



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.09.2021**

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.5419 to 5426, 4261 & of 2015

and

W.M.P(MD) Nos.5129 to 5135 of 2016,

M.P.(MD)Nos.1, 1, 1, 1, 1, 1, 1, 1, 1 of 2015

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Sri Shanmugha Solvent Extracts (p) Ltd.,
Represented by its Managing Director,
S.PR.Palaniappan. ...Petitioner in WP(MD).No.5419 to 5426/2015

Vs.

- 1.The Joint Commissioner (CT),
Trichy Division,
Court Campus, Trichy.
- 2.The Assistant Commissioner (CT),
Pudukkottai. ...Respondents in WP(MD).No.5419 to 5426/2015
1. M/s Sree Aravindh Steel Ltd.,
Rep. by its Managing Director Arun Shanker,
3/b, Bhulabai Desai Road, Chokkikulam,
Madurai. ... Petitioner in WP(MD). 4261/ 2015

- Vs. -

1. The Joint Commissioner, (Ct), Court Campus, Trichy.
2. The Assistant Commissioner (Ct),
Srirangam Assessment Circle, Trichy.

... Respondent(s) in WP(MD). 4261/ 2015

Prayer in WP(MD). 4261/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records in Na.Ka.730/2012/A8 dated 12.01.2015 on the file of the 1st respondent and quash the same as illegal and arbitrary and to direct the 1st respondent to pass a refresh order by calculating the interest from the due date for repayment of loan i.e. 20.04.2002.

Prayer in WP(MD). 5419/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, calling for the records on the file of the



1st Respondent in Na.Ka. 5056/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement of Arrears) ACT, 2008 by considering afresh the petitioner's application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5420/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5058/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement of Arrears) ACT, 2008 by considering afresh the petitioner's application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5421/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5060/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement of Arrears) ACT, 2008 by considering afresh the petitioner's application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5422/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5062/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement of Arrears) ACT, 2008 by considering afresh the petitioner's application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5423/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5064/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement of Arrears) ACT, 2008 by considering afresh the petitioner's application for settlement of disputes dated 30.03.2009.



Prayer in WP(MD). 5424/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5066/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlement fo Arrears) ACT, 2008 by considering afresh the petitioner s application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5425/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on teh file of the 1st Respondent in Na.Ka. 5059/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlementn fo Arrears) ACT, 2008 by considering afresh the petitioner s application for settlement of disputes dated 30.03.2009.

Prayer in WP(MD). 5426/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in Na.Ka. 5061/2009/A8 dated 16.02.2015, quash the same as illegal, invalid and arbitrary and direct the 1st respondent to grant samadhan certificate under the Tamil Nadu Sales Tax (Settlementn of Arrears) ACT, 2008 by considering afresh the petitioner s application for settlement of disputes dated 30.03.2009.

For Petitioner : Mr.A.Chandrasekaran
in WP(MD).Nno.5419 to 5426/2015
Mr.N.Sudalai Muthu
in WP(MD).No.4261/2015

For Respondents : Mr.R.Sureshkumar
Government Advocate
(in all petitions)

COMMON ORDER

Since the issue raised in all these writ petitions in this batch of cases is one and the same, with consent of the learned Counsel appearing for both sides, these writ petitions were heard



together and are being disposed of by this common order.

2. For the sake of convenience and to understand the case, the fact relates to the writ petition in W.P.(MD)No.5419 of 2015 is traversed hereunder:

2.1. The petitioner is a Company established in the year 1989 for manufacturing edible grade rice bran oil. It is located in a declared industrially backward area in the State of Tamil Nadu. Therefore, the State Government had come forward to provide certain incentives and concessions. The petitioner was granted deferral of sales tax for their unit for a sum of Rs.90,00,000/- to be availed in the period from 01.10.1990 to 30.09.1996.

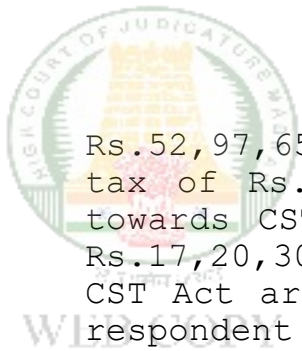
2.2. Based on the benefit of such deferral sales tax scheme, the petitioner filed monthly returns and paid the relevant taxes, wherever payable and claimed deferral in accordance with the provisions of then existing Tamil Nadu General Sales Tax Act, 1959 as well as Central Sales Tax Act, 1956 [in short to be referred to as "TNGST Act" and "CST Act" respectively].

2.3. During the course of the business, the petitioner claimed to have availed only Rs.31,90,000/- approximately, out of the total deferral amount of Rs.90,00,00/- from the year 1990-91 till 1995-96. Thereafter, due to various reasons, the petitioner was forced to close their production activity with effect from 04.07.1996. Therefore, a portion of the sanctioned deferral amount alone with great difficulty was able to be paid by the petitioner.

2.4. Due to the financial crisis, the balance of deferral amount and the interest was not paid and in the meanwhile, the second respondent seems to have taken various recovery proceedings against the petitioner and in fact, one of the properties of the petitioner was subjected to attachment.

3. At that time, the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 [Tamil Nadu Act No.60 to 2008] [in short it would be called as "Settlement Act, 2008"] was introduced. The salient features of the Settlement Act, 2008 is that, the settlement scheme has been introduced under the Settlement Act, 2008, under which, various category of tax payers with due of tax can pay the tax due with interest at the rate of 6% per annum. Such kind of offer can be accepted and on the settlement scheme, the balance of interest as well as the entire penalty would be waived.

4. In view of the Settlement Act, 2008, the petitioner immediately wanted to respond and in fact requested the second respondent to state the exact amount to be paid to avail the scheme, so that they can make arrangement from their financial sources for payment of the same. Accordingly, the second respondent informed the petitioner that the petitioner has to pay a total sum of



Rs.52,97,656/- as per the scheme comprising of the entire arrears of tax of Rs.27,61,469/- towards TNGST Act arrears and Rs.4,30,877/- towards CST Act arrears and also the interest calculated at 6% is Rs.17,20,304/- towards TNGST Act arrears and Rs.3,84,689/- towards CST Act arrears. The said intimation had been given by the second respondent vide his proceedings dated 03.04.2009.

5. Accordingly, the petitioner, having mobilised funds from various sources with great difficulty, including selling some of the properties of the petitioner, arranged the said amount of Rs.52,97,656/- and paid the same along with an application made under Section 5 of the Settlement Act, 2008 before the first respondent on 30.03.2009. Thereafter, on 15.07.2011, the first respondent to the surprise of the petitioner, had issued a notice proposing to reject the petitioner's Samadhan application on the ground that the payment of interest as per the scheme is fall short of more than 10%. The reason being for such shortfall, according to the first respondent is that, they calculated the interest from the date of returns due, stating that the petitioner's unit since was closed in November 1995 i.e., during the deferral period, such interest shall be calculated from the returns due. Whereas, the petitioner had calculated the interest of 6% per annum from the date of actual deferral due, that starts only from September 2001 and ends in September 2002.

6. Though the petitioner, in response to the said notice dated 15.07.2011 had given a detailed reply and objection dated 03.10.2011, with supporting documents and requested the first respondent to grant Samadhan certificate and also requested for personal hearing, which was granted on 21.12.2014 and on that date, the petitioner or his representative appeared before the first respondent and explained the details as to how the interest shall be calculated from the deferral due date. It seems however that the first respondent was not convinced, with the result, the first respondent has passed a rejection order dated 16.02.2015 stating that the Samadhan application made by the petitioner is liable to be rejected on the ground that the difference amount is more than 10% and therefore, the benefits of Settlement Act, 2008 cannot be availed by the petitioner. Accordingly, such rejection of the application of the petitioner was made through the impugned order and therefore, challenging the same, this Writ Petition has been filed.

7. It is to be noted that, insofar as the petitioner is concerned, since the TNGST arrears is for six years starting from 1990-1991 upto 1995-1996 and the CST arrears is for 2 years i.e., for 1991-1992 and 1992-1993, orders have been passed in respect of all the six assessment years arrears of TNGST Act and two assessment years arrears of CST Act. Hence, these eight writ petitions of the

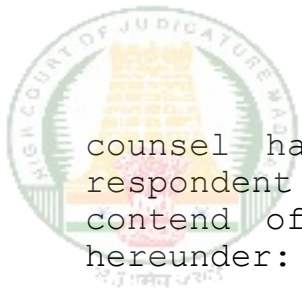


8. Like that, writ petition in W.P.(MD)No.4261 of 2015 has been filed by the another petitioner, in that writ petition also all other facts are similar except one difference, where, under the deferral scheme, it is not five years deferral of payment of sales tax, it is ten years deferral from 2001 to 2010 and the petitioner wanted to avail the benefit of the scheme under Tamil Nadu Sales Tax [Settlement of Arrears] Act, 2011 [in short "Settlement Act, 2011"], where there was a tax due for the assessment year 1994-1995, which had become due after some years, based on the deferral scheme. Therefore, based on the due under the deferral scheme, the tax arrears as well as the interest at the rate of 7.5%, which has been fixed under the Settlement Act, 2011, though had been paid by the petitioner in that case along with an application made in this regard under the Settlement Act, 2011, the same had also been rejected by the first respondent, of course on the very same reason as has been narrated in respect of eight other cases of other petitioner. Therefore, all these nine cases have been grouped together and were heard accordingly.

9. Assailing the impugned order passed by the first respondent, Mr.A.Chandrasekaran, learned Counsel appearing for the petitioner has made submissions. Though the learned Counsel has made extensive submissions on various aspects of the deferral scheme as well as the salient features of the Settlement Act, 2008 and also the fact that the petitioner, having calculated the entire arrears of Sales Tax for the relevant years as well as the interest at the rate of 6% having been calculated, paid along with an application, his submissions had been made on the pointed issue as to whether the interest of 6% as provided under Settlement Act, 2008, is to be calculated from the date of actual returns due of each assessment year or from the date of deferral due based on the deferral scheme.

10. In order to delve into the said question and in support of the case of the petitioners, the learned counsel has made submissions that the reason mainly stated in the impugned orders for rejecting the application of the petitioners is that, the petitioner has not paid 90% of the tax arrears with interest and since it is 17.72% and 15.27% etc., in each of the cases invariably, since it is above 10% maximum permissible limit, those applications cannot be accepted.

11. In respect of the said reason stated by the first respondent through various impugned orders herein, the learned counsel would contend that, the said higher due more than 10% has come not because that the petitioner had not paid 90% of the tax due with interest, but only on the reason that, the method of calculation adopted by the first respondent in calculating the interest. In this context, it is the contention of the petitioner's counsel that, interest on the tax due payable by the petitioner shall be calculated only from the date of deferral due. In support of his submission, the learned



counsel has relied upon the communication issued by the second respondent dated 03.04.2009. For the sake of convenience, the content of the said communication dated 03.04.2009 is extracted hereunder:

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"While acknowledging the receipt of a letter cited above, please note that you are due totally Rs.52,97,656/-(Rupees Fifty two lakhs ninty seven thousand six hundred and fifty six only) as on 31.03.2009 under one time settlement of tax arrears scheme' 2008. Kindly remit the said arrears within the stipulated date.

*Commercial Tax Officer
Pudukkottai."*

12. Along with the said communication, a working /calculation sheet has been annexed separately for TNGST Act arrears as well as CST Act arrears. The learned Counsel relying upon heavily this communication with annexure would contend that, it is their own stand of the respondent that the arrears of tax due as well as the interest being calculated for the purpose of availing settlement of tax arrears scheme, 2008 is only based on the interest calculated from the date of deferral due and not from the date of returns due.

13. The learned counsel would further add that, only after getting these figures from the second respondent, through his communication dated 03.04.2009, the petitioner has mobilized the funds and paid the same, along with the application made in this regard under Settlement Act, 2008. Therefore, the learned Counsel would submit that, the present reason, which is reflected in the impugned orders stating that the petitioner has not paid interest calculating from the date of return due and calculated only from the date of deferral due, thus, it goes beyond minimum permissible limit of 10% and accordingly, it was rejected, is untenable.

14. In this context, it is the vehement contention of the learned Counsel appearing for the petitioner that, nowhere in the Settlement Act, 2008, nor in any other legislation, it is stated that, interest shall be calculated from the date of return due in cases of the assessee, who availed the deferral scheme. In fact, in support of his contention, the learned Counsel appearing for the petitioner has relied upon the judgment of a Division Bench of this Court dated **06.12.2006** made in **W.A(MD)No.1482 of 2006** in the case of **M/s.Amutha Mills Private Limited Vs. The Assistant Commissioner Zone-III, Coimbatore, and 2 others**. For the sake of convenience, the relevant portion of the Judgment of the Division Bench as referred to above is extracted hereunder:

"The learned counsel appearing for the appellant/petitioner submitted that as per the



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terms of the deferral agreement, in the event of default in the repayment of the IFST deferral loan, the loan can be recoverable along with interest at 24% p.a. Calculated from the due date for repayment of loan. Therefore, the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed. He submitted that the issue has already been settled by the Tamil Nadu Taxation Special Tribunal in O.P. Nos. 65 to 68 of 1998. The decision of the Special Tribunal has been accepted by the Commercial Taxes Department. This position is not disputed by the learned Special Government Pleader but he submitted that since the appellant/petitioner stopped the production in 2002, they are liable to pay the penal interest from November, 2002 in terms of the Circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994. However, a perusal of the said Circular shows that this was only in the form of recommendation and this term has not been specifically incorporated in the agreement. In the circumstances, we are of the view that the appellant/petitioner shall be liable to pay penal interest only with effect from June, 2003. The writ petition is disposed of accordingly. Consequently, writ appeal and miscellaneous petitions are closed. No costs."

15. The learned counsel would also rely upon an order of a Single Judge dated **01.12.2010** made in **W.P.No.19060 of 2009** in the case of **S.R.Subramaniam vs. The Assistant Commissioner (CT), Coimbatore, Zone-III, Coimbatore and others**, where the learned Judge following the dictum of the Division Bench Judgment in **M/s Amutha Mills Private Limited** case cited supra has taken the view that, the interest shall be calculated from the deferral date and not from the return due date. To appreciate the said order of the learned Judge, the relevant portion of the same is extracted hereunder:-

"5. As rightly pointed out by the petitioner following the Hon'ble First Bench judgment of this Hon'ble Court made in W.A.No.1462 of 2006 dated 06.12.2006, the Department could at best claim the interest on the Deferral Scheme only from the due date of repayment of loan and not on the date from the IFST was filed. But at the same time as rightly pointed out by the



Department, the Scheme itself was cancelled in the year 2001 because the erst-while owner has seized to avail and closed the business. Therefore, it should be construed that he is liable to repay as per the Hon'ble First Bench judgment of this Hon'ble Court made in W.A.No.1462 of 2006 dated 06.12.2006 from the date when it is closed i.e., when the Deferral Scheme was cancelled namely, January 2001.

6.As per the order of Hon'ble First Bench judgment of this Hon'ble Court made in W.A.No.1462 of 2006 dated 06.12.2006 in which also a similar point was taken, in that case, the erst-while owner has even sold the machinery and therefore, they claimed that the penal interest is liable to be paid from January 2002 onwards relying upon the circular by the Department. But the Hon'ble First Bench judgment of this Hon'ble Court made in W.A.No.1462 of 2006 dated 06.12.2006 has categorically stated as follows:

"2.The learned counsel appearing for the appellant/petitioner submitted that as per the terms of the deferral agreement, in the event of default in the repayment of the IFST deferral loan,, the loan can be recoverable along with interest at 24% p.a. Calculated from the due date for repayment of loan. Therefore, the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed. He submitted that the issue has already been settled by the Tamil Nadu Taxation Special Tribunal in O.P.Nos.65 to 68 of 1998. The decision of the Special Tribunal has been accepted by the Commercial Taxes Department. This position is not disputed by the learned special government Pleader but he submitted that since the appellant/petitioner stopped the production in 2002, they are liable to pay the penal interest from November, 2002 in terms of the Circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994. However, a



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perusal of the said Circular shows that this was only in the form of recommendation and this term has not been specifically incorporated in the agreement. In the circumstances, we are of the view that the appellant/petitioner shall be liable to pay penal interest only with effect from June, 2003. The writ petition is disposed of accordingly. Consequently, writ appeal and miscellaneous petitions are closed. No costs."

(Emphasis Supplied)

7. Following the Hon'ble First Bench judgment of this Hon'ble Court made in W.A.No.1462 of 2006 dated 06.12.2006, the Department is entitled to claim penal interest only from the date of repayment namely, May, 2005 and therefore, the impugned order in so far as it relates to claiming interest from 1996 to May, 2005 alone is set aside. "

16. Having relied upon these decisions, the learned counsel would contend that, the law has been made in this regard by these judgments, where the Division Bench Judgment had come prior to the Settlement Act, 2008 and the Single Judge order had come after the Settlement Act, 2008. Though in those cases, it was not the case of the assessee, who had availed the benefit of any of the scheme like Settlement Act, 2008, but the Principle is whether the interest or penal interest shall be calculated from which date as to whether it is from the return due or otherwise.

17. The learned counsel, insofar as the reason stated by the first respondent, having relied upon the letter or circular issued by the Commissioner of Commercial Taxes Department, Government of Tamil Nadu, in Letter No. Drafting Cell-I/28518/2012 dated 28.02.2014 and also having relied upon the clarification to a pointed query No.04, has submitted that, the said clarification given by the Commissioner of Commission Taxes Department is nothing but beyond the scope of the decision already made in this regard and also contra to the very scheme itself as provided under Settlement Act, 2008.

18. By making all these submissions, the learned Counsel would submit that, in this kind of Samadhan Scheme, which was being introduced by the State with its legislative wisdom, what has been intended by the legislature that shall be given credence and in this context, no further clarification or interpretation, detrimental or contra to the legislative intent as has been intended in the



legislature can be made by the executives. Herein the case in hand, since the first respondent heavily relied upon the clarification given by the Commissioner of Commercial Taxes Department, dated 28.02.2014, the said view taken by the first respondent by applying the clarification given by the executives, unmindful of the import of the Settlement Act, 2008 is untenable and unjustifiable. Therefore, the learned Counsel seeks indulgence of this Court against the impugned orders.

19. The aforesaid submissions made by the learned Counsel Mr.A.Chandrasekaran were adopted by Mr.N.Sudalaimuthu, learned Counsel appearing for the petitioner in W.P.(MD)No.4261 of 2015, except the one single difference that the deferral scheme is for ten years between 2001 and 2010 and the Samadhan Scheme, which the petitioner availed in this case i.e., W.P(MD)No.4261 of 2015 is under Settlement Act, 2011, where the only difference is rate of interest, as it is 7.5% rate of interest, that should be calculated under the Settlement Act, 2011. Therefore, the learned Counsel in this Writ Petition would contend that what are all the grounds urged or argued in respect of first eight cases by the learned counsel appearing for the petitioner in that batch, would apply to this case also. Accordingly, he has adopted those arguments and he also seeks indulgence of this Court against the impugned orders in his writ petition.

20. Per Contra, Mr.R.Suresh Kumar, learned Government Advocate has relied upon the following averments made in the counter affidavit, which are extracted hereunder:

"5.It is further submitted that the Writ petitioner accordingly started availing deferral from October 1990 and availed the same up to September 1996. From November 1995, the unit was not functional and thereby they violated the conditions of agreement and hence they were not eligible to avail the deferral scheme. The Assistant Commissioner(CT), Pudukottai therefore issued show cause notice as to why the deferral agreement should not be cancelled, and after having examined the objections raised by the Writ Petitioner, cancelled the agreement.

6.It is further submitted that as the agreement was cancelled as stated above, action was initiated under the Revenue Recovery Act to realize the arrears due from the default-Writ petitioner.

7.It is submitted further that though "Samadhan Scheme" for settling the arrears of sales tax were available through the Tamil Nadu Sales Tax (Settlement of Arrears) Act 2008, the



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Writ petitioner filed applications under section 5 of the Act for settling the arrears for all the years i.e. From 1990-1991 to 1995-1996 under the TNGST ACT 1959 and from 1990-1991 to 1995-1996 and under the CST ACT 1956.

8.It is submitted further that the applications so submitted were examined by the petitioner herein-namely the Joint Commissioner (CT), Trichy Division-with reference to records and found to be defective as the Writ petitioner had not complied with the conditions stipulated under section 7(a) of the TN Sales Tax (Settlement of Arrears) Act 2008 (in short Settlement Act) and hence summarily rejected all the applications of the Writ Petitioner on 16.02.2015, under Sec.6(3) of the Settlement Act.

9.It is submitted further that aggrieved against the order passed by the Joint Commissioner(CT), Trichy Division on 16.02.2015, the Writ Petitioner filed W.P.(MD)No.5419 of 2015 before the Hon'ble Madurai Bench of Madras High Court.

10.It is submitted further that in that case, the dealers have violated the conditions of agreement during the repayment period only (Repayment period from 01.10.1996 to 30.09.2002 - violation - non-repayment of loan-in October 1996)."

By relying upon the said averments made in the counter affidavit, the learned Government Advocate would further submit that, as per the deferral scheme, there has been condition imposed along with the eligibility certificate issued in this regard and also, there has been a deferral agreement between the parties. Under the conditions imposed under eligibility certificate as well as the Clauses of the deferral agreement, if the petitioner failed to strictly adhere to the terms and conditions of the deferral scheme or in case of any violation of the deferral scheme, the petitioner would not be entitled to get any benefit arising out of the deferral scheme.

21.In this context, the learned Government Advocate submits that, the deferral scheme, which was availed by the petitioner starts from October 1990 and it must end only in September 1996, whereas during the deferral scheme, the petitioner closed the unit during November 1995, thereby, the petitioner had violated the conditions of agreement. Hence, the petitioner is not at all eligible to avail the benefit of deferral scheme.

22. Once the petitioner has become ineligible to avail the



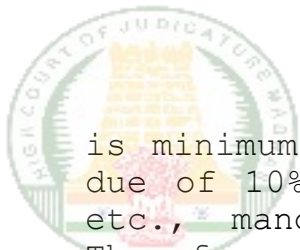
benefits occurred or arisen out of the deferral scheme, because of their own action of closing down the industry or stopping the production, insofar as the availment of benefit under the Settlement Scheme as per the provisions of the Settlement Act, 2008, the petitioner if at all wants to make the payment of tax due with 6% interest, the same shall be calculated from the date of actual due ie., return due and accordingly, 6% interest should have been calculated and paid along with an application.

23. However, admittedly the petitioner had calculated the interest of 6%, not from the date of actual return due, but from the date of deferral due. Therefore, there is a vast difference of interest due between the return due date and deferral due date and if that interest is calculated, certainly the petitioner should have made more payment, which admittedly he has not paid. Therefore, the petitioner cannot avail the benefit of Samadhan Scheme under Settlement Act, 2008. By making these contentions, the learned Government Advocate has relied upon the following decisions:-

- (i) **W.A. (MD) No. 396 of 2011 dated 08.01.2018** in the case of **Pandian Industries vs. The Joint Commissioner (CT), Tirunelveli and another;**
- (ii) **W.P. (MD) No. 3735 of 2015 dated 09.11.2018** in the case of **Chetak Timber Products (P) Limited vs. Joint Commissioner (CT) and others;** and
- (iii) **W.P. (MD) No. 3676 of 2015 etc., batch,** dated **10.07.2019** in the case of **M/s. Cheran Cements Limited vs. The Joint Commissioner (CT), Trichy, and another.**

24. By relying upon these decisions, the learned Government Advocate would vehemently contend that, once the deferral scheme is availed by any assessee, where he has violated the conditions or terms of agreement of such deferral scheme during the deferral period, certainly, such assessee would not be entitled to seek any benefits arising out of the deferral scheme. Therefore, in the present case, the petitioner since has violated the deferral scheme, as he stopped production in November 1995 ie., well before the deferral scheme come to an end, he would not be entitled to claim any benefit arising out of the said deferral scheme.

25. As a sequel, the petitioner would also not be entitled to claim any benefit of calculating the interest from the date of deferral due, as the petitioner in view of his default or violation of the scheme, would be considered as normal or regular tax payer. Therefore, the interest shall be calculated for the tax due from the actual due date, ie., return due date and not from the deferral due date. If that calculation of interest is made, certainly the payment admittedly made now by the petitioner along with the application filed under Samadhan Scheme is definitely less than what



is minimum 90% of the payment. Therefore, the maximum permissible due of 10% under the scheme since has been above like 17% or 15% etc., mandatarily such application is liable to be rejected. Therefore, accordingly the applications of the petitioner have been rejected. Hence, the learned Government Advocate, by making these submissions, would contend that, the reasons stated by the respondent in the impugned orders for rejecting the applications of the petitioner under Samadhan Scheme are fully justifiable with acceptable reasons. Hence, no interference is called for against these orders, which are impugned in these writ petitions. Hence the learned Government Advocate would seek dismissal of these writ petitions.

26. I have considered the said rival submissions made by the learned Counsel appearing for the parties and have perused the materials placed before this Court.

27. Though such elaborate submissions have been made by the learned Counsel appearing for both sides, the issue raised in this batch of writ petitions is in very narrow compass. The only question to be delved into in the batch of cases, is that, whether a tax payer, who availed the benefit of deferral scheme, if he becomes a defaulter in paying the tax arrear or tax due, would be entitled to calculate the interest payable on such tax due, when he intended to file Samadhan Scheme provided under the state legislation, from the date of actual return due or from the date of deferral due.

28. Though both sides, some judgments of this Court have been relied upon, the exact question now posed before this Court in the given facts and circumstances whether has been considered and decided in those cases. If we look at the cases cited by the revenue side by the learned Government Advocate, there is one Division Bench judgment and two Single Judge orders. In **Pandian Industries** case cited supra, the Division Bench, having considered the scheme under the Settlement Act, 2008 had decided the issue posed before this Court in the said case, where the facts are definitely differed from the facts of the present case. In order to appreciate the same, the relevant portion of the Division Bench Judgment is extracted hereunder:

"8. As already pointed out, sub section (3) of section 6 mandates the applicant to remit 90% of the arrears and if the applicant has not paid 90% of the amount payable under Section 7, along with the application, the designated authority shall summarily reject the application. Admittedly, the father of the appellant has paid only 63% of the arrears as against the said mandate of 90% of the arrears. In the considered opinion of this Court, it cannot be



termed as mere omission or defect so as to attract Rule 3(5) of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2008.

9. In the considered opinion of this Court, the appellant / writ petitioner has failed to comply with the mandatory provisions and the first respondent, in exercise of the power under Section 6(3) of the Act, has rightly rejected the application and the learned Judge has taken note of the statutory provisions and rightly came to the conclusion that the writ petition deserves to be dismissed and accordingly, dismissed.

10. This Court, on an independent application of mind to the entire materials placed before it, it is of the considered view that there is no error in the reason assigned by the learned Single Judge. This Court finds no merit in the writ appeal. Therefore, this writ appeal is dismissed. Consequently connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs."

29. Insofar as **Chetak Timber Products (P) Limited**, case cited supra, the learned Judge in this case, had considered the import of the Settlement Act, 2011, where also if we look into the facts, it is certainly different, which could be culled out from the following:

"6. According to the first respondent, the petitioner ought to have filed the Samadhan application in terms of Section 7(c) and remitted the entire tax due, together with 7½% interest. But, in this case, the petitioner filed his application by remitting only 40% of the tax amount with interest, as per Section 7 (a). Therefore, the only question is whether Section 7(a) will apply or Section 7(c).

7. The learned Counsel appearing for the petitioner strongly contended that admittedly, there is a dispute pending between the petitioner and the Department. In fact, the appeal is still pending before the appellate authority as on date, with regard to the transaction in question. Therefore, according to him, only Section 7(a) will apply and the petitioner was right in remitting only 40% of the tax due, together with the Samadhan application. He also drew the



attention of this Court to the communication issued by the second respondent, who was also the assessing authority. The petitioner's Counsel contended that if the mistake, now, attributed to the petitioner had been pointed out on the right time, he would probably have filed the application in terms of Section 7(c) itself.

8. Though there is a considerable force in the submission of the learned Counsel for the petitioner that the petitioner was apparently misled by the communication of the second respondent made on 12.03.2012, I am of the view that there cannot be any estoppel against the statute. The petitioner is a businessman. Therefore, it is for him to have promptly understood the true import of Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

9. While considering the fiscal provisions, the Court is obliged to apply the law by strictly construing the same. Equity plays no role in the scheme of things. Section 7(c) of the said act reads that where it relates to arrears of tax, which was admitted as tax due as per the returns file for the year, the applicant will have to pay the entire arrears of tax. In this case, no doubt dispute is pending between the parties. But then, it arose subsequent to the filing of the returns for the year concerned. Therefore, the issue on hand will have to be resolved with reference to the returns filed by the applicant for the year concerned. The subsequent development will have to be ignored. In this case, as per the returns filed by the petitioner, the tax amount was fixed as Rs.1,91,507/-. Therefore, the said amount of Rs.1,91,507/- together with 7½ % interest has to be paid, along with the Samadhan application. But, the petitioner remitted only as sum of Rs.63,118/-, including interest. If the amount paid by the petitioner was short by 10% or less, then the authority was oblige to call upon the petitioner to adjust the short fall. But, in this case, the short fall is more than 60%. Once the short fall goes beyond 10%, the authority could not even return the application. The only option left to the authority was to reject the application. Therefore, I find no ground to interfere with the



order impugned and the same is sustained."

30.In **Cheran Cements limited** case cited supra from the revenue side, the learned Judge has followed the decision made in W.A.(MD) No.498 of 507 of 2015, where also the issue is slightly different on the basis of the facts projected therein.

31.Insofar as the fact of the cases in this batch is concerned, in these cases, the respective petitioners have calculated the tax arrears payable by them and paid the same along with interest, while making applications under the Samadhan Scheme. It is pertinent to note that insofar as the first eight cases of the assessee, ie., Sri Shanmugha Solvent Extracts Private Limited is concerned, after the Settlement Act, 2008 comes into effect, the petitioner had requested the respondent to spell out the arrears of tax with interest, so that they can make arrangement and to come forward to file the application by paying the tax due with interest. In response to the same, on 03.04.2009, the second respondent has given letter stating that the total due is Rs.52,97,656/- and break-up figures had been given as what is the interest reduction availed by the petitioner in respect of the TNGST arrears and what is the interest reduction availed by the petitioner in respect of CST arrears. Along with the said communication dated 03.04.2009, the second respondent also annexed the working sheet separately for TNGST arrears and separately for CST arrears. According to the said communication, the total TNGST arrear is Rs.44,79,910/- and CST arrear is Rs.8,17,746/- totalling Rs.52,97,656/-. Therefore, this is the arrear within the meaning of the provisions of the Settlement Act, 2008.

32. In this context, the following provisions of the Settlement Act, 2008 are relevant to be noted:

"5.Application for settlement-(1) An application for the purpose of section 4 shall be made to the designated authority by an applicant within three months from the date of commencement of this Act or by such later date as the Government may, by notification, specify, from time to time, in such form, and in such manner, as may be prescribed, with proof of payment of the amount payable at the rates specified in section 7.

(2) A separate application shall be made for each assessment year.

(3)The applicant shall send a copy of the application made under sub-section (1) to the assessing authority, appellate authority or revisional authority under the relevant Act, before whom any proceeding or appeal or revision, as the case may be, is pending,



within seven days from the date of making such application before the designated authority.

6.Determination of amount payable by the applicant-(1) The designated authority shall verify the correctness of the particulars furnished in the application made under section 5 with reference to all relevant records and determine the amount payable at the rates specified in section 7.

(2) The designated authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with application falls short of not more than ten per cent of the amount determined under sub-section (1).

(3) If the applicant has not paid ninety per cent of the amount payable under section 7 alongwith the application, the designated authority shall summarily reject the application.

(4) The amount determined under sub-section (1) shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, and, if such part is fifty paise or more, it shall be rounded off to the nearest rupee, and if such part is less than fifty paise, it shall be ignored.

7.Rate applicable in determining amount payable-The amount payable by the applicant and to be waived shall be determined as follows:

(a)Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the applicant shall pay one third of arrears of tax pending collection on the date of application along with interest calculated at six per cent per annum on the arrears of tax and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(b)Where it relates to arrears of tax which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay one third of such arrears of tax pending collection on the date of application along with interest at six per cent per annum on the arrears of tax and on



such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(c)Where it relates to arrears of tax, which was admitted as tax due as per returns filed for the year with corresponding arrears of penalty and interest, the applicant shall pay the entire arrears of tax pending collection along with interest at six per cent per annum and on such payment, the balance of interest and the entire penalty shall be waived.

(d)Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten per cent of the penalty and twenty five per cent of interest, the balance of penalty and interest shall be waived."

33.Under the scheme, applications for the purpose of getting the Settlement Arrears shall be made to the Designated Authority within three months from the date of commencement of the Settlement Act, 2008. Separate applications shall be made for each assessment year. Under Section 6 of the Settlement Act, 2008, the Designated Authority, after verifying the correctness of the particulars furnished in the application, determine the amount payable at the rates specified in Section 7. Under Section 6 (2) of the Settlement Act, 2008, the Designated Authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with the application falls short of not more than 10% of the amount determined under Sub-Section (1).

34.Herein, the case in hand, as we discussed above, in fact the tax arrears with interest has already been determined and communicated by the second respondent vide his communication dated 03.04.2009, according to which, the grand total of both TNGST arrear as well as CST arrear comes to Rs.52,97,656/-, where what is the tax due and what is the interest component calculated at the rate of 24% or 6%, whatever it may be, have also been given in the annexure along with communication dated 03.04.2009.

35.Therefore, it is already determined tax due in respect of the petitioner's case. If that determined tax is paid with interest along with an application as contemplated under Section 5 of the Settlement Act, 2008 and if there is any shortage of arrear, which is not more than 10% of the total due payable by the assessee / tax payer, then, under Section 6 (2) of the Settlement Act, 2008, the Designated Authority can demand further amount to be paid by the



assessee.

36. Here the case in hand, the stand appears to be taken by the respondents, which is reflected in the impugned orders, invariably in any of such orders, that the tax payable by the petitioner as determined has been paid. It is admitted in the impugned orders itself. However, the dispute arose only in respect of the calculation of interest, where according to the respondents, the petitioner has not paid full interest, only part interest has been paid. Therefore, if the full interest is calculated along with tax due, that would be the total due to be accepted for the purpose of Samadhan Scheme and comparing with the total due that the amount paid by the assessee, the difference is more than 10%. Therefore, under the provisions of the Settlement Act, 2008, the petitioner is not entitled to get no arrears certificate under Section 8 of the Settlement Act, 2008. Accordingly since the petitioner's application has to be rejected, it has been rejected.

37. However, if we look at the facts, which have been discussed hereinabove, there has been no dispute with regard to the quantum of tax arrears. The only dispute is the quantum of interest. While we are speaking about the quantum of interest, still there is no quarrel on the rate of interest to be calculated, because, the rate of interest ie., 6% per annum under the Settlement Act, 2008 and 7.5 % under the Settlement Act, 2011 has already been provided in the Act itself. The petitioners also having calculated the respective rate of interest ie., 6% in respect of the first petitioner, 7.5% in respect of the second petitioner, have paid the same.

38. Now, we have come almost the exact gray area, where, the respondents' stand is that, while calculating the interests, it should be calculated from the return due ie., actual due date with regard to the corresponding assessment years and not from the deferral due date.

39. Though in this regard, some judgments have been cited by the revenue side, which we have dealt with in the earlier parts, in all these cases, exactly this issue has not been dealt with and moreover, factual aspects can be distinguished in all these cases. Admittedly, the tax arrears in these cases with interest calculated and paid along with application to avail the benefit of Samadhan Scheme is like 40% or 60%. Therefore, not even nearly to 90%.

40. However, in the cases in hand, though a stand has been taken by the respondent revenue that it is not 90% of the tax due with interest paid by the petitioners as per their calculation, but, the fact remains that, the tax due with interest paid by the petitioners has not come upto 90% and it goes down below, not because the petitioners have not paid the amount, but because the method of calculation of interest is different from the period of interest, as suggested by the revenue.



41. In this context, heavy reliance has been placed by the learned Government Advocate appearing for the respondents that the Commissioner of Commercial Taxes, by letter dated 28.02.2014 has given a clarification to query No.4, which reads thus:

"4. The due date for arriving at the interest dues for the dealers who have violated deferral repayment.

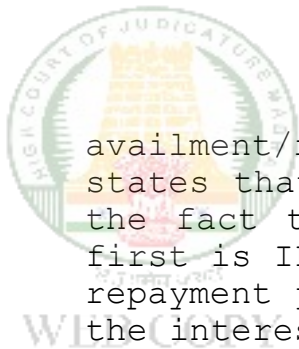
It has been legally settled in the case law of the Division Bench of the Hon'ble High Court of Madras in W.P.No.1462/2006, dated 06.12.2006 (M/s. Amutha Mills Pvt. Ltd., Annur vs. Assistant Commissioner (CT), Zone-III, Coimbatore and others), which had been followed in the subsequent decision of the Hon'ble Madras High Court in W.P.No.19060 of 2009, dated 01.12.2010 (Mr.S.R.Subramanian, M/s. Sree Kalpatharu Spinning & Weaving Mills vs. Assistant Commissioner (CT), Zone-III, Coimbatore), that "the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed"

The above ruling of the Hon'ble High Court of Madras will have to be followed in arriving at the interest due from the dealers who have violated the conditions for deferral availment/repayment.

In deciding such issues, the officials may take note of the fact that there are two periods in IFST / Deferral Schemes. The first is IFST / Deferral availing period and the second relates to the repayment period. If the violation happens during the first period, the interest has to be calculated as if a normal delay had occurred i.e. from the dates on which returns were due. If violation happened during the second tenure, interest will start from the date of violation or from the date of default in payment of dues."

This clarification was heavily relied upon by the learned Government Advocate, because the said clarification has been taken into account by the first respondent, while passing the impugned order.

42. If we look into the said clarification, the Commissioner of Commercial Taxes, after having taken note of the decisions of this Court made in **M/s. Amutha Mills Private Limited** as well as **S.R. Subramaniam** cases, has added that, the said rulings of this Court will have to be followed in arriving at the interest due from dealers who have violated the conditions for deferral



availment/repayment. But not stopping with that the circular further states that, in deciding such issue, the officials may take note of the fact that there are two periods in IFST/Deferral schemes. The first is IFST/Deferral availing period and the second relates to the repayment period. If the violation happens during the first period, the interest has to be calculated, as if a normal delay had occurred ie., from the dates on which returns were due. This clarification or interpretation sought to be given by the Commissioner of Commercial Taxes in the said letter, in the considered opinion of this Court, is nothing but traversing beyond the scope of the Settlement Act, 2008 as well as 2011.

43. Though the judgment in **M/s. Amutha Mills Private Limited** as well as **S.R. Subramaniam** case cited supra had been relied upon by the Commissioner, it seems that the decision of this court have not been properly understood. In the Judgment in **M/s. Amutha Mills Private Limited** cited supra, which has been quoted hereinabove already, the Division Bench has held that, even though the petitioner appellant in that case stopped production in particular year, ie., middle of the deferral scheme period, he would not be liable to pay penal interest from that date in terms of the circular issued in this regard, by the Commissioner of Commercial Taxes dated 18.03.1994.

44. Exactly the similar position we are confronting in dealing with the clarification given to the point No.4 in the said letter of the Commissioner of Commercial taxes dated 28.02.2014.

45. Moreover, the dichotomy is, which the Commissioner of Commercial Taxes sought, to be implemented, by adding some more clarification stating that, there are two periods, one is IFST/Deferral scheme and another one is repayment period. If any default is taken place in the deferral availing period, the interest has to be calculated as if any normal delay had occurred ie., from the date, on which returns due. This kind of interpretation sought to be employed by the Commissioner of Commercial Taxes, in the considered view of this Court, cannot be sustained, because, the exercise of interpreting the particular provision of the Act or the Rules made thereunder is necessarily the job of the judiciary and in this context, the law is well settled by a number of pronouncements of the Hon'ble Supreme Court that such an interpretative power cannot be either given to or be taken by the executives.

46. Therefore, merely based on such an interpretative clarification given by the Commissioner of Commercial Taxes, vide his letter dated 28.02.2014, the first respondent cannot reject the claim of the petitioners to accept them for availing benefit of Samadhan Scheme.



47. These two issues alone ie., one is that the import of the clarification given by the Commissioner of Commercial Taxes and another is that the petitioner has not paid 90% of the due with interest, since were shown as main reasons for rejecting the Samadhan application of the petitioners are only arising out of mis-interpretation or wrong interpretation in this regard by way of clarification of the Commissioner of Commercial Taxes. By virtue of such employment of the said interpretation, the first respondent cannot reject the applications for Samadhan, under the Settlement Act, 2008 and 2011 respectively, of these petitioners.

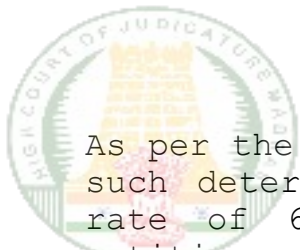
48. It is to be noted that, the very purpose of giving deferral scheme is nothing but an encouraging factor to develop industrial hub in the backward areas of the State. The petitioners' industries since have been located in backward areas, such kind of deferral scheme has been extended to the petitioners, which they have availed and 4 out of 5 years the industries ran and only at the last year, the industries could not run and make production for various reasons.

49. Merely because the industry could not run at the fag-end of the deferral scheme period due to unforeseen reasons, it cannot be stated that the petitioners, who availed the deferral scheme would be under default or it has violated the conditions of the scheme and therefore, they are not entitled to calculate the interest from the deferral due date and they should be treated as ordinary tax payers resulting in calculation from the return due date.

50. If this proposition as has been propounded by the revenue through the impugned orders is accepted, the very purpose of giving such incentive programme like deferral scheme would get defeated. Therefore, detrimental to any such concession scheme for the industrial development given by the State Government cannot be permitted to be taken away by another wing of the State ie., Commissioner of Commercial Taxes Department.

51. Moreover, the very Samadhan Scheme itself, which was brought under two legislations, i.e., 2008, subsequently 2011 Settlement Act, is only to give solace to the tax payers to pay the entire tax due, which has also been either determined or to be determined to give concession of waiver of penal interest and penalty. Moreover, the rate of interest also normally would be calculated either 18% or 24%, but, here which has been reduced to either 6% or 7.5% respectively and these concessions were given under the Samadhan Scheme only to bring more defaulters under the main stream to collect the tax due with 6% or 7.5% interest.

52. Herein the case in hand, the entire tax due payable by the petitioners have been already determined and in case of the first petitioner, a written order has been given in the year 2009 itself.



As per the payment made by the petitioner to the scheme and based on such determined tax, since interest having been calculated at the rate of 6% from the deferral due date having been paid, the petitioner shall be treated only under Section 7(c) of the Settlement Act, 2008. Therefore, the reason stated in the impugned orders that the petitioners have violated Section 7(a) of the Settlement Act, 2008 does not hold good. Therefore, for that reason also, the impugned orders cannot be sustained.

53. In view of all these reasons discussed hereinabove, this Court is of the considered view that, the impugned orders rejecting the applications for Samadhan Schemes made by the petitioners after having made the payment of either 90% or more of the determined tax with interest from the date of deferral due, is bad in law, unsustainable and unlawful. Therefore, the impugned orders are liable to be interfered with. Accordingly, these writ petitions are disposed of with the following orders:

" that the respective impugned orders in this batch of writ petitions are quashed and in the result, the respondents shall calculate the interest at the rate of 6% as well as 7.5% respectively under the relevant provisions of Settlement Act, 2008 and 2011 from the date of deferral due, not from the date of returns due and accordingly, shall calculate whether the respective writ petitioners have paid, not less than 90% of the total due of tax, along with interest and if so, the first respondent shall demand the remaining due if any payable, which is less than 10%, from the petitioners under Section 6 (3) of the Settlement Act, 2008 by giving time, within which, if the petitioners come forward to make the remaining shortfall also, the applications for Samadhan submitted by the petitioners shall be accepted and consequentially, necessary certificate under Section 8 of the Settlement Act, 2008 shall be issued to the petitioners."

54. With these directions and observations, all these writ petitions are ordered to the terms indicated above. However there shall be no order as to costs.

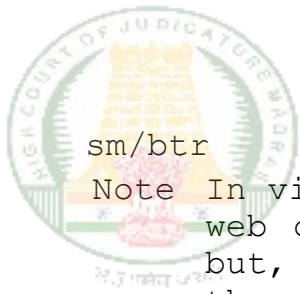
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



sm/btr

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Joint Commissioner (CT),
Trichy Division,
Court Campus, Trichy.
- 2.The Assistant Commissioner (CT),
Pudukkottai.
- 3.The Assistant Commissioner (Ct),
Srirangam Assessment Circle, Trichy.

+1 CC to M/s.SPL.GP (SR-30726[F] dated 30/09/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-30828[F] dated 30/09/2021)

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-30656[F] dated 29/09/2021)

W.P. (MD)Nos.5419 to 5426 & of 2015
29.09.2021

NSN(CO)
KB(04.01.2022) 25P 7C