



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NOS.17959 AND 17961 OF 2021

AND

W.M.P.NOS.19180 AND 19181 OF 2021

Tvl.Arvind Seeds & Agency,
Represented by its Proprietor,
N.Balamurugan,
No.116/137, Main Road,
Kattukottai, Attur Taluk,
Salem District.

... Petitioner in both WPs

.Vs.

The State Tax Officer,
Attur(Town) Assessment Circle,
Attur.

... Respondent in both WPs

PRAYER IN W.P.NO.17959/2021:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records on the files of the respondent in CST.676385/2004-05 dated 30.06.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

PRAYER IN W.P.NO.17961/2021:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records on the files of the respondent in TNGST.3261190/2004-05 dated 30.06.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.



WEB COPY

For Petitioner : Mr.R.Senniappan
in both WPs

For Respondent : Ms.Amirta Dinakaran
in both WPs Government Advocate

C O M M O N O R D E R

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 13.09.2021, which reads as follows:

'Mr.R.Senniappan, learned counsel for writ petitioner in both the captioned writ petitions is before this virtual Court.

2. 'WP.No.17959 of 2021' shall be referred to as 'senior WP' and 'WP.No.17961 of 2021' shall be referred to as 'junior WP'.

3. Adverting to impugned orders in senior and junior WPs [both dated 30.06.2021] bearing reference CST:676385/2004-05 and TNGST:3261190/2004-05 respectively, learned counsel submits that the orders have been made under CST Act and TNGST Act, in senior and junior WPs respectively, but both are under Section 12 of respective Acts and both are revision orders pertaining to assessment year 2004-2005.

4. Learned counsel, adverting to impugned orders, more particularly, No.3 in the reference therein, submits that there were two communications, one dated 11.12.2020 and the other dated 08.03.2021 prior to impugned orders, both of which pertain to personal hearing. These two personal hearing notices read as follows:



WEB COPY

ATTUR (TOWN) ASSESSMENT CIRCLE, ATTUR (TOWN)

676385/2004-05

Date: 11.12.2020

NOTICE

Salamurugan (Aravind Seeds & Agency),
27, Main Road,
Attur (Post),
Madurai,

Sub:	Appeals - CST Act 1956 - Attur Town assessment circle - Attur Tvl. Aravind Seeds & Agency, Attur - Assessment for the year 2004-05 - High Court Appellate against appeal revised order passed - Reg.
Ref:	1. Deputy Commercial Tax Officer, Attur (Rural) Office Notice in CST: 676385/2004-05, Dated: 05.05.2006 2. Honorable High Court of Madras, W.P.Nos.36640/2006, Dt:03.11.2020

I invite attention to the references 2nd cited, You are given an personal hearing to appear with connected account book for the year 2004-05 before the order signed on 28/12/2020 at 03.30 pm in connection with orders of the Honorable High Court of Madras in the reference cited.

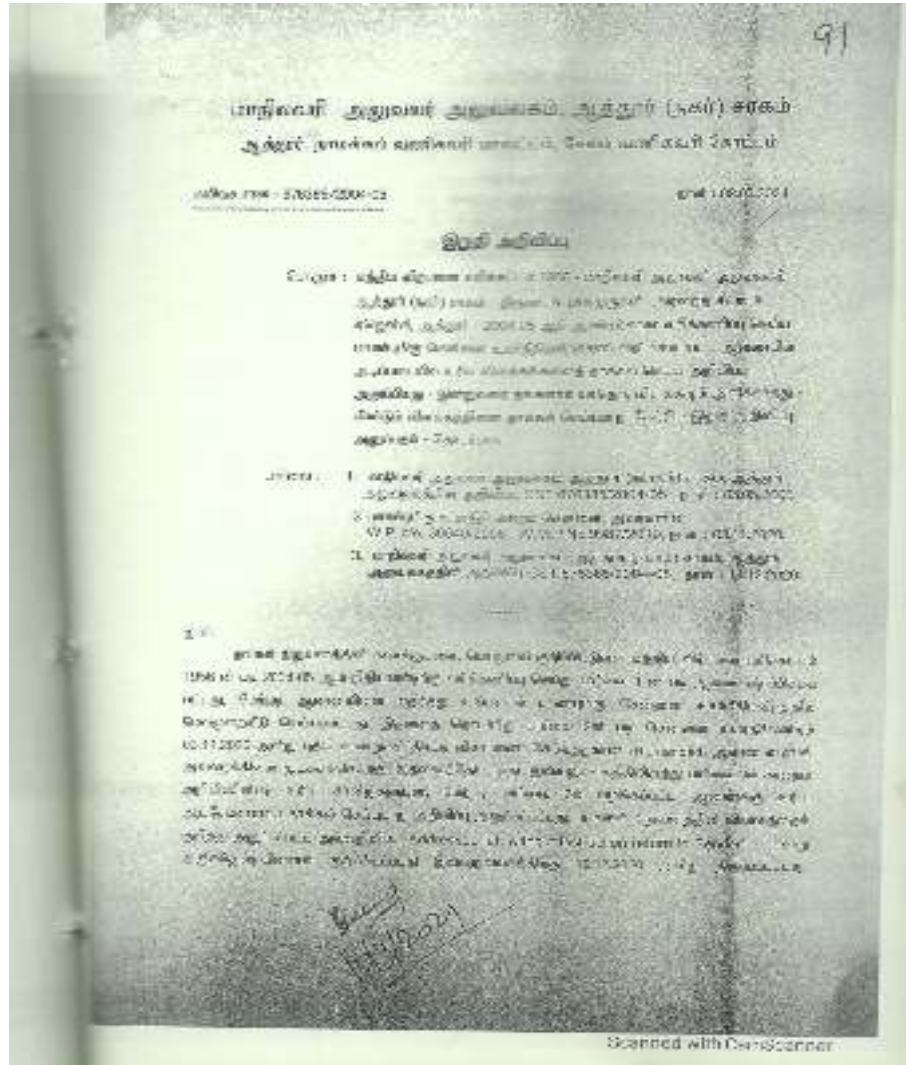
Please treat this as URGENT.

Hearing Dated 28/12/2020 at 03.30 p.m

[Signature]
11/12/2020
State Tax Officer,
Attur (Town) Assessment Circle
Attur.



WEB COPY





WEB COPY

5. It is learned counsel's specific say that 11.12.2020 notice was never served on writ petitioner, on seeing the impugned orders, writ petitioner requested for a copy of the same and it was given to the writ petitioner only on 27.07.2021 post impugned orders. Be that as it may, with regard to 08.03.2021 personal hearing notice, learned counsel submits that writ petitioner had sent a detailed reply dated 11.03.2021, saying that Covid-19 situation and the lock down is delaying the collection of 15 year old documents and some time has been requested, but notwithstanding the same the impugned orders have been passed without giving personal hearing.

6. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of sole respondent and requests for a short accommodation to get instructions.

List in the Admission Board day after tomorrow i.e., 15.09.2021.'

2. Mr.R.Senniappan, learned counsel for writ petitioner in both the captioned writ petitions and Ms.Amirta Dinakaran, learned Revenue counsel for the lone respondent in both the captioned writ petitions are before me.

3. Before proceeding further, regarding paragraph 3 of previous proceedings dated 13.09.2021, I deem it appropriate to make it clear that the impugned order in the senior WP, which has been made under CST Act is under Section 12 of CST Act read with Section 9(2A) of CST Act, whereas, impugned order in junior WP has been made under Section 12 per se of TNGST Act. To this extent, paragraph 3 of the previous proceedings shall stand corrected.

4. Reverting to the core issue i.e., issue captured in the previous proceedings, learned Revenue counsel, on instructions submits that the first notice dated 11.12.2020 was returned 'unserved' and to the second notice dated 08.03.2021, writ petitioner did respond citing the Covid-19 situation and sought time. In other words, there is no dispute that the first notice dated 11.12.2020 was made available to the writ petitioner only on 27.07.2021 post impugned order.

5. Regarding service of notices, the applicable Rules are the 'Tamil Nadu General Sales Tax Rules, 1959' [hereinafter 'TNGST Rules' for the sake of convenience]. To be noted, this Court is informed without any dispute or disagreement that



TNGST Rules is applicable with regard to proceedings under CST Act also. The Rules that deals with services of notices is Rule 52 and the relevant Rule in this case is 52(1)(d), which reads as follows:

WEB COPY

'Rule 52 (1): Service of notices: The service on a dealer of any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely:-

R.52(1)(a)

R.52(1)(b)

R.52(1)(c)

R.52(1)(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.'

6. In the case on hand, there is no dispute that there was no affixure much less affixure in the conspicuous place at his last known place of business/residence qua writ petitioner. Therefore, there was no service of notice as far as the 11.12.2020 notice is concerned. Therefore, following order is passed:

a) Impugned orders being orders (both) dated 30.06.2021 bearing reference CST:676385/2004-05 and TNGST:3261190/2004-05 respectively are set aside solely on the ground that pre order notices have not been served in accordance with TNGST Rules;

b) Though obvious, it is made clear that the impugned orders are set aside solely on the ground that pre order notices have not been served in accordance with prescribed procedure, no opinion or view has been expressed on the merits of the matter;

c) Respondent in both the writ petitions shall commence the proceedings afresh, serve notices on the writ petitioner in accordance with prescribed procedure and conclude the proceedings as expeditiously as his business would permit and in any event within twelve(12) weeks from today i.e., on or before 08.12.2021.



7. Writ petitions disposed of with the above directives. There shall be no order as to costs. Consequently, connected WMPs are also disposed of as closed.

WEB COPY

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi

To

The State Tax Officer,
Attur(Town) Assessment Circle,
Attur.

+1cc to the Special Government Pleader(Taxes), S.R.No.47626

W.P.NOS.17959 AND 17961 OF 2021 AND
W.M.P.NOS.19180 AND 19181 OF 2021

PMK (CO)
PBS/27/09/2021