IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2021

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.9240, 9241, 9242, 9243, 9244,
9245, 9246, 9247 and 4604 of 2011 and
M.P.Nos.1 to 1 of 2011

K.M.Chinnadurai ...Petitioner in W.P.No.9240, 9241, 9242, 9243 of 2011

Susheela Durai ...Petitioner in W.P.No.9244, 9245, 9246, 9247 of 2011

M/s.Sakthi Murugan Enterprises Pvt.Ltd.
No.2/15 Main Road Kariagoundanur
Vadakkalur, Annur
Coimbatore. ...Petitioner in W.P.No.4604 of 2011

Vs.

1. The Assistant Commissioner (CT)(FAC),
   Avinashi Assessment Circle,
   Avinashi. Respondents W.P.No.9241,9242, 9243,9244,9245,9246,9247 of 2011

2. The Deputy Commissioner (CT),
   Zone III, Coimbatore.

3. The Joint Commissioner of Commercial
   Taxes (Enforcement), Coimbatore.

4. R.Sakthivel
   PROPRIETOR:M/s.Sakthi Murugan Agro Foods
   93 Mettupalayam Road
   Ayimapadur Pirivu, Oddarpalayam PO
   Annur-641 653.

1. The Commercial Tax Officer
   Avinashi, Coimbatore. Respondent in W.P.No.4604 of 2011

2. K.Sivakumar,
   PROPRIETOR: M/s.Sakthi Murugan Trading CO.
   2/16 Kariagoundanur, Vadakkalur Post,
   Annur.

Prayer in W.P.No.9240 of 2011 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings in TNGST No.Nil/2001-02, quash the notice dated 29.03.2011 issued therein and further direct the first respondent not to assess the turnover of the fourth respondent in the hands of the petitioner herein, in the absence of any such provision under the Tamil Nadu General Sales Tax Act, 1959.

Prayers in WP.Nos.
W.P.No.9241 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2002-03 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9242 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2003-04 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9243 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2004-05 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9244 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2001-02 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9245 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2002-03 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9246 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2003-04 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.9247 of 2011 : Calling for the records of the First Respondent in his proceedings in TNGST No.NIL/ 2004-05 quash the Notice dt.29.03.2011 issued therein and further direct the First Respondent not to assess the turnover of the Fourth Respondent in the hands of the petitioner herein in the absence of any such provision under the Tamil Nadu General Sales Tax Act 1959.

W.P.No.4604 of 2011 : Calling for the records of the first respondent in his proceedings in TNGST No.2081835/ 2003-2004 quash the proceedings dated 18.02.2011 issued therein and further direct the first respondent not to club the turnover of the second respondent with that of the petitioner both being separate and distinct legal entities.

For Petitioner : Mr.R.L.Raman
Senior Counsel
for Mr.B.Raveendran in all WP's

For Respondents : Mr.V.Veluchamy
Government Advocate
for R1 to R3 in all WP's

For Respondent : No appearance for R4

COMMON ORDER

The learned senior counsel appearing on behalf of the writ petitioners made a submission that the writ petitions are filed in the year 2011 and there are subsequent developments at certain grounds raised by the petitioners are decided in favour of the petitioners. However, all these grounds are raised before the authorities competent for complete adjudication of the issues as raised in the writ petitions.

2. A writ against a show cause notice is entertainable only on certain limited grounds. A writ against show cause notice may be entertained, if such notice is issued by an incompetent authority having no jurisdiction directly in violation of the provisions of the statute or an allegation of malafides are

raised against the authorities concerned and even in such cases where an allegation of malafides are raised, whom such allegation is raised must be impleaded as party respondent in the writ proceedings in his personal capacity. In all other circumstances, the noticee are expected to respond to the notice by submitting their objections/defence statements along with the documents or evidences if any and contest the matter. The High Court cannot adjudicate all such disputed facts elaborately in a writ proceedings under Article 226 of the Constitution of India. The power of judicial review under Article 226 of the Constitution is to ensure the processes through which a decision is taken by the competent authority in consonance with the provisions of law, but not the decision itself. This being the principles to be followed. The petitioners are at liberty to submit their objections/defence statements, documents and evidences within a period of four weeks from the date of receipt a copy of this order and on receipt of any such objections from the petitioners, the respondents shall consider the same and pass orders on merits and in accordance with law and by following the procedures as contemplated. If any request for personal hearing is made, such an opportunity is also directed to be provided to the petitioners.

3. With these directions, all these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Assistant Commissioner (CT) (FAC),
   Avinashi Assessment Circle,
   Avinashi.

2. The Deputy Commissioner (CT),
   Zone III, Coimbatore.

3. The Joint Commissioner of Commercial
   Taxes (Enforcement),
   Coimbatore.

4. The Commercial Tax Officer,
Avinashi,
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.42879

+3cc to the Special Government Pleader (Taxes),
S.R.No.42785, 42791, 42790

W.P.Nos.9240, 9241, 9242, 9243, 9244,
9245, 9246, 9247 and 4604 of 2011

SVI(CO)
RGA(21/09/2021)