# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM :

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

W.P.Nos.1896 and 1899 of 2022
and
W.M.P.Nos.2048 and 2050 of 2022

Tvl.SRP Communications,
Represented by its Proprietor S.Prasathkumar ... Petitioner in both W.Ps

Vs.

1.The State Tax Officer (Intelligence),
Inspection-1,
Office of the Deputy Commissioner (Intelligence),
Salem.

2.The State Tax Officer,
Recovery and Arrears,
Office of the Deputy Commissioner (Intelligence),
Salem. ... Respondents in both W.Ps

Prayer in W.P.No.1896 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the second respondent notice bearing Reference Na.Ka.No.Aa4/3336/2019 dated 11.08.2021 for the year 2017-2018 and quash the same.

(Prayer amended vide order dated 08.02.2023 made in W.M.P.No.6883 of 2022 in W.P.No.1896 of 2022).

Prayer in W.P.No.1899 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the second respondent notice bearing Reference Na.Ka.No.Aa4/3336/2019 dated 11.08.2021 for the year 2018-2019 and quash the same.

(Prayer amended vide order dated 08.02.2023 made in W.M.P.No.6881 of 2022 in W.P.No.1899 of 2022).

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| For Petitioner<br>(In both W.Ps) | : | Mr.Adithya Reddy |
| For Respondents<br>(In both W.Ps) | : | Mr.V.Prashanth Kiran<br>Government Advocate |

## COMMON ORDER

By this common order, both the writ petitions are being disposed of.

2. The petitioner is before this Court against the respective Recovery Notices dated 11.08.2021 issued for the arrears of tax for the Assessment Years 2017-2018 and 2018-2019.

3. The Impugned Recovery Notices itself recorded that the petitioner has

not filed returns subsequently. The petitioner had earlier suffered Assessment Orders under Section 62 of the Tamil Nadu Goods and Services Tax Act, 2017, which was wrongly mentioned as Section 63 of the Tamil Nadu Goods and Services Tax Act, 2017 on 20.09.2019.

4. This was because the petitioner has not filed the returns for the respective Assessment Years and therefore, invoking best judgment method, taxable turn over determined by adding 10% towards gross profit. The demand itself was based on the data captured in GSTR-2A for the respective Assessment Years.

5. In the orders that were passed on 20.09.2018 under Section 62, the benefit of adjustment of the Input Tax Credit has not been granted as the provisions as it stood then as it would have disentitled the petitioner from utilizing the Input Tax Credit which was not claimed within time under Section 16 of the Tamil Nadu Goods and Services Tax Act, 2017.

6. The Parliament has come to the rescue of the assessees who have not claimed the Input Tax Credit in time and the proposal was made in Clause 114

of the Finance Bill, 2024 pursuant to the recommendation of the GST Council Meeting in its 53rd meeting held on 22.06.2024.

7. The Finance Bill was presented on 23.07.2024 before the Parliament. The Finance Bill was also passed into Act as a result of which, the proposals in Clause 114 of the Finance Bill has been passed as Section 114 of the Finance Act, 2024.

8. As a consequence of the above amendment, Sections 16(5) and 16(6) of the Central Goods and Services Tax (CGST) Act have been incorporated. Similar amendments are expected by the Tamil Nadu State Legislature to insert Sections 16(5) and 16(6) of the Tamil Nadu Goods and Services Tax Act, 2017.

9. Even otherwise, as per the decision of the Hon'ble Supreme Court in **Formica India Division, Bombay, Burma Trading Corporation Limited** Vs. **Collector of Central Excise and others**, 1995 Supp (3) SCC 552/1995 (77) ELT 511, once the tax is demanded, the benefit of Input Tax Credit has to be granted.

10. Under these circumstances, the Impugned Recovery Notices can be

set aside and the case be remitted back to the respondents to pass a fresh order.

11. Therefore, the Impugned Recovery Notices are set aside and the case is remitted back to the respondents to pass fresh order on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

12. These Writ Petitions stand allowed with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

**22.08.2024**

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

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**C.SARAVANAN, J.**

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To

1.The State Tax Officer (Intelligence),
Inspection-1,
Office of the Deputy Commissioner (Intelligence),

Salem.

2.The State Tax Officer,
Recovery and Arrears,
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