BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.9834 to 9838 of 2024
and
W.M.P.(MD)Nos.8928 to 8931, 8935, 8936, 8943, 8944, 8958 & 8960 of 2024

W.P.(MD)No.9834 of 2024:

Ramaraj Constructions,
Represented by its Proprietor A.Ramaraj. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AEIPR7002M1ZC/2017-18, dated 16.05.2023 and quash the same.

For petitioner : Mr.R.Krishnamoorthy for Mr.T.Bashyam
For respondent : Mr.J.K.Jayaselan Government Advocate

W.P.(MD)No.9835 of 2024:

Ramaraj Constructions,
Represented by its Proprietor A.Ramaraj. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AEIPR7002M1ZC/2018-19, dated 16.05.2023 and quash the same.

For petitioner : Mr.R.Krishnamoorthy for
Mr.T.Bashyam
For respondent : Mr.J.K.Jayaselan
Government Advocate

W.P.(MD)No.9836 of 2024:

Ramaraj Constructions,
Represented by its Proprietor A.Ramaraj. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AEIPR7002M1ZC/2019-20, dated 16.05.2023 and quash the same.

For petitioner : Mr.R.Krishnamoorthy for Mr.T.Bashyam
For respondent : Mr.J.K.Jayaselan Government Advocate

W.P.(MD)No.9837 of 2024:

Ramaraj Constructions,
Represented by its Proprietor A.Ramaraj. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AEIPR7002M1ZC/2020-21, dated 16.05.2023 and quash the same.

For petitioner : Mr.R.Krishnamoorthy for Mr.T.Bashyam
For respondent : Mr.J.K.Jayaselan Government Advocate

W.P.(MD)No.9838 of 2024:

Ramaraj Constructions,
Represented by its Proprietor A.Ramaraj. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AEIPR7002M1ZC/2021-22, dated 16.05.2023 and quash the same.

For petitioner : Mr.R.Krishnamoorthy for
Mr.T.Bashyam
For respondent : Mr.J.K.Jayaselan
Government Advocate

*****

COMMON ORDER

By this common order, all these Writ Petitions are taken up for dismissal.

2. In these Writ Petitions, the petitioner has challenged the respective assessment orders dated 16.05.2023 bearing reference No.33AEIPR7002M1ZC

for the respective assessment years as detailed below:

S.No	W.P.(MD)No.	Assessment Year	Tax Rs.	Interest Rs.	Penalty Rs.
1.	9834 of 2024	2017-18	17,05,330.00	8,10,504.64	17,05,330.00
2.	9835 of 2024	2018-19	8,70,392.80	3,38,259.88	8,70,392.80
3.	9836 of 2024	2019-20	8,95,680.00	2,84,950.06	8,95,680.00
4.	9837 of 2024	2020-21	19,76,120.00	4,80,721.88	19,76,120.00
5.	9838 of 2024	2021-22	4,91,406.00	69,700.48	4,91,406.00

3. The impugned orders have been passed under Section 74 of the TNGST Act, 2017 for the above mentioned assessment years.

4. The learned counsel for the petitioner submits that the petitioner is a small time building contractor and had committed certain mistakes, but, has, however, paid disputed tax together with the interest.

5. It is submitted that the 100% penalty, that has been levied, is usurious and therefore, liable to be interfered with.

6. The learned counsel for the petitioner has drawn attention to the decision

of this Court in the case of ***M/s.Aarthi Hotels vs. Assistant Commissioner (ST) (FAC) in W.P.No.3474 of 2021, dated 08.12.2021***. Specifically, the learned counsel for the petitioner would submit that in the aforesaid case, the Court had considered the rigors of law and reduced the penalty to Rs.10,000/-. It is submitted that the same exercise may be followed in this case as well.

7. It is further submitted that this is a fit case for reading down the provisions of Section 74 of the TNGST Act, 2017 and CGST Act, 2017.

8. On the other hand, the learned Government Advocate for the respondent would submit that these Writ Petitions are devoid of merits and are liable to be dismissed.

9. It is submitted that the impugned orders are dated 16.05.2023. However, these Writ Petitions are filed before this Court on 08.04.2024. Therefore, these Writ Petitions are hopelessly time barred and therefore, liable to be dismissed, on account of latches, in the light of the decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo***

Smith Kline Consumer Health Care Limited reported in ***2020 SCC Online SC 440.***

10. It is submitted that even otherwise, the appellate remedy is also time barred in the light of the decision of the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70.*** Hence, prays for dismissal of these Writ Petitions.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

12. In my view, the impugned orders are passed under Section 74 of the respective GST enactments, do not call for any interference in the hands of this Court, under Article 226 of the Constitution of India. The scope of interference is limited with wide powers. I do not see any extenuating reasons in this case for extending olive branch to the petitioner. Suffice to state that the petitioner can be given an opportunity to went out his grievances before the Appellate Authority under the hierarchy prescribed under the respective GST enactments. Law on the

subject as I understand is that there is no scope for any reduction of penalty, contrary to Section 74 of the respective GST enactments.

13. In the case of ***M/s.Aarthi Hotel*** referred supra by the learned counsel for the petitioner, the petitioner M/s.Aarthi Hotel had availed Input Tax Credit but had not utilised the same. Whereas, in this case, the tax amount has been paid on the date of inspection, which is long after the due date for payment for the respective assessment years.

14. Considering the same, I do not wish to make any further observations on the submissions made by the learned counsel for the petitioner. Perhaps, the petitioner may able to convince the Court, when the matter reaches before the Hon'ble Division Bench of this Court either by way of Appeal from the orders of Appellate Authority or Tribunal or if a challenge is made to the vires of Section 74 of the respective GST enactments, stating that it works very harshly against the small time assessees.

15. These Writ Petitions are dismissed with a liberty to the petitioner to file

statutory Appeal within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

08.07.2024

Index : Yes / No
Internet : Yes / No
apd

To

The State Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.9834 to 9838 of 2024

08.07.2024