BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.17811 to 17818 of 2024
and
W.M.P.(MD)Nos.15288, 15289, 15294, 15295, 15276, 15278, 15292, 15293, 15284, 15285, 15298, 15299, 15290, 15291, 15297 & 15300 of 2024

W.P.(MD)No.17811 of 2024:-

Sri Saravana Enterprises,
A Partnership Firm,
Represented by its Managing Partner
Mr.K.Saravanakumar,
No.1256/2A, Cholapuram Village,
Rajapalayam,
Virudhunagar - 626 139. ... Petitioner

Vs.

1.The State Tax Officer (Inspection-III),
Office of Joint Commissioner (ST) (Intelligence),
Virudhunagar Division,
No.6/499- B, Madurai Road,
Virudhunagar - 626 001.

2.The State Tax Officer (Inspection-IV),
Office of Joint Commissioner (ST) (Intelligence),
Virudhunagar Division,
No.6/499-B, Madurai Road,
Virudhunagar - 626 001.

3.The Joint Commissioner (ST) (Intelligence),
Virudhunagar Division,
No.6/499-B, Madurai Road,
Virudhunagar - 626 001.

4.The Assistant Commissioner (ST)-I,
Rajapalayam Assessment Circle - I,
Rajapalayam, Virudhunagar District.

5.The Principal Secretary /
The Commissioner of State Tax,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for records from the file of first respondent in impugned order in GSTIN:33ADDFS7783E1ZW/2017-18 dated 16.05.2024 passed for Tax Period 2017-18, quash the same as illegal, void *ab initio*, arbitrary, wholly without jurisdiction, barred by limitation and violative of principles of natural justice.

For Petitioner : Mr.J.Narayanasamy
for Mr.R.Janarthanan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

These Writ Petitions are being disposed of by this common order.

2. In W.P.(MD)Nos.17811 to 17817 of 2024, the petitioner has challenged the respective Assessment Orders passed by the second respondent for the Assessment Years 2017 – 2018 to 2023 – 2024. In W.P.(MD)No.17818 of 2024, the petitioner has challenged the impugned Circulars in Circular No.13/2022 – TNGST dated 08.11.2022 and Circular No.11/2023 dated 27.05.2023.

3. The admitted case of the petitioner is that the petitioner's business premises was inspected during October, 2023 and statements were recorded on 30.10.2023 by the Officers attached to the second respondent Office. Thereafter, the petitioner was issued with show cause notice in DRC – 01 by the second respondent, which has now culminated in the impugned orders passed by the first respondent.

4. The case of the petitioner is that initiation of proceedings under DRC – 01 on various dates by the second respondent and adjudication by the first respondent is void, inasmuch as it is contrary to the scheme of the respective GST Enactments.

5. It is submitted that the impugned Circulars are also liable to be quashed as they are contrary to the scheme of the GST Enactments. That apart, the learned counsel for the petitioner submits that the petitioner had failed to respond to the notices issued in DRC – 01 for the respective Assessment Years and has thus, suffered the impugned orders.

6. The learned Special Government Pleader on the other hand submits that the issue is covered against the petitioner in terms of the decision of this Court in **M/s.Rasathe Garments, Rep. by its Partner, Virudhunagar** vs. **The State Tax Officer (ST) (Inspn.), Tirunelveli** [W.P.(MD)Nos.25548 and 26389 of 2023, decided on 03.06.2024].

7. It is submitted that the order has been passed by an Officer different from the Officer, who investigated the case, inasmuch as the order has been passed by the first respondent though attached to the Office of the Joint Commissioner (ST) (Intelligence). It is therefore submitted that no mercy shown to the petitioner, as the petitioner has wilfully failed to participate in the adjudication mechanism prescribed under the Act and hence, the learned Additional Government Pleader prays for dismissal of the Writ Petitions. However, the learned Additional

Government Pleader submits that the petitioner may be given liberty to challenge the respective orders before the Appellate Commissioner, as the limitation for filing appeal would have expired as on date.

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, I am of the view that the petitioner has been negligent in not participating in the proceedings, which emanated from the notices issued by the second respondent in DRC – 01 for the respective Assessment Years. There is no excuse for the petitioner to have ignored the notices and now, present a Writ Petition in W.P.(MD)No.17818 of 2024 as a *fait accompli* stating that the Circulars are void and contrary to the provisions of the Act.

9. The challenge to the Circular in W.P.(MD)No.17818 of 2024 has to fail, as there is no embargo on the second respondent to inspect and record statements. Circular No.13/2022-TNGST, dated 08.11.2022 as modified on 27.05.2023 by Circular No.11/2023 dated 27.05.2023 itself has addressed the issue, the content of which has been extracted in Paragraph No.10 of the order in **M/s.Rasathe Garments, Rep. by its**

Partner, Virudhunagar vs. **The State Tax Officer (ST) (Inspn.), Tirunelveli** [W.P.(MD)Nos.25548 and 26389 of 2023, decided on 03.06.2024].

10. Since the petitioner has not filed reply, one opportunity is being given to the petitioner subject to the petitioner depositing 10% of the disputed tax to the credit of the respondent Department from its Electronic Cash Register within a period of eight weeks from today. The impugned order which stands quashed for the respective Assessment Years shall be treated as Addendum to the respective notices in DRC – 01.

11. The petitioner shall file a separate reply for each of the Assessment Years within a period of 12 weeks from today. The fourth respondent shall pass final orders on merits within a period of two months thereafter. It is made clear that the petitioner shall co-operate with the respondents. It is also made clear that in case the petitioner fails to either deposit the above said amount as ordered above or file a reply as above, it shall be construed that these Writ Petitions challenging the impugned Assessment Orders shall stand dismissed, in which case, the respondents are at liberty to proceed against the petitioner at the expiry of 91st day from today.

12. These Writ Petitions stand disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No **30.07.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.17811 to 17818 of 2024

30.07.2024