BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P.(MD)Nos.6137, 6141 & 6144 of 2021
and
W.M.P.(MD)Nos.4772, 4777 & 4778 of 2021

M/s.Sree Maruthi Traders,
Represented by its Proprietor
S.Suresh,
2-54, Anjukandarai Junction, Main Road,
Kulasekaram,
Kanyakumari District. ... Petitioner in all W.Ps.

-Vs-

The State Tax Officer (Inspection Cell),
Virudhunagar,
Tirunelveli Division. ... Respondent in all W.Ps.

**Prayer in W.P.(MD)No.6137 of 2021**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned order passed by the respondent herein in his proceedings vide No.33AXSPS9623A1Z8/2017-18 (case ID No.TVL-009-5), dated 11.01.2021 and quash the same as illegal, arbitrary and unjust in the eye of law.

**Prayer in W.P.(MD)No.6141 of 2021**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned order passed by the respondent herein in his proceedings vide No.33AXSPS9623A1Z8/2018-19 (case ID No.TVL-009-5), dated 11.01.2021 and quash the same as illegal, arbitrary and unjust in the eye of law.

**Prayer in W.P.(MD)No.6144 of 2021**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned order passed by the respondent herein in his proceedings vide No.33AXSPS9623A1Z8/2019-20 (case ID No.TVL-009-5), dated 11.01.2021 and quash the same as illegal, arbitrary and unjust in the eye of law.

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| For Petitioner (in all W.Ps.) | : | Mr.B.Brijesh Kishore |
| For Respondent (in all W.Ps.) | : | Mrs.J.Padmavathi Devi<br>Special Government Pleader |

**COMMON ORDER**

Heard the learned counsel on either side. With the consent of learned counsel on either side, these writ petitions are taken up for final disposal at the admission stage itself.

2.The petitioner is a dealer registered with the Nagercoil Assessment Circle. The petitioner had purchased goods from one Charles and his wife Shanthi. The assessment years pertain to 2017-18, 2018-19 and 2019-20. The said vendors are also dealers registered with the very same assessment circle. It appears that though the said vendors had collected tax from the petitioner, the same was not remitted. However, based on the returns filed by the sellers, the petitioner herein had availed input tax credit. Before effecting reversal, the respondent issued a show cause notice to the petitioner. The petitioner questioned the same by filing W.P.(MD)Nos.14641, 14645 & 14648 of 2020. This Court, vide order dated 28.10.2020, disposed of these writ petitions by directing the respondents to consider the petitioner's replies dated 05.06.2020 and 09.09.2020 as well as the supporting documents placed by him. When non remittance by the vendors came to light, the impugned reversal was made. Questioning the same, these writ petitions have been filed.

3.It is not in dispute that the case on hand is covered by the order dated 24.02.2021 in W.P.(MD)No.2127 of 2021 etc., batch. Those writ petitions were allowed by me in the following terms:-

> "11.It can be seen therefrom that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply.
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> 12.Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller/charles and his wife Shanthi, on the present transactions.
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> 13.The learned counsel for the petitioners draws my attention to the order dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.
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> 14.That apart in the enquiry in question, the Charles and

his Wife ought to have been examined. They should have been confronted. This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

15.According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become all the more necessary and imperative. When the petitioners have insisted on this, I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry. Thus, the impugned orders suffer from certain fundamental flaws. It has to be quashed for more reasons than one.

a) Non-examination of Charles in the enquiry
b) Non-initiation of recovery action against Charles in the first place.

16.Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

17.With these directions, these Writ Petitions are allowed."

4.The petitioner is also one of the dealers like those writ petitioners. The orders impugned in the writ petitions are quashed and the writ petitions are allowed on the very same terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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
The State Tax Officer (Inspection Cell),
Virudhunagar,
Tirunelveli Division.



+1 CC to M/s.B.BRIJESH KISHORE, Advocate ( SR-12556[F] dated 19/03/2021 )

+1 CC to Mr. Special Government Pleader, SR.No. 12503

W.P.(MD)Nos.6137, 6141 & 6144 of 2021
and
W.M.P.(MD)Nos.4772, 4777 & 4778 of 2021
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