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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2025

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THE HON'BLE MR.JUSTICE C. SARAVANAN

W.P.(MD) No.19943 of 2025
and
W.M.P.(MD) No.15362 & 15363 of 2025

M/s.Bambiah Stores,
Represented by its
Proprietrix V.Ambigai,
GSTIN 33ACMPA1376P1ZE,
180, East Car Street,
Authoor, Thoothukudi - 628 151. ... Petitioner

Vs.

1.The State Tax Officer (FAC),
Tiruchendur Assessment Circle,
C.T.Buildings, Tiruchendur.

2.The State of Tamil Nadu
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai 600 009.

3.Union of India,
Secretary to the Government of India,
Ministry of Finance (MOF),
Raj Path Marg, 'E' Block,
Central Secretariat,
New Delhi 110 011. ... Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the third respondent in notifications issued in Notification No. 09/2023-Central Tax dated 31.03.2023 and corresponding the second respondent's proceedings in G.O.Ms.No.41 dated 05.04.2023 and consequential assessment order passed by the first respondent in GSTIN : 33ACMPA1376P1ZE/2017-18 dated 28.12.2023 for the assessment year 2017-18 and quash the same as ultra vires Section 168A of the Central Goods and Service Tax Act, 2017, cannot act retrospectively, apart from being violative of Article 14, 246A and 265 of the Constitution of India, 1950.

For Petitioner	: Mr.S.Karunakar for Mr.Sudalai Muthu N
For R1 & R2	: Mr.J.K.Jaya Selan Government Advocate
For R3	: Mr.K.Govindarajan Deputy Solicitor General of India

ORDER

In this Writ Petition, the petitioner has challenged the impugned Notification No.09/2023 - Central Tax, dated 31.03.2023, issued by the third respondent, Union of India, and the corresponding notification in G.O. (Ms) No.41, Commercial Taxes and Registration (B1) Department, dated 05.04.2023, issued by the second respondent under Section 168A of

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the Tamil Nadu Goods and Services Tax Act, 2017, as well as the consequential assessment order passed by the first respondent in GSTIN: 33ACMPA1376P1ZE/2017-18, dated 28.12.2023, for the assessment year 2017-18.

2. The prayer in this Writ Petition reads as under:

> *"for the issuance of a Writ of Certiorari to call for the records relating to Notification No.09/2023 – Central Tax, dated 31.03.2023, issued by the third respondent, the corresponding proceedings of the second respondent in G.O.(Ms) No.41, dated 05.04.2023, and the consequential assessment order passed by the first respondent in GSTIN: 33ACMPA1376P1ZE/2017-18, dated 28.12.2023, for the assessment year 2017–18, and to quash the same as being ultra vires Section 168A of the Central Goods and Services Tax Act, 2017, which cannot operate retrospectively, and as being violative of Articles 14, 246A, and 265 of the Constitution of India, 1950."*

3. It is noticed that a detailed order has recently been passed by the Principal Bench of this Court in a batch of cases in ***M/s.Tata Play Limited vs. Union of India and others***, reported in 2025 (7) TMI 772. The operative portion of the said order reads as under:

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"10. Conclusion:

i) The authorities under the CGST Act shall have the benefit of exclusion of the period 15.03.2020 to 28.02.2022, while reckoning limitation under sub section (2) and (10) to Section 73 of CGST Act, in terms of the of the Supreme Court dated 10.01.2022 passed under Article 142 of the Constitution.

ii) Notification Nos.9 and 56 of 2023 stands vitiated and illegal for the following reasons:

a) It results in diminishing / curtailing the limitation which was otherwise available in view of the order of the Hon'ble Supreme Court under Article 142 of Constitution, and thus contrary to the object of Section 168A of CGST Act.

b) It proceeds on an erroneous assumption of the limitation available and a misconception as to the scope and effect of the order of Hon'ble Supreme Court under Article 142 of Constitution. The impugned notification made on an erroneous assumption of the position in law is unsustainable on the ground of being arbitrary.

c) The impugned notification results in extinguishing vested right of action with the authorities under CGST Act by diminishing the limitation thus suffers from the vice of arbitrariness.

d) The impugned notification is issued on the basis of recommendation made without examining relevant materials discussed supra and thus stands vitiated.

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e) In addition to the above reasons, impugned notification No.56/2023 is made even prior to the recommendations of the GST Council, failure to comply with the statutory mandate renders the notification illegal.

f) The impugned notification no.56/2023 is issued on the basis of the recommendations of GIC which cannot be a substitute for GST Council and thus stands vitiated.

11. There are issues relating to violation of principles of natural justice, lack of jurisdiction, errors apparent on the face of record etc. These are questions which will have to be re examined by the assessing authority inasmuch as the thrust of the petitioner's submissions before this Court as well as before the authorities has been primarily on the jurisdiction in view of the challenge to the validity of the notification.

12. In light of the present order, this Court is inclined to remand all the matters back to the assessing authority for passing orders afresh: i. In case challenge is to the order of assessment/adjudication, petitioners shall treat the impugned orders as show cause notice and submit their objections within a period of 8 weeks from the date of uploading of the Web Copy of this order and the authorities shall proceed to pass orders afresh after affording the petitioners an opportunity of hearing. ii. In case the challenge is to the notice it is open to the petitioner to submit their objections within a period of 8 weeks from the date of uploading of the Web Copy of this order and the authorities shall proceed to pass orders afresh after affording the petitioners an opportunity of hearing.

13. Accordingly, the writ petitions stand

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> *disposed of. No costs. Consequently, connected miscellaneous petitions are closed."*

4. Since the issue is covered in favour of the petitioner, the present Writ Petition is liable to be allowed in terms of the aforesaid order. Accordingly, the impugned assessment order dated 28.12.2023, passed by the first respondent for the assessment year 2017-18, is quashed, and the case is remitted back to the first respondent to pass a fresh order on merits and in terms of the aforesaid order of this Court in ***M/s.Tata Play Limited***, referred to *supra*, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

5. The impugned order, which stands quashed by this order, shall be treated as an addendum to the show cause notices issued to the petitioner. The petitioner shall file a reply thereto within a period of six weeks from the date of receipt of a copy of this order.

6. Needless to state, before passing such an order, the petitioner shall be heard.

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7. In the result, this Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

23.07.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes/No

To

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2.The Secretary,
Commercial Taxes Department,
The State of Tamil Nadu
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3.The Secretary,
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