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W.P.Nos.5047, 5052, 5086 & 5472 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.5047, 5052, 5086 & 5472 of 2024

W.M.P.Nos.5549, 5550, 5553, 5555, 5598, 5599, 6044 & 6045 of 2024

In all WPs.

M/s.AVS Villas,
Represented by its Partner Shri Leela Shankar Rao,
4/371/A1, Godavari Complex,
Moovendar nagar, Hosur-635 109.

... Petitioner

Vs.

The State Tax Officer,
Hosur North-2 Assessment Circle,
Commercial Taxes Building,
Hosur-635 129.

...Respondent

Prayer in W.P.No.5047 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in passing the impugned order bearing GSTIN 33AASFA6709J1Z6/2017-2018 dated 08.09.2023 and quash the same as the same lacks jurisdiction and has been passed in violation of Section 9



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read with Para 5 of Schedule III of the GST Acts and also in violation of Articles 19(1)(g) and 265 of the Constitution.

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Prayer in W.P.No.5052 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in passing the impugned order bearing reference number ZD330923059360H dated 11.09.2023 and quash the same as the same lacks jurisdiction and has been passed in violation of Section 9 read with Para 5 of Schedule III of the GST Acts and also in violation of Articles 19(1)(g) and 265 of the Constitution.

Prayer in W.P.No.5086 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in passing the impugned order bearing reference No.ZD3309230418780 dated 08.09.2023 and quash the same as the same lacks jurisdiction and has been passed in violation of Section 9 read with Para 5 of Schedule III of the GST Acts and also in violation of Articles 19(1)(g) and 265 of the Constitution.

Prayer in W.P.No.5472 of 2024: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in passing the impugned order bearing GSTIN 33AASFA6709J1Z6/2019-2020 dated 11.09.2023 and quash the same as the same lacks jurisdiction and has been passed in violation of Section 9



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read with Para 5 of Schedule III of the GST Acts and also in violation of Articles 19(1)(g) and 265 of the Constitution.

In all WPs.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.V.Prasanth Kiran, Govt. Adv.(T)

COMMON ORDER

In all these writ petitions, assessment orders pertaining to specific assessment years are challenged.

2. The petitioner asserts that the firm is in the business of purchase of lands, obtaining approvals in respect thereof and thereafter developing and selling the plots. By further asserting that the business carried on by the petitioner is not liable to GST on account of the exemption in Section 7 read with Schedule 3 of applicable GST statutes, the petitioner surrendered the GST registration obtained previously. In these circumstances, the petitioner received a notice in Form GST ASMT-14. Such notice was replied to. Thereafter, show cause notices were issued in May 2023 stating that the petitioner had not produced project wise details of work done in every financial year. It was further stated therein



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that there is no concrete evidence to prove the nature of business carried on by the petitioner. In those circumstances, it was proposed to impose GST and the petitioner was called upon to show cause. The petitioner replied to such show cause notices. The impugned assessment orders were issued thereafter on 08.09.2023 and 11.09.2023 respectively in respect of the relevant assessment years. The writ petitions were filed in the above facts and circumstances.

3. Learned counsel for the petitioner submitted that the business carried on by the petitioner is exempted from GST under Schedule III of applicable GST statutes. In response to the show cause notice and during personal hearing, he submitted that the petitioner placed on record all relevant documents, including documents relating to purchase and sale of lands. He also submitted that the petitioner had provided particulars of goods purchased for carrying on the business. By referring to the impugned order, learned counsel pointed out that such order itself indicates that the petitioner had provided several documents. By further pointing out that the assessing officer rejected the submissions of the petitioner largely on the ground that the project details were not provided, learned counsel submits that such details were provided in



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course of hearing of the rectification petition filed subsequently.

Therefore, learned counsel submits that the petitioner would be able to persuade the assessing officer about the exempted nature of business carried on by the petitioner, if another opportunity is provided to submit these documents.

4. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. At the outset, he submits that the petitioner had informed the GST authorities that statutory appeals would be filed against the assessment orders. Even otherwise, he submits that the impugned assessment orders indicate clearly that the assessing officer applied his mind to the materials placed on record and entered findings based upon appraisal of such evidence. Consequently, he submits that the impugned assessment orders do not warrant interference in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

5. On examining the impugned assessment orders, it is noticeable that the reply submitted by the petitioner on several dates were referred to therein. All the documents submitted by the petitioner, such as purchase documents, Government approvals, copies of sale deeds to



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customers, documents relating to development fees paid to the Government and the statement relating to purchase of goods were taken into account. Eventually, the assessing officer concluded as under in the operative portion of the order in W.P.No.5047 of 2024:

“In tax payer letter dated: 8-11-2022, they have stated the project as Jasmine Valley Phase-I, but no details have been provided as how many projects and how many phases have been made for the specific period. The tax payer have not made any clear justification and reconciliation project wise for the specific year for the purchase and sales are per Income TAX Statement. They have randomly provided few sale deed copies and approval and gift deed copies. No proper project wise supporting documents as called for in this office notice in DRC-01 dated: 08-05-2023 have been provided. They have randomly provided the document copies, which is not specific year wise. In the absence of clear documents, sale details, sale ledgers with documentary proof and apt documents on purchases, the reply filed by the Tax payer stating that they are engaged in sale of plots after leveling, laying down of roads and drainage lines, could not be accepted.

There is no concrete evidences to prove their nature of business and their commodity as per



registration is 00440410-Works Contract Services. And it is also clear that they are engaged in construction services also. The tax payer have also not given the detailed Abstract of all the work done during the year. No valid supporting documents submitted for the Purchases and Sales as per Profit & Loss Account.”

Substantially similar orders were issued in matters relating to other assessment years.

6. Thus, it is evident that the assessing officer engaged with the evidence placed on record by the petitioner and entered findings after appraising such evidence. It cannot be said that a reasonable opportunity was not provided to the petitioner and that the order is a consequence of non application of mind. In these circumstances, no case is made out to warrant interference in exercise of discretionary jurisdiction. The appropriate recourse for the petitioner would be to carry these assessment orders in appeal before the appellate authority.

7. These writ petitions were filed in January 2024 after orders were



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issued on the rectification petitions on 05.01.2024. In these circumstances, if appeals are presented by the petitioner within a period of 15 days from the date of receipt of a copy of this order, the appellate authority is directed to consider and dispose of the same on merits without going into the question of limitation.

8. These writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.03.2024

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

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To

The State Tax Officer,
Hosur North-2 Assessment Circle,
Commercial Taxes Building,
Hosur-635 129.

SENTHILKUMAR RAMAMOORTHY,J.



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