BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8577 of 2024
&
W.M.P.(MD).Nos.7817 and 7820 of 2024

Tvl.RESHEE SUPER STORES
Rep by its Partner
P.S.Gunasekaran
53, Lakshmipuram 4th street
Madurai-625 001 ... Petitioner

Vs.

1 The Union of India
Rep by its Secretary, Department of Revenue,
Ministry of Finance, No. 137, North Block,
New Delhi - 110001.

2 The Goods and Service Tax Council,
Rep by its Chairman, GST Council
Secretariat, 5th Floor, Tower II, Jeevan
Bharti Building, Janpath Road,
Connaught Place, New Delhi-110001.

3 The State of Tamil Nadu
Rep by Secretary to Government, Commercial
Taxes and Registration Department,
Secretariat, Fort St George, Chennai -600009.

4 Principal Secretary / Commissioner of Commercial Taxes,
Commercial Taxes Department, Ezhiligam,
Chepauk, Chennai- 600005.

5 The State Tax Officer / Audit Officer,
Vengalakadai Street Circle, Madurai - 20.

6 The State Tax Officer
Munichalai Road Circle, Madurai - 20. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in Notification No. 09/2023 - Central Tax dated 31-03-2023 the records on the file of the 3rd respondent in G.O Ms.No. 41 and quash the Notification dated 05-04-2023 issued therein and the records on the files of the 6th respondent in GSTN:33AAPFR9277H1ZK/2017-18 dated 31.12.2023 and quash the same as manifestly arbitrary, void, contrary to the provision of Section 168A of the Goods and Services Tax Act 2017 and violative of Articles 14 and 19(1)(g) of the Constitution of India and illegal without jurisdiction and against the Principles of Natural Justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.G.Rajaraman, CGSC for R1

Mr.R.Suresh Kumar, AGP for R3 to 6

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in Notification No. 09/2023 - Central Tax dated 31-03-2023 the records on the file of the 3rd respondent in G.O Ms.No. 41 and quash the Notification dated 05-04-2023 issued therein and the records on the files of the 6th respondent in GSTIN:33AAPFR9277H1ZK/2017-18 dated 31.12.2023 and quash the same as manifestly arbitrary, void, contrary to the provision of Section 168A of the Goods and Services Tax Act 2017 and violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. Petitioner is aggrieved by the impugned order passed by the 6th respondent in GSTIN:33AAPFR9277H1ZK/2017-18 dated 31.12.2023 for the assessment year 2017-2018. Operative portion of the impugned order reads as under:

" The reply of the taxable person was carefully considered. Personal hearing was afforded to them. They attended the personal hearing and explained their view with regard to the discrepancies. Based on the reply and available records, the adjudication order is passed under section 73 of TN-GST Act as follows:

Quantification:

S.No	Defect	Tax		
		IGST	CGST	SGST
		Deliberately left blank		

Abstract:

	Tax in Rs	Interest	Penalty
		Deliberately left blank	

Order in "DRC-07" is issued through common portal.

Note: *The interest has been calculated as on the date of passing the adjudication order. While making payment, interest for the subsequent period also to be calculated u/s. 50(1) of CGST Act @ 18% per annum."*

3. It is noticed that the impugned order has preceded the order and a show cause notice dated 27.09.2023 in DRC-01 and personal hearing held on 23.11.2023 and 25.12.2023. The petitioner appears to have given a detailed reply dated 26.12.2023 at the time of personal hearing. However, the content of the reply of the petitioner has not been considered while passing the impugned order by the 3rd respondent. As such the impugned order is arbitrary and is therefore liable to be quashed. Accordingly, the

impugned order is quashed and case is remitted back to the 3rd respondent to pass a fresh order on merits within a period of 90 days. Before passing the order petitioner's reply dated 26.12.2023 shall be considered. Petitioner may file additional reply if any within a period of 30 days from the date of receipt of a copy of this order. Impugned order which stands quashed shall be treated as corrigendum to show cause notice dated 27.09.2023 in DRC-01.

Writ Petition is disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

15.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
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Copy To:

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Department of Revenue,
Ministry of Finance, No. 137, North Block,
New Delhi - 110001.

2 The Chairman,
Goods and Service Tax Council,
Secretariat, 5th Floor, Tower II, Jeevan
Bharti Building, Janpath Road,
Connaught Place, New Delhi-110001.

C.SARAVANAN, J.

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