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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.07.2024**

CORAM:

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

W.P.(MD) Nos.17692 to 17695 of 2024
and
W.M.P.(MD) Nos.15182, 15183, 15190, 15191, 15178, 15179, 15177 and 15180 of 2024

M/S.N.J.Motor,
represented by its Proprietor
Nagarajan Ilaiya Bharathi

... Petitioner in all W.Ps.,

/vs./

The State Tax Officer,
Survey Unit,
Madurai.
Office of the Joint Commissioner (State Tax) (Intelligence),
Survey Unit, Ground Floor,
Commercial Tax Buildings,
Madurai 625 020.

... Respondent in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in ARN/Case ID Nos.AD330923056366X, AD3309230566223, AD330923056694S and AD3309230567502 Order

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Reference Numbers. ZD330224146990I, ZD3302241471014, ZD330224147170Z and ZD330224150505T dated 23.02.2024 for the assessment years 2019-20, 2020-21, 2021-22 and 2022-23 and to quash the same as illegal, arbitrary, wholly without jurisdiction and direct the respondent to issue notice to the petitioner then pass an assessment order afresh after affording an sufficient opportunity within such time as may be directed by this Court.

For Petitioner
in all W.Ps., : Mr.N.Sudalai Muthu

For Respondent
in all W.Ps., : Mr.J.K.Jayaselan
Government Advocate

COMMON ORDER

By this common order, all these four writ petitions are being disposed of.

2.In these writ petitions, the petitioner has challenged the impugned order passed by the respondent for the assessment years commencing from 2019-20 to 2022-23 imposing penalty under Section 122(1)(ii) of the Act.

3.The case of the petitioner is that the petitioner was appointed as Authorized Dealer of M/S.Java Motors, namely, Classic Legends Private Limited. It is the case of the petitioner that the petitioner was filing regular returns and that

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due to the outbreak of COVID-19 pandemic with effect from 24.03.2020, the petitioner's business had suffered and therefore, the petitioner decided to close the business in November, 2022.

4.Since the petitioner’s show room was located in prime location, the manufacturer, namely, Classic Legends Private Limited, advised the petitioner to retain the show room till the transfer of business to an incoming dealer. According to the petitioner, it appears that the Official from the Department visited the premises during December, 2022 and had thereafter, issued the notices to the petitioner, which were transmitted to the petitioner through GST common portal.

5.It is submitted that the statements were recorded from few of the persons, who were in-charge of the principle place of business and additional place of business on 02.02.2023 and since the petitioner had failed to respond to the notices that preceded the impugned order, the impugned orders have been passed.

6.It is the case of the petitioner that the petitioner was dealing only in sale of Java Motor Cycles and that predominantly the sales are only to the customers

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and not to business house and therefore, there is no question of petitioner attempting to pass on input tax credit to the consumer.

7.It is submitted that, on the other hand, the petitioner was merely transferring the burden of the GST payable on the sales/supplies made, on which no credit could have been availed by the individual customers of the petitioner.

8.The learned counsel for the petitioner submits that the petitioner may be given one opportunity to explain the position, as admittedly the petitioner has closed the business as early as November, 2022. It is further submitted that there is no dispute that the petitioner was filing regular returns as is contemplated under the provisions of the respective GST Act and the respective Rules.

9.The learned Government Advocate for the respondent would submit that the writ petitions are misconceived, as the petitioner has an alternate remedy by way of an appeal before the Appellate Authority under Section 107 of the respective GST Act, 2017.

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10.It is submitted that notice were served on the Professor of the College run by the petitioner, namely Bharath Vidyalaya. It is therefore submitted that the petitioner cannot feign innocence stating that the petitioner was not served with the notice.

11.Having considered the over all facts and circumstances of the case, I am of the view that this is a fit case for quashing the impugned orders and remitting the cases back to the respondent to pass a fresh order on merits and in accordance with law, as the penalty has emanated from the statements recorded from the persons, who were stated to be the in-charge of the principal place of business and additional place of business of the petitioner.

12.The impugned orders are also based on the information gathered by the respondent from the returns filed by the petitioner. *Prima facie*, the impugned orders are un-sustainable. In any event, the petitioner has to explain the case afresh before the respondent.

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13.Under these circumstances, the impugned orders are quashed and the cases are remitted back to the respondent to pass a fresh order on merits and in accordance with law.

14.The impugned orders, which stand quashed, shall be treated as addendum to the notices issued to the petitioner earlier. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall thereafter pass a fresh order on merits and in accordance with law within a period of two months. Needless to state that the petitioner shall be heard, before fresh order is passed.

15.Since the impugned orders are quashed and the cases are remitted back to the respondent, the respondent is directed to leave the order of attachment attaching the petitioner’s sister concern.

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16.The Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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To

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C.SARAVANAN, J.

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