BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) Nos.12933 to 12938 of 2021
and
W.M.P.(MD) Nos.10012, 10015, 10022, 10023, 10026 & 10027 of 2021

M/s.Grace Blue Metals,
Rep. by its Managing Partner,
No.2/6-A, Kadanary Main Road,
Madurai,
Madurai District. .. Petitioner in all the W.Ps.

Versus

The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Madurai District. .. Respondents in all the W.Ps.

Prayer in W.P.(MD)No.12933 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33646382828/2016-17, dated 15.12.2020 and quash the same as illegal without jurisdiction.

Prayer in W.P.(MD)No.12934 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33295044126/2013-14, dated 15.12.2020 and quash the same as illegal without jurisdiction.

Prayer in W.P.(MD)No.12935 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33295044126/2014-15, dated 15.12.2020 and quash the same as illegal without jurisdiction.

Prayer in W.P.(MD)No.12936 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33295044126/2015-16, dated 15.12.2020 and quash the same as illegal without jurisdiction.

Prayer in W.P.(MD)No.12937 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33646382828/2017-18 (upto June 2017), dated 15.12.2020 and quash the same as illegal without jurisdiction.

Prayer in W.P.(MD)No.12938 of 2021:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings TIN: 33295044126/2012-13, dated 15.12.2020 and quash the same as illegal without jurisdiction.

For Petitioner (in all the W.Ps.)	:	Mr.B.Saravanan
For Respondent (in all the W.Ps.)	:	Mr.K.S.Selvaganesan Additional Government Pleader

COMMON ORDER

In all these Writ Petitions, the petitioner has challenged the impugned orders passed by the respondent on 15.12.2020, demanding tax for the escaped turnover.

2.These Writ Petitions are predicted on the ground that these proceedings have been initiated beyond six years from the date of assessment in terms of Section 27(1)(a) of the TNVAT Act, 2006.

3.The Writ Petitions are opposed by the respondent on the ground that no returns were filed by the petitioner as contemplated under the provisions of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, the limitation under Section 27 of the TNVAT Act will not apply.

4.The facts on record are not in dispute that the petitioner had not filed returns as it contemplated under the provisions of the TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules, 2006. It is therefore not open to the petitioner to state that the proceedings were without jurisdiction. The dispute pertains to the assessment year 2012-2013 to 2017-2018. Notices were issued during the peak wave of Covid-19 on 31.08.2020. Thereafter, notice was issued on 25.11.2020 when the Country was still under partial lockdown. The impugned order was passed on 15.12.2020, when the ban was partially lifted.

5.Considering the fact that the order came to be passed between the period of first and second lockdown and also considering the fact that the petitioner has not given any reply to the proceedings, which culminated in the impugned proceedings, I am inclined to quash the impugned order and remit the cases back to the respondent to pass a speaking order subject to the petitioner depositing 50% of the tax determined in the impugned order as pre-deposit. This amount to be paid by the petitioner shall be adjusted against the tax liability to be determined *de novo*. In case, the petitioner is not liable to pay tax, such amount shall be refunded/adjusted in accordance with law, by permitting the petitioner to utilize the same for discharging the tax liability. The petitioner is therefore directed to deposit 50% of the tax determined within a period of 30 days from the date of receipt of a copy of this order. Simultaneously, the petitioner is also directed to file a reply to the show cause notices and to the impugned orders, which stands quashed shall be treated as corrigendum to the notices issued to the petitioner. The respondent shall thereafter proceed to pass final order within a period of 45 days. Needless to state before passing such order, the petitioner shall be heard.

6.These Writ Petitions stand allowed with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Madurai District.

+1 CC to M/s.SPL GP (SR-13881[F] dated 23/03/2022)

+6 CC to M/s.B.SARAVANAN, Advocate (SR-14043, 14038,14044,14045, 14042, 14037[F] dated 24/03/2022)

Writ Petition (MD) Nos.12933 to 12938 of 2021
22.03.2022

RK(01/04/2022) 3P 9C