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

**DATED : 31.01.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.Nos.3380 & 3396 of 2025**
**and**
**W.M.P.Nos.3749, 3750, 3767 & 3768 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 in W.P.Nos.3380 & 3396 of 2025

Vs.

State Tax Officer (Intelligence),
Inspection-2 Vellore (Commercial Tax Officer)
O/o.The Joint Commissioner (ST) Intelligence,
Vellore Division, Vellore.

..Respondent in W.P.Nos.3380 & 3396 of 2025

**PRAYER in W.P.No.3380 of 2025:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records on the file of the Respondent passed in GSTIN 33AAGCM9677A1ZE / 2021-22 dated 09.05.2024 and consequential Order u/s 74 and Form GST DRC and 07 having Reference No.ZD3305240656956 all dated 10.05.2024 for the tax period April 2021 - March 2022 relating to FY 2021-22 and quash the same as illegal contrary to the provisions of the Act, and in violation of principles of natural justice and fair play.

**PRAYER in W.P.No.3396 of 2025:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records on the file of the Respondent passed in GSTIN 33AAGCM9677A1ZE / 2020-21 dated 09.05.2024 and consequential Order u/s 74 and Form GST DRC and 07 having Reference No. ZD330524066203Q dated 10.05.2024 for the tax period April 2020 - March 2021 relating to FY 2020-21 and quash the same as illegal contrary to the provisions of the Act and in violation of principles of natural justice and fair play.

**Appearance of counsel in both W.P's**

For Petitioner : Mr.T.Pramod Kumar Chopda
Senior Counsel
for T.C.Gopalakrishnan

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

**COMMON ORDER**

Since the issue involved and the relief sought in both these Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. These Writ Petitions are filed challenging the impugned orders dated 09.05.2024 and the consequential summary of the order in Form DRC-07 dated 10.05.2024 passed by the respondent, relating to the assessment years 2020-21 and 2021-22.

3. It is submitted by the learned counsel for the petitioner that the petitioner is carrying on boarding and lodging business and is a registered dealer under the Central/State/Integrated Goods and Services Tax Act, 2017. During the relevant periods, the petitioner had filed its return and paid appropriate taxes. While so, there was an inspection of the business place of the petitioner on 26.05.2023. During the course of inspection, it was noticed that there was mismatch between GSTR-1 and GSTR-3B and it was also found that the petitioner had availed

ineligible Input Tax Credit and thus in terms of Section 17(5) of the GST Act.

4. Subsequently, an intimation notice in Form DRC-01A dated 23.08.2023 was issued to the petitioner, followed by show cause notices in Form DRC-01 on 20.09.2023 for the assessment year 2020-21 and Form DRC-01 on 06.12.2023 for the assessment year 2021-22. It is submitted by the learned counsel for the petitioner that pursuant to the issuance of notices/intimation, the petitioner has paid the entire disputed taxes and they are aggrieved only by the levy of penalty, which is according to the petitioner without any jurisdiction.

5. It is submitted by the learned counsel for the petitioner that in respect of mismatch between GSTR-3B and GSTR-2A, levy of penalty may not be warranted in terms of Section 74 of the Act, which requires establishment of mental element. It is further 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.

6. The learned counsel for the petitioner would then 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. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

7. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted the entire 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 Government Advocate for the respondent.

8. By consent of parties, these writ petitions stands disposed of on the following terms:

a) The impugned orders dated 09.05.2024 and consequential summary of the order dated 10.05.2024 are set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, 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 entire disputed taxes 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 from 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 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 to be paid for compliance of the direction of 25% of the disputed taxes after deducting the sums already paid and payment by the petitioner of the balance amount on intimation in compliance of 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 first 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.

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

**31.01.2025**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To
State Tax Officer (Intelligence),
Inspection-2 Vellore (Commercial Tax Officer)
O/o.The Joint Commissioner (ST) Intelligence, Vellore Division, Vellore.

**MOHAMMED SHAFFIQ, J.**

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**W.P.Nos.3380 & 3396 of 2025**

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