# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 20.10.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.Nos.8295, 8297 and 8298 of 2021**
**and**
**W.M.P.Nos.8833, 8835 and 8838 of 2021**

M/s.MMS Steel & Power Private Limited,
Represented by its Assistant General Manager
Mr.R.Srinivasan,
No.17/2-D, ONGC Road,
Narana Mangalam, Narimanam,
Nagore - 611 002. ... Petitioner in all petitions

v.

The State Tax Officer,
Nannilam Assessment Circle,
Door No.40, First Floor,
AKR Complex Buildings,
Nallamangudi,
Nannilam - 610 105. ... Respondent in all petitions

Prayer in W.P.No.8295 of 2021: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the Assessment Order TNGST: 4020961/2005-2006

(Entry Tax on Goods) dated 30.11.2020, received on 01.12.2020, passed by the Respondent and quash the same as arbitrary and illegal.

Prayer in W.P.No.8297 of 2021: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the Assessment Order TNGST: 4020961/2003-2004 (Entry Tax on Goods) dated 30.11.2020, received on 01.12.2020, passed by the Respondent and quash the same as arbitrary and illegal.

Prayer in W.P.No.8298 of 2021: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the Assessment Order TNGST: 4020961/2004-2005 (Entry Tax on Goods) dated 30.11.2020, received on 01.12.2020, passed by the Respondent and quash the same as arbitrary and illegal.

For Petitioner in all petitions: Mr.Joseph Prabakar

For Respondent in all petitions: Ms.Amrita Dinakaran
Government Advocate.

**COMMON ORDER**

These three writ petitions are filed challenging the impugned orders of assessment for the assessment years 2003-04, 2004-05 and 2005-06 only insofar as it levies penalty by invoking Section 12(3) of the Tamil Nadu

General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") *interalia* on the following grounds:

a) There is no provision to levy penalty under the Entry Tax Act.

b) The impugned orders are made beyond reasonable period and thus suffers from the vice of arbitrariness.

c) Assuming that Section 12(3) of the TNGST Act can be invoked to levy penalty under the Entry Tax Act, nevertheless, the assessments were made on the basis of books of account and not a best judgment assessment which is a condition precedent to invoke Section 12(3) of the TNGST Act.

2. The petitioner had imported lubricating oils from other States. Lubricating Oil is liable to levy of entry tax under the Tamil Nadu Tax on Entry of Goods in Local Areas Act, 2001. The place of business of the petitioner was inspected by the Enforcement Wing Officials on 28.03.2006. During the course of such inspection, it was found that the petitioner had effected purchase of lubricating oil from other States but had not paid entry tax nor had filed their returns within the prescribed period. The petitioner on being informed about the above defects remitted the Entry Tax due on

the value of the lubricating oil proposed by the authority. The above facts are not in dispute.

2.1. In the mean while, after paying the taxes under the Entry Tax on the lubricating oil, the petitioner challenged the validity of the Entry Tax in W.P.No.34287 of 2006 which was allowed by this Court vide order dated 06.07.2007. The State of Tamil Nadu carried the matter by way of an appeal and the Hon'ble Supreme Court upheld levy of tax under Tamil Nadu Tax on Entry of Goods in Local Areas Act, 2001, vide order dated 11.11.2016.

2.2. Thereafter, notices dated 09.06.2020 and 29.07.2020 were issued and personal hearing was also granted on 10.11.2020. The impugned orders came to be passed *inter alia* levying penalty while also levying tax on purchase of lubricating oil and compressor from other States. Though the petitioner had raised several grounds, the petitioner has confined his submission insofar as legality of the levy of penalty under Section 12(3) of the TNGST Act, on the premise that the assessment not being a best judgment assessment which is a condition precedent to invoke Section 12(3) of the TNGST Act, the levy of penalty invoking Section 12(3) of the TNGST Act is challenged as lacking jurisdiction. In this regard, reliance was placed on the judgment of the Division Bench of this Court in W.P.No.4554 of 2008 wherein it was held as under:

> "*2. Learned counsel for the appellant Mr.Parthasarathi has urged before us that, the two grounds on which the imposition of penalty has been sustained by the Tribunal are, that the assessing authority imposed additional tax on the sales made by the Assessee, which were not supported by declaration in 'C' Forms and secondly on the Cash Incentives received by the Assessee on the Exports made by it was held to be part of taxable turnover, which was not so. <u>The imposition of additional tax, however, has not been done as a result of 'Best Judgment Assessment' under Section 12(2) of the TNGST Act, upon which only the penalty under Section 12(3)(b) of the Act is attracted and therefore, the learned Tribunal has erred in upholding the imposition of the said penalty.</u>*
>
> .......
>
> *4. Having heard the learned counsel for the parties, we are of the opinion that the parameters of Section 12(3)(b) of the Act are not satisfied in the present case. Section 12(3)(b) provides for imposition of penalty in case of*

*submission of incorrect or incomplete return by the Assessee. Both the grounds given above for imposition of additional tax on the Assessee did not, in our opinion, result in Best Judgment Assessment against the Assessee and it cannot amount to filing of incorrect or incomplete return by the Assessee. <u>On debatable issues, even if the addition in taxable turnover is made by the Assessing Officer, it does not amount to Best Judgment Assessment, which can be passed, only if the regular books of accounts and the return filed by the Assessee are rejected for given reasons.</u> Therefore, the learned Tribunal has erred in relying upon the insertion of the Explanation in Section 12(3) of the Act at a later date with effect from 01.04.1996 to uphold such penalty in the year 1993-94. In our opinion, the Explanation to Section 12(3) does not get attracted to the facts of the present case at all."*

*(emphasis supplied)*

3. I find that there is merit in the submission made by the learned counsel for the petitioner that a best judgment assessment is a condition precedent before penalty under Section 12(3) of the TNGST Act would be levied. However, the impugned order of assessment has been made without even considering if the condition precedent exist viz., whether the assessment is best judgment assessment to invoke Section 12(3) of the

TNGST Act. As the above aspect goes to the root of jurisdiction to levy penalty under Section 12(3) of the TNGST Act. I am inclined to set aside the order and remit the matter back to the assessing authority to reconsider whether levy of penalty is warranted after applying his mind as to the existence of condition precedent viz., whether the assessment is a best judgment assessment.

4. The impugned orders are set aside with liberty to the Respondent to reconsider if penalty under Section 12(3) of the TNGST Act is warranted after applying his mind as to the existence of the condition precedent viz., whether the assessment in issue is a best judgment assessment thereby warranting penalty after affording the petitioners a reasonable opportunity. The writ petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

**20.10.2023**

Index: Yes/No
Speaking order/ Non-Speaking order
Neutral Citation :Yes/No
spp /shk

**MOHAMMED SHAFFIQ,J.**

spp/ shk

To:
The State Tax Officer,
Nannilam Assessment Circle,
Door No.40, First Floor,
AKR Complex Buildings,
Nallamangudi,
Nannilam - 610 105.

**W.P.Nos.8295, 8297 and 8298 of 2021**
**and**
**W.M.P.Nos.8833, 8835 and 8838 of 2021**

**20.10.2023**