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W.P.Nos.8878, 8901, 8904 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.8878, 8901 & 8904 of 2024
and W.M.P.Nos.9883, 9884, 9910, 9912, 9914 & 9915 of 2024

Tvl. Shriniwas Impex,
(Represented by its Partner Vinod Babulal Mandot)
SF No.616/2B2, Pollachi Main Road,
Coimbatore - 641 021.

... Petitioner in all WP's

-VS-

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

... Respondent in all WP's

PRAYER in W.P.No.8878 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to impugned order bearing GSTIN 33ABCFS5773R1ZG/2021-22 dated 22.01.2024 passed by the respondent.

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PRAYER in W.P.No.8901 of 2024: Writ Petition filed under Article

226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to impugned order bearing GSTIN 33ABCFS5773R1ZG/2020-21 dated 22.01.2024 passed by the respondent.

PRAYER in W.P.No.8904 of 2024: Writ Petition filed under Article

226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to impugned order bearing GSTIN 33ABCFS5773R1ZG/2022-23 dated 22.01.2024 passed by the respondent.

For Petitioner : Mr.G.Natarajan
in all WP's

For Respondent : Mr.V.Prashanth Kiran, GA (T)
in all WP's



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COMMON ORDER

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In these three writ petitions, separate orders dated 22.01.2024 with regard to the imposition of penalty are challenged. The petitioner is engaged in the business of trading of metal scraps. A surprise inspection was conducted at the petitioner's registered place of business and other branches in May 2022 by the State Tax Department. Pursuant thereto, an intimation was issued to the petitioner in November 2023. This was followed by a show cause notice dated 08.11.2023. The petitioner replied to such show cause notice seeking an additional 30 days on the ground that notices were received in respect of five financial years and that the petitioner is in the process of gathering the required data to submit a detailed reply. The impugned order was issued in the above facts and circumstances on 22.01.2024.



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2. Learned counsel for the petitioner submits that the petitioner

is part of a group of entities and that such group includes Sonali Extrusion Private Limited and Sonali Metal Industries LLP. Since the licence for procurement of metal scrap was issued to Sonali Extrusion Private Limited, he submits that the petitioner had to necessarily purchase goods from Sonali Extrusion Private Limited. By referring to the orders impugned herein, learned counsel submitted that the respondent noticed that certain suppliers (named in the impugned orders) had generated fake invoices and, on that basis, concluded that the petitioner acted as an intermediary in bill trading transactions. Merely because there were transactions between the petitioner and Sonali Extrusion Private Limited or between the petitioner and Sonali Metal Industries LLP, he contended that it could not have been concluded that the petitioner was engaged in bill trading. He further submits that the petitioner was not provided a reasonable opportunity to place all relevant documents on record to establish that the transactions were genuine. Instead of granting time



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up to 10.02.2024, as requested for by letter dated 11.01.2024, he submits that the impugned order was issued on 22.01.2024.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the sequence of dates and events, Mr.V.Prashanth Kiran contends that the petitioner was provided multiple opportunities to place all relevant document on record and establish that the transactions were genuine. He further submits that a person who fails to avail of opportunities provided by the respondent cannot complain about breach of principles of natural justice. In support of this contention, he relied on a judgment of the Kerala High Court in *C.Prasannakumaran Unnithan v. The Commissioner of Income Tax (Appeals) and another*, order dated 21.09.2023 in W.P(C) No.30276 of 2023.

4. On instructions, learned counsel for the petitioner submits that the petitioner is ready and willing to remit 5% of the amount



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imposed as penalty under each impugned order as a condition for remand.

5. The documents on record clearly indicate that the petitioner was provided several opportunities to contest the claim for penalty. Upon receipt of the intimation and show cause notice, the petitioner could and should have placed on record documents indicating movement of goods between the group entities. Such documents could have been in the form of e-way bills, lorry receipts, weighment slips and the like. Instead of submitting such documents, the petitioner merely requested for further time to provide the documents by citing the fact that notices pertaining to five assessment periods were issued. Therefore, the petitioner cannot be absolved of responsibility for the current state of affairs. It should, however, be noticed that substantial amounts were imposed as penalty without taking into account documents that the petitioner claims is in his possession. The reply dated 11.01.2024 of the



petitioner seeking an additional thirty days' time is also a material consideration. When these facts and circumstances are considered cumulatively, a case is made out to provide the petitioner another opportunity, albeit by putting the petitioner on terms.

6. Therefore, the orders impugned herein are set aside subject to the condition that the petitioner remits 5% of the penalty imposed under each order as a condition for remand. Such amount shall be remitted within *three weeks* from the date of receipt of a copy of this order. The petitioner is also permitted to submit a detailed reply to the show cause notices within the aforesaid period by enclosing all relevant documents. Upon receipt of the petitioner's reply and upon being satisfied that 5% of the penalty in respect of each assessment period was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within *two months* from the date of receipt of the petitioner's reply.



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WEB COPY 7. W.P.Nos.8878, 8901 & 8904 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9883, 9884, 9910, 9912, 9914 & 9915 of 2024 are closed.

03.04.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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



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W.P.Nos.8878, 8901, 8904 of 2024

SENTHILKUMAR RAMAMOORTHY,J

rna

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