

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.12166 & 12167 of 2007

18254 & 18255 of 2008 11364 to 11366 of 2007

M.P. Nos.1 & 1 of 2007, 1 and 1 of 2008

and 1,1,1 and 2,2,2 of 2007

W.P.Nos.12166 and 12167 of 2007:

M/s.Vinayagar Spinning Mills,
21, Town Extension 4th Street,
Tirupur - 641 604.

...Petitioner in both WPs.

Vs

The Commercial Tax Officer,

Bazaar Circle, Tirupur.

... Respondent in both WPs.

Prayer in both WPs.: PETITIONS filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the Respondent in TNGST No.24230853/2004-05 and CST No.323633/2004-05, quash the orders dated 16.01.2007 passed therein and further direct the respondent not to levy tax on the sale of cotton yarn sold by the petitioner to exporters in the light of G.O.No.2398, Revenue dt.27.07.1970 and G.O. No.1128, Revenue dt.31.05.1968, G.O. No.197(b)/70 dt 27.07.1970 besides Sec 12-C of TNGST Act, 1959.

For Petitioner : Mr.B.Raveendran assisted by

MS.C.P.Priya

For Respondent : Mr.V.Haribabu, AGP

W.P.Nos.18254 and 18255 of 2008:

M/s.SRP Enviro Systems (P) Ltd.,
Represented by its Director,
Mr.K.V.Ravikanth,
2/607-5, Krishnagiri Main Road,
Opposite Yamaha Show room,
Ganga Nagar, Hosur.

...Petitioner in both WPs.

Vs

The Commercial Tax Officer,
Hosur (North) Assessment Circle,
Hosur.

... Respondent in both WPs.

Prayer in both WPs.: PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the respondent in TNGST.3321940/05-06 & 04-05 dated 28.3.2008 and quash the same as being contrary to Section 7-C of the Tamil Nadu General Sales Tax Act, 1959 and 12-C of the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 2006 (Tamil Nadu Act No.37 of 2006).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Haribabu, AGP

W.P.Nos.11364 to 11366 of 2007:

Henkel Marketing India Limited
(formerly known as
Detergents India Limited,
No.3, Club House Road, Chennai - 2)
represented by its Director,
Debasis Saha "TPL"House,
No.3, Cenotaph Road,
Chennai - 600 018.

...Petitioner (in all three WPs)

Vs

The Commercial Tax Officer,
Anna Salai -II, Assessment Circle,
"Saire Mansion", 621 Anna Salai,
Chennai 600 002.

... Respondent (in all three WPs)

Prayer in W.P. Nos.11364 & 11366 of 2007: PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records on the files of the Respondent herein in CST/31962/2002-03 and CST/31962/2003-04 dated 27.02.2007 and quash the same, while directing the Respondent herein to accept the returns as provided under Section 12-C(1) of the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 2006 (Tamil Nadu Act No.37 of 2006) read with Section 9 (2) of the Central Sales Tax Act, 1956.

Prayer in W.P. No.11365 of 2007: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the respondent herein to forbear from proceeding to make an assessment proposed in CST/31962/04-05 dated nil contrary to Section 12 C of the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 2006

(Tamil Nadu Act No.37 of 2006) read with Section 9 (2) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.N.Prasad assisted by

Ms.G.Jaya Shruthi

For Respondent : Mr.V.Haribabu, AGP

C O M M O N O R D E R

W.P.Nos.18254 and 18255 of 2008 and 11364 to 11366 of 2007:

A common order is passed in respect of the above five Writ Petitions, since the legal provisions that are at play are more or less one and the same. After dealing with the legalities of the matters, I will thereafter refer to the specific facts of each matter and apply my conclusions in law to each Writ Petition.

2. The Government of Tamil Nadu had introduced a special scheme of assessment in terms of Section 12C of the Tamil Nadu General Sales Tax Act 1959 (in short 'TNGST Act') bearing in mind the transitional period between the phasing out of the TNGST Act and the coming into force of the Tamil Nadu Value Added Tax Act, 2006 (in short, 'TNVAT Act'). The spirit and intendment of Section 12C appears to be in recognition of the fact that a finality has to be arrived at in regard to assessments for the periods prior to 01.04.2006. (The TNVAT Act came into force from and with effect from 01.01.2007). Thus, an expedited and simplified procedure for assessment was put in place for completion of assessments prior to the aforesaid date, i.e., 01.04.2006 (in short 'effective date').

3. Section 12C provided that assessments for the periods prior to the effective date shall be completed by the Assessing Authority during the period 01.04.2006 to 31.03.2007 on the basis of the returns filed by the petitioner and upon consideration of certain pre-conditions and compliances that were fastened upon the parties in terms of Section 12C as well as Rule 15(5-E) of the Tamil Nadu General Sales Tax Rules (in short 'Rules').

4. The provisions of Section 12C and Rule 15(5-E) being critical to the appreciation of the issues that arise in this writ petition, are extracted below:

Section 12-C

'12-C. Assessment of sales in certain cases- (1) Notwithstanding anything contained in this Act but subject to the provisions of section 16, the assessment of a dealer in respect of the assessment for the period prior to the 1st day of April 2006 shall be on the basis of the return relating to his turnover and on the basis of the declaration or certificate as may be prescribed, furnished on or before the 31st March 2007 and

such return shall be accepted without requiring the presence of the dealer or production of books of accounts by the dealer subject to such conditions as may be prescribed:

Provided that this sub-section shall not apply to a dealer who has filed an appeal or other proceeding in respect of any assessment for the period referred to in this sub-section and is pending before the High Court or the supreme Court, as the case may be.

(2) Every dealer who claims to be not liable to pay tax and has not filed return, shall file the return on or before the 31st March 2007 in the prescribed manner relating to his turnover for the period prior to the 1st day of April 2006 and such return shall be accepted, subject to the provisions of section 16, failing which his registration shall be cancelled, after giving him a reasonable opportunity of being heard.'

Rule 15(5-E):

'(5-E) The conditions to be satisfied by a dealer for the purpose of sub-section (1) of Section 12-C are , namely:-

(1) The dealer should have submitted prescribed return for the year before 20th December 2006.

(2) The dealer should submit the declaration referred to in sub-section (1) of section 12-C in Form XVII or other certificates already prescribed in the Act

(3) During the relevant assessment year, the dealer should not have attempted to conceal or suppress tax liability of more than twenty-five thousand rupees.

(4) The dealer should not be in arrear of tax as per the monthly and annual returns filed for the assessment years concerned.

(5) The dealer should not also be in arrear of tax for any previous year other than those cases in respect of which appeal or revision is pending.

(6) The dealer's assessment does not relate to the first or last year of business.

(7) In case where the total turnover under the Act exceeds fifty lakhs of rupees, the dealer shall file his annual return only after it is duly audited and certified by a Chartered Accountant or a Cost Accountant.'

5. The Commissioner, Commercial Taxes issued a Circular setting out very specific criteria for the purposes of assessment and guidelines for completion of the same. The Circular is extracted below:

VAT CELL Circular NO:12/2007 Office of the
Commissioner of (VAT Cell No.26401/2007)
Commercial Taxes,

Chepauk, Chennai 600 005.

Dated: 23.07.2007

C I R C U L A R

SUB: Tamil Nadu General Sales Tax Act, 1959 -
Deemed Assessment - Introduction of Section 12-C -
Certain guidelines issued - Regarding.

REF: Commissioner of Commercial Taxes Circular
No.23/2006, dated 27.12.2006 and subsequent
circular issued.

Inspite of instructions issued in the circular cited, it has been brought to the notice of the Commissioner of Commercial Taxes that some of the assessing officers are insisting the production of accounts relating the finalisation of assessment for the years upto 2005-2006. In this connection, the following instructions are issued:

(1) The assessing authorities should pass deemed assessment orders in all the cases where the prescribed returns have been filed and declaration forms and certificates submitted in support of their claim of exemption or concessional rate of tax.

(2) The assessing authorities should sort out the assessment files where there is no need to file saleable forms differentiated from the files involving saleable forms.

(3) Wherever no saleable forms are involved, they have to pass orders accepting the turnovers declared by the dealers. Even if there is

mistake / error in a return, they should pass orders without calling for accounts. Thereafter, they can revise the order, wherever necessary.

(4) Wherever the declaration forms or certificates prescribed have not been submitted, notices must be issued immediately by disallowing the concessional rate of tax / exemption specifying the date (within 90 days) before which the records should be filed.

(5) In case the forms and declarations were not filed within the stipulated time, orders should be passed disallowing the claim of concessional rate of tax / exemption.

(6) If the declaration forms or certificates are produced subsequently after passing of the order, revision of assessment may be considered.

The assessing officers are instructed to follow the above instructions strictly. They are strictly instructed not to call for the dealer's accounts under any circumstances for the purpose of passing deemed assessment upto the assessment year 2005-2006. They will be held personally responsible if any deviation is noticed.

Assistant Commissioners and Deputy Commissioners are instructed to properly supervise this item of work. If any complaint is received, they will also be held responsible.

The receipt of this circular should be acknowledged at once.

Sd/- XXXXXXXXX

Commissioner of Commercial Taxes'

6. My understanding of the Scheme of expedited assessment is as follows:

(i) Section 12C is intended to ease the transition from the TNGST regime to the TNVAT regime.

(ii) It is operational i.e. to be applied, in respect of all pending assessments for the periods prior to the effective date.

(iii) It provides for an assessment to be framed for periods prior to 01.04.2006, the procedure being specifically set out in the applicable Rule and the Circular extracted above.

W.P.Nos.18254 and 18255 of 2008:

7. Two orders of assessment are impugned before me both dated 28.03.2008 for the periods 2004-05 and 2005-06.

8. Heard Mr.Senniappan, learned counsel for the petitioner and Mr.Haribabu, learned Additional Government Pleader for the respondent.

9. The petitioner is a contractor and a dealer in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 on the files of the respondent/Assessing Officer. As far as both assessment years are concerned, the petitioner had availed of the scheme of assessment under Section 12 C. Notice dated 02.03.2007 had been issued though served on the assessee/petitioner on 11.05.2007. The petitioner objected to the pre-assessment process on 21.05.2007 relying both on the expedited process of assessment set out under Section 12 C and seeking a personal hearing prior to conclusion of assessment proceedings. The orders of assessment had been passed on 28.03.2008 after a period of ten months (approx.) from filing of reply by the petitioner. No personal hearing as sought for was provided.

10. With respect to the assessment relating to the period 2004-05 though the provisions of Section 12 C have been invoked the Assessing Authority has dealt with the request in the following terms:

'Request to complete the assessment under Sec.12-C

According to sub Rule 5(5) (6) of Rule 15 the relevant year of assessment should not be the first or last year of business and according to Sub Rule 5(E) (3) of Rule 15 during the relevant assessment year the dealer should not have attempted to cancel or suppress tax liability of more than twenty five thousand rupees.

In this case the dealers had commenced their business in Oct'04 i.e. during the assessment year only. Further more the Enforcement wing officers during the course of their inspection on 27.7.05 noticed tax suppression. In view of the above, their assessment cannot be completed under section 12 C of the Act, as the conditions stipulated in the act and also the circular instructions of the commissioner of Commercial Taxes, Chennai are not fulfilled by the dealers. Hence they are not eligible to be assessed under section 12 (c) of the Act'

11. It is not disputed that the dealer in this case has commenced business in October, 2005, as rightly stated by the Assessing Authority. Thus clause (6) under Rule 15 (5-E), that excludes assessments for the first or last year of business from the scheme of a 12 C assessment, will be attracted in the present case. The rejection by the Assessing Authority for the request to complete the assessment under Section 12 C for the period 2004-05 is thus in order.

12. However as far as the period 2005-06 is concerned, the position is different. The request of the petitioner to complete the assessment under Section 12 C has been dealt with by the Assessing Authority in the following terms:

'Request to complete the assessment under Sec.12-C

In this case, the business premises of the dealers was inspected by the Enforcement wing officers on 27.7.05 and they noticed that the supply of 'clean Room Equipment' was reported under "Work Contract" and paid tax @ 4% instead of 20% and tax and surcharge suppressing were involved more than twenty five thousand rupees. Their the conditions laid down under Sub Rule 5-E of (Rule 15 read with 12 (c) (i) have not been fulfilled in this case therefore the dealer are not eligible to be assessed under section 12 (C) of the Act.'

13. The Assessing Authority thus proceeds on the basis that there has been suppression of tax by the dealer noticed at the time of visit by the Enforcement Department Officials on 27.07.2005. The officials are stated to have noticed that the supply of 'clean room equipments' was taken to be a works contract and brought to tax at the rate of 4%, whereas, according to the Department, the transaction comprised of sale of equipment which would be taxable at the rate of 20%. Thus, according to the revenue, there was suppression of more than Rs.25,000/-, in this case and in the light of the condition in clause (5) of Rule 15 (5-E), that excludes cases where the dealer has suppressed tax liability in excess of Rs.25,000/-, the petitioner was not entitled to the benefit of the scheme.

14. I am prima facie of the view that the question of suppression does not merely mean a difference in the interpretation of law vis-a-vis the petitioner and the respondent. In the present case, it is a legal dispute as to whether the transaction in question constitutes works contract, taxable at 4% or sale of equipment, taxable at 20%. Though the Assessing Authority, in the present case, has proceeded to assess the transaction as sale of equipment, taxable at the rate of 20%, that by itself cannot lead to an inference of suppression and a bonafide difference of opinion on the interpretation of a taxing statute cannot be ruled out.

15. In the facts and the circumstances of the present case, particularly bearing in mind that no personal hearing has been granted to the petitioner, I am inclined to set aside the assessments, to be re-done de novo for both periods 2004-05 and 2005-06, on merits.

16. This order is passed bearing in mind that we are today in 2019, and the scheme of expedited assessment proceedings under Section 12C has long since elapsed. The need of the hour is to bring in finality to long pending assessments and this can best be achieved by avoiding technical distractions and instead focusing on substantive matters.

17. The assessee shall appear before the Assessing Authority on 30.10.2019 at 10.30. a.m.. No further notice need be issued in this regard. The Assessing Authority shall after hearing the petitioner and considering all materials that may be placed by it, pass orders of assessment de novo and on merits within a period of four (4) weeks from date of conclusion of personal hearing.

18. These Writ Petitions are allowed in the aforesaid terms.

W.P.Nos.11364 to 11366 of 2007:

19. These Writ Petitions relate to the assessment periods 2002-03, 2003-04 and 2004-05. Orders of assessment dated 27.02.2007 are impugned in relation to assessment periods 2002-03 and 2003-04 and show cause notice dated 27.02.2007 for the period 2004-05.

20. Some dates are relevant in these matters. Pre-assessment notices for the periods 2002-03 and 2003-04 were issued on 31.08.2005 and the assessee filed its reply dated 15.11.2005. The question for determination is whether the provisions of Section 12C and the procedure for expedited assessment provided therein could also be sought by an assessee where there had been proceedings for assessment initiated even prior to 01.04.2006. The tenor of Section 12C, to my mind, appears to be that assessments in relation to the periods prior to 01.04.2006 'shall' be on the basis of return and the declarations prescribed and such returns shall be accepted without requiring the presence of the dealer or production of books of accounts subject to the satisfaction of the conditions stated therein. This indicates that an order under Section 12C will have to be passed in cases where an assessee satisfies all the prevalent conditions even if proceedings for assessment have been initiated in respect of the periods in question. After all, the clarificatory circular issued by the Special Commissioner makes it clear that the purpose of Section 12 C and the corresponding Rule is to bring to an end proceedings for assessment as expeditiously as possible, if the officer is prima facie satisfied with the return and the exemptions sought by the assessee, subject to the conditions stipulated in the Rule.

21. Thus I hold that an assessment under Section 12 C must be framed even in respect of periods where there has been exchange of communication by way of pre-assessment notice, objections as well as personal hearing afforded to the petitioner prior to 01.04.2006, such proceedings pending completion as on 01.04.2006. The impugned orders of assessment though dated 27.02.2007 do not refer to the provisions of Section 12 C at all.

22. Admittedly, in these cases the assessee has only invoked the applicability of Section 12C only after completion of assessment, by communication dated 19.03.2007 wherein for the first time Section 12 C is referred to and a request made to the Assessing Officer to cancel the assessment order and to recall the same. This request has been pending with no reply, hence prompting the assessee to approach this Court by way of the present Writ Petitions.

23. In counter, the Assessing Authority relies on the provisions of Rule 15 (5-E) alleging suppression on the part of the petitioner and hence justifying the non-applicability of Section 12 C for the periods of assessment in question.

24. According to the Assessing Authority, the petitioner has disguised taxable turnover as stock transfers and this would amount to suppression in terms of Rule 15(5-E). The relevant provisions have already been extracted elsewhere in this order and I do not again extract the same for the sake of brevity. Suppression for the purposes of Rule 15(5-E), has to be seen to have been established beyond reasonable doubt by the Assessing Authority, to enable him to take a view that the provisions of Section 12 C are inapplicable.

25. The allegation in the present cases is that the petitioner has disguised taxable transactions under central excise as branch transfers. The petitioner has admittedly carried on a consistent modus operandi of running its business. Branch transfers were being effected to its depot in Kerala from where they are sold to various entities including Henkal Spic India Ltd., a group concern. According to the Assessing Authority the quantity of the commodities transferred by the petitioner to the Kerala Depot and the sales effected by the Kerala Depot to other group concerns did not match, hence justifying the conclusion of suppression. In my considered view this argument prima facie, and by itself may not be the sole factor to determine the existence of suppression or otherwise.

26. A Division Bench of this Court in the case of State of Tamil Nadu V. Kalpana Lamp Components (Pvt.) Ltd. (T.C.Nos.548 and 549 of 1985 dated 24.01.2001), in this context, has stated as follows:

'Counsel contends that the numerical similarity in the quantity of the goods moved from the factory to the branch office and the quantity delivered from the branch office to the customer

would indicate the existence of the prior contract and the goods having moved from within the State to outside by reason of the contract of sale. Counsel relied on two decisions of the Punjab and Haryana High Court in the case of Mehta Group of Industries V. State of Haryana (75 S.T.C.428) and Haryana Iron & Steel Rolling Mills V. State of Haryana (77 S.T.C.211).

2. The Appellate Authority, as also the Tribunal, after examining all the facts placed before them, have found that the assessee was maintaining branch offices outside the State, that the goods had been sent to the branch office and that the branch office had delivered the goods to the customers. It has found that the goods viz., electrical lamps were standardised goods, and were not articles manufactured to the specifications of the customer. It has also been found by the Tribunal that the fact that there was high demand for the goods of the assessee was the reason for the coincidence of the quantity moved to the branch office corresponding to the quantity delivered from the branch office to the customers. The Tribunal has also held that the invoices that had been prepared in the assessee's factory were subsequent to the preparation of the invoice at the branch office, and that the sales were in fact effected from the branch office and not from the factory. The Tribunal has concluded that there was no contract pursuant to which the goods had moved to destinations outside the State and that in fact the goods were moved as stock transfers from the assessee's factory to the branch office outside the state. It has also held that the local sales tax had been paid on the local sales effected in the states where the assessee maintained depots. The essential ingredients of the contract of sale pursuant to which the goods could be said to have been moved being, absent and the existence of such a contract also not having been inferred from the proved facts. It is not possible to accept the contentions for the Revenue that the transactions though subject to sales tax in other States as local sales were nevertheless inter-state sales.

3. We, therefore, do not find any merit in these revision petitions which concern the assessment on the assessee for the assessment year 1980-81. The tax cases are dismissed.'

27. While the Assessing Authority is always at liberty to establish the truth of the matter, the aspect of quantitative identity will not be the sole determinative factor in deciding upon the veracity of inter-branch transfers. Moreover, the assessee has also pointed out that even in the previous year i.e., for the period 2001-02, an identical query was raised by the Assessing Authority and a conclusion arrived at as in the present case. The order travelled in appeal to the first Appellate Authority, who concurred with the petitioners' stand. This appellate order remains unchallenged. This position was brought to the notice of the Assessing Authority in the impugned proceedings who negates the same stating that each assessment is independent, and in relation to a different assessment period. Then again, the petitioner has also established by production of orders of assessment of the Kerala Unit that sales effected in Kerala have suffered tax in Kerala. The Assessing Authority has brushed aside this contention as well. Factually, the impugned orders of assessment do not set out a break-up in respect of the items transferred from the Madras unit which, in my view, is necessary to establish the alleged mis-match.

28. Upon careful consideration of the matters, I am of the view that the assessee has prima facie discharged the burden cast upon it to establish that the transactions in question constitute branch transfers and nothing further. The Assessing Authority has, on the other hand, not conclusively established suppression in order to take the present assessment out of the ambit of Section 12 C. I may, in this connection, also cite a judgement of the Supreme Court in the case of Union of India V. Chaturbhai M. Patel & Co. ((1976) 1 SCC 747), wherein the Bench holds that in order to establish fraud, whether in civil or criminal proceedings, the authority alleging such fraud should establish the same beyond reasonable doubt. Equally so, for an allegation of suppression.

29. In the light of the observations made above, I am inclined to set aside the impugned orders as well as show cause notice. The respondent is at liberty to pass a deemed assessment in terms of Section 12 C within a period of two (2) weeks from the date of receipt of a copy of this order. It is also made specifically clear that the respondent is at liberty to initiate proceedings for re-assessment in terms of Section 16 of the Act, in accordance with the applicable timelines and in accordance with law.

30. These Writ Petitions are allowed in the aforesaid terms.

31. Consequently, connected Miscellaneous Petitions are closed. No costs.

W.P.Nos.12166 and 12167 of 2007

32. Heard Mr.Raveendran, learned counsel for the petitioner and Mr.Haribabu, learned Additional Government Pleader for the respondent.

33. The challenge is to orders of assessment dated 16.01.2007 passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short, 'TNGST Act') as well as under Central Sales Tax Act, 1956 (in short 'CST Act') for the assessment period 2004-05. The petitioner manages a spinning mill and has been claiming exemption on the sale of cotton yarn sold to exporters, upon the petitioner producing proof of export by the registered exporters by way of requisite documents, such as, Declaration in Form H, Bill of Lading and other documents establishing export.

34. The Assessing Authority appears to have accepted the claim of exemption for all assessment periods upto 2003-04 and subsequently as well. Orders of assessment in respect of the periods 2002-03 and 2005-06 are placed on file to establish that identical claims of exemption have been made by the petitioner for the previous and later years and the Assessing Authority has, on an examination of relevant documents, accepted the claim for exemption. However, in the impugned order of assessment, while rejecting the claim, the Assessing Authority states as follows:

'As regards pre export sales the dealers filed xerox copy of the letter dt:20.08.2004 of Tvl.Knit Fab International (P) ltd, confirming the fact that they did not export cotton yarn purchased from the dealers and what they exported was cloth manufactured by them out of cotton yarn purchased from dealers (vide CST act 56). According to the clarification issued in Special Commissioner and Commissioner of Commercial Taxes, Chennai in Lr.No: Cell/IV/25577/2004 dt:29.11.06. If the cotton yarn purchased is converted into cloth and only if the latter is exported, the tax liability exists even as per the notifications issued in G.O. P.No:2398, Revenue Department dt:27.07.70. Hence the dealers are liable to pay tax @ 4% on Rs.30,95,758.00 under the TNGST Act 1959.'

35. The Assessing Authority cites Notification issued in G.O.P.No.2398, Revenue Department, dated 27.07.1970. The relevant part of the Notification which exempts turnover from sales of cotton yarn manufactured by Mills situated in Tamil Nadu to registered exporters subject to the condition that the mills shall produce proof of export by the exporter is extracted below:

'130. Exemption on the sales of cotton yarn manufactured by the mills in Tamil Nadu on the sales of cotton yarn manufactured by them to

registered exporters subject to the condition that the mills shall produce proof of exports before the final check of their accounts for the year concerned to the satisfaction of the assessing authority concerned.

(G.O. No.2398, Revenue, dated 27.07.1970)
(Notn.No.197(a) of 1970), dated 27.07.1970)
(Gazette Notn. Dated 28.07.1970)'

36. The Notification supports the claim of exemption and has been applied in the assessments of the petitioner for previous and subsequent years. While this is so, the Assessing Authority refers to a Clarification issued by the Special Commissioner and Commissioner of Commercial Taxes dated 29.11.2006 which, according to him, stipulates that if the cotton yarn purchased is converted into cloth, then the benefit of G.O.No.197 dated 27.07.1990 is not available to such assessee. The conclusion of the Assessing Authority turns on the position that the petitioner has not supplied cotton yarn for export but has, in fact, supplied cloth manufactured from out of the cotton yarn, for export. Learned counsel for the Revenue is unable to produce a copy of the Clarification and instead circulates a copy of the Exemption Notification to which I have already made reference. The fact that the petitioner has indeed supplied manufactured cotton is not denied by it. However, the interpretation of the G.O. by Assessing Authorities has all along, been in favour of the petitioner. I am thus inclined to accept the case of the petitioner, simply on the anvil of consistency. Moreover, the Commissioners' Clarification is dated 29.11.2006, and has not, admittedly been supplied either to the assessee at the time of assessment or to the Court despite a specific request. On the facts and circumstances of this case as I have noticed earlier, it cannot be made to apply for a prior period, i.e., assessment period 2004-05, when, in fact, even for period 2005-06, the Assessing Officer has accepted the petitioners' claim for exemption under identical circumstances.

37. Though a ground has been raised questioning the validity of the present assessment in the light of Section 12 C of the TNGST Act, this ground is given up by the learned counsel for the petitioner in the course of the hearing.

38. In the light of the aforesaid discussion, the impugned orders are set aside. These Writ Petitions are allowed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

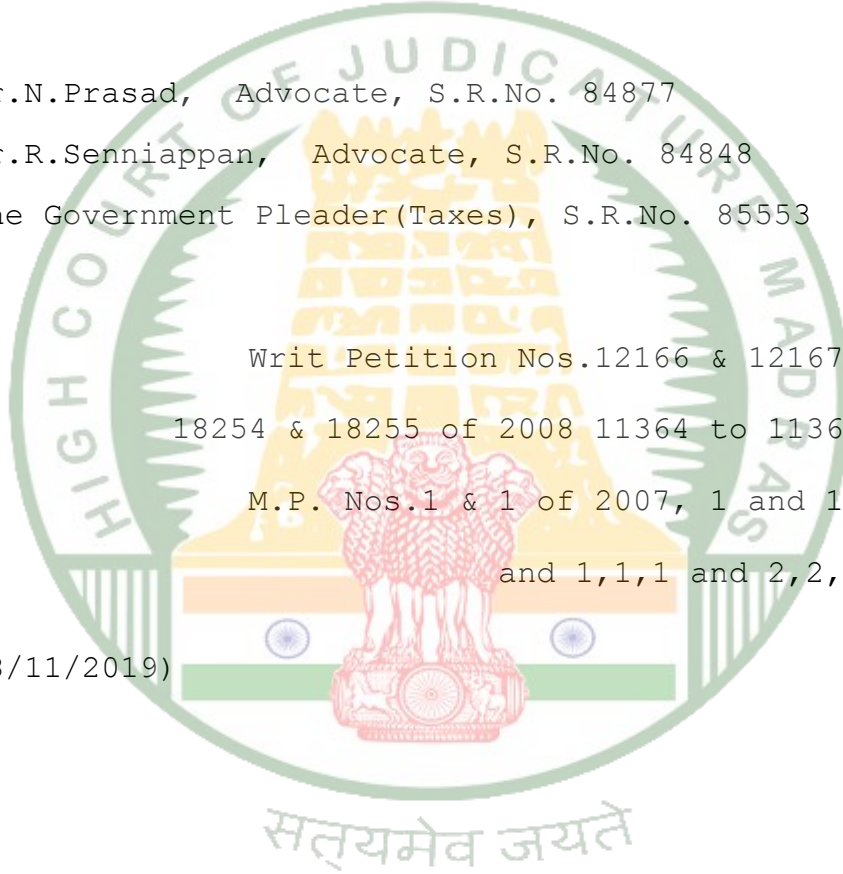
Sub Assistant Registrar

To

1. The Commercial Tax Officer,
Bazaar Circle, Tirupur.
2. The Commercial Tax Officer,
Hosur (North) Assessment Circle, Hosur.
3. The Commercial Tax Officer,
Anna Salai -II, Assessment Circle,
"Saire Mansion", 621 Anna Salai,
Chennai 600 002.

+1cc to Mr.N.Prasad, Advocate, S.R.No. 84877
+1cc to Mr.R.Senniappan, Advocate, S.R.No. 84848
+1cc to the Government Pleader(Taxes), S.R.No. 85553

Writ Petition Nos.12166 & 12167 of 2007
18254 & 18255 of 2008 11364 to 11366 of 2007
M.P. Nos.1 & 1 of 2007, 1 and 1 of 2008
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CP (CO)
GN(28/11/2019)



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