IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35479, 35482, 35764 and 35579 of 2024
and W.M.P.Nos.38376, 38379, 38455 and 38630 of 2024

M/s.GVR Ashoka Chennai ORR Limited,
Represented by its Authorized Signatory
Umasankar Muthuraman ..Petitioner in all WPs

Vs.

1.Assistant Commissioner (ST),
Cholavaram Assessment Circle,
Room No.109, 1st Floor,
Integrated Commercial Taxes Building,
Wall Tax Building,
Chennai-600003.

2.Joint Commissioner (ST),
Tiruvallur Division, Chennai-600003. ..Respondents in all WPs

PRAYER in W.P.No.35479 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the impugned proceedings of the first respondent passed in TN/33821706307/2016-17 dated 21.09.2023 and quash the same as violative principles of natural justice, contrary to the provisions of TNVAT Act and violative of Article 14, 19(1)(g) and

21 of the Constitution of India and pass orders.

PRAYER in W.P.No.35764 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the impugned notice dated 15.02.2024 in TIN:33821706307/2016-17 issued by the first respondent and quash the same as violative of principles of natural justice, contrary to the provisions of TNVAT Act and violative of Aricle 14, 19(1)(g) and 21 of the Constitution of India and pass orders.

PRAYER in W.P.No.35482 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the impugned recovery notice dated 13.08.2024 in TIN:33821706307/2016-17 passed by the first respondent and quash the same as violative of principles of natural justice, contrary to the provisions of TNVAT Act and violative of Article 14, 19(1)(g) and 21 of the Constitution of India and pass orders.

PRAYER in W.P.No.35579 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the impugned proceedings of the first respondent passed in RC/1941/2024 dated 26.06.2024 and quash the same as violative principles of natural justice, contrary to the provisions of TNVAT Act and violative of Article 14, 19(1)(g) and 21 of the Constitution of India and pass orders.

For Petitioner : Mr.Kumar Vishalaksh

For Respondent : Ms.Amrita Dinakaran
Government Advocate
for respondents 1 and 2

COMMON ORDER

These four writ petitions are filed challenging the following:

W.P.No.35479 of 2024	Challenging the order of assessment dated 21.09.2023 for the assessment 2016-17
W.P.No.35579 of 2024	Challenging the order rejecting the revision filed by the petitioner vide order dated 26.06.2024
W.P.No.35764 of 2024	Challenging the recovery proceedings dated 15.02.2024
W.P.No.35482 of 2024	Challenging the recovery proceedings dated 13.08.2024

2. The impugned order dated 21.09.2023 for the assessment year 2016-17 is challenged on the premise that neither the notice nor the order was served on the petitioner and it was only after the recovery proceedings were initiated and the petitioner was served with a recovery notice dated 15.02.2024, the petitioner was

aware of the impugned order of assessment dated 21.09.2023. Thereafter, he applied for certified copy. On receipt of such certified copy, the petitioner had filed a revision petition before the Joint Commissioner under Section 54 of the TN VAT Act.

3. It is submitted by the learned counsel for the petitioner that the challenge before the Joint Commissioner was inter alia on the premise that there was no valid and proper service of the impugned order of assessment dated 21.09.2023 in the manner contemplated under the TNVAT Act and Rules. However, the revisional authority, namely, the Joint Commissioner rejected the revision petition, without examining the question of validity of service. Thereafter, there has been recovery proceedings dated 15.02.2024 and 13.08.2024, which are also the subject matter of challenge in the present set of writ petitions.

4. It is submitted by the learned Government Advocate for the respondents that the challenge to the revision petition cannot be sustained inasmuch as the revision petition itself could not have been maintained inasmuch as the impugned

order dated 21.09.2023 was an appealable order in terms of Section 51 of the TN VAT Act and a revision would lie only against those orders with regard to which an appeal cannot be maintained under Section 51 of the TN VAT Act. In view thereof, the revision petition itself could not have been maintained.

5. Learned counsel for the petitioner would reiterate that there has not been a valid and proper service.

6. The issues/question whether there has been a valid and proper service in accordance with the provision of the TNVAT Act and Rules is essentially a question of fact and this Court is not inclined to examine the same.

7. At this juncture, the learned counsel for the petitioner would submit that they would file an appeal challenging the order dated 21.09.2023 and seeks for a limited protection against recovery proceedings until they file an appeal under Section 51 of the Act, which was not seriously objection to by learned Standing Counsel for the respondents.

8. In the light of the above submission, it is open to the petitioner to file an

appeal under Section 51 of the TN VAT Act, challenging the impugned order dated 21.09.2023. It is open to the petitioner to raise all contentions that are available including that of validity of service of the notice/order. If any appeal is filed and ground relating to validity of service of notice/order is raised, the appellate authority shall decide the said question of validity of service of notice/order as a preliminary issue.

9. In view of the statement made and the directions issued supra, the respondent authority shall keep all recovery proceedings in abeyance for a period of two weeks from the date of receipt of a copy of this order to enable the petitioner to file an appeal and move a stay application.

10. It is made clear that this Court has not expressed any view on the validity or otherwise of the service. It is also made clear that this Court has not examined whether the appeal to be filed is within limitation or otherwise, that again is left to the appellate authority to decide on the basis of the material that may be produced by the petitioner herein.

11. Accordingly, the writ petition stands disposed of. There shall be no order

as to costs. Consequently, connected miscellaneous petitions are closed.

21.12.2024

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
mrn

To
1.The Assistant Commissioner (ST),
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Room No.109, 1st Floor,
Integrated Commercial Taxes Building,
Wall Tax Building,
Chennai-600003.

2.The Joint Commissioner (ST),
Tiruvallur Division, Chennai-600003.

MOHAMMED SHAFFIQ, J.

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