



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A. NOS.1223, 1226, 1222, 1227, 1224, 1230, 1231 & 1238 OF 2022

AND

C.M.P. NOS.7772, 7773, 7774, 7777, 7782, 7786, 7790 & 7827

1. The Managing Director,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
4th Floor, CMDA Towers,
Gandhi Irwin Bridge Road,
Egmore, Chennai.
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC), Trichy Region,
Collector Office, Old Building First Floor,
Trichy - 620 001.
3. The District Manager/ Deputy Collector,
Tamil Nadu State Marketing Corporation
Limited (TASMAC), Cuddalore,
Cuddalore District.

... Appellants in all the appeals

Versus

R.Sivashanmugam

... Respondent in W.A.No.1223/2022

K.Mylvaganan

... Respondent in W.A.No.1226/2022

S.Paneerselvam

... Respondent in W.A.No.1222/2022

S.Jayabalan

... Respondent in W.A.No.1227/2022

Chakkarvarthi Kaliyamurthy

... Respondent in W.A.No.1224/2022



S.Velmurugan

K.Balamurugan

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A.Kalonji

... Respondent in W.A.No.1230/2022

... Respondent in W.A.No.1231/2022

... Respondent in W.A.No.1238/2022

Prayer:

Writ Appeals filed under Clause 15 of Letters Patent against the orders passed by this Court in W.P. Nos.12657, 15158, 14730, 12697, 15166, 15159, 12699 and 12760 of 2020 dated 22.02.2021.

Prayer in WP.No.12657/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo No. A4(RV)/531/2020 dated 01.06.2020 and Quash the same and direct the 3rd respondent to repay a sum of Rs.34,976/- to the petitioner which was paid by him through Bank chellan.

Prayer in WP.No.15158/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo No. A4 (RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs 49,255/- to the petitioner which was paid by him through Bank Chellan.

Prayer in WP.No.14730/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Na.Ka. No. A4 (RV) / 531 / 2020 dted 01.06.2020 and quash the same and direct the 3rd respondnet to repay sum of Rs 43,432/- to the petitioner which was paid by him through Demand Draft No. 005208 draw on Central Co operative Bank Viruthachalam Branch.

Prayer in WP.No.12697/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for



the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo.no. A4(RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs.44,238/- to the petitioner which was paid by him through Demand Draft No. 500083.

Prayer in WP.No.15166/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Na.Ka.No.A4 (RV) / 531/ 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay sum of Rs. 29,408/- to the Petitioner which was paid by him through Demand Draft No.779366 drawn on Indian Bank Cuddalore Branch.

Prayer in WP.No.15159/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo No. A4 (RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs 4,32,863/- to the petitioner which was paid by him through Bank Chellan.

Prayer in WP.No.12699/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo.no. A4(RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs.24,594/- to the petitioner.

Prayer in WP.No.12760/2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo.no. A4(RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs.39,858/- to the petitioner.

For Appellants in
all W.As. : Mr.K.Sathish Kumar



For Respondents
all W.As.

: Mr.V.Prashanth Kiran
Government Advocate (Taxes)

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COMMON JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN,J.]

Assailing the common order dated 22.02.2021 passed by the learned Judge in the respective writ petition bearing Nos.12657, 15158, 14730, 12697, 15166, 15159, 12699 and 12760 of 2020, the appellants / TASMAC have come up with these intra-court appeals.

2.By the order impugned herein, the learned Judge, following the earlier order of this court in WP.(MD)No.10355 of 2020 dated 18.12.2020, allowed the writ petitions filed by the respondents herein as against the orders of the concerned District Manager, TASMAC, imposing penalty, interest and GST for the remittance of the shortage value in stock.

3.It is the main contention of the learned counsel for the appellants that the order dated 18.12.2020 made in WP(MD) No.10355 of 2020, based on which, the learned Judge passed the order impugned herein, was subsequently challenged by the appellants / TASMAC by filing WA(MD)No.679 of 2021 and this court, by order dated 24.03.2021, granted an order of interim stay in respect of the findings of the learned Judge on the calculation of GST on the penalty, alone; and hence, the order of the learned Judge is covered by the said interim order of this court dated 24.03.2021 passed in WA(MD)No.679 of 2021. Adding further, the learned counsel submitted that the omitted section 7(1)(d) was brought into the same amendment as section 7(1)(A) and the same was not taken into consideration by the learned Judge; and that, the findings of the learned Judge that GST cannot be imposed in respect of the penalty levied in the disciplinary proceedings, are against clause 5(e) of the schedule II of the Central Goods Sales Tax Act, 2017. It is also submitted that the respondents had already paid the amount of shortage as well as penalty with GST, without any protest and thereafter, filed the writ petitions and asked for refund of GST, which is a clear case of estoppel. The learned counsel further submitted that the stock shortage was admitted and the shortage amount was also paid; in such an event, no domestic enquiry is necessary; and therefore, the orders of the authority imposing a lenient and minor punishment of levying penalty, without affecting the service condition of the respondents, are perfectly justified. However, the learned Judge erred in setting aside the same, on the ground of violation of principles of natural justice. With these submissions, the learned counsel sought to allow these appeals by quashing the order impugned



herein.

4. Heard Mr.K.Sathish Kumar, learned counsel appearing for the appellants and also perused the materials available on record.

5. At the outset, we are not inclined to go into the correctness of the order passed by the learned Judge, in respect of setting aside the orders impugned in the writ petitions and directing the appellants to proceed against the respondents in accordance with law and the procedure as contemplated in the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation, 2014, on the ground of violation of principles of natural justice, having regard to the admitted position that no enquiry was conducted before passing the orders imposing penalty on the respondents herein.

6. Qua levy of GST, in the order dated 18.12.2020 passed in WP(MD)No.10355 of 2020, based on which, the learned Judge passed the order impugned herein, it was held that the penalty imposed, under Rule 7(b) (xiv) of the Code in a disciplinary proceedings initiated against the employees, would not attract the GST and the penalty referred therein would only refer to the penalty imposed in the course of trade or commerce; and hence, the imposition of GST on the penalty is illegal and is liable to be set aside. For better appreciation, the relevant paragraphs of the said order are extracted below:

"32. The next question that arises for consideration is whether the penalty imposed in a disciplinary proceedings in a service matter is liable for GST, in terms of Section 7(1) (d) or 7(1-A) of the GST Act, 2017. Admittedly the said Section 7(1) (d) was not in force as on the date of passing the impugned order in the month of September 2020. The said Section was omitted with effect from 01.02.2019. The respondent, in his counter clearly stated that the notice of collection of GST was issued under Section 7(1) (d) alone. Therefore, without any provision/authority, the third respondent has issued the show cause notice to collect the GST, which is totally illegal.

33. Secondly, even assuming that Section 7(1A) of the Act r/w Rule 5(e) of the Rules will be applicable and the show cause notice was issued in accordance with the said provision, as contended by the learned counsel for the respondents, nowhere either in the show cause notice or in the impugned order or in the counter affidavit, the respondents never ever stated about the applicability of Section



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"3.Considering the same, there shall be an order of interim stay insofar as the order of the learned Judge pertaining to the finding on the calculation of GST on the penalty alone is concerned. Thus, it is made clear that the other portion of the order of the learned Judge, in which, liberty was given to the appellant to proceed to conduct an enquiry has not been dealt with and therefore, it is open to the appellant/petitioner to proceed further. Notice."

8.However, in the opinion of this court, the order of the Co-ordinate Bench of this court dated 24.03.2021 in WA(MD). No.679 of 2021, as referred to above, cannot be applicable to the facts of the present cases, as the learned Judge rendered his verdict on 22.02.2021, whereas, the appellants obtained the order of interim stay with respect of GST on penalty, only on 24.03.2021 i.e., much later than the order of the learned Judge. Therefore, the order of the learned Judge, which holds good as on 22.02.2021, does not call for any interference. However, it is made clear that there is no bar for the appellants in proceeding with the enquiry as against the respondents in accordance with law. At the same time, the imposition of GST on the penalty amount alone, is subject to the result of WA(MD) No.679 of 2021.

9.With the aforesaid observations, this writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

msr/gba

To

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Tamil Nadu State Marketing Corporation
Limited (TASMAC),
4th Floor, CMDA Towers,
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7782, 7786, 7790 & 7827

RP(CO)
PM/02/06/2022