

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 WP.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 WP.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.

For Petitioner
in both WPs : Mr.R.Senniappan.
For Respondent
in both WPs : Ms.Amirta Dinakaran
Government Advocate

COMMON ORDER

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:

ATTUR (TOWN) ASSESSMENT CIRCLE, ATTUR (TOWN)
676385/2004-05 Date: 11.12.2020

NOTICE

Aravind Murugan (Aravind Seeds & Agency),
10/1, Main Road,
Attur (Post),
Tamil Nadu.

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.

State Tax Officer,
Attur Assessment Circle
Attur.

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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:

'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.

15.09.2021

Speaking/Non-speaking order

Index: Yes/No

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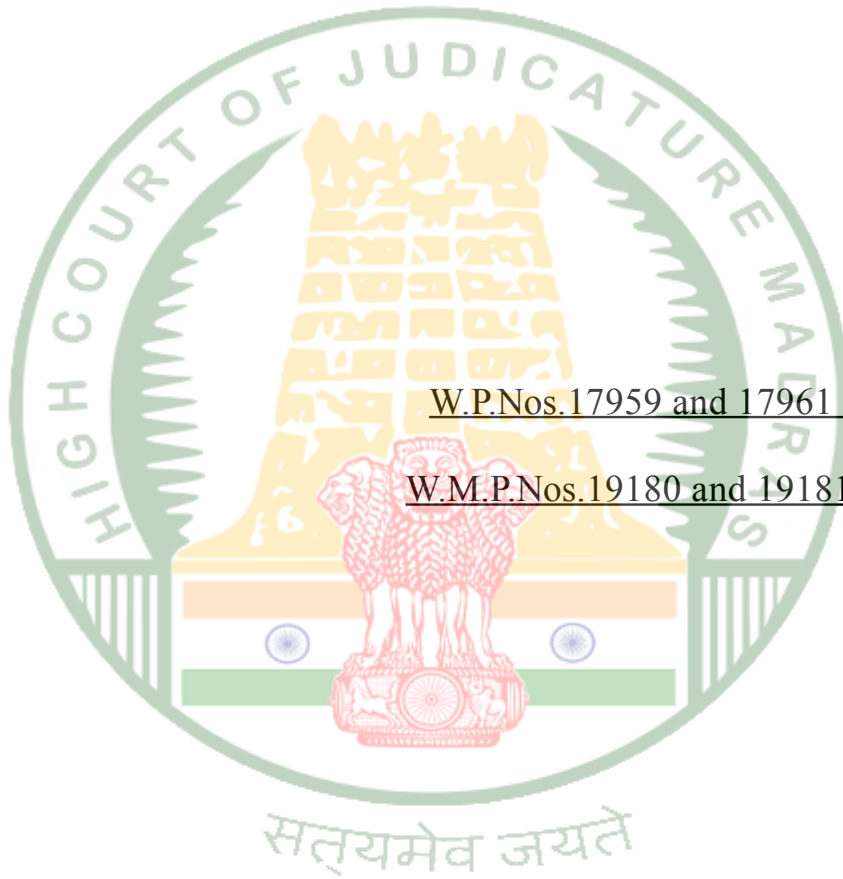
To
The State Tax Officer,

*W.P.Nos.17959 and 17961 of 2021
and W.M.P.Nos.19180 and 19181 of 2021*

Attur(Town) Assessment Circle
Attur.

M.SUNDAR.J.,

kmi



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