IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.9824, 9835 & 9841 of 2023
and
W.M.P.Nos. 9900, 9902, 9910, 9911, 9914 & 9915 of 2023

Tvl.Harishri Enterprises
Rep. By its Proprietor Mrs.S.Harini,
No.35A, Gajapathi Street,
Shenoi Nagar,
Chennai – 600 030. .. Petitioner in all writ petitions

vs

1.The Assistant Commissioner (ST)
Kilpauk Assessment Circle,
F-50, 3rd Floor, 1st Avenue, Anna Nagar,
Chennai – 600 012.

2.The Branch Manager,
Indian Bank,
No.812, Periyar EVR High Road,
Chennai – 10. .. Respondents in all writ petitions

Prayer in W.P.No.9824 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling the records of the 1st respondent in GSTN/33AMAPH8646K1ZX/2019 – 20 dated 06.12.2022 and quash the same being illegal, invalid, without authority of law, against the principles of natural justice and contrary to the law.

Prayer in W.P.No.9835 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling the records of the 1st respondent in GSTN/33AMAPH8646K1ZX/2020

– 21 dated 06.12.2022 and quash the same being illegal, invalid, without authority of law, against the principles of natural justice and contrary to the law.

Prayer in W.P.No.9841 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling the records of the 1st respondent in GSTN/33AMAPH8646K1ZX/2021 – 22 dated 06.12.2022 and quash the same being illegal, invalid, without authority of law, against the principles of natural justice and contrary to the law.

For Petitioner	:	Mr.D.Vijayakumar (in all writ petitions)
For Respondents	:	Ms.Amritha Poonkodi Dinakaran Government Advocate (in all writ petitions)

COMMON ORDER

Read this order in conjunction with and in continuation of order dated 30.03.2023 that reads as follows:-

> *"Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate accepts notice for the respondents and seeks some time to obtain instructions and file a counter.*
>
> *2. Before going into the veracity or otherwise of the challenge made to the assessment orders, a preliminary objection is raised by the respondents to the effect that the mismatch is between the claim of Input Tax Credit as reflected in GSTR 3B and as reflected in GSTR 3A, both available on the official website.*
>
> *3. Thus, all material for reconciliation was available with the petitioner and there is no merit in the submission that opportunity was not provided. According to the respondents, the mis-match most probably, arises from bill trading.*

> *4. To this effect, she submits that an inspection was made, which reveals that there was no business premises from where the petitioner could have carried on business and that communications issued to the address stated in the registration certificate were returned stating 'no such person'. The registration of this assessee is stated to have been suspended recently as well.*
> *5. Since this goes to the root of the matter, R1 will cause inspection of the business premises of the petitioner this afternoon. Learned counsel for the petitioner is directed to inform the petitioner to be present in the business premises. Learned Government Advocate will file a report on 31.03.2023.*
> *6. List on 31.03.2023 as item 1 in the regular list."*

2. The inspection was ordered yesterday i.e., 30.03.2023, in view of the cloud cast upon the respondents on the business transactions of the petitioner. Enquiry was carried out and a report has been filed by the Assistant Commissioner, that reads as follows:-

> *"I invite your kind attention to the reference 2nd cited with regards to W.P.No.9824, 9835, 9845 of 2023 filed by Tvl.Harishri Enterprises, Chennai.*
> *I submit herewith the physical verification report of the taxpayer's principal place of business dated 30.03.2023. The registered principal place of business under the Department of Commercial Taxes of Tvl.Harishri enterprises (GSTIN-33AMAPH8646K1ZX) whic his 35A, Gajapathy Street, Shenoy Nagar, Chennai, Tamil Nadu 600 030 was inspected today(30.03.2023) by the Assistant Commissioner (ST), Kilpauk assessment circle*

at 4.55 PM as per the directions of the Honorable Judge to physically inspect the principal place of business on 30.03.2023.

The taxpayer was contacted through the registered mobile number, which was the phone number of the taxpayer's father Mr.Saravanan and informed that the principal place of business will be inspected as per the Honorable Judge's directions, for which Mr.Saravanan(the father of the taxpayer) informed that the principal place of business was shifted to No.14/1, Sothukuppam Main Road, Redhills, Chennai - 52 and that no business is being operated in that shifted premises as well as on date. The premises in Redhills was also inspected today by the Deputy State Tax Officer, Kilpauk Assessment Circle at 6.45 PM and it was found that no business was found to be in existence in the said premises.

Further on verification of the registered principal place of business under the Tamil Nadu Goods and Services Act, 2017, it was found that the premises at 35A, Gajapathy Street, Shenoy Nagar, Chennai, Tamil Nadu 600 030 is a residential apartment and there was no such business as Tvl.Harishri enterprises being operated in that address. Also there was no person in the name of HARINI SARAVANAN found in that address. On enquiry with the security of the premises, it was informed that there was no such business operating in the building mentioned and Mr.Saravanan and his daughters had resided and shifted from the premises 2 years ago. The photo proof documents of the verification done is attached below.

This is submitted for your kind information."

3. Learned counsel for the petitioner would also confirm the contents of the report as aforesaid, including the fact that the petitioner has vacated the premises at 35A, Gajapathi Street,

Shenoy Nagar, Chennai – 600 030 more than two years ago. Learned Government Advocate adds that a change of address was filed but was rejected for want of details in the application. The matter was not pursued thereafter by the petitioner.

4. In this context, learned counsel for the petitioner circulates an order of seizure dated 06.01.2023, pointing out that the addresses stated therein, constitute the premises at Gajapathi Street as well as Redhills. This is explained by the respondents who state that the recording of the statement and the seizure was in Redhills and the reference to Gajapathi street is only as the registered place of business.

5. Coming to the impugned assessment, it is the case of the petitioner in the affidavit that no personal appearance was granted prior to finalization of proceedings. This fact is disputed by the learned Government Advocate, on instructions from the officer who is present in Court. The pre-assessment notice is dated 26.09.2022 and the impugned order has been passed on 06.12.2022. The affidavit at paragraph 3, states that the accountant who was to appear before the officer was advised to take an adjournment of two months to locate a consultant to address the

proceedings initiated. Even assuming that such a request was made, the impugned order was passed long past the period of two months sought.

6. Though learned counsel for the petitioner submits that the petitioner had been hospitalized on 24.11.2022, I am dis-inclined, in light of the trajectory of events as above, to accept the case of the petitioner and hence grant liberty to the petitioner to approach the appellate authority by way of statutory appeal, if so inclined. Appeal, if filed within a period of two weeks from today, shall be entertained without reference to limitation having regard to all other statutory conditions, including pre-deposit.

7. Writ petitions stand dismissed though with liberty. No costs. Connected miscellaneous petitions are closed. Registry to return original order.

31.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

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F-50, 3rd Floor, 1st Avenue, Anna Nagar,
Chennai – 600 012.

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Indian Bank,
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DR. ANITA SUMANTH,J.

ssm

W.P.Nos.9824, 9835 & 9841 of 2023

31.03.2023