



W.P.Nos.677, 679 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 12.01.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.677 and 679 of 2024
and W.M.P.Nos.708, 704, 705, 707 of 2024

Tvl.Sharmi Traders
No.07 Alangadu 8th Street
Karuvanpalayam,
Tiruppur 641 604.

... Petitioner in both WP's

-VS-

1.The Assistant Commissioner,
Tirupur (South) - II Circle, Tirupur-II
Tirupur - 641 602.

2.The Assistant Commissioner (ST) (FAC)
Tirupur South Assessment Circle
Tirupur.

... Respondents in both WP's

PRAYER in W.P.No.677 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to quash the order under Section 74 of the GST Acts dated 03.07.2023 and the consequent Summary of the order in Form GST DRC-07



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dated 03.07.2023 for the Financial Year (FY) 2020-21 both passed by the first respondent and both having Reference Number ZD330723004519J and the order dated 26.06.2023 in GSTIN 33BDVPS4709M1ZR / 2020-21 for the Financial Year (FY) 2020-21 passed by the second respondent.

PRAYER in W.P.No.679 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to quash the order under Section 74 of the GST Acts dated 03.07.2023 and the consequent Summary of the order in Form GST DRC-07 dated 03.07.2023 for the Financial Year (FY) 2021-22 both passed by the first respondent and both having Reference Number ZD330723004377L and the order dated 26.06.2023 in GSTIN 33BDVPS4709M1ZR / 2021-22 for the Financial Year (FY) 2021-22 passed by the second respondent.

For Petitioner : Mr.N.V.Balaji
in both WP's

For Respondents : Mr.TNC.Kaushik,



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in both WP's

AGP (Taxes)

ORDER

In these two writ petitions, two separate impugned orders dated 03.07.2023 relating to the financial years 2020-21 and 2021-22 are assailed.

2. The petitioner asserts that he is engaged in the business of dealing in copper waste and scrap of primary cells, primary batteries and electric accumulators. Pursuant to an inspection carried out at the premises, the petitioner was put on notice of alleged contravention of Section 16(2)(b) of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act). The petitioner responded to the notices issued in Form GST DRC-01A and Form GST DRC-01 and stated that ITC was not wrongly availed. In support of such contention, the petitioner placed on record the relevant ledger



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accounts, tax invoices and E-way bills. Eventually, by the orders impugned herein, the explanation provided by the petitioner was rejected. These writ petitions were filed in the above facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the impugned order and submitted that the documents filed by the petitioner to corroborate that the input goods were duly purchased and delivered to the petitioner were not taken into account by the Assessing Officer. In particular, he referred to the conclusion recorded at page 181, internal page 10 of the order.

4. Mr.TNC.Kaushik, learned Additional Government Pleader (Taxes), accepts notice on behalf of the respondents. He points out that a statutory appeal was available in respect of the impugned order. He also points out that the ITC claim was rejected for non submission of documents.



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5. On examining the impugned order in respect of Issue No.1 relating to wrong availment and utilization of ITC, the following was recorded in respect of thereof in the operative portion of the order:

"Issue No.1 - Wrongly availed and utilized input tax credit:-

The tax payer raised his objections against this discrepancy noticed by stating that they had stated that they had actually purchased the goods from their suppliers and to drop the proposals. They have not submitted any records related to the movement of goods from the supplier's place to their business premises, mode of transport and records related to the physical movement of goods.

In the absence of valid supportive documents for the physical movement of goods the objections and records submitted is not supportive to their objections and hence the proposals for the levy of tax, penalty and interest are found to be in order and hence the proposals are confirmed."



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6. The above extract contains the findings that the petitioner did not submit any documents relating to movement of goods, mode of transport and physical movement of goods, and that the proposal for levy of tax, penalty and interest is found to be in order as a consequence.

7. The petitioner has placed on record invoices and E-way bills relating to the relevant purchases. The E-way bills contain details of not only the products purchased by the petitioner but also the vehicles used for the movement of goods. The impugned order does not contain any discussion on the documents produced by the petitioner to corroborate the assertion that legitimate purchases were made and point out deficiencies or inadequacies. On that ground, the impugned order calls for interference. Therefore, the impugned orders dated 03.07.2023 are quashed. As a corollary, these matters are remanded for re-consideration. The second respondent is



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directed to re-consider the matter and issue a fresh assessment order after providing a reasonable opportunity to the petitioner.

8. W.P.Nos.677 and 679 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.708, 704, 705, 707 of 2024 is closed.

12.01.2024

rna

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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Tirupur - 641 602.

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SENTHILKUMAR RAMAMOORTHY,J

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