IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 03.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.11579, 11591 & 11595 of 2024
and W.M.P.Nos.12689, 12675, 12690, 12693, 12694 & 12674 of 2024

Tvl. Town & City Developers,
GSTIN/ID: 33AAGFT8799R1ZX,
Represented by its Partner Sanjana Vijayakumar,
126, KG House, Arts College Road,
Coimbatore – 641 018. ... Petitioner in all WP's

-vs-

1.The State Tax Officer (Intelligence),
Central Intelligence Wing – II,
Dr.Balasundaram Road,
Coimbatore – 641 018.

2.The State Tax Officer,
Trichy Road Circle, Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore – 641 018. ... Respondents in all WP's

PRAYER in W.P.No.11579 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Form GST DRC-07 bearing number ZD330324090052V / 2019-20 dated 15.03.2024 issued by the 2nd respondent and quash the same.

PRAYER in W.P.No.11591 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Form GST DRC-07 bearing number ZD3303240043175S / 2021-22 dated 08.03.2024 issued by the 2nd respondent and quash the same.

PRAYER in W.P.No.11595 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Form GST DRC-07 bearing number ZD3303240433203 / 2019-20 dated 08.03.2024 issued by the 2nd respondent and quash the same.

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

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

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COMMON ORDER

Assessment orders relating to assessment periods 2019-20, 2020-21 and 2021-22 are assailed primarily on the ground of denial of reasonable opportunity. The petitioner is a developer who had availed of the benefit of Notification No.03/2019 – Central Tax (Rate) dated 29.03.2019 (Notification No.03/2019), and was consequently paying GST at 1%. Pursuant to an inspection, an intimation dated 22.07.2022 was issued to the petitioner. Such intimation was replied to on 05.08.2022. Since the respondents were not satisfied with such reply, show cause notices were issued in December 2023. The petitioner sent replies dated 29.12.2023 and 24.02.2024 to the show cause notices. The orders impugned herein were issued in these facts and circumstances.

2. Learned counsel for the petitioner invited my attention to the petitioner's replies dated 05.08.2022, 29.12.2023 and 24.02.2024. By pointing out that the petitioner expressly requested for a personal hearing by reply dated 24.02.2024, learned counsel submits that a personal hearing was not granted. He further submits that the impugned order does not make reference to the petitioner's replies. The next contention of learned counsel is that Notification No.3/2019 sets out the consequences of non compliance therewith. Therefore, the respondent exceeded jurisdiction by applying GST at 5% merely on the allegation of non compliance with Notification No.3/2019. The last contention is that the show cause notice did not contain any of the essential ingredients for invoking Section 74 of applicable GST enactments. For all these reasons, learned counsel submits that the orders impugned herein are unsustainable. Without prejudice, on instructions, learned counsel submits that the petitioner agrees to remit 5% of the disputed tax demand in respect of each assessment period as a condition for remand.

3. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. By referring to the petitioner's replies, he points out that the petitioner failed to provide evidence that the projects developed by the petitioner qualify as affordable housing projects. In particular, he points out that the petitioner had engaged the services of sub contractors and in spite of agreeing to produce relevant documents failed to do so. By drawing reference to the impugned order, learned Additional Government Pleader points out that the petitioner's reply is referred to in the impugned order and that such order contains reasons for rejecting the petitioner's request that GST be imposed at 1% and not at 5%.

4. On perusal of the impugned order, it is evident that such order refers to contentions raised in the petitioner's replies. However, it is noticeable from the petitioner's final reply dated 24.02.2024 that the petitioner requested for a personal hearing. Such

personal hearing was not granted before issuing orders impugned herein. For such reason, interference with the orders impugned herein is warranted.

5. At the same time, as indicated above, the impugned orders were preceded by both an intimation and a show cause notice. The petitioner's replies were also taken into consideration while issuing the impugned orders. In these circumstances, revenue interest is required to be taken into consideration while remanding the matter.

6. For reasons set out above, orders impugned herein are set aside subject to the condition that the petitioner remits 5% of the disputed tax demand in respect of each assessment period as agreed to within ***two weeks*** from the date of receipt of a copy of this order. Subject to the respondents being satisfied that 5% of the disputed tax demand was received, the 2nd respondent is directed to provide a reasonable opportunity to the petitioner, including a personal

hearing, and thereafter issue fresh orders within ***three months*** from the date of receipt of a copy of this order.

7. W.P.Nos.11579, 11591 and 11595 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.12689, 12675, 12690, 12693, 12694 and 12674 of 2024 are closed.

03.06.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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