IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.01.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.723, 741, 745, 772, 776 & 798 of 2024
and W.M.P.Nos.752, 757, 763, 793, 817, 820 of 2024

In all WPs.

M/s.Sree Jayavarmatha,
Proprietor K.Ramesh,
No.1/76, Veeranathapuram,
Reddy Street, Veeranathapuram,
Kattumannar Koil,
Cuddalore-608 301.
Temporarily residing at No.26/21,
Arunagirinathar street,
Perungalathur, Chennai-600 063. ... Petitioner

-vs-

1.Office of the Appellate Deputy Commissioner (ST),
Goods and Service Tax,
Vellore Camp, No.4,
Bharathiyar salai,
Fort Round Road,
Vellore-632 001.

2.The State Commercial Tax Officer,
Chidambaram-2, Near RTO,
Bye-pass road, Chidambaram-608 102. ... Respondents

PRAYER in W.P.No.723 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/643/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2022-2023 by order No.ZD330523148302T passed on 31.05.2023 by the learned Goods & Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

PRAYER in W.P.No.741 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/642/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2021-2022 by order No.ZD330523148026P passed on 31.05.2023 by the learned Goods &

Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

PRAYER in W.P.No.745 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/641/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2020-2021 by order No.ZD330523147530R passed on 31.05.2023 by the learned Goods & Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

PRAYER in W.P.No.772 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/638/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2017-2018 by order No.ZD330523147064Q passed on 31.05.2023 by the learned Goods &

Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

PRAYER in W.P.No.776 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/640/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2019-2020 by order No.ZD330523147449A passed on 31.05.2023 by the learned Goods & Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

PRAYER in W.P.No.798 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records for issuance of the impugned proceeding of the 1st respondent by the intimation vide in Rc.A1/639/2023 dated 14.11.2023, by the Office of the Appellate Deputy Commissioner (ST) to quash the same by condone the delay of 32 days with Reference No.33AXFPR2253N1Z7 issued by 2nd respondent in the assessment year 2018-2019 by order No.ZD330523147375H passed on 31.05.2023 by the learned Goods &

Service Tax Officer-cum-Proper Officer of State Tax, Chidambaram-2.

In all WPs.

For Petitioner : Mr.Jayabalan K.

For Respondents : Ms.Amirtha Poonkodi Dinakaran, Govt. Adv.(tax)

COMMON ORDER

In all these writ petitions, the petitioner challenges an order by which he was called upon to provide the reasons for belated filing of the appeal.

2. In each of these writ petitions, an assessment order was issued on 31.05.2023. As per Section 107(1) of the TNGST Act, an appeal is required to be filed within three months from the date on which the order impugned was communicated to the assessee. The said three month time limit expired on 30.08.2023 in all these cases. Under sub-section(4) of Section 107, the appellate authority is empowered to condone delay up to 30 days for sufficient cause. By the impugned communication, the petitioner was called upon to submit a valid reason for the belated filing.

3. Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate (Tax), accepts notice on behalf of the respondents. She points out that

sub-rule (3) of Rule 108 of the TNGST Rules provides that the date of issue of provisional acknowledgment shall be considered as the date of filing of the appeal. She further submits that such provisional acknowledgment is given only upon receipt of a physical copy of the appeal.

4. The relevant facts and dates are set out in the impugned communication. The impugned communication records that each appeal was presented online on 31.08.2023. This falls within the 30 day period for condonation of delay in terms of sub-section (4) of Section 107. In the affidavit in support of the petitions, the petitioner has asserted that the delay occurred because the petitioner did not receive the show cause notice and therefore was not heard in person before the order impugned in the appeal was issued.

5. By taking into consideration the fact that the petitioner filed the appeal online within the 30 day period for condoning the delay for sufficient cause, this is a fit case to exercise discretionary jurisdiction and direct that the appeal be received and disposed of on merits. The impugned orders are

quashed on such ground.

6. For reasons set out above, the 1st respondent is directed to consider and dispose of the respective appeal on merits subject to the petitioner making the prescribed pre-deposit in relation to such appeal. All the writ petitions are allowed on these terms. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
kj

SENTHILKUMAR RAMAMOORTHY,J

kj

To

1.Office of the Appellate Deputy Commissioner (ST),
Goods and Service Tax,
Vellore Camp, No.4,
Bharathiyar salai,
Fort Round Road,

Vellore-632 001.

2.The State Commercial Tax Officer,
Chidambaram-2, Near RTO,
Bye-pass road, Chidambaram-608 102.

Writ Petition Nos.723, 741, 745, 772, 776 & 798 of 2024
and W.M.P.Nos.752, 757, 763, 793, 817, 820 of 2024

12.01.2024