**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 14.09.2023

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**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.Nos.26882 & 26889 of 2023
and
W.M.P.Nos.26303, 26304, 26307 & 26308 of 2023

A.Nazimudeen,
Proprietor,
Tade Name: Emerald Trading
24/1A, Kumbapalayam Pirivu
Madukkarai,
Coimbatore – 641 105. ... Petitioner in both W.Ps.

Vs

The State Tax Officer,
Podanur Circle,
Coimbatore. ... Respondent in both W.Ps.

**Prayer in W.P.No. 26882 of 2023:** Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order Proc.No. GSTIN 33CHEPN4196H1Z6/2020-2021 dated 05.09.2022 passed by the respondent and quash the same since the same is passed in violation of provisions of the CGST/TNSGST Act and Rules, principals of natural justice.

**Prayer in W.P.No. 26889 of 2023:** Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order Proc.No. GSTIN 33CHEPN4196H1Z6/2021-2022 dated 05.09.2022 passed by the respondent and quash the same since the same is passed in violation of provisions of the CGST/TNSGST Act and Rules, principals of natural justice.

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| For Petitioner (in both W.Ps) | : | Mr.G.Natarajan |
| For Respondent (in both W.Ps) | : | Ms.Amirtha Poonkodi Dinakaran Government Advocate |

**COMMON ORDER**

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2.In these writ petitions, the petitioner has challenged the respective Assessment order dated 05.09.2022 for the Assessment years 2020-2021 and 2021-2022. The petitioner has not filed a statutory appeal as is required under Section 107 of the TNGST Act, 2017 within the time stipulated in Section 107 of the said Act.

3. The case of the petitioner is that the petitioner was unwell, when the notices were issued to the petitioner on 21.04.2022 in Form GST DRC-01. It is further submitted that the notices were sent through portal and that the petitioner was unaware of the same.

4.The learned counsel for the petitioner submits that the petitioner was also not called for a hearing before the impugned order was passed on 05.09.2022. He further submits that one opportunity may be given to the petitioner to explain the case on merits.

5.The learned Government Advocate for the respondent on the other hand would submit that three different dates were fixed for personal hearing on 10.08.2022, 24.08.2022 and 29.08.2022. However, the petitioner failed to avail all the opportunities for personal hearing. It is further submitted that the petitioner also failed to respond to the notice in GST DRC-01 dated 21.04.2022. It is further submitted that the writ petition is liable to be dismissed in the light of 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.

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

7.The petitioner has filed medical records to show that during the period when the notice was issued in GST DRC 01 on 21.04.2022, the petitioner was dealing with a health issue on account of coronary heart disease. The petitioner appears to be a proprietor of the concern called Emerald Trading. The petitioner deserves a chance to explain the case.

8.Considering the facts and circumstances of the case, Court is inclined to set aside the impugned order and remit the cases back to respondent subject to petitioner remitting 25% of the disputed amount from his electronic cash ledger within a period of thirty days from the date of receipt of a copy of this order.

9.Subject to such compliance, the respondent shall take up the case and therefore to decide the issue afresh preferably within a period of 30 days thereafter. The petitioner shall co-operate with the respondent in the denovo proceedings. It is made clear in case, the petitioner fails to comply with the conditions, this order shall stands automatically vacated *sine die* without reference, in which case the respondent is at liberty to proceed against the petitioner in accordance of the impugned order.

10.These writ petitions stand disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

**14.09.2023**

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

The State Tax Officer,
Podanur Circle,
Coimbatore.

**C.SARAVANAN, J.**

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