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W.P.Nos.5527, 5530 & 5546 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.5527, 5530 & 5546 of 2024

and

W.M.P.Nos.6140,6118,6119,6110,6113 & 6141 of 2024

M/s.SL Lumax Limited,
(Represented by its Chief Financial Officer Shri.G.Murugan)
Ground Floor, G14, 15 & 25,
SL Lumax Industries Limited Manufacturing Unit,
Sipcot Industrial Complex, Irunkattukottai,
Sriperumpudur 602 117.

... Petitioner
(in all W.P's)

Versus

Deputy Commissioner of State Taxes-II,
Large Taxpayer Unit,
Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.

... Respondent
(in all W.P's)

Prayer in W.P. No.5527 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records and quashing the impugned show cause notice bearing GSTIN 33AAACL1857B1Z1/2020-21 Dated 31.01.2024 along with a summary in DRC-1 bearing reference No. ZD3301241676597 dated 31.01.2024, issued by the respondent.



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Prayer in W.P. No.5530 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records and quashing the impugned show cause notice bearing GSTIN 33AAACL1857B1Z1/2023-24 Dated 31.01.2024 along with a summary in DRC-1 bearing reference No. ZD330124167865A dated 31.01.2024, issued by the respondent.

Prayer in W.P. No.5546 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records and quashing the impugned show cause notice bearing GSTIN 33AAACL1857B1Z1/ 2019-20 Dated 31.01.2024 along with a summary in DRC-1 bearing reference No. ZD330124167575F dated 31.01.2024, issued by the respondent.

In all W.P's:

For Petitioner : Mr. G. Natarajan
For Respondent : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

COMMON ORDER

In all these writ petitions, show cause notices issued in respect of distinct assessment periods are challenged. The petitioner is engaged in the business of manufacturing and supplying electrical lighting or signaling equipment used in motor vehicles. As a registered person under applicable GST laws, the petitioner was filing returns and paying



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applicable taxes by classifying the goods under chapter heading 8512 of the then Central Excise Tariff. After the introduction of GST, the rate of CGST payable on various goods were notified under Notification No.1/2017 Central Tax (Rate) dated 28.06.2017. In the initial period commencing from 01.07.2017, the parts manufactured by the petitioner and falling under Chapter 8512 attracted 28% GST in the aggregate. With effect from 16.11.2017, under Notification No.41/2017 Central Tax (Rate) dated 14.11.2017, the rate of tax was reduced to 18% in the aggregate. Therefore, the petitioner was paying taxes on these items at 18% from 14.11.2017.

2. In these facts and circumstances, the petitioner received an intimation in Form DRC-01A on 11.12.2023 stating that the goods manufactured by the petitioner are classifiable under chapter 8708 and not under 8512 and indicating the amount payable by the petitioner. The petitioner replied thereto on 18.12.2023 and stated that the goods are correctly classified under chapter 8512. The show cause notices impugned herein were issued on 31.01.2024 upon receipt of the petitioner's reply.



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3. Learned counsel for the petitioner contends that the show cause notices were issued by pre-determining and pre-judging that the goods fall within Chapter 8708 and not 8512. By referring to the notes under Section XVII, particularly notes 2 and 3 to chapter 85, learned counsel submitted that these notes, which appear *prima facie* to be conflicting, are required to be interpreted in the light of the HSN Explanatory Notes. He also submits that the show cause notices were issued by relying on the judgment of the Hon'ble Supreme Court in *Westinghouse Saxby Farmets Ltd. v. Commissioner of Central Excise, Calcutta*. By referring to instruction No.1/2022 Customs dated 05.01.2022, he submits that instructions were issued to take into consideration all facts, details of individual cases and all decisions on the subject before arriving at the appropriate classification. Since the impugned show cause notices are in the nature of a demand for payment, learned counsel submits that interference by this Court is warranted.

4. In response to these submissions, Mr.C.Harsha Raj, learned Additional Government Pleader, who accepts notice on behalf of the



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respondent, submits that classification should be undertaken either by the assessing officer or the authority for advance rulings. He also points out that a show cause notice is merely a starting point and that upon receipt of the assessee's reply, the assessing officer would complete the assessment only upon taking into consideration all relevant material. He also submits that the issue of classification should be left to the wisdom of the assessing officer and that the exercise of quasi-judicial functions in such regard should not be shackled by this Court. In addition, he submits that the petitioner's apprehensions are misplaced and that the assessing officer would duly take into consideration all materials placed on record by the assessee, including all precedents.

5. Ordinarily, a show cause notice is not interfered with unless issued by a person without jurisdiction or unless no case is made out even proceeding on the assumption that the statements in the show cause notice are correct. Obviously, the above principles are not cast-in-stone. In paragraph 14 of the impugned show cause notices, the assessing officer recorded as under:

"14. Therefore it is proposed to levy the above



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said turnover at the rate of 28% as such supply should have fallen under HSN 8708 for the tax period July-2017 to March-2018. Moreover, since you are an automobile industry you cannot claim that you genuinely classify your product with right HSN code. To suppress the tax payable to Government treasury you willingly reduce the tax rate from 28% to 18% with intention to suppress the fact that you are manufacturing commodity of 28% that is why section 74 has been involved here. Hence, you are requested to pay the difference amount as detailed below:-

Year	De tails	TAX			Penalty at 100%			Interest u/s 50(1)			Grand Total
		CGS T	SGST	Total	CGS T	SGS T	Total	CGS T	SGS T	Total	
2017-18	Short Payment of Tax	17,88,50,824	17,88,50,824	35,77,01,647	17,88,50,824	17,88,50,824	35,77,01,647	18,28,39,442	18,28,39,442	36,56,78,884	1,08,10,82,177.73
	Grand Total	17,88,50,824	17,88,50,824	35,77,01,647	17,88,50,824	17,88,50,824	35,77,01,647	18,28,39,442	18,28,39,442	36,56,78,884	1,08,10,82,178

Please note that interest have been calculated till 22/01/2024 only and the same shall be calculated till the date of payment.

Personal Hearing:-

You are requested to pay the amount of tax as ascertained above along with the amount of aforesaid



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interest and penalty under section 74 of the TNGST Act 2017 and also submit objection if any against the proposals in DRC01 within 30 days from the date of receipt of this notice and you may also avail the opportunity of personal hearing on 05.03.2024 at 11.00 AM before the undersigned."

6. The above extract is *prima facie* indicative of pre-judgment in as much as the assessee has been called upon to pay the quantified sum and not show cause as to why the said amounts are not payable. Therefore, I am of the view that these writ petitions are liable to be disposed of by making a few observations.

7. The petitioner has placed on record the notes under Section XVII, which deals with chapter 85. He has also placed on record the HSN Explanatory Notes. In multiple judgments of this Court and the Supreme Court, the HSN Explanatory Notes have been referred to and relied upon as an authoritative guide to issues relating to classification. The petitioner has also placed for consideration Instruction No.1/2022, which refers to several judgments of the Supreme Court. If the petitioner / assessee places



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this material before the assessing officer, it is needless to say that the assessing officer is under an obligation to consider this material with an open mind and in an objective manner before concluding the assessment.

8. Therefore, these Writ Petitions are disposed of by directing the petitioner to file a reply to the show cause notices, on or before 25.03.2024. This time limit will apply to show cause notices issued to the petitioner in respect of all assessment years, including assessment years which form the basis of challenge in W.P.Nos.5066, 5067, 5070 and 5071 of 2024. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter conclude the assessments by taking note of the observations set out above. No costs. Consequently, connected miscellaneous petitions are also closed.

05.03.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation: Yes / No

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To

The Deputy Commissioner of State Taxes-II
Large Taxpayer Unit
Integrated Commercial Taxes Building
Nandanam,
Chennai 600 035.



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SENTHILKUMAR RAMAMOORTHY, J.,

klr

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