IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.8290, 8294 & 8297 of 2024
and W.M.P.Nos.9262, 9255, 9257, 9259, 9261 & 9253 of 2024

M/s.Gus Clothing Co., now known as
M/s.Gus Clothing Private Ltd., Rep. by
its Managing Director Sri.G.Umashankar,
No.2/547, 1st Floor, Uthukuli Road,
Sarkar Periyapalayam,
Tiruppur 641 607. ... Petitioner in all WP's

-vs-

State Tax Officer - 2,
Date Analytic Unit,
O/o. the Joint Commissioner (ST)
(Intelligence) No.161, Meenakshi Sudaranar Salai,
Erode - 1. ... Respondent in all WP's

PRAYER in W.P.No.8290 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records of the respondent in GSTIN:

33AADFG1109M1ZP/2017-18 and quash the impugned proceeding dated 27.12.2023 passed therein.

PRAYER in W.P.No.8294 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records of the respondent in GSTIN: 33AADFG1109M1ZP/2018-19 and quash the impugned proceeding dated 27.12.2023 passed therein.

PRAYER in W.P.No.8297 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records of the respondent in GSTIN: 33AADFG1109M1ZP/2020-21 and quash the impugned proceeding dated 27.12.2023 passed therein.

For Petitioner in all WP's : Mr.B.Raveendran

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

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COMMON ORDER

Orders-in-Original dated 27.12.2023 are challenged on the ground that such orders were issued against a partnership firm called M/s.Gus Clothing Company, which was subsequently converted into a private limited company under the name and style of M/s.Gus Clothing Private Limited.

2. Learned counsel for the petitioner referred to the certificate of incorporation dated 11.02.2022 and to the memorandum and articles of association of the company. He points out that the partnership firm was converted into a private limited company in 2022. He also points out that proceedings against the partnership firm, which was no longer in existence, were initiated pursuant to show cause notice dated 23.09.2023 and that the impugned orders were issued on 27.12.2023.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, countered these submissions. By referring to Section 85 of applicable

GST enactments, he submits that both the transferor and transferee are jointly and severally liable in respect of liabilities accruing up to the date of transfer. Therefore, he submits that the respondent was entitled to proceed against the partnership firm.

4. Sub-section (1) of Section 85 applies to transfers, whether by way of sale, gift, lease, leave and licence or in any other manner, wherein the transferor and transferee continue in existence. By contrast, when the transferor ceases to exist as a result of merger with the resulting entity, proceedings would only lie against the resulting entity. In this case, the documents on record indicate that the partnership firm was converted into the private limited company in 2022, whereas proceedings culminating in the orders impugned herein were initiated in 2023. In these circumstances, the orders impugned herein cannot be sustained.

5. Consequently, the impugned orders are set aside by permitting the respondent to initiate fresh proceedings against Gus

Clothing Private Limited in accordance with law. This order will not, however, stand in the way of proceedings against individual partners in accordance with Section 90 of applicable GST statutes.

6. W.P.Nos.8290, 8294 and 8297 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.9262, 9255, 9257, 9259, 9261 and 9253 of 2024 are closed.

22.04.2024

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

To

State Tax Officer - 2, Date Analytic Unit,
O/o. the Joint Commissioner (ST)
(Intelligence) No.161, Meenakshi Sudaranar Salai,
Erode - 1.

SENTHILKUMAR RAMAMOORTHY,J

rna

W.P.Nos.8290, 8294 & 8297 of 2024
and W.M.P.Nos.9262, 9255, 9257, 9259, 9261 & 9253 of 2024

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