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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2021

PRONOUNCED ON : 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.26347 OF 2019

AND

W.M.P.NO.25699 OF 2019

(Through Video Conferencing)

The Schneider Electric India Pvt. Limited,
Represented by its Manager-Finance,
B.Suresh,
No.172, Poonamallee Bypass Road,
Poonamallee, Chennai - 600 056.

... Petitioner

.Vs.

The Assistant Commissioner (ST),
Ambattur Assessment Circle,
No.127, 1st Floor,
Yadhaval Street,
Padi, Chennai - 600 050.

... Respondent

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Assessment Order in TIN/33641363220/2014-2015 dated 19.07.2019 passed by the respondent, quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Ms.Amirta Dinakaran
Government Advocate

ORDER

This is a second round of litigation by the petitioner. Earlier, an assessment came to be passed by the respondent on 30.11.2018 for the Assessment Year 2014-2015.



2. Since the said order was passed without affording an opportunity of hearing to the petitioner, the petitioner had filed W.P.No.2355 of 2019 stating that the said order was passed in violation of principles of natural justice as no opportunity of hearing was given to the petitioner. The said Writ Petition was allowed by an order dated 29.01.2019 with the following observations:-

"5. Perusal of the said notice would show that the petitioner was called upon to appear in person on any working day in the notice time. This Court has already considered the said aspect and found that such course of providing personal hearing is not an effective and proper opportunity, since such personal hearing has to be conducted only after filing the reply. Therefore, without expressing any view on the merits of the reasons stated in the impugned order, this Court is inclined to remit the matter back to the Assessing Officer for giving an opportunity of personal hearing to the petitioner and to complete the assessment thereafter. The petitioner is at liberty to raise all the contentions as raised in this writ petition before the Assessing Officer at the time of personal hearing.

6. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

3. Pursuant to the aforesaid order of this Court, the petitioner filed a reply dated 13.05.2019 which has culminated in the impugned Assessment Order dated 19.07.2019. In the impugned order, the respondent has held as follows:-

Rule 7 of the TNVAT Act, 2006 stated that "a registered dealer specified in clause (a) or (b), whose taxable turnover in the preceding year is two hundred crores of rupees and above, shall file the above returns on or before 12th of the succeeding month to the assessing authority in



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whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax."

The Dealer himself accepted that their total turnover exceeds 200 crores if CST sales taken into account. But the contention of the dealer is CST Sales will not be taken to to account for calculating Rs.200 crores.

Neither in TNVAT Act or in TNVAT Rule specifies that CST turnover not taken into account for arriving the total turnover for filing returns.

Hence the reply of the dealer is not accepted and overruled and confirm the proposal

Hence interest under Section 42 (3) of the Act for belated payment of taxes is levied as under

Interest due	:	Rs.513205.00
Interest Paid	:	Rs. Nil

Balance	:	Rs.513205.00

A notice in Form of RR is issued.

4. Appearing on behalf of the petitioner, learned counsel for the petitioner submits that the entire order passed by the respondent is cryptic and is not reasoned and is therefore contrary to the law made by the Division Bench of this Court in State of Tamil Nadu Vs. M/s Taher Ali Industries & Projects (P) Ltd., 2016-VIL-548-MAD.

5. The learned counsel for the petitioner submits that the turnover under the (Central Sales Tax Act, 1956) CST cannot be clubbed in the returns filed under Section 21 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, the impugned order passed by the respondent is liable to be quashed.

6. The learned counsel for the petitioner also states that Under Section 21 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) a dealer is



required to file returns in the manner prescribed under Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007 (hereinafter referred to as TNVAT Rules, 2007)

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7. The learned counsel for the petitioner has drawn attention to the Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007 as it stood at the time of its implementation on 01.01.2007 and as it stood amended with effect from 30th March, 2009.

8. It is submitted that prior to the amendment, an assessee was required to file returns on or before 20th of the succeeding month and pay the tax at the time of filing of the returns.

9. It is further submitted that by virtue of the above amendment to the Rule 7 of the Rules amended with effect from 30th March, 2009, Sub-Clause 8 to Rule 7 was introduced, wherein, in case of dealers making electronic payment of tax, the dealers whose taxable turnover in the previous assessment year was Rs.200 Crores and above was required to file returns on or before the 14th of the succeeding month along with the proof of payment of tax while others were required to file returns on or before 22nd of the succeeding month along with proof of payment of tax.

10. The learned counsel for the petitioner submits that the turnover under the CST and TNVAT cannot be clubbed for the purpose of Rule 7 of the TNVAT Rules, 2007. He has also drawn attention to the definition of "taxable turnover" under Section 2(38), the definition of "total turnover" under Section 2(40) and the definition of "turnover" under Section 2(41) of the TNVAT Act, 2006 and the definition of "Sale Price" under Section 2(h) and "turnover" in 2(j) of the Central Sales Tax Act, 1956 (hereinafter referred to as CST Act, 1956)

11. The learned counsel for the petitioner submits that though for the purpose of assessment under CST Act, 1956 the procedure prescribed under TNVAT Act, 2006 is adopted, the two turnover and assessments are independent of each other and there is no scope for overlapping or including the turnover into the other for the purpose of Section 21 of the TNVAT Act, 2006 and Rule 7 of the TN VAT Rules, 2007 and therefore submits that the impugned order is liable to be quashed for the aforesaid reason apart from being cryptic, non-speaking and unreasoned.



12. It is submitted that even on first principles of law and on a plain reading of the definitions and the scheme of the respective enactments and the Rules made therein, it is clear that there is no legal basis to sustain the impugned order.

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13. The learned counsel for the petitioner has also referred to Rule 5 of the Central Sales Tax (Tamil Nadu) Rules, 1957 to substantiate the point that only the date for filing the returns under the TNVAT Act, 2006 will apply to filing of the returns under the CST Act, 1956 and therefore submits that barring the above commonality, there is no scope of overlapping between the assessments under the respective enactments and determining the turnover.

14. The learned counsel for the petitioner finally submits that since the issue in the present Writ Petition is a pure question of law, the petitioner need not be relegated to work out a remedy before the Appellate Commissioner in the light of the decision of this Court in National Co.. Private Limited Vs. Commissioner of Chennai, 2008 31 CLT 410.

15. Appearing on behalf of the respondent, learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference.

16. The learned counsel for respondent submits that an order of an assessment officer need not be detailed where a question of law arises and in this case, the officer concerned has come to a correct conclusion that the turnover under the CST Act, 1956 was to be included for the purpose of Section 21 of the TNVAT Act, 2006 and Rule 7 of the TNVAT Rules, 2007. He therefore submits that the Writ Petition is devoid of merits and prays for dismissal.

17. The learned counsel for the respondent further submits that in terms of Rule 8 of the TNVAT Rules, 2007 only certain categories of turnovers are to be excluded and therefore, the petitioner should have filed for returns in time, in terms of sub-Rule 8 to Rule 7 as amended during the period in question.

18. It is submitted that for the purposes of calculating 'taxable turnover', which will in turn determine the filing date as contemplated under Section 21 read with Rule 7, the TNVAT Act not only defines the term 'taxable turnover', but it also



19. It is submitted that Section 2(40) of the TNVAT Act, 2006 defines total turnover to mean the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not, the whole or any portion of such a turnover is liable to tax. In other words, the Act clearly contemplates the turnover arising as a result of the interstate sales ought to also be taken into account for calculating total turnover.

21. It is submitted that Section 2(38) defines "taxable turnover" to mean turnover liable to be taxed as determined after making such deductions from the total turnover in such manner as may be prescribed. In other words, "taxable turnover" can be arrived at only after making such deductions as already prescribed under the statute. It is further submitted that Rule 8(2) is the relevant rule which prescribes the manner and lays out the deductions which are permissible from the total turnover in order to arrive at the taxable turnover. A combined reading of Rule 8(2), Rule 8(2)(a) and Rule 8(2)(b) would show that only the following deductions can be made from total turnover. They are as follows:-

- i) All amounts for which goods specified in the Fourth Schedule to the Act are sold; - This deduction is based on the type of good.
- ii) All amounts for which goods exempted by a notification issued by the Government under Section 30 are sold or purchased, as the case may be, provided the terms and conditions, if any, for the exemption in the notification are complied with. - This deduction is based on the type of good which has been exempted by way of notification.



22. It was submitted that both the above mentioned deductions are purely determined based on the type of goods and whether such a good is exempted either under the fourth Schedule of the Act or by way of exemption notification. Nowhere does the Act provide that turnover from CST sales to be deducted in order for one to arrive at the taxable turnover.

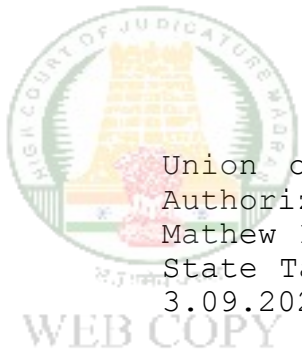
23. It was submitted that if it is well settled law that an Act, including a taxing legislation has to be read as a whole so as to avoid inconsistency. The learned counsel for the respondent referred to a decisions of the Hon'ble Supreme Court in Innamuri Gopalam and Maddala Nagendrudu and Others Vs. State of Andhra Pradesh, (1964) 2 SCR 888 and in The Commissioner of Income Tax, Central Calcutta Vs. National Taj Traders, 1980 (1) SCC 370.

24. Secondly, Section 2(38) clearly defines "taxable turnover" as "turnover" in which a dealer is 'liable to pay tax', irrespective of whether it is under TNVAT Act or CST Act. The definition by itself only looks into a dealer's liability to pay tax in general.

25. It is also submitted that as far as taxation legislations are concerned, nothing can be read in, implied and there is no room for discovering or imputing any intendment. In this connection, the learned counsel for the respondent also referred to the decisions of the Hon'ble Supreme Court in Ranbaxy Laboratories vs. Union of India, (2011) 10 SCC 292 and in Cape Brandy Syndicate vs. IRC, (1921) 1 KB 64.

26. Therefore, it is further submitted that for the purposes of determining the dates of filing returns, the dealer's taxable turnover (i.e. his/her general liability to pay tax, irrespective of whether it is under TNVAT Act or CST Act) ought to be taken into account. In the present case, the petitioner's taxable turnover (including both under TNVAT Act and CST Act) is greater than 200 crores and as a result the petitioner should have filed his returns before the 12th of the succeeding month.

27. It is submitted that as far as taxation cases are concerned, an assessee can come before the Hon'ble High Court only on very specific grounds namely, violation of Principles of Natural Justice and violation of fundamental rights. This has been reiterated in a decision of the Hon'ble Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others, 1985(1) SCC 260 and in



Union of India Vs. Satyawati Tandon, 2010(8) SCC 110 and in Authorized Officer, State Bank of Travancore and other Vs. Mathew K.C, 2018(3) SCC 85 and in The Assistant Commissioner of State Tax Vs. Commercial Steel, C.A.No.5121 of 2021, order dated 3.09.2021.

28. Therefore, as far as the writ jurisdiction is concerned, the petitioner cannot come before this Hon'ble High Court without exhausting his alternative remedy available under Section 51 of the TNVAT Act. This was reiterated in another judgment of this Hon'ble High Court where the very same issue was concerned in International Flavors and Fragrances India Pvt Ltd. Vs. The Assistant Commissioner (CT), order dated 06.11.2017 in W.P 20633 of 2016, wherein, this Hon'ble High Court directed the petitioner to go before the Assessing Authorities under Section 51 of TNVAT Act, 2006.

29. The learned counsel for the respondent has placed reliance on the decision of the Hon'ble Supreme Court in United Bank of India Vs. Satyawati Tandon And Others, (2010) 8 SCC 110. In this connection, the learned counsel for respondent has placed reliance in the above on account that the scope of writ petition being limited the petitioner should have relegated to work out the remedy in the manner known to law before the Appellate Commissioner.

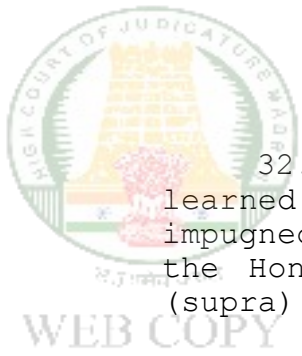
30. The learned counsel for the respondent has placed reliance on the following judgments of the Hon'ble Supreme Court:-

" i. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1.

ii. United Bank of India Vs. Satyawati Tandon and Ors., (2010) 8 SCC 110.

iii. The Assistant Commissioner of Sales Tax and Ors Vs. M/s Commercial Steel Limited, in Civil Appeal No. 5121 of 2021".

31. The learned counsel for the respondent also referred to Section 9(2) of the CST Act, 1956 to state that the provisions of TNVAT Act has to be followed.



32. Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the impugned order and the provisions of law and the decisions of the Hon'ble Supreme Court and of this High Court referred to (supra).

33. A short point that arises for consideration in this writ petition is whether the writ petitioner was required to include the CST turnover into the VAT turnover under the provisions of the TNVAT Act, 2006?

34. Though the petitioner has an alternative remedy, no useful purpose will be served by either relegating the petitioner to the respondent or to work out the remedy before the Appellate Commissioner as the issue is one of interpreting of the provision of the two Act.

35. Section 21 of the TNVAT Act, 2006 it reads as under:-

"Filing of returns - Every dealer, registered under this Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with prescribed documents and proof of payment of tax. The tax under this Section shall become due without notice of demand to the dealer on the last date of the period for filing return as prescribed The tax under this Section shall become due without any notice of demand of the dealer on the date of receipt of this return or on the last date of the period for filing return as prescribed, whichever is later".

36. The manner prescribed for the purpose of Section 21 of the TN VAT Act, 2006 is under Rule 7 of the TNVAT Rules 2007. Rule 7 as it stood on 01.01.2007 was amended with effect from 24.08.2009.

37. Relevant portions of Rule 7 of the TNVAT Rules, 2007 relevant portions are reproduced below for the purpose of answering the above question of law below:-



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TNVAT Rules, 2007 w.e.f. 01.01.2007

7. Filing of returns-(1)

(a) Every registered dealer liable to pay tax under the Act, other than a dealer who opted to pay tax under sub-section (4) of section 3 or section 6 or section 8 including agent of a non-resident dealer and casual trader, shall file return for each month in Form I on or before 20th of the succeeding month, to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax.

(b) Every registered dealer who is liable to pay tax under sub-section (5) of section 3 shall file a return in Form J on or before 20th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax:

Provided that a registered dealer specified in clause (a) or (b), whose taxable turnover in the preceding year is two hundred crores of rupees and above, shall file the above returns on or before 12th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax:

(c) The option exercised under sub-section (4) of section 3 of the Act shall be final for the financial year and such option shall be exercised within thirty days from the date of commencement of the Act or commencement of his business whichever is later.

(d) Every registered dealer who opts to pay tax under sub-section (4) of section 3 shall file a return for each month in Form K on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax.

(e) Every registered dealer who opts to pay tax under section 6 or section 8 shall file a return for each month in Form L on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax.



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TNVAT Rules, 2007 w.e.f. 01.01.2007

(2) Every principal or head office shall include the turnover relating to the goods consigned to the agent and file a return in Form I for each month on or before 20th of the succeeding month with the particulars of name and full address of the agent, value of the goods sold or purchased, tax collected on sale and tax paid on purchase by the agent along with proof of payment of tax.

(3) Every branch or agent of a dealer shall file a return in Form I, on or before the date on which the head office or his principal has to file return, for the preceding month, to the assessing authority under whose jurisdiction he carries on business.

(4) Every department of Government liable to pay tax under the Act shall file a statement in Form M showing the total and taxable turnover for each quarter on or before 20th of the month succeeding the quarter along with proof of payment of tax.

(5) Every dealer registered under the Act shall file return in duplicate: Provided that such category of dealers as may be directed by the Commissioner shall file returns electronically.

(6) If a dealer receives or returns in any year any amount due to price variation, he shall within thirty days from the end of the year submit a return in Form N to the assessing authority.

(7) Every registered dealer who is not liable to pay tax under the Act, shall file return for each year in Form I-I on or before the 20th day of May of the succeeding year showing the actual total turnover in respect of all goods dealt with by him.

Provided that for the year 2007-2008, the return shall be filed on or before the 31st day of December 2008.

8)* In case of dealers making electronic payment of the tax, the dealers whose taxable turnover in the previous year is two hundred crores of rupees and above, shall file the returns on or before 14th of the succeeding month along with proof



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TNVAT Rules, 2007 w.e.f. 01.01.2007

of payment of tax and the others shall file the above returns on or before 22nd of the succeeding month along with proof of payment of tax.

(9)*If a dealer having filed a return, finds any omission or error therein, other than as a result of an inspection or audit or receipt of any other information or evidence by the assessing authority, he shall file a revised return rectifying the omission or error within a period of six months from the last day of the relevant period to which the return relates. Where, as a result of such revised return, the tax payable by the dealer increases, the dealer shall furnish along with such revised return, proof of payment of tax and interest due thereon under sub-section (4) of Section 42 of the Act.

* inserted vide TNVAT Rules, 2007 w.e.f. 26.08.2009.

38. Thus, a registered dealer specified in clause (a) or (b) Rule 7(1) of the TNVAT Rules, 2007, whose taxable turnover in the preceding year exceeded two hundred crores of rupees and above was required file the above returns on or before 12th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office was situated. Such return shall be accompanied by proof of payment of tax.

39. This period for filing return was extended from 12th of succeeding month to the 14th of the succeeding month in the case of a registered dealer who made electronic payment of the tax vide the above amendment. In the case of other dealers making the time was extended till 22nd of the succeeding month along with proof of payment of tax. Barring the above, amendment in the year 2009 is of no significance.

40. The expression used is "taxable turnover". This expression is defined in Section 2(38) of the TNVAT Act, 2006 as follows:-

"Taxable Turnover: It means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his

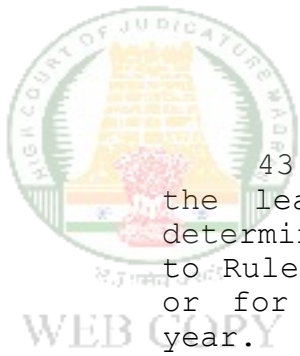


total turnover and in such manner as may be prescribed".

41. The "taxable turnover" is that 'turnover' on which the a dealer was liable to pay tax as determined after making such deduction from the total turnover. Permissible deductions are recognized in Rule 8(2) of the TNVAT Rules 2007. The expression "Turnover" and "Total Turnover" are defined in Sections 2(41) and 2 (40) of the TNVAT Act, 2006 as follows:-

Section 2 (41): Turnover	Section 2(40) : Total Turnover
Turnover : It means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagagee, tenant or otherwise, shall be excluded from his turnover.	Total Turnover : It means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not, the whole or any portion of such turnover is liable to tax.

42. Thus, for the purpose of determining the date for filing return, it is the " turnover" on which the tax is liable to be paid. It is not dependent on the "total turnover" of a dealer. Whole or part of the such" total turnover" may or may not be liable be tax. However, for the purpose of filing Returns under Rule 7 (1) and Rule 7(9) of the TNVAT Rules, 2007 on 7th or 14th as the case may be, the other turnover which are exempted or are not liable to tax are not relevant.



43. Rule 8 of the TNVAT Rules, 2007 which was referred to by the learned counsel for the respondent is not relevant for determining the due date for filing of the returns under proviso to Rule 7(1) or under Rule 7(9) of the of the TNVAT Rules, 2007 or for computation of the "taxable turnover" during previous year.

44. Rule 8(1) of the TNVAT Rules, 2007 merely prescribes the procedure for assessment and arriving at the deduction. As per Rule 8(2) recognizes deductions while determining "taxable turnover". Apart from post sale charges and the amounts specified in the following clauses are to be deducted from the "total turnover" of a dealer namely:-

- "(a) All amounts for which goods are specified in the Fourth Schedule to the Act are sold ;
- (b) All amounts for which goods exempted by the a notification issued by the Government under section 30 are sold or purchased, as the case maybe, provided the terms and conditions, if any, of the exemption notification are complied with."

45. Rule 8 prescribes a method of determination of "taxable turnover" for the purpose of payment of tax. It is not to be read to mean that CST "turnover" is to be included either for determination of tax liability under the TNVAT Act, 2006 or for filing of Returns under Rule 7 of the TNVAT Rules, 2007 on 12/14 of the succeeding month as the case may be.

46. Thus, "taxable turnover" under Section 2(38) under TNVAT Act, 2006 can include only the "turnover" on which a dealer was liable to pay tax under TNVAT Act, 2006 as determined after making such deductions from "total turnover" and in such manner as may be prescribed for determining "total turnover". The amounts to be deducted Rule 8(2) of TNVAT Rules, 2007 can never form part of the "taxable turnover" under Section 2 (38) of the TNVAT Act 2006 for the purpose of Section 21 of the TNVAT Act 2006.

47. The overlap between the CST Act, 1956 and the TNVAT Act, 2006 and the Rules made thereunder are only for the purpose of following the procedure prescribed under the latter Act for the former. Barring the above, there is no scope for including one



turnover into another either for determining the tax liability or the determining the due date for filing the Returns, Section 9 of the CST and Rule made thereunder do not permit any inclusion of the turnover under one tax enactment into another.

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48. Therefore, there is no merits in the impugned order. It is therefore liable to be quashed. It is accordingly quashed. Thus, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

The Assistant Commissioner (ST),
Ambattur Assessment Circle,
No.127, 1st Floor,
Yadhaval Street,
Padi, Chennai - 600 050.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.62686
+1cc to the Special Government Pleader, S.R.No.62194

W.P.NO.26347 OF 2019

CP(CO)
PBS/15/12/2021