IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.3385 & 3400 of 2025
and
W.M.P.Nos.3753, 3755, 3771 & 3773 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 both W.P's

Vs.

Deputy Commercial Tax Officer,
Jurisdiction:Thirupattur,
Thirupattur:Vellore:Tamil Nadu,
Thirupattur, Tamil Nadu.

..Respondent in both W.P's

PRAYER in W.P.No.3385 of 2025: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records on the file of the Respondent passed in GSTIN 33AAGCM9677A1ZE / 2021-22 and consequential Order u/s 73 and Form GST DRC 07 having Reference

No. ZD330424063816C all dated 08.04.2024 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 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.

PRAYER in W.P.No.3400 of 2025: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records on the file of the Respondent passed in GSTIN 33AAGCM9677A1ZE / 2020-21 and consequential order u/s 73 and Form GST DRC 07 having Reference No.ZD330424063973A all dated 08.04.2024 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 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.

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 08.04.2024 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 viz., 2020-21 and 2021-22, the petitioner had filed its return and paid appropriate taxes. While so, on verification of monthly returns filed by the petitioner, it was noticed that there was mismatch between GSTR-3B and GSTR-2A.

4. Subsequently, a notice in Form ASMT-10 was issued on 08.03.2023, followed by a show cause notice in Form DRC-01 on 27.09.2023 for the

assessment year 2020-21 and 2021-22 was issued to the petitioner through GST common portal. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal. 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.

5. 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***. 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 further submitted that subsequent to the passing of the impugned order, the petitioner has already remitted more than 25% of the disputed taxes and his only request is that the same may be adjusted towards 25% of the disputed tax, to which, the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned orders dated 08.04.2024 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 more than 25% 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.

7. 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
Deputy Commercial Tax Officer,
Jurisdiction:Thirupattur,
Thirupattur:Vellore:Tamil Nadu,
Thirupattur, Tamil Nadu.

MOHAMMED SHAFFIQ, J.

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W.P.Nos.3385 & 3400 of 2025

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