BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.25338 & 25339 of 2022
and 7921 & 7922 of 2024
and
W.M.P.(MD) Nos.19429, 19431 of 2022
and 7196, 7197, 7203, 7204 of 2024

In W.P.(MD)No.25338 of 2022:

M/s.Vivegam Travels,
Represented by its Proprietor G.Vivekanandan. ... Petitioner

Vs.

The Assistant Commissioner (ST) (Circle),
Tuticorin -III Assessment Circle,
Commercial Tax Buildings,
Tuticorin. ... Respondent

PRAYER: Writ Petition 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 GSTIN 33ABPPV7993M1ZF/2018-19 dated 23.05.2022 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing/being heard as contemplated under Section 63 of the Tamil Nadu Goods and Services Tax 2017.

For petitioner	: Dr.A.Thiyagarajan Senior Counsel for Mr.S.Karunakar
For respondent	: Mr.J.K.Jayaseelan Government Advocate

In W.P.(MD)No.23559 of 2022:

M/s.Vivegam Travels,
Represented by its Proprietor G.Vivekanandan. ... Petitioner

Vs.

The Assistant Commissioner (ST) (Circle),
Tutocorin-III Assessment Circle,
Commercial Tax Buildings,
Tuticorin. ... Respondent

PRAYER: Writ Petition 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 GSTIN 33ABPPV7993M1ZF/2019-20 dated 23.05.2022 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing/being heard as contemplated under Section 63 of the Tamil Nadu Goods and Services Tax 2017.

For petitioner : Dr.A.Thiyagarajan
Senior Counsel for
Mr.S.Karunakar
For respondent : Mr.J.K.Jayaseelan
Government Advocate

In W.P.(MD)No.7921 of 2024:

M/s.Vivegam Travels,
Represented by its Proprietor G.Vivekanandan. ... Petitioner

Vs.

The Assistant Commissioner (ST) (Circle),
Tutocorin-II Assessment Circle,
Commercial Tax Buildings,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records in GSTIN 33ABPPV7993M1ZF/2018-19 dated 29.12.2023 on the file of the respondent and to quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax 2017 and direct the respondent to pass orders as per law.

For petitioner : Dr.A.Thiyagarajan
Senior Counsel for
Mr.S.Karunakar
For respondent : Mr.J.K.Jayaseelan
Government Advocate

In W.P.(MD)No.7922 of 2024:

M/s.Vivegam Travels,
Represented by its Proprietor G.Vivekanandan. ... Petitioner

Vs.

The Assistant Commissioner (ST) (Circle),
Tutocorin-II Assessment Circle,
Commercial Tax Buildings,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records in GSTIN 33ABPPV7993M1ZF/2019-20 dated 06.01.2024 on the file of the respondent and to quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax 2017 and direct the respondent to pass orders as per law.

For petitioner : Dr.A.Thiyagarajan
Senior Counsel for
Mr.S.Karunakar

For respondent : Mr.J.K.Jayaseelan
Government Advocate

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COMMON ORDER

By this common order, the above mentioned four Writ Petitions are disposed of.

2. In these Writ Petitions, the petitioner has challenged the impugned orders passed under Sections 63 and 74 of the TNGST Act, 2017. The dispute pertains to the assessment years 2018-19 and 2019-20.

3. It is the case of the petitioner that there is overlapping with the demand that was confirmed under Section 63 of the TNGST Act, 2017 earlier and the same demand has been confirmed again in the subsequent orders passed for the assessment years 2018-19 and 2019-20 under Section 74 of the TNGST Act, 2017.

4. The demand that have been confirmed in these assessment years, which are impugned orders in these Writ Petitions, are as under:

S.No	W.P.(MD) Nos.	Assessment year	Demand under Section 63 notice	Demand under Section 74 notice
1.	25338/2022	2018-19	Rs.45,88,096/-	---
2.	25339/2022	2019-20	Rs.3,62,82,788/-	---
3.	7921/2024	2018-19	---	Rs.1,42,58,318/-
4.	7922/2024	2019-20	---	Rs.1,35,54,604/-

5. Per contra, the learned Government Advocate for the respondents has referred to the relevant portion of the impugned order for the assessment years 2018-19 and 2019-20 under Section 74 of the TNGST Act, 2017 passed on 29.12.2023 and 06.01.2024, respectively. Further, he draws attention to the operative portion of the orders passed under Section 74 of the respective cases as detailed below:

Details	Income as per P & L for 2018-19	Income as per P & L for 2019-20
Luggage Collection A/c	Rs.1,38,35,134/-	Rs.1,28,31,727/-
Online Ticket Collection A/c	Rs.6,05,29,880/-	Rs.7,47,92,791/-
Ticket Collection A/c	Rs.3,86,51,105/-	Rs.5,93,82,845/-
Lorry hire charges Received	---	Rs. 49,79,500/-
Total Income received	Rs.11,30,16,119/-	Rs.15,19,86,863/-
Less Already assessed	Rs. 1,27,44,706/-	Rs. 5,03,92,760/-
Now determined Turnover	Rs.10,02,71,413/-	Rs.10,15,94,103/-

Rate of Tax	@ 5%	@5%
Tax Due under CGST	Rs.25,06,785/-	Rs. 25,39,853/-
Tax Due under SGST	Rs.25,06,785/-	Rs. 25,39,853/-

6. In my view, challenge to the impugned orders, on the ground that there is overlapping between demand confirmed earlier under Section 63 of TNGST Act, 2017 for the same assessment years, cannot be countenanced. On this ground, these Writ Petitions are liable to be dismissed.

7. However, it is noticed that in these cases also, the petitioner has not replied to the respective show cause notices that preceded the impugned order, in view of the pendency of W.P.(MD)Nos.25338 and 25339 of 2022. Since the matter would require detailed consideration, the impugned orders are quashed and the cases are remitted back to the respective respondents to pass fresh orders on merits and in accordance with law as expeditiously as possible, subject to the petitioner depositing 25% of the disputed tax in each financial years. The amount, that was already pre-deposited i.e., a sum of Rs.9,90,513/-, shall be treated as part of pre-deposit, that is required to be made pursuant to this order.

These Writ Petitions are disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

25.06.2024
(2/2)

To

1.The Assistant Commissioner (ST) (Circle),
Tuticorin -III Assessment Circle,
Commercial Tax Buildings,
Tuticorin.

2.The Assistant Commissioner (ST) (Circle),
Tutocorin-II Assessment Circle,
Commercial Tax Buildings,
Tuticorin.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.25338 & 25339 of 2022
and 7921 & 7922 of 2024

25.06.2024
(2/2)