IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.723 of 2025 and
W.M.P.Nos.879 & 880 of 2025

TVL.MG RESIDENCY PRIVATE LIMITED,
NOW KNOWN AS AGS HILL RESIDENCY PRIVATE LIMITED,
REPRESENTED BY ITS DIRECTOR: MR A.GNANASEKAR,
NO.S.F.NO.31/3B, NEW S.F.NO.31/3B,31/4A8A,
ATHANAYUR VILLAGE,
TIRUPATTUR TALUK, VELLORE,
TAMIL NADU 635 853. ....Petitioner

Versus

THE ASSISTANT COMMISSIONER (ST)(FAC),
(cum) COMMERCIAL TAX OFFICER,
THIRUPPATTUR ASSESSMENT CIRCLE,
442, WARD-I, BLOCK 18, ICT BUILDING, GROUND FLOOR,
PUDUPETTAI ROAD,
THIRUPATTUR 635 601. .... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, call for the records on the file of the Respondent passed in GSTIN 33AAGCM9677A1ZE / 2019-20 and consequential order u/s 73 and Form GST DRC-07 both having Reference No. ZD330824246407A all dated 27.08.2024 for the tax period April 2019 - March

2020 relating to Financial Year 2019-20 and quash the same as illegal contrary to the provisions of the TNGST/CGST/ IGST Acts, and in violation of principles of natural justice and fair play.

For Petitioner	:	Mr.T.Pramod Kumar Chopda Senior Advocate for Mr.T.C.Gopalakrishnan
For Respondent	:	Mr.C.Harsha Raj Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 27.08.2024 passed by the respondent relating to the financial year 2019-20.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under Central/State/Integrated Goods and Services Tax Act, 2017 and carrying on boarding and lodging business. During the relevant period 2019-20, the petitioner filed its returns and paid appropriate taxes. However, on scrutiny of the returns filed for the year 2019-20, the following discrepancies were *inter alia* noticed:

(i) Under declaration of output tax

(ii) Excess claim of ITC

2.1. Pursuant thereto, a show cause notice in Form DRC-01 was issued to the petitioner on 19.05.2024, followed by three reminder notices and personal hearing opportunities were also granted to the petitioner on 28.06.2024, 26.07.2024 and 12.08.2024 respectively. However, the petitioner had neither filed its reply nor paid the taxes and also not availed the opportunity for personal hearing. Hence, the impugned order came to be passed, confirming the proposals.

3. The learned counsel for the petitioner would then place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes. It was further submitted that the petitioner has already paid 10% of the disputed taxes and thus would request that one consolidated assessment order may be made for the year 2019-20, which was agreed to by the learned Additional Government Pleader.

4. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted the 10% of the disputed taxes, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Additional Government Pleader for the respondent.

5. By consent of parties, this writ petition stands disposed of on the following terms:

a) The impugned order dated 27.08.2024 is set aside.

b) The petitioner shall deposit 10% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) It is open to the petitioner to produce material to show that the 10% of the disputed tax amount is paid. If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 10% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance with the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 10% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 10 % of the disputed taxes.

g) 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 four (4) 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. It is made clear that if the above conditions viz., 10% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.01.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

jd

To
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(cum) COMMERCIAL TAX OFFICER,
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