IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26321, 26324, 26328 and 26331 of 2023
and
W.M.P.Nos.25727, 25728, 25730, 25731, 25734, 25735, 25739 and 25740 of 2023

Tvl.Sowmya Constructions,
Represented by its Managing Director
Kalimuthubalasubramani,
Sellappampatti,
Namakkal- 637 019. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Namakkal Rural, Salem,
Tamil Nadu. ... Respondent in all W.Ps

Prayer in W.P.No.26321 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to quash the order No.33AIDPB9692C2ZG/2018-2019 dated 31.01.2023 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

Prayer in W.P.No.26324 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to quash the order No.33AIDPB9692C2ZG/2019-2020 dated 31.01.2023 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

Prayer in W.P.No.26328 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to quash the order No.33AIDPB9692C2ZG/2020-2021 dated 31.01.2023 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

Prayer in W.P.No.26331 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to quash the order No.33AIDPB9692C2ZG/2021-2022 dated 31.01.2023 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

For Petitioner (In all W.Ps)	:	Mrs.P.Jayalakshmi
For Respondent (In all W.Ps)	:	Mrs.E.Ranganayaki Special Government Pleader

COMMON ORDER

Mrs.E.Ranganayaki, learned Special Government Pleader takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Assessment Orders all dated 31.01.2023 for the Assessment Years 2018-2019, 2019-2020, 2020-2021, 2021-2022.

3. Dispute pertains to rate of tax on the works sub-contracts services provided by the petitioner for many Government Projects like construction of road work of State Highways, Municipal Corporations and Municipalities.

4. According to the petitioner, the petitioner's account was looked after by one P.Suresh, who was also handling taxation. It is submitted that the said P.Suresh was hospitalized due to heart complications and ailments and therefore, the petitioner was unaware of the notices issued prior to the impugned Assessment Orders. It is submitted that the impugned Assessment Orders which were passed on 31.01.2023 were hosted in web portal also went unnoticed.

5. The learned counsel for the petitioner would submit that *post facto* the respondent had recovered almost 7.5% of the disputed tax amounting to Rs.47,06,297/- .

6. The learned counsel for the petitioner has placed reliance on the decisions of this Court in the following two cases:

(i) **M/s.ACD Communications Private Limited** Vs. **The Union of India, Represented by its Secretary and others** in W.P.No.840 of 2009 dated 20.01.2009.

(ii) **K.Marimuthu** Vs. **The Commissioner of GST & Central Excise and others** in W.P.(MD)Nos.12115 and 12116 of 2023 dated 18.05.2023 and therefore prays for allowing the writ petitions.

7. On the other hand, the learned Special Government Pleader for the respondent has relied on the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440 and submits that the writ petitions are liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

9. The service of notice through web portal although recognized under section 169 of the respective GST enactments, is not sufficient. An assessee may or may not notice the web portal on a regular basis unless it is a large establishment within a dedicated section/department to handle the taxation.

10. There should be a method by which, a prior intimation is sent to the assessees on their designated Short Message Service (SMS)/What's up number stating that orders/notices have been sent to their web portal. The reasons given for not participating in the proceedings prior to passing of the impugned orders are accepted.

11. Therefore, the Court is inclined to grant liberty to the petitioner to file a Statutory Appeal before the Appellate Authority under Section 107 of the TNGST Act, 2017, within a period of thirty days from the date of receipt of a copy of this order, subject to the petitioner complying with the other

mandatory requirement of pre-deposit as is contemplated under the aforesaid provision.

12. Subject to the above compliance, the Appellate Authority shall dispose the appeal on merits, proposed to be filed by the petitioner within a period of two months thereafter or on its turn.

13. These Writ Petitions are disposed of with the above observations. Connected Writ Miscellaneous Petitions are closed. No costs.

07.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb/gvn

To

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Namakkal Rural, Salem,
Tamil Nadu.

C.SARAVANAN, J.
arb/gvn

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