IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.5738, 5745, 5752, 5773 & 5776 of 2024
and W.M.P.Nos.6357, 6344, 6356, 6368, 6369, 6341, 6398, 6399, 6403 & 6404 of 2024

Tvl. Ruby Constructions,
Represented by Mohamed Yousuf Samsudeen, Partner,
130 B, First First Floor, Podanur Main Road,
Mylkal Bus Stop, Coimbatore 641 023. ... Petitioner in all WP's

-vs-

The State Tax Officer,
Podanur Circle, Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore 641 018.
... Respondent in W.P.5738, 5745, 5773, 5776 of 2024

1.The Assistant Commissioner (ST) (FAC),
Podanur Circle, Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641 018.

2.The Branch Manager,
Syndicate Bank, 444B, Palakkad Road,
Kuniamuthur, Coimbatore 641 008.

3.The State Tax Officer,
Podanur Circle, Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore 641 018. ... Respondents in W.P.5752 of 2024

PRAYER in W.P.No.5738 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order ZD330923208314N dated 27.09.2023, issued by the respondent and quash the same.

PRAYER in W.P.No.5752 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the original of the letter Ref.No. 33AAVFR3181Q1ZC dated 07.02.2024, issued by the first respondent and quash the same.

PRAYER in W.P.No.5745 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order ZD3309232078384 dated 27.09.2023, issued by the respondent and quash the same.

PRAYER in W.P.No.5773 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order ZD3309232080010 dated 27.09.2023, issued by the respondent and quash the same.

PRAYER in W.P.No.5776 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned order ZD330923208187E dated 27.09.2023, issued by the respondent and quash the same.

For Petitioner in all WP's : Mr.S.Durairaj

For Respondents in all WP's : Mr.C.Harsha Raj, AGP (T)

****

COMMON ORDER

 By these five writ petitions, assessment orders pertaining to four assessment years are challenged and, in the fifth writ petition, a recovery notice pursuant to the assessment orders is challenged. The petitioner is a registered person under applicable GST statutes and the firm carries on construction business. In relation thereto, goods were purchased Input Tax Credit (ITC) was claimed. The petitioner asserts that he did not carry on construction activity during the relevant periods. He further asserts that he is not conversant with the use of computers. In those circumstances, it is stated that he became aware of the impugned proceedings only upon receipt of a communication in early February 2024 from the bank. These writ petitions were filed in those facts and circumstances.

2. Learned counsel for the petitioner assails the impugned assessment orders and recovery notice on two grounds. The primary ground of challenge is that notices were not served in accordance

with Section 169 of applicable GST statutes. With specific reference to sub-section (2) thereof, learned counsel contends that the date of service of communications uploaded on the GST portal is not specified therein. He further submits, on the merits of the disputes, that the assessing officer proceeded on the basis of assumptions. In specific, he points out that the assessing officer relied on materials available on the internet and attributed values to material used in construction and thereby arrived at the petitioner's turnover. By contending that this method is completely arbitrary and untenable, learned counsel assails these orders.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents.

4. The impugned orders make reference to the notice in Form GST ASMT-10, which was issued in May 2022. Reference is also made to the intimation and show cause notice which followed it. On

examining the show cause notice, it is evident that personal hearing was offered to the petitioner. In these circumstances, as a registered person, the explanation provided by the petitioner for not responding to these notices is not convincing. On examining the impugned assessment order, it is clear that the petitioner was not heard. It is also clear that the assessing officer relied on information available on a particular website on the internet to attribute values to materials used in construction. If the petitioner had been heard, the petitioner would have able to place relevant materials on record to endeavor to convince the assessing officer that the values estimated by him are incorrect. In these facts and circumstances, the impugned assessment orders warrant interference, albeit by putting the petitioner on terms.

5. On instructions, learned counsel for the petitioner submits that the amounts available to the credit of the petitioner in the electronic credit ledger may be adjusted towards 10% of the disputed

tax demand under each assessment order.

6. Accordingly, the impugned assessment orders are quashed subject to the condition that 10% of the disputed tax demand under each assessment order be adjusted against the credit available in the electronic credit ledger of the petitioner. The petitioner is also permitted to submit replies to the show cause notice within a maximum period of ***fifteen days*** from the date of receipt of a copy of this order. Subject to the receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was duly adjusted from the electronic credit ledger of the petitioner in respect of each assessment year, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order in respect of each assessment year. As a consequence of the assessment order

being quashed, the recovery notice does not survive and no action shall be taken pursuant thereto.

7. W.P.Nos.5738, 5745, 5752, 5773 and 5776 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.6357, 6344, 6356, 6368, 6369, 6341, 6398, 6399, 6403 and 6404 of 2024 are closed.

06.03.2024

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

To

1.The Assistant Commissioner (ST) (FAC),
Podanur Circle, Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641 018.

2.The Branch Manager,
Syndicate Bank, 444B, Palakkad Road,
Kuniamuthur, Coimbatore 641 008.

3.The State Tax Officer, Podanur Circle, Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641 018.

SENTHILKUMAR RAMAMOORTHY,J

rna

W.P.Nos.5738, 5745, 5752, 5773 & 5776 of 2024
and W.M.P.Nos.6357, 6344, 6356, 6368, 6369, 6341, 6398, 6399, 6403 & 6404 of 2024

06.03.2024