

W.A.(MD)Nos.22 and 23 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2025

PRONOUNCED ON : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)Nos.22 and 23 of 2025
and
C.M.P.(MD)Nos.175 and 176 of 2025

M/s.SPK and Company,
Represented by its Joint Managing Partner,
2/67, RC Middle Street,
Keelamudimannarkottai,
Kamuthi, Ramanathapuram,
Tamil Nadu – 623 603.

... Appellant in both cases

Vs.

The State Tax Officer,
Muthukulathur Assessment Circle,
Muthukulathur,
Ramanathapuram District.

... Respondent in both cases

Prayer in W.A.(MD)No.22 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.27787 of 2024, dated 22.11.2024.

Prayer in W.A.(MD)No.23 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.27788 of 2024, dated 22.11.2024.



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

In both cases:

For Appellant :Mr.Isaac Mohanlal
Senior Counsel
for Mr.B.Vijay Karthikeyan
For Respondent :Mr.R.Suresh Kumar
Additional Government Pleader

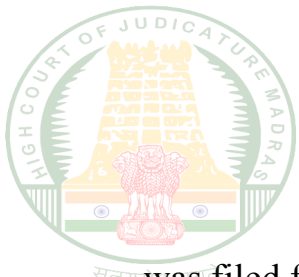
COMMON JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

Both the writ appeals are arising from the common order passed in the writ petitions and both has raised same issues. Hence both the writ appeals are taken together and a common judgment is passed.

2.(i) The writ appeal in W.A.(MD)No.22 of 2025 is filed by against the order dated 22.11.2024 passed in W.P.(MD)No.27787 of 2024. The writ petition was filed for issuance of a Writ of Certiorari, to quash the assessment order for the assessment year 2019-2020, dated 07.08.2024 and the order dated 12.11.2024 rejecting the rectification application.

2.(ii) The writ appeal in W.A.(MD)No.23 of 2025 is filed by against the order dated 22.11.2024 passed in W.P.(MD)No.27788 of 2024. The writ petition



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

सत्यमेव जयते was filed for issuance of a Writ of Certiorari, to quash the assessment order for the assessment year 2022-2023, dated 07.08.2024 and the order dated 12.11.2024 rejecting the rectification application.

3. The petitioner is a partnership firm is engaged in various road construction activities as “Works Contractor” and a registered dealer under GST having GST No.33ABXFS5510P1ZG and paying GST without default. For the assessment year 2019-2020 a show cause notice was issued in GST DRC-01, dated 18.06.2024, demanding a sum of Rs.70,03,94,873/- along with 24% interest per annum otherwise to furnish detailed explanation on or before 25.06.2024 and personal hearing date was fixed on 25.06.2024. The petitioner submitted a reply, dated 05.07.2024. In the reply, the petitioner had specifically stated that the demand in the show cause notice is vague, inspite of the same the petitioner submitted detailed explanation.

4. For the assessment year 2022-2023 a show cause notice was issued in GST DRC-01, dated 15.05.2024, demanding a sum of Rs.54,37,29,408/- along with 18% interest per annum otherwise to furnish detailed explanation on or before 31.05.2024 and personal hearing date was fixed on 24.07.2024. The



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

petitioner submitted a reply, dated 05.07.2024. In the reply, the petitioner had specifically stated that the demand in the show cause notice is vague, inspite of the same the petitioner submitted detailed explanation.

5. The contention of the petitioner is that the respondent has not considered the reply and no personal hearing was granted, thereby violating the principles of natural justice. Further, the impugned order is without any reasons and is a non-speaking order. Hence, a rectification application was filed and the same was also dismissed without any reasons. Further, the demand goes beyond the scope of GST Law, since the demand is raised on 'current liabilities', 'indirect expense', 'partners remuneration' and 'depreciations' etc. As the said headings are not falling within the ambit of definition of 'supply' under Section 7 of TN GST Act 2017, hence the demand could not be raised on the above said headings. Hence, the writ petition was filed.

6. The contention of the petitioner is that the show cause notice is vague. The Writ Court has held that the show cause notice was issued, immediately the appellant has not raised the voice that the show cause notice is vague. But the appellant had submitted reply and based on the reply the



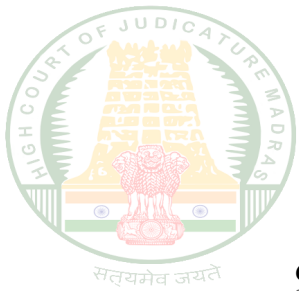
W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

respondent had passed the impugned assessment order and at this juncture the appellant cannot raise the voice against the show cause notice. When the writ petitioner has acted on the show cause notice and filed a detailed reply, now he cannot raise ground that the show cause notice is vague and assessment order is vague. The writ petitioner is having an appellate remedy. Further, the Writ Court saved the limitation for the period the writ petition was pending before this Court and directed to file an appeal and dismissed the writ petitions. Aggrieved to the same, the present writ appeals are preferred by the writ petitioner.

7. Heard Mr.Isaac Mohanlal, the learned Senior Counsel appearing for Mr.B.Vijay Karthikeyan appearing for the appellant, Mr.R.Suresh Kumar, the learned Additional Government Pleader appearing for the respondent and perused the records.

8. The primary contention of the appellant is that the show cause notice is vague and without particulars. But as rightly held by the Writ Court, when the writ petitioner has submitted a reply and based on the reply, the assessment order was passed, the writ petitioner cannot challenge the show cause notice as vague after passing assessment orders. Therefore, the said contention is rejected.



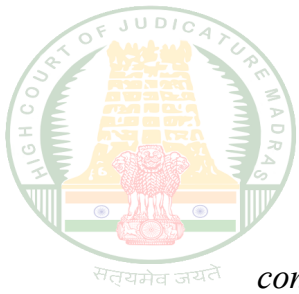
W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

9. The next contention of the appellant is that the assessment order, dated 07.08.2024, is a non-speaking order and the same was passed before considering the reply, dated 05.07.2024. On perusing the assessment order as far as the issue of “defect: interest not paid”, it is seen that the respondent had accepted the reply of the assessee that interest for belated payment was paid on 26.02.2022 vide DRC-03ARN:AD330222021254V and dropped the proceedings further. While dropping, the respondent need not give any reasoning, therefore the same cannot be faulted.

10. The next defect that was raised by the respondent is “defect: on verifying profit loss account and TDS credit received by taxpayer the following mismatch”. The query by the respondent is that for the tax period 2019-2020 contract receipt as per P&L is 6,39,87,55,965 and as per GSTR-9 it is stated as 5,85,68,35,990, hence there is a difference of 54,19,19,975. The reply of the assessee is that the turnover is 6,39,87,55,965, after deducting GST taxes to the tune of 68,59,16,081 it comes to 5,71,28,39,884. Hence the assessee had explained there is no mismatch and prayed to drop the demand. But the respondent had passed one line order as under:

“The taxpayer had submitted reply they have not paid TDS credit difference amount, the reply was not accepted and proposal is



W.A.(MD)Nos.22 and 23 of 2025

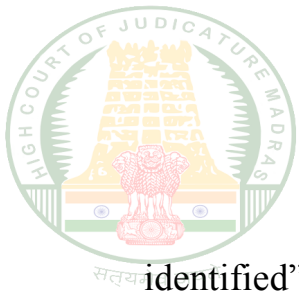
confirmed.”

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The show cause notice was issued to explain the mismatch and the appellant had explained there in no mismatch. The show cause notice was not issued to show whether the TDS was credited, therefore the assessment order is beyond the show cause notice as far as this issue is concerned. Further it is cryptic order without any reasons. This issue is raised in the assessment order passed for the assessment year 2022-2023 also and hence the above observation is applicable to the assessment order for the assessment year 2022-2023 also.

11. As held supra, if the respondent is dropping the demand, then reasons may not be given / may not be necessary. But if the respondent is confirming the demand, the respondent is bound to state reasons for the same. Since based on the reasoning only, the appellant would be able to prefer appeal and contest the same. When the show cause notice itself is not vague and without any particulars, at least the assessment orders ought to have been passed by stating the reasons.

12. The next defect that was raised by the respondent is “defect: as per Profit and Loss account filed by the taxpayer the following discrepancies were



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

identified”, wherein the show cause notice claims the appellant is liable to pay tax for the current liabilities, indirect expense, partners remuneration, depreciation. After considering the reply of the appellant, the assessment order confirms the alleged discrepancy under **depreciation** for the assessment year 2019-2020 as Rs. 7,70,81,313 and for the assessment year 2022-2023 as Rs.8,08,66,909/- and imposed tax at 18%. This Court is of the considered opinion that such an order is totally against the tax jurisprudence and unheard of. The petitioner is a road contractor and his work as “works contractor” is considered as “service” and GST is leviable for the same. Obviously, the road contractors would have machineries and other materials, due to wear and tear the value of such machineries and other materials would diminish which is claimed as depreciation. And it is claimed as deduction under Income Tax Act, which is shown in the Profit and Loss Account. This Court is at loss how such deduction under Income Tax Act is coming within the purview of GST. The assessment orders for the assessment years 2019-2020 and 2022-2023 is totally illegal as far as this issue is concerned. Under Article 265 “No tax shall be levied or collected except by authority of law” and the imposition of tax is levied without authority of law, thereby violates Article 265.

13. The next contention of the appellant that before passing the



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

assessment orders the respondent had not granted any personal hearing. On perusal of the reply to show cause notice, the appellant had sought for hearing and the same is extracted hereunder:

*“In light of the aforementioned submissions, we most humbly request you to drop the proceedings initiated vide the impugned Notice DRC-01 bearing reference No.ZD330624163144M dated 19.06.2024 and to permit us to provide you with any additional evidence and additional submissions to substantiate our arguments and **to provide us with an opportunity of hearing before passing any order in this matter**”*

On perusal of reference in the assessment orders it is not indicating any personal hearing was offered. Therefore, this Court is of the considered opinion that there is clear violation of principles of natural justice.

14. Hence, interference is necessary in the assessment order. The assessment orders and the rectification orders are set aside. The matter is remitted back to the assessing officer to the extent where the assessment is confirmed i.e. to adjudicate only the defect 2 alone. The other dropped items cannot be reopened i.e. defect 1 cannot be reopened. Likewise, the issue of discrepancies regarding “current liabilities, indirect expense, partners remuneration, depreciation” cannot be levied since this Court had held the said levy is against Article 265, hence the



W.A.(MD)Nos.22 and 23 of 2025

WEB COPY

same is dropped i.e. defect 3 is dropped. The appellant is permitted to furnish further explanation within a period of two weeks from the date of receipt of a copy of this judgment. The enquiry shall be conducted after giving personal hearing. The assessment shall be completed within a period of three months therefrom.

15. With the above said observations, the writ appeals are allowed and the orders passed by the Writ Court are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

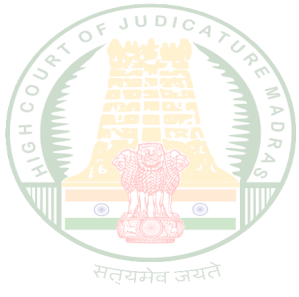
[J.N.B., J.] [S.S.Y., J.]
28.04.2025

Index : Yes / No

Tmg

To

The State Tax Officer,
Muthukulathur Assessment Circle,
Muthukulathur,
Ramanathapuram District.



WEB COPY



W.A.(MD)Nos.22 and 23 of 2025

J.NISHA BANU, J.

and

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W.A(MD)Nos.22 and 23 of 2025

28.04.2025