IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.(MD)Nos.14407, 14408, 14409 & 14410 of 2021 and
WMP.(MD)Nos.11339, 11343, 11344,
11347, 11352 & 11353 of 2021

M/s.Sri Krishna Timbers
Represented by its Authorised
Representative N.Prakash Patel
1/908, NA, Courtallam Cross Road,
Piranoor Border, Shencottah,
Tirunelveli, Tamil Nadu-627809 ... Petitioner in WP(MD) Nos.14407 and 14408 of 2021

M/s.Maruthi Traders
Represented by its Proprietor Prakash Patel,
No.1/909, Courtallam Cross road, Piranoor Border,
Shencottah, Tenkasi District-627 809. ... Petitioner in WP(MD) Nos.14409 and 14410 of 2021

Vs

1.State Tax Officer (Collection and Arrear)
Tirunelveli.
2.Superintendent of GST & Central Excise,
Tenkasi Range, Tirunelveli Division,
Madurai Commissionerate. ... Respondents in all WPs

Prayer in WP(MD)No.14407 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st Respondent in proceedings in GSTIN: 33AGDPD0324M1ZW/2017-18 dated 31.12.2020 passed therein for Assessment Year 2017-18 and consequent recovery notice dated 15.04.2021.

Prayer in WP(MD)No.14408 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st Respondent in proceedings in GSTIN: 33AGDPD0324M1ZW/2018-19 dated 31.12.2020 passed therein for Assessment Year 2018-19 and consequent recovery notice dated 15.04.2021.

Prayer in WP(MD)No.14409 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st Respondent in proceedings in GSTIN: 33AJMPP0538M1ZW/2017-18 dated 31.12.2020 passed therein for Assessment Year 2017-18 and consequent recovery notice dated 15.04.2021.

Prayer in WP(MD)No.14410 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st Respondent in proceedings in GSTIN: 33AJMPP0538M1ZW/2018-19 dated 31.12.2020 passed therein for Assessment Year 2018-19 and consequent recovery notice dated 15.04.2021.

(In all WPs)
For Petitioners : Ms.Dhanamadhri.G

For Respondents : Mr.Haja Nazrudeen
Additional Advocate General
assisted by
Mr.M.Venkateswaran, Special Government Pleader
and
Mr.P.Hari Babu, Government Advocate

COMMON ORDER

The challenge is to assessments made for the periods 2017-18 and 2018-19 under the provisions of the Tamil Nadu Goods and Service Tax Act, 2017 (in short 'Act') dated 31.12.2020.

2.Though the petitioners have raised various grounds including the fact that the present proceedings have been initiated by officers of the State Tax Department though the petitioners are registered as a Central assessee, in the course of hearing before me, Ms.Dhanamadhri, learned counsel for the petitioners, prefers to restrict herself to the grounds raised touching on the violation of principles of natural justice.

3.She appears to be right in so far as, prior to passing of the impugned orders, the petitioners had filed replies dated 17.12.2020, where, in conclusion they request for a personal hearing prior to finalization of the proceedings. This request has been totally ignored by the assessing officer who has instead proceeded to pass the impugned order without hearing the petitioner.

4.The impugned orders have been passed under the provisions of Section 74 of the Act and the officer is, in passing the orders, bound by the general provisions relating to determination of tax as set out under Section 75 of the Act.

5.Section 75(4) provides for an opportunity of hearing to be granted to an assessee where such request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against the paid person. Seeing as the petitioners have specifically requested for an opportunity of personal hearing, it was incumbent upon the officer to have fix the matter for hearing, heard the petitioners and thereafter determined the tax payable.

6.In such circumstances, the impugned orders of assessment are set aside. The petitioners will appear before the assessing officer on 22.06.2023 at 10.30 a.m. along with all/any materials, in support of their contentions without anticipating any further notice. Since one of the contentions advanced is that the impugned orders of assessment traverse far beyond the points upon which the show cause notices have been issued, let the impugned orders be treated as show cause notices as well.

7.Thus, and in effect, the petitioners are permitted to appear along with a detailed reply to all points as revealing themselves from the impugned orders of assessment, all show cause notices/pre-assessment notices issued thus far and the counters filed to these writ petitions dated 03.08.2020 and 25.06.2022. After hearing the petitioners and considering their submissions and supporting documents, if any, orders shall be passed within a period of six (6) weeks thereafter, i.e. on or before 03.08.2023.

8.It is made clear that if the petitioners do not appear before the officer on 22.06.2023, the benefit under this order stands revoked without further reference to the petitioners and the impugned orders will stand revived automatically.

9.These writ petitions are allowed by way of remand. No costs. Connected miscellaneous petitions are closed.

12.06.2023

vs
Index : Yes / No
Speaking order
Neutral Citation : Yes

To
1.State Tax Officer (Collection and Arrear)
Tirunelveli.

2.Superintendent of GST & Central Excise,
Tenkasi Range,
Tirunelveli Division,
Madurai Commissionerate.

Dr.ANITA SUMANTH, J.
vs

W.P.(MD)Nos.14407, 14408, 14409 & 14410 of 2021 and WMP.(MD)Nos.11339, 11343, 11344, 11347, 11352 & 11353 of 2021

12.06.2023