 2nd respondent proposing to revise the assessment for the year 1996-1997 under the Tamil Nadu General Sales Tax Act, 1959 by invoking his powers under Section 55 of the Act. As against the assessment made for the said year, by order dated 31.08.1999, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT), Pollachi in A.P.No.6/1999. At that point of time, the Government of Tamil Nadu enacted the Tamil Nadu Sales Tax, Entertainments Tax and

Luxury Tax (Settlement of Disputes) Act, 1999 (12 of 1999) [hereinafter referred to as 'the Settlement Act'] which provide for expeditious enforcement of payment of arrear tax, penalty or interest in dispute under the relevant Act, relating to sales tax, entertainment tax etc. by way of settlement of such dispute on a one time basis. Immediately, the petitioner withdrew the appeal filed before the Appellate Assistant Commissioner and filed a Form I declaration in terms of Section 5(1) of the Settlement Act requesting for settlement of their case for the assessment year 1996-1997. The case has been settled and a Certificate was issued by the Designated Authority vide Certificate dated 09.02.2000. After about four years, the impugned notice has been issued by the respondent proposing to reopen the assessment on the ground that there was a computation error. The respondent accepts the fact that the petitioner opted for settlement of the case. The question would be as to whether after the Certificate is issued in terms of Section 8(1) of the Settlement Act, whether the 2nd respondent would have jurisdiction to revise the assessment invoking his powers under Section 55 of the Act.

3. In the para wise comments given by the 2nd respondent to the learned Special Government Pleader vide letter dated 21.10.2004, none of the legal issues raised by the petitioner have been dealt with. Therefore, the said instruction does not render any support to the case of the respondents. The Statute makes it abundantly clear that there is an absolute bar on reopening of certain cases. Section 9 of the Act is to the effect that a certificate of settlement issued under Section 8 (1) of the Act shall be conclusive as to the dispute to which it relates to, and no matter covered by such certificate of settlement shall be re-opened in any proceedings of review or revision, or in any other proceeding, under the relevant Act. Thus, the petitioner's case having been settled under the Settlement Act, the question of re-opening by the 2nd respondent invoking Section 55 of the TNGST Act is wholly without jurisdiction.

4. For the above reasons, the Writ Petition is allowed and the impugned notice is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

Sgl

To

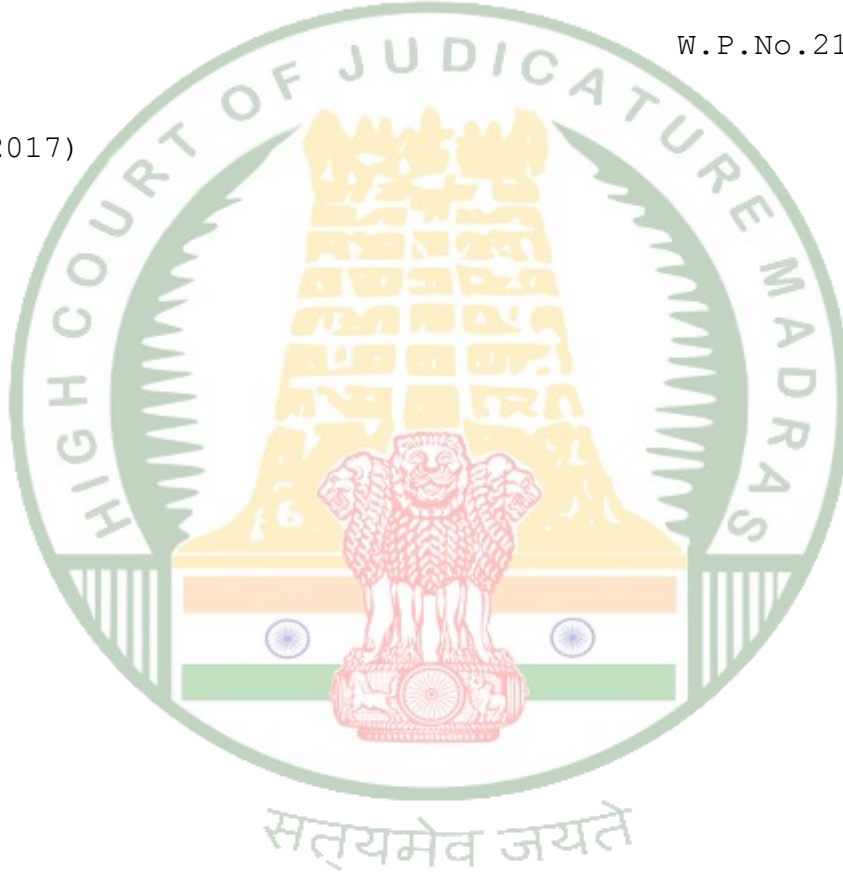
1.The Deputy Commissioner (CT)
(Designated Authority),
Coimbatore.

2.The Commercial Tax Officer,
Tirupur South, Tirupur.

+lcc to Mr.M.Md.Ibrahim Ali, Advocate SR.No.78822
+lcc to Government Pleader SR.No.78970

W.P.No.21924 of 2004

GN(29/11/2017)



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