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W.P.Nos.8968, 8999 & 9003 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.8968, 8999 & 9003 of 2020

and

W.M.P.Nos.10905, 10906, 10939, 10942, 10944 & 10946 of 2020

EPMS Property Services Private Limited,
Rep. by its Director,
Mr.E.Selva Kumar,
No.3, Isha Commercial Complex,
Dr.Abdul Kalam Road,
Pudupakkam - 603 103.

.. Petitioner
in all writ petitions

vs

1.The State Tax Officer,
Group - VI, Intelligent - II,
Office of the Deputy Commissioner (ST),
PAPJM Buildings, No.1, Greams Road,
Chennai - 600 006.

2.The Appellate Deputy Commissioner (ST)(FAC),
GST - Appeal, Chennai - II,
3rd Floor, C.T.Annex Building,
No.1, Greams Road,
Chennai - 600 006

.. Respondents
in all writ petitions

Prayer in W.P.No.8968 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case from the files of the first and second respondent herein, quash the impugned order of assessment dated 18.10.2019 in Order No.GST/INS-13/2019-20 passed by the first



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respondent and consequent order of the second respondent dated 26.02.2020 in Rc.No.229/2020/A1 as illegal and improper.

Prayer in W.P.No.8999 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case from the files of the first and second respondent herein, quash the impugned order of assessment dated 18.10.2019 in Order No.GSTIN 33AAECE2224M1ZU/2018-19 passed by the first respondent and consequent order of the second respondent dated 26.02.2020 in Rc.No.228/2020/A1 as illegal and improper.

Prayer in W.P.No.9003 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case from the files of the first and second respondent herein, quash the impugned order of assessment dated 18.10.2019 in Order No.GSTIN 33AAECE2224M1ZU/2017-18 passed by the first respondent and consequent order of the second respondent dated 26.02.2020 in Rc.No.227/2020/A1 as illegal and improper.

For Petitioner	:	Ms.Lakshmi Sriram for Mr.B.Sivaraman (in all petitions)
For Respondents	:	Mr.C.Harsha Raj Additional Government Pleader (in all petitions)



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COMMON ORDER

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Heard Ms.Lakshmi, learned counsel for the petitioner and Mr.Harsha Raj, learned Additional Government Pleader for the respondents.

2. These three writ petitions relate to the periods 2017 – 2018, 2018 – 2019 and 2019 – 2020 and the challenge is to orders of assessment passed under the provisions of the Tamil Nadu Goods and Services Taxes Act, 2017, (in short, 'Act') as well as memo dated 26.02.2020 issued by the Deputy Commissioner (Sales Tax) holding the appeals filed by the petitioner challenging the aforesaid orders of assessment as non-maintainable and filed beyond the period of limitation.

3. As regards the assessments itself, learned counsel for the petitioner would submit, and these are matters of record, that notices were issued on 26.08.2019 calling for various particulars for finalizing the assessments. The authorized representative of the petitioner who was dealing with tax matters was, at that time, diagnosed with hepatitis and had, vide letter dated 10.09.2019, sought an adjournment.



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4. A second notice followed on 04.10.2019 granting the petitioner seven days time to reply with documentary evidences in support of its contentions. Under the same notice, the respondent also afforded the petitioner an opportunity of personal hearing. The representative of the petitioner, who was still unwell was unable to take effective steps within the time granted to respond. Hence, the impugned orders of assessment have come to be passed, without further reference to the petitioner.

5. The petitioner filed statutory appeals challenging the assessments. The appeals were filed on 20.02.2020. Inter alia, the appeal memorandum contained an error, in that, the date of receipt of the order was stated as '21.10.2019'. In fact, the orders of assessment had only been received on 29.09.2019 as confirmed by a certificate issued by the State Tax Officer, Group - VI, Intelligent - II dated 26.05.2020 placed on file before this Court.

6. With the aforesaid confirmation, to the effect that the date of service of the orders was 29.10.2019, the appeals have been filed within time and the rejection of appeals as non-maintainable is erroneous. However, no fault can be attributed to the second respondent in this regard as the officer has merely



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proceeded on the facts as contained in the appeal memorandum filed by the petitioner.

7. In any event, there is no necessity to advert to the aspect of maintainability any further, seeing as I am of the considered view that the orders of assessment suffer from violation of principles of natural justice. The exchange of correspondence between the parties establishes that the petitioner was co-operating with the proceedings for assessment. This, and the request contained in letter dated 10.09.2019, lead me to the conclusion that the petitioner should be afforded an effective opportunity of hearing and has been denied the same prior to passing of the orders impugned.

8. In light of the reasoning as above, the impugned memo and orders are set aside and the assessments remanded to the file of the Assessing Authority to be re-done, de novo. Parties would request that the Court fix a date for hearing seeing as the matters relate to the periods 2017 - 2019. Hence, date of hearing is fixed as Wednesday, 12.04.2023 and the petitioner shall appear before the officer without expecting any further notice in this regard. After hearing the petitioner, orders shall be passed within a period



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of twelve weeks from date of personal hearing as fixed above, in accordance with law.

9. Writ petitions stand allowed in the above terms. No costs. Connected miscellaneous petitions are closed.

05.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

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DR. ANITA SUMANTH,J.

ssm

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