IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.5055, 5059, 5062, 5065, 5068 & 5073 of 2024
and W.M.P.Nos.5576, 5579, 5557, 5559, 5565, 5566, 5569, 5571, 5580, 5591, 5592 & 5574 of 2024

Tvl. Murugesan Kesavan
No.3/137, Perumbakkam Main Road,
Medavakkam,
Chennai 600 100. ... Petitioner in all WP's

-vs-

The State Tax Officer
Medavakkam Assessment Circle
Integrated Commercial and Registration Building,
Nandanam, Chennai 600 035. ... Respondent in all WP's

PRAYER in W.PNo.5055 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2017-18 dated

09.10.2023, passed by the Respondent herein, and quash the same.

PRAYER in W.PNo.5059 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2018-19 dated 09.10.2023, passed by the Respondent herein, and quash the same.

PRAYER in W.PNo.5062 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2019-20 dated 09.10.2023, passed by the Respondent herein, and quash the same.

PRAYER in W.PNo.5065 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2020-21 dated 09.10.2023, passed by the Respondent herein, and quash the same.

PRAYER in W.PNo.5068 of 2024: Writ Petition filed under Article

226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2021-22 dated 09.10.2023, passed by the Respondent herein, and quash the same.

PRAYER in W.PNo.5073 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN: 33APQPK6784G1E/2022-23 dated 09.10.2023, passed by the Respondent herein, and quash the same.

For Petitioner in all WP's	:	Ms.S.P.Sri Harini for Mr.R.Prabakaran
For Respondent in all WP's	:	Mr.T.N.C.Kaushik, AGP (T)

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COMMON ORDER

In these writ petitions, assessment orders in respect of distinct assessment periods are challenged. The petitioner runs a provision store and is engaged in the trade of products such as rice, sugar confectionery, bread and tobacco products. Pursuant to a surprise inspection conducted by the intelligence wing officials on 26.09.2022 at the place of business of the petitioner, a statement was recorded. According to the petitioner, he was coerced to sign the said statement. Thereafter, an intimation and show cause notice were received by the petitioner, and the show cause notice was replied to by the petitioner on 01.06.2023 and 31.08.2023. The impugned orders were issued in these facts and circumstances.

2. Learned counsel for the petitioner assails the orders impugned herein on about two grounds. The first ground of challenge is that the petitioner had filed returns periodically as mandated by applicable GST enactments, but that the impugned assessment orders were issued on best judgment basis. By adverting to Sections 62 and 63 of the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act), learned counsel submits that assessment on best judgment basis is permissible either if no returns are filed or if the tax authorities are dealing with an unregistered person. The

second ground of challenge is that the petitioner enclosed multiple documents with the reply of 01.06.2023. The returns of the petitioner, the reply of the petitioner and these documents were disregarded while recording findings. Learned counsel refers specifically to internal page 5 of the respective assessment orders in this regard.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the respondent admitted liability during the inspection on 26.09.2022.

4. The petitioner expressly asserted that returns were filed for each of the relevant assessment years. The assessment orders also record the statement of the petitioner that he filed GST returns on monthly basis without default. The said assessment orders also refer to the reply dated 01.06.2023 of the petitioner, and the petitioner has placed the said reply on record. On perusal thereof, it is clear that the petitioner has enclosed about seven documents.

5. In this factual context, in the operative portion of the order, the assessing officer refers to Section 62 of the TNGST Act and thereafter records the following findings:

> "*The taxpayer's contention and verified and found that at the time of Inspection, the taxpayer had admitted the above defect. Now, they cannot go back their own statement. The proprietor has agreed to pay taxes and penalty for buying and selling of illegal trade of tobacco products, which was recorded in sworn statement. It is therefore no alternative except to confirm the proposals. Hence, the proposed addition turnover, tax and penalty are confirmed.*"

6. The above extract indicates clearly that the tax demand and penalty were confirmed entirely on the basis of the statement recorded on 26.09.2022. *Prima facie*, such statement appears to be based on the stock position as on that date. Since the impugned assessment orders did not take into account the returns, the reply ad the documents annexed thereto, these orders are not sustainable.

7. Hence, the orders impugned herein are quashed and these matters are remanded for re-consideration. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh reasoned assessment order after taking into account all relevant materials. This exercise shall be completed within a maximum period of ***three months*** from the date of receipt of a copy of this order.

8. W.P.Nos.5055, 5059, 5062, 5065, 5068 and 5073 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.5576, 5579, 5557, 5559, 5565, 5566, 5569, 5571, 5580, 5591, 5592 & 5574 of 2024 are closed.

01.03.2024

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

SENTHILKUMAR RAMAMOORTHY,J

rna

To

The State Tax Officer
Medavakkam Assessment Circle
Integrated Commercial and Registration Building,
Nandanam, Chennai 600 035.

W.P.Nos.5055, 5062, 5059, 5065, 5068 & 5073 of 2024
and W.M.P.Nos.5576, 5579, 5557, 5559, 5565, 5566, 5569, 5571, 5580, 5591, 5592 & 5574 of 2024

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