IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.7087, 7090, 7093, 7097 & 7102 of 2024 and
W.M.P.Nos.7921, 7922, 7926, 7930, 7933,
7934, 7939, 7940, 7946 & 7948 of 2024

In all WPs.

Tvl. Angalamman Auto Spares,
Represented by its Proprietor,
Thiru M.M.Vellingiri,
23, Kabilar Street, Gopichettipalayam,
Erode-638 452. .. Petitioner

vs

The State Tax Officer,
(also known as the Commercial Tax Officer)
Gobichettipalayam. ... Respondent

Prayer in W.P.No.7087 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in Form GST DRC-07 with Reference No.ZD331023064272Y along with annexure in GSTIN 33ALCPV3431F1ZD/2017-2018 dated 12.10.2023 for the assessment period July 2017 to March 2018 and quash the same.

Prayer in W.P.No.7090 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in Form GST DRC-07 with Reference No.ZD3310230760306 along with annexure in GSTIN 33ALCPV3431F1ZD/2019-2020 dated 13.10.2023 for the assessment period April 2019 – March 2020 and quash the same.

Prayer in W.P.No.7093 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in Form GST DRC-07 with Reference No.ZD331023076328L along with annexure in GSTIN 33ALCPV3431F1ZD/2020-2021 dated 13.10.2023 for the assessment period April 2020 – March 2021 and quash the same.

Prayer in W.P.No.7097 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in Form GST DRC-07 with Reference No.ZD331023076766D along with annexure in GSTIN 33ALCPV3431F1ZD/2021-2022 dated 13.10.2023 for the assessment period April 2021 – March 2022 and quash the same.

Prayer in W.P.No.7102 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in Form GST

DRC-07 with Reference No.ZD331023077385K along with annexure in GSTIN 33ALCPV3431F1ZD/2022-2023 dated 13.10.2023 for the assessment period April 2022 – March 2023 and quash the same.

In all WPs

For Petitioner : Mr.K.A.Parthasarathy
Mr.N.Chandirasekar
for Mr.N.Prasad

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

COMMON ORDER

Assessment orders in respect of five distinct assessment periods are challenged primarily on the ground of breach of principles of natural justice.

2. The petitioner is involved *inter alia* in trading of automobile parts. As a small trader, the petitioner had entrusted the task of filing returns and handling GST compliance to an accountant. The petitioner asserts that he became aware of the impugned assessment orders only in the second week of February 2024. The present writ petitions were filed thereafter.

3. Learned counsel for the petitioner submits that the common issue in respect of all five assessment orders is the mismatch between the GSTR 3B returns filed by the petitioner and the auto-populated GSTR 2A returns. After submitting that the petitioner was unaware of the notices preceding the assessment orders, learned counsel submits that Circular No.183/15/2022-GST dated 27.12.2022 (Circular No.183) was issued to prescribe the procedure for dealing with cases relating to mismatch between the above mentioned returns. Learned counsel contends that such Circular envisages the conduct of an enquiry by the assessing officer and that the tax payer is entitled to submit a certificate either from the supplier or from the Chartered Accountant depending on the quantum of discrepancy. Learned counsel further submits that even a detailed show cause notice was not issued in these matters and that only a summary was provided to the petitioner.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the petitioner was provided sufficient opportunity, as is evident from the notice in Form ASMT-10 and the intimation preceding the show cause notices. He

also submits that the statute imposes the burden on the tax payer to establish entitlement to Input Tax Credit (ITC) and that the petitioner completely failed to discharge such obligation.

5. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit 10% of the disputed tax demand in respect of each assessment period as a condition for remand.

6. The documents on record disclose that the liability pertains to alleged mismatch between the GSTR 3B returns of the petitioner and the auto-populated GSTR 2A returns. In recognition of difficulties faced in this regard, Circular No.183 was issued. The petitioner has also placed on record a certificate from the Chartered Accountant with regard to the reason for disparity between the above mentioned returns. Although the petitioner did not respond to the notices and participate in the assessment proceedings, the above facts and circumstances justify interference with the impugned orders, albeit by putting the petitioner on terms.

7. For reasons set out above, the impugned assessment orders are quashed and all these matters are remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand in respect of each assessment period within a period of 15 days from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand under each assessment period was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within a period of two months.

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.

18.03.2024

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

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SENTHILKUMAR RAMAMOORTHY J.

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To

The State Tax Officer,
(also known as the Commercial Tax Officer)
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