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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.20786 to 20789 of 2024
and
W.M.P.(MD).Nos.17607, 17609, 17610,
17612 to 17614, 17630 and 17632 of 2024

W.P.(MD).No.20786 of 2024

Cape Infrastructure Private Limited,
9/3, Jawahar Street,
Ramavarmapuram, Nagercoil,
Kanniyakumari,
Tamil Nadu – 629 001,
Represented by its Director R.Rajakumar. ... Petitioner

Vs.

The Commercial Tax Officer (ST),
Nagercoil (Rural), Kanyakumari,
Tirunelveli,
Tamil Nadu. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records on the file of the respondent leading to the issuance of impugned order dated 07.06.2023 vide GSTIN : 33AADCC2632G1Z6/2022-23 and impugned order dated 16.03.2024 vide GSTIN 33AADCC2632G1Z6/2022-23 and quash the same and consequently direct the respondent to re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

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W.P.(MD).No.20787 of 2024

Cape Infrastructure Private Limited,
9/3, Jawahar Street,
Ramavarmapuram, Nagercoil,
Kanniyakumari,
Tamil Nadu – 629 001,
Represented by its Director R.Rajakumar. ... Petitioner

Vs.

The Commercial Tax Officer (ST),
Nagercoil (Rural), Kanyakumari,
Tirunelveli,
Tamil Nadu. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records on the file of the respondent leading to the issuance of impugned order dated 27.12.2023 vide GSTIN : 33AADCC2632G1Z6/2017-18 and quash the same and consequently direct the respondent to re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

W.P.(MD).No.20788 of 2024

Cape Infrastructure Private Limited,
9/3, Jawahar Street,
Ramavarmapuram, Nagercoil,
Kanniyakumari,
Tamil Nadu – 629 001,
Represented by its Director R.Rajakumar. ... Petitioner

Vs.

The Commercial Tax Officer (ST),
Nagercoil (Rural), Kanyakumari,
Tirunelveli,
Tamil Nadu. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records on the file of the respondent leading to the issuance of impugned order dated 09.03.2024 vide GSTIN : 33AADCC2632G1Z6/2019-20 and quash the same and consequently direct the respondent to re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

W.P.(MD).No.20789 of 2024

Cape Infrastructure Private Limited,
9/3, Jawahar Street,
Ramavarmapuram, Nagercoil,
Kanniyakumari,
Tamil Nadu – 629 001,
Represented by its Director R.Rajakumar. ... Petitioner

Vs.

The Commercial Tax Officer (ST),
Nagercoil (Rural), Kanyakumari,
Tirunelveli,
Tamil Nadu. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records on the file of the respondent leading to the issuance of impugned order dated 16.03.2024 vide GSTIN : 33AADCC2632G1Z6/2018-19 and impugned order dated 16.03.2024 vide GSTIN : 33AADCC2632G1Z6/2018-19 and quash

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the same and consequently direct the respondent to re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

For Petitioner	: Mr.AG.Sathyanarayana
For Respondent	: Mr.R.Suresh Kumar Additional Government Pleader (In all Writ Petitions)

COMMON ORDER

A batch of Writ Petitions are filed challenging the impugned orders of assessment under Section 74 of the TNGST Act for the assessment years 2017-2018, 2018-2019, 2019-2020 and 2022-2023.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a private limited company under the name and style of M/s.Cape Infrastructure Private Limited, which is engaged in the business of Engineering Consultancy executing turn key project for various energy systems. The petitioner has challenged the impugned orders of assessment on the premise that the petitioner was not served with the impugned orders or GST DRC-01 notice in view of the fact that the said notices and the impugned orders were uploaded in “Additional Notices” tab in the GSTIN portal. The petitioner was thus not aware of the same, inasmuch as the notices and impugned orders ought

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to have been uploaded under the tab "View Notices and Orders". It was further submitted that inability to respond to the above notices was also in view of the fact that one of the Directors of the petitioner Company, who was looking after the affairs of the Company, has suffered from right thalamic infract and was hospitalized during the year 2023.

3. At the outset, it is submitted by the learned Additional Government Pleader appearing for the respondent that these Writ Petitions have been filed well beyond the statutory period stipulated for filing an appeal and therefore, the Writ Petitions are not maintainable. It is further submitted that the said notices and orders were not only uploaded in the GSTIN portal, but as a matter of fact, they were sent by registered post and the same was also served on the petitioner. To substantiate the same, the learned Additional Government Pleader placed the file before this Court, which includes acknowledgment cards for serving all the notices and the impugned orders of assessment on the petitioner.

4. The learned counsel for the petitioner would place reliance upon the recent judgment 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***.

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5. It was submitted by the learned counsel for the petitioner that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order is set aside and the petitioner shall deposit the admitted tax and 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of six (6) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or the objections not filed within the stipulated period, i.e., four weeks and six weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

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7. Accordingly, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.09.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
The Commercial Tax Officer (ST),
Nagercoil (Rural), Kanyakumari,
Tirunelveli,
Tamil Nadu.

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MOHAMMED SHAFFIQ, J.

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W.P.(MD).Nos.20786 to 20789 of 2024

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