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W.P. Nos.6701 of 2021 and etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2024

Pronounced on : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.6701, 5548, 5555, 5557 and 5566 of 2021

and

W.M.P. Nos.6185, 6189, 6193, 7252 and 7253 of 2021

M/s.A.J.Steels

Represented by its Propreitor,
Mr.M.Mohamed Abdul Cader,
No.104, Pillaiyarkoil Street,
Mannurpet, Padi, Chennai-50.

..Petitioner in all W.Ps.

Vs.

1.The State Tax Officer,
Group-IV, Inspection-II,
Intelligence-II, Greams Road,
Chennai-600 006.

2.The Joint Commissioner (ST),
Intelligence-II, Greams Road,
Chennai-06.

3.The State Tax Officer,
Office of the Assistant Commissioner (ST),
Korattur Assessment Circle,
Chennai.

..Respondents in all W.Ps.



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PRAYER in W.P.No.6701 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 4th Respondent in Circular No.9 of 2019 dated 24.05.2019 delegating the power for adjudication to be inspection cell falls under Deputy Commissioner inspection unit delegated to Joint Commissioner intelligences and quash the 2nd function adjudication and assessment based on findings during the inspection and quash the same as illegal, invalid and without authority of law and also the principles of administration of justice.

PRAYER in W.P.No.5548 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent proceedings in GSTIN:33AJRPM5224G1Z6/2017-18 dated 19.01.2021 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law or issue.

PRAYER in W.P.No.5555 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent proceedings in GSTIN:33AJRPM5224G1Z6/2018-19 dated 19.01.2021 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law or issue.

PRAYER in W.P.No.5557 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent proceedings in GSTIN:33AJRPM5224G1Z6/2019-20 dated 20.01.2021 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law or issue.

PRAYER in W.P.No.5566 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent proceedings in GSTIN:33AJRPM5224G1Z6/2020-21 dated 21.01.2021 and quash the same being illegal, invalid, without jurisdiction and violated the



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principles of natural justice and contrary to the law or issue.

For Petitioner : Mr.D.Vijayakumar
in all W.Ps.

For Respondents : Ms.Amritha Dinakaran
in all W.Ps. Government Advocate

COMMON ORDER

This batch of five writ petitions is filed challenging the assessment orders for the period 2017-18 to 2020-21 and Circular No.9 of 2019 dated 24.05.2019 issued by the 4th Respondent in W.P.No.6701 of 2021.

2. The petitioner is engaged in wholesale and retail trade of M.S.Scraps and other scraps. The petitioner is an assessee under the jurisdiction of the 3rd Respondent herein. There was an inspection of the petitioner's place of business by the 1st Respondent on the basis of the authorisation issued by Joint Commissioner (ST), Intelligence-II, the 2nd Respondent herein. During the course of the inspection, the following defects were noticed which is tabulated hereunder:



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S.No.	Assessment year	Order date	Defects
1	2017-18	19.01.2021	i) Ineligible claim of ITC – Regarding inward supplies. ii) Ineligible claim of ITC on vehicles (One Lorry – TN 13 L 0766). iii) Interest under Section 50 of the Act. iv) Penalty under Section 73(9) of the Act.
2	2018-19	19.01.2021	i) Ineligible claim of ITC – Regarding inward supplies ii) Interest under Section 50 of the Act. iii) Penalty under Section 73(9) of the Act.
3	2019-20	20.01.2021	i) Ineligible claim of ITC – Regarding inward supplies. ii) Ineligible claim of ITC on vehicles spare parts. iii) Interest under Section 50 of the Act. iv) Penalty under Section 73(9) of the Act.
4	2020-21	21.01.2021	i) Stock Reconciliation ii) Ineligible claim of ITC on vehicle spare parts. iii) Penalty under Section 73(9) of the Act.

3. Pursuant thereto, on the basis of the defects noticed during the course of inspection, the 1st Respondent initiated the proceedings under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as “TNGST Act or “the Act”), by issuing a show cause notice dated 31.10.2020 for the period 2017-18 to 2020-21 and



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directing the petitioner to file its objection on or before 17.11.2020. The petitioner filed its replies dated 26.11.2020 and 21.12.2020 for the said period. Thereafter, the 1st Respondent issued notices dated 02.12.2020 and 03.12.2020 and fixed the personal hearing on 14.12.2020.

4. The petitioner filed copies of invoices, E-way bills, party's ledger account and Bank statements disclosing the payment made to the alleged bill traders viz., Zahira Trading Company, A.R.Enterprises, M.I.Traders, Basheer and Co. and MAK Enterprises. The petitioner also submitted its explanation to the proposal to reject its claim of ITC on vehicles and its spare parts. The proposal to reverse ITC on the supplies made by M/s.A.R.Enterprises and M.I.Traders was dropped vide notice dated 03.12.2020 for the assessment years 2018-19 and 2019-20. However, thereafter, the respondent issued yet another notice dated 29.12.2020 for the assessment years 2018-19 and 2019-20 stating that the proposal to deny ITC in respect of M/s.A.R.Enterprises and M.I.Traders was wrongly dropped in the absence of documents being furnished by the petitioner to prove the genuineness of the transaction in particular transport documents such as lorry receipts, freight charges etc. In the



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meanwhile, the 1st Respondent issued notice dated 28.12.2020 for the assessment year 2017-18 and 2020-21 wherein for the period 2017-18 the Respondent dropped the proposal to deny ITC in respect of Lucky Scrap Traders while confirming its proposal in respect of the remaining suppliers. The petitioner submitted its reply dated 11.01.2021 wherein it was submitted that they had already demonstrated the genuineness of the transactions with A.R.Enterprises and M.I.Traders for the assessment years 2018-19 and 2019-20 and that with regard to the other three suppliers documents were already filed which would show that the transactions are genuine and requested dropping the proposal to reverse ITC on the ground that these transactions are not genuine. The petitioner reiterated its objection to the proposal denying ITC with regard to vehicle and vehicle spare parts viz, levy of interest and penalty under Section 50 and Section 73(9) of the Act respectively. The impugned orders for the assessment years 2017-18 and 2018-19 dated 19.01.2021, for the assessment years 2019-20 and 2020-21 dated 20.01.2021 and 21.01.2021 respectively were passed confirming the proposal thereby rejecting the claim of ITC in respect of all the 5 suppliers including A.R.Enterprises and M.I.Traders, on the premise that the transactions were not genuine



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while also confirming the proposal to deny ITC in respect of vehicles and its spare parts.

5. It is against the above orders of assessment for the year 2017-18 to 2020-2021 that the present writ petitions are filed. A challenge is also laid to Circular No.9 of 2019 dated 24.05.2019.

6. I shall proceed to deal with the challenge to the Circular No.9 dated 24.05.2019. The challenge is primarily on two grounds viz.,

i) That the 4th respondent has no authority to delegate the power of adjudication by way of a circular contrary to Section 167 of the Act which contemplates a notification being issued.

ii) That the assessing authority was the inspecting authority and permitting the very same authority to adjudicate would fall foul of the maxim "*No man can be a judge of his own cause.*"

7. I find that both the above grounds had arisen for consideration on earlier occasions and stands rejected. With regard to the 1st ground that the authorisation ought to have been made only by way of a Notification as contemplated under Section 167 of the CGST Act, 2017,



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the same is misplaced inasmuch as the Circular is apparently traceable to Section 2(91) of the Act and not Section 167 of the Act, thus, issuance of a notification may not be necessary for authorising/ assigning proper officers with power of adjudication. In this regard, it may be relevant to refer to the judgment of the Gujarat High Court in the case of *Yasho Industries Ltd. vs. Union of India* in Special Civil Application No.7388 of 2021 dated 24.06.2021 wherein identical contention stood rejected, the relevant portions of the said order is extracted hereunder:

“13.Therefore, the respondent No.3 is a proper officer in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such, was entitled to issue summons under Section 70 of the CGST Act in connection with the inquiry initiated against the petitioner.

14. The submission of Mr. Rastogi that the said assignment of function has to be by way of Notification and not by way of Circular in view of Section 167 of the CGST Act is thoroughly misplaced. Section 167 of the CGST Act pertains to the delegation of powers by the Commissioner exercisable by any authority or officer under the Act to be exercisable also by another authority or officer as may be specified in the Notification. So far as Section 2(91) is concerned, it pertains to the proper officer in relation to any function to be performed under the CGST Act to be the Commissioner or the officer of Central Tax, who is assigned that function by the Commissioner in the Board. Here the Board means the Central Board of Indirect Taxes and Customs" as defined in Section 2(16) of the CGST Act. Vide the Circular dated 5.7.2017 the said Board namely the Central Board of Excise and Customs in exercise of the powers conferred by Section 2(91) of the CGST Act read with



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Section 20 of the IGST Act and subject to Section 5(2) of the CGST Act has assigned the officers the functions as that of proper officers in relation to the various Sections of the CGST Act and the Rules made thereunder, and as such the Superintendent of Central Tax has been assigned the function of Section 70(1) of the CGST Act. Thus, there being no delegation of powers by the Commissioner, the provisions contained in Section 167 of the CGST Act could not be said to have been attracted, nor was there any necessity to issue Notification as sought to be submitted by Mr.Rastogi./ There could not be any disagreement to the proposition of law laid down by the Supreme Court in case of Canon India Pvt. Limited (supra) relied upon by the learned Advocate Mr.Rastogi that when a statute directs that the things to be done in a certain way, it must be done in that way alone. However, in the instant case, the Board has assigned the officers to perform the function as proper officers in relation to various Sections of CGST Act and the Rules made thereunder by issuing the Circular in question, the question of issuing Notification for delegation of powers by the Commissioner as contemplated under Section 167 of the CGST Act does not arise. Mr.Rastogi appears to have misread the powers of the Board to assign the officers to perform the function as proper officers in relation to the various Sections of the CGST Act, as the delegation of powers by the Commissioner to the other authority or the officer as contemplated in Section 167 of the CGST Act. The Court, therefore, does not find any substance in the submission of Mr.Rastogi that the respondent No.3 was not the 'proper officer' as per the definition contained in Section 2(91) of the CGST Act, and therefore, had no powers to issue summons under Section 70 of the CGST Act." (emphasis supplied)

7.1. Thus, I find that the challenge to Circular No.9 of 2019 on the ground that the authorisation of power of adjudication by way of Circular is impermissible is liable to be rejected.



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8. There is no dispute to the position that the 1st Respondent is also a proper officer, it is however the case of the petitioner that the 1st Respondent having carried out the inspection, cannot undertake the adjudication for it would then be vitiated by bias. Similar issue had arisen for consideration before this Court under the erstwhile TNGST Act, 1959, wherein challenge was made to the power of the Enforcement Wing officers to carry out assessment on the ground of alleged bias. The same was rejected finding that merely because a person during inspection or a raid was able to get at and collect some material warranting or justifying reassessment he would not become disqualified on the ground of bias to exercise the powers of reassessment under Section 16 or 16-A of the Act, the relevant portions of the judgment is extracted hereunder:

“24. We now take up for consideration the challenge made to the notification on the ground of alleged bias or over interestedness of the officers to intelligence/Enforcement wing. The petitioners under the pretext to challenging the impugned notifications have approached this court in the majority of the cases even at the stage of show cause notices issued, except in a few cases where final orders have been passed.

25. The challenge of possible bias, want of impartiality.



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and due application of mind are made on the basis that the Intelligence /Enforcement wing officers who conducted raids or surprise inspections and gathered materials would be over-anxious and interested in confirming or finalising assessments on the basis of the materials gathered by them to take credit for the same. It is also urged that the authorities normally submit before initiating proceedings reports of the materials gathered to the higher authorities and obtain their orders for proceedings in the matter further and this would impair the impartiality of approach and an exercise of free and independent mind. It is also the plea that in certain cases, the inspecting officers may have to figure as witnesses and it would be inappropriate and unjust to entrust or empower such category of with powers of assessment.

26. We have carefully considered the submissions in the light of the decisions relied upon by either side. As noticed already, the decisions relied upon mainly cases where the courts came to make certain observations and chose to interfere on grounds of bias and lack of independent application of mind, on a challenge made in those cases with reference to individual exercise of power in particular in case. Hence, a general challenge to the notification on such grounds on mere assumptions and hypothetical considerations, could not be countenanced inasmuch as those decisions would be wholly inappropriate for the cases on hand before us. The plea based on bias is an issue of fact and depends upon proof that an officer has or is supposed to have bias or strong leaning to one side rather than the other or that he is a party or the interested party in the controversy with a result that he could not be indifferent. No doubt, it is well accepted principle of law that justice should not only be done but the parties affected have a feeling that justice has been done to them. The essence of judicial and quasi judicial decisions is that the authority making such a decision should be able to act impartially, objectively and without bias. Bias or want of impartiality could not be readily assumed merely because the officers of a particular department or a wing of the department are involved nor because the particular officer was instrumental in unearthing suppression. From the notifications issued constituting the enforcement wing and the allocation of



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jurisdiction, we are of the view that normally scope for every same inspecting officer exercising powers of assessment who gathered materials would be very little and invariably it would be some other officer who would be really exercising such powers of assessment through pertaining to the same wing. That apart, can it be legitimately claimed that merely because a person during inspection or a raid was able to get at and collect some material warranting or justifying reassessment he becomes disqualified to exercise the powers of reassessment under section 16 or 16-A of the act. Even in the case of regular Assessing officer who exercised powers under section 12 of the Act before invoking the provisions of section 16 or 16-A of the Act he has to get hold of some material or should be armed with some reason to proceed with reassessment and can it be pleaded that final orders cannot be passed such aspersion. Except that in one category the officers belonged to enforcement wing and in the other, regular wing, so far as materials which would provide the basis for action under section 16 or 16-A of the Act are concerned, there could be no basic or intrinsic differences because in all such cases, the materials have been subsequently unearthed and found to have escaped earlier. The plea on behalf of the petitioners if countenanced, would even have the consequence of undermining the competency on the same grounds, of the regular assessing authority also in invoking the powers under section 16 or 16-A of the Act to pass final orders there under. Further, the proceedings relating to assessment or Reassessment under section 16 or 16-A of the Act are quasi-judicial in nature and could be exercised only on materials and grounds which could satisfy the test of objectivity, reasonableness and principles of fair play as well as due application of mind. Any infirmity on this account is always subject to correction before the statutory authorities as well as before this court and the safeguards available in law to an assessed who has been wronged in law, in our view, are not only reasonable, but effective to vindicate their rights and secure justice. Consequently, we are unable to persuade ourselves to agree with the plea of possible bias or want of impartiality in cases of exercise of power under the impugned notifications. If in any given case, an individual officer who undertook the raid or inspection and gathered material has to figure in as a witness,



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the ineligibility of such an officer to exercise the power of assessment would be purely a matter personal to him in an individual case of exercise of power and on that account, the system or scheme underlying the conferment of powers on the intelligent/Enforcement wing officers, the power to assess escaped turnover under section 16 and 16-A of the Act cannot be said to be either unlawful or arbitrary or discriminatory and opposed to the provisions of the Act or the rules made thereunder.”

(emphasis supplied)

9. The above judgment dealing with bias of Enforcement Wing Officers under the erstwhile TNGST Act, 1959, would apply on all fours to the present challenge to Circular No.9 of 2019. I find that the challenge to Circular No.9 of 2019 on the ground of possible bias lacks merit. As a matter of fact, I also find that subsequent to the Circular No.9 of 2019 there have been at least four other circulars issued viz., Circular No.10 of 2019, 72 of 2019, 23 of 2021 and 13 of 2022 dated 31.05.2019, 04.10.2021 and 08.11.2022 respectively. Circular No.10 of 2019 dated 31.05.2019 was issued setting out the guidelines and the protocol to be followed by the Enforcement Wing renamed as Intelligence Wing. Even in terms of this Circular, the head of the inspecting team or any such officer not below the rank of State Tax Officer authorised by the Joint Commissioner (Intelligence) was enabled to pass the final assessment or



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adjudication order on the basis of the findings made during the inspection. The 4th Respondent vide Circular No.72 of 2019 authorised the officers working in the Intelligence wing to exercise the powers vested under Section 62, 63, 64, 73 or 74 of the TNGST Act, 1959, in respect of cases inspected by them as they are already notified as proper officer vide Notification No.4 of 2017. Thereafter, Circular 72 of 2019 was revisited by the 4th Respondent and Circular No.23 of 2021 dated 04.10.2021 was issued which *inter-alia* required the group head of the inspecting team to send the inspection report along with documents collected at the time of inspection to the jurisdictional proper officer within the stipulated period. The show cause notice would thereafter be issued by the jurisdictional proper officer and adjudication completed by the JPO. The above Circular No.23 of 2021 was withdrawn and the Inspecting Officer was required to obtain orders of the Joint Commissioner (Intelligence) concerned for transfer of file to other proper officers working under the control of the Joint Commissioner (Intelligence) based on the revenue effect involved in the show cause notice issued.



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10. I had referred to the subsequent circulars viz., Circular No.10 of 2019, 72 of 2019, 23 of 2021 and 13 of 2022 only to give an overview of the subsequent development, in any view, as discussed supra the challenge to Circular No.9 of 2019 that the inspecting authority if authorised to carryout adjudication would be vitiated on the ground of bias is without merit.

11. With regard to the challenge to the assessment orders, I am not inclined to entertain the writ petition inasmuch the question whether the transactions are genuine or not and entitlement of the petitioner to ITC with regard to motor vehicles and its spare parts involves disputed questions of fact. Furthermore, in the present case a question arises as to whether the document was furnished and if so, whether the same was adequate.

12. It is trite law that adjudication of disputed questions of fact falls outside the purview of Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the following judgment of the Hon'ble Supreme Court in the case of *Thansingh Nathmal v. Supt. of*



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Taxes, reported in *AIR 1964 SC 1419*, wherein, the Constitution Bench of the Hon'ble Supreme Court made it clear that though the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the Writ Petition, if an effective alternate remedy is available to the aggrieved person. In para 7, the Court observed thus :

“7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another



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jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

(emphasis supplied)

13. There can be no doubt that even though the High Court can entertain a Writ Petition against any order or direction passed / action taken by the State and / or its authorities under Article 226 of the Constitution of India, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.¹

14. In the light of the above discussion, the writ petition challenging Circular No.9 of 2019 and the assessment orders for the period 2017-18 to 2020-21 are liable to be rejected. The petitioner(s) are granted liberty to file appeal(s) within a period of 4 weeks from the date of receipt of a copy of this order subject to complying with statutory conditions relating to appeal including pre-deposit, if any.

1. Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556; Nivedita Sharma v. COAI, (2011) 14 SCC 337.



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15. The writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To:

- 1.The State Tax Officer,
Group-IV, Inspection-II,
Intelligence-II, Greams Road,
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