BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.12452 to 12455 of 2024
and
W.M.P.(MD) Nos.11046, 11047, 11049, 11050, 11088, 11091, 11093, 11096, 11040, 11043 to 11045, 11072, 11076, 11078 and 11080 of 2024

M/S.MPS & Co.
represented through its Managing Partner,
P.Selvakumar

... Petitioner in all W.Ps.,

/vs./

1.The Deputy Commissioner (Appeal),
TNGST,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai.

2.The Assistant Commissioner (ST), FAC,
Thirupparankundram Circle,
Dr.Thangaraj Salai,
Commercial Tax Complex,
Third Floor,
Madurai 625 020.

3.The Deputy Commercial Tax Officer,
Thirupparankundram, Madurai West, Madurai.

4.The Branch Manager,
Canara Bank,
Tallakulam Branch,
HO. TS.779, Alagar Kovil Road,
Tallakulam,
Madurai 625 002.

... Respondents in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in Reference Nos. ZD3302241280217, ZD3303240975311, ZD330324092834B and ZD330324099301N dated 21.02.2024, 16.03.2024 and 15.03.2024 for 2018-2019, 2019-2020, 2020-2021 and 2021-2022 and quash the same and consequently directing the respondents to drop all further proceedings initiated on the basis of the impugned order passed by the 3rd respondent in Reference Nos. ZD3302241280217, ZD3303240975311, ZD330324092834B and ZD330324099301N dated 21.02.2024, 16.03.2024, 15.03.2024 for 2018-2019, 2019-2020, 2020-2021 and 2021-2022.

For Petitioner
in all W.Ps., : Mr.R.Aravindan

For R1 to R3
in all W.Ps., : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

In these writ petitions, the petitioner has challenged the impugned orders passed for the assessment years 2018-19 to 2021-22 as detailed below:

S.No.	Writ Petition	Date	Assessment Year
1	W.P.(MD) No.12452 of 2024	21.02.2024	2018-19
2	W.P.(MD) No.12453 of 2024	16.03.2024	2019-20
3	W.P.(MD) No.12454 of 2024	15.03.2024	2020-21
4	W.P.(MD) No.12455 of 2024	16.03.2024	2021-22

2.The case of the petitioner is that an inspection was conducted at the premises of the petitioner on 28.10.2022 and thereafter, notices were issued under Section 74 of the TNGST Act, 2017. It is submitted that the petitioner is a semiliterate person and statements were obtained from the petitioner as if the petitioner had agreed to pay tax.

3.It is the further case of the petitioner that the show cause notice has not alleged suppression of fact to invoke larger period of limitation under Section 74 of the TNGST Act, 2017.

4.That apart, the learned counsel for the petitioner would submit that the penalty and interest at usurious rate has been levied in the impugned order and therefore, the impugned orders are liable to be quashed.

5.The sum and substance of the defense of the learned counsel for the petitioner is that the impugned orders, which emanated from the notices issued to the petitioner in the respective DRC 01A and DRC 01, are without jurisdiction and therefore, the impugned orders are liable to be quashed.

6.The learned counsel for the petitioner has placed on the following decisions:

*i) in **Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay** reported in **(1995) 6 Supreme Court Cases 117**;*
*ii) in **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay** reported in **AIR Online 1995 SC 706**;*
*iii) in **M/S.Godrej Sara Lee Ltd Vs. Asst. Commissioner (Aa) & Anr** reported in **2009 AIR SCW 6376**;*
*iv) in **W.P.No.4313 of 2008 (M/S.Sargam Foods Private Limited and others Vs. State of Maharashtra and others) dated 08.07.2010**;*
*v) in **Commissioner of Sales Tax U.P. Lucknow Vs. M/S.Sanjiv Fabrics** reported in **2010 AIR SCW 6914**;*
*vi) in **Uniworth Textiles Limited Vs. Commissioner of Central Excise, Raipur** reported in **(2013) 9 Supreme Court Cases 753**;*

vii) in ***Escorts Limited Vs. Commissioner of Central Excise, Faridabad*** *reported in* ***(2015) 9 Supreme Court Cases 109;***

viii) in ***Commissioner of Customs Vs. Magus Metals Private Limited and others*** *reported in* ***(2017) 16 Supreme Court Cases 491;***

7.The learned Additional Government Pleader for the respondents 1 to 3 would submit that the petitioner has admitted the tax liability and despite such admission, the petitioner failed to pay the entire tax. It is submitted that only part of the tax liability has been paid and therefore, the Department was constrained to issue the notice.

8.It is submitted that in any event, the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 3.

10.In my view, there is no merit in the present writ petitions challenging the impugned orders under Article 226 of the Constitution of India. If at all the petitioner is aggrieved, the petitioner has to file a statutory appeal under Section 107 of the TNGST Act, 2017.

11.Under these circumstances, the Writ Petitions are dismissed with liberty to the petitioner to file a statutory appeal within a period of 30 days from the date of receipt of a copy of this order. The mandatory requirement of pre-deposit shall stand waived if the petitioner has already paid 10% or more of the tax for the respective assessment years during inspection. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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13.06.2024

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C.SARAVANAN, J.

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