**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 30.01.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.810 of 2025**
**and**
**W.M.P. Nos.992 and 994 of 2025**

Tvl.AGS Holiday Resorts,
Represented by its Partner Mr.A.Gnanasekar,
No.350/2G, 350/2B1, Palakaniyur Road,
Athanavur Village, Yellagiri Hills,
Vellore, Tamil Nadu-635 853. ... Petitioner

Vs.

Commercial Tax Officer,
Jurisdiction: Thirupattur,Thirupattur: Vellore: Tamil Nadu,
Thirupattur-Tamil Nadu. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the Respondent passed in order under Section 73 in GSTIN 33ABEFA0740L1ZR and Form GST DRC-07 both having Reference No.ZD3303240995168 and dated 16.03.2024 for the tax period April 2018-March 2019 relating to Financial Year 2018-19 and quash the same as illegal contrary to the provisions of the TNGST / CGST Acts and in violation of principles of natural justice and fair play and direct the respondent to reverse the suo moto debiting of the electronic credit ledger of the petitioner.

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| For Petitioner | : Mr.T.Pramod Kumar Chopda<br>Senior Advocate<br>for Mr.T.C.Gopalakrishnan |
| For Respondent | : Mr.V.Prashanth Kiran<br>Government Advocate |

**ORDER**

The present writ petition is filed challenging the impugned order dated 16.03.2024 relating to the assessment year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is carrying on lodging and boarding business and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, on scrutiny of returns *inter-alia* the following discrepancies were noticed:

i) The tax on outward supplies under declared on reconciliation of data in GSTR-09 : IGST Rs.6624/-

ii) Mismatch between GSTR 1 and GSTR 9;

iii) Verification of ITC availed;

iv) ITC to be reversed on non-business transactions and exempt supplies and

v) Under declaration of Ineligible ITC.

3. Pursuant thereto, a notice in DRC-01 was issued on 27.12.2023, followed by three reminder notices dated 27.01.2024, 15.02.2024 and 22.02.2024. However, the petitioner had not responded to the above notice / intimation, the impugned order was thus passed confirming the proposal.

Subsequent to the passing of the impugned order, the respondent passed a rectification order on 09.11.2024, confirming the proposal. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is

also the case of the petitioner that that subsequent to the order of assessment, the petitioner had remitted more than 25% of the disputed taxes and they would only request that the same may be taken into account while reckoning 25% of the disputed tax which is directed to be paid, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 16.03.2024 is set aside.

b) The petitioner shall deposit 25% 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) 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 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % 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 25% 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 25% 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 25 % 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., 25% 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.

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

**30.01.2025**

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
Commercial Tax Officer,
Jurisdiction: Thirupattur,
Thirupattur: Vellore: Tamil Nadu,
Thirupattur-Tamil Nadu.

**<u>MOHAMMED SHAFFIQ, J.</u>**

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**<u>W.P. No.810 of 2025</u>**

**30.01.2025**

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