BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) Nos.18870 to 18874 of 2024
and
W.M.P.(MD)Nos.15952, 15953, 15962, 15964, 15968, 15970, 15965, 15967, 15977 & 15978 of 2024

Tvl.Sree Garuda Global Service,
Represented by its Partner Krishnakumar. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner,
Sivagangai Assessement Circle,
Sivagangai. ... Respondent in all W.P.s

PRAYER in W.P.(MD)No.18870 of 2024: 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 proceedings passed by the respondent in his proceedings in Form GST ASMT-13 reference No.ZD330623085516A, dated 20.06.2023 (Tax Period:April 2023- April 2023) and quash the same as it is illegal and the same is passed by grossly violating the principles of natural justice.

PRAYER in W.P.(MD)No.18871 of 2024: 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 proceedings passed by the respondent in his proceedings in Form GST ASMT-13 reference No.ZD330923149741A, dated 22.09.2023 (Tax Period:May 2023- May 2023) and quash the same as it is illegal and the same is passed by grossly violating the principles of natural justice.

PRAYER in W.P.(MD)No.18872 of 2024: 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 proceedings passed by the respondent in his proceedings in Form GST ASMT-13 reference No.ZD3310230048024, dated 03.10.2023 (Tax Period:June 2023- June 2023) and quash the same as it is illegal and the same is passed by grossly violating the principles of natural justice.

PRAYER in W.P.(MD)No.18873 of 2024: 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 proceedings passed by the respondent in his proceedings in Form GST ASMT-13 reference No.ZD331023004893U, dated 03.10.2023 (Tax Period:July 2023- July 2023) and quash the same as it is illegal and the same is passed by grossly violating the principles of natural justice.

PRAYER in W.P.(MD)No.18874 of 2024: 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 proceedings passed by the respondent in his proceedings in Form GST ASMT-13 reference No.ZD3312230983679, dated 14.12.2023 (Tax Period:September 2023- September 2023) and quash the same as it is illegal and the same is passed by grossly violating the principles of natural justice.

For petitioner in all W.Ps	: Mr.K.Srinivasan
For respondents in all W.Ps	: Mr.R.Suresh Kumar Additional Government Pleader

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COMMON ORDER

By this common order, these five Writ Petitions are taken up for disposal.

2. The Writ Petitions in W.P.(MD)Nos.18870 to 18873 of 2024 are filed challenging the impugned orders made under Section 62 of the TNGST Act, 2017, on the premise that the petitioner has failed to furnish the Return for the period from April to July 2023 within the prescribed period. The impugned orders made under Section 62 also provided that if the petitioner files the Return within a period of 30 days from the date of receipt of that order, the impugned orders would be withdrawn. However, admittedly, the petitioner has not done so within the prescribed period, i.e., 30 days from the date of receipt of that order as it is evident from the following table:

S.No	W.P.(MD)Nos.	Months	Date of impugned order in ASMT-13	Date of speaking order	GSTR-3B returns filed on	GSTR-3B returns filed with delay of
1.	18870/2024	April-23	20.06.2023	20.06.2023	18.12.2023	151 days
2.	18871/2024	May-23	22.09.2023	22.09.2023	16.03.2024	146 days
3.	18872/2024	June-23	03.10.2023	22.09.2023	16.03.2023	45 days
4.	18873/2024	July-23	03.10.2023	22.09.2023	16.03.2023	45 days

3. It is submitted by the learned counsel for the petitioner that the assessment orders were not served on the petitioner.

4. Opposing the same, the learned Additional Government Pleader for the respondent submits that the impugned orders were uploaded in the GST common portal, which is one of the modes of service, as contemplated under Section 169(1)(d) of the TNGST Act, 2017, which reads as under:

*“**169.Service of notice in certain circumstances:***

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

......

(d) by making it available on the common portal;”

5. It is submitted by the learned counsel for the petitioner that the petitioner had paid entire tax. In view of the fact that the petitioner has not responded to the respective notices that preceded the respective impugned orders, the respondent has proceeded to make Best of Judgement Order on the basis of the total turn over and Return in GSTR 01 for the month of April 2023 by adding 10% towards gross profit.

6. It is submitted by the learned counsel for the petitioner that entire tax due in terms of the Return filed in GSTR 3B has already been remitted, which demonstrates their bonafides and they were unable to file the appeal within the prescribed statutory period only in view of the fact that they were unaware of the order being uploaded in the GST portal. The learned counsel would then refer to the order of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise*** in ***W.P.(MD)No.11924 of 2024 dated 10.06.2024*** and submit that the petitioner is ready and willing to deposit 25% of the disputed tax, i.e., apart from what is stated to have been already remitted in terms of GSTR-3B and they may be granted an opportunity to place their objection before the Adjudicating Authority. The above request was not seriously objected to by the learned Additional Government Pleader for the respondents.

7. Considering the fact that this Court, under similar circumstances, has found that the petitioner can be granted one opportunity on payment of 25% of the differential tax, this Court is inclined to direct the petitioner to deposit 25% of the differential tax between the tax remitted in terms of GSTR 3B and that which

is arrived at in terms of the order of assessment within a period of two weeks. If such tax is paid, the assessing Officer shall redo the assessment after hearing the petitioner.

8. As far as the period of September 2023 which is the disputed period in W.P.(MD)No.18874 of 2024 is concerned, it is submitted by the learned counsel for the petitioner that GST 3B has been filed on 103rd day from the date receipt of ASMT 13. It is also brought to the notice of this Court that vide Notification No. 28/2023-Central Tax dated 31.07.2023 and vide Section 148(b) of the Finance Act, 2023, the time limit to furnish the Return has been extended to 120 days.

9. It is submitted that the above proviso has not been considered by the Assessing Officer/respondent, which is applicable inasmuch as the impugned order is made only on 14.12.2023 i.e., after the amendment came into force.

10. In view there of, the impugned order in W.P.(MD)No.18874 of 2024 is set aside and the Assessing Officer/respondent shall consider the impact of the

above amendment and thereafter, proceed to pass fresh orders on merits and in accordance with law.

11. In the result, W.P.(MD)Nos.18870 to 18873 of 2024 are disposed of and W.P.(MD)No.18874 of 2024 is allowed, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

07.08.2024

To
The Assistant Commissioner,
Sivagangai Assessement Circle,
Sivagangai.

MOHAMMED SHAFFIQ, J.

apd

W.P.(MD) Nos.18870 to 18874 of 2024

07.08.2024