

W.P(MD)Nos.5150, 5162 and 5164 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.5150, 5162 and 5164 of 2021

and

WMP(MD)Nos.4131, 4134, 4135, 4139 and 4140 of 2021

ARSK Hardwares & Traders
Represented by its Proprietor,
Mr.S.Reyazudeen
No.1/511-A, Poriyalar Nagar,
7th Street, Thirupallai,
Madurai – 625 014

... Petitioner in all W.Ps.

Vs.

1.The State Tax Officer,
Legal and Revision (Intelligence),
Office of the Joint Commissioner (ST)(Intelligence),
Legal and Revision Wing,
Dr.Thangaraj Salai,
C.T.Complex, K.K.Nagar,
Madurai – 625 020.

2.The State Tax Officer (ST)(Int.),
Office of the Deputy Commissioner (ST)(Int.),
Collection and Arrear,
Demand and Arrear
Demand and Collection Cell,
Dr.Thangaraj Salai,
C.T.Complex, K.K.Nagar,
Madurai – 625 020.

... Respondents in all W.Ps



W.P(MD)Nos.5150, 5162 and 5164 of 2021

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to call for the records on the file of the first respondent herein, quash the impugned order of assessment passed by the first respondent in GSTIN: 33ANPR8730L129/2017-18, GSTIN: 33ANPR8730L129/2018-19 and GSTIN: 33ANPR8730L129/2019-20 respectively dated 07.02.2020, as ex-facie illegal, violation of principle of natural justice and contrary to the provisions of the Tamil Nadu Goods and Service Tax Act, 2017.

For Petitioners : Mr.B.Sivaraman
in all WPs.

For Respondents : Ms.J.Padmavathi Devi
in all WPs. Spl.Govt.Pleader

COMMON ORDER

These Writ Petitions have been filed praying for issuance of Writ of Certiorari, to call for the records on the file of the first respondent herein, quash the impugned order of assessment passed by the first respondent in GSTIN: 33ANPR8730L129/2017-18, GSTIN: 33ANPR8730L129/2018-19 and GSTIN: 33ANPR8730L129/2019-20 respectively dated 07.02.2020, as ex-facie illegal, violation of principle of natural justice and contrary to the provisions of the Tamil Nadu Goods and Service Tax Act, 2017.



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2. The brief facts of the case are as follows:-

(i) The petitioner is the proprietor of ARSK Hardware & Traders, Madurai. On 30.10.2019 and 01.11.2019, the petitioner's place of business was inspected by the 1st respondent and certain defects were noticed for the Tax period 2017-18, 2018-19 and 2019-20 and therefore, on 04.11.2019, the 1st respondent called for the GSTR 3B & GSTR-1 returns, statement of P&L Accounts, Balance Sheet, Purchase Invoices, Sale Bills, Stock Account Register, Copies of E-Way Bill Transactions, Import Export details, Bank Statements and Annual Return GSTR-9. On 21.11.2019, the first respondent issued notice pointing out discrepancies between GSTR-3D and GSTR-2A and some suppressions; rate of tax collected 18% instead of 28% and on verification P&L Account regarding freight charges, no supporting evidences were furnished by the petitioners to prove that the taxes have already been paid under Reverse Charge under Section 9(3) of TNGST Act and 5(3) IGST Act etc., and the petitioners was directed to furnish objections within 15 days to the above proposals.

(ii) Further, on 12.12.2019, the 1st respondent issued pre-assessment notice, proposing 10 defects, by reiterating the earlier notice, proposed levy of penalty under Sections 74 and 125 and the



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petitioner was directed to furnish objections within 7 days to the above proposals. On 02.01.2020, the 1st respondent issued personal hearing notice and fixed for personal hearing on 06.01.2020 at 11.30 a.m. On 06.01.2020, the petitioner filed letter stating that documents pertaining to the said tax periods are voluminous and sought 30 days time to file reply / objections with documents etc. Further, on 20.01.2020, the petitioner filed detailed objections to the pre-assessment notice, dated 12.12.2019 and given detailed objections to each and every defects pointed out by the first respondent and requested personal hearing before passing any orders.

(iii) On 21.01.2020, the 1st respondent issued Notice, enclosing the details of proposed ITC as per GSTR-2a & E-Way Bill inward verification details for the said Tax Period and called for reply / objections to be filed on or before 23.01.2020. On 30.01.2020, the 1st respondent issued notice stating that there was difference between P&L Account filed before the 1st respondent and also proposed penalty equivalent to tax evaded, as per Section 122(XV) of the TNGST Act. On 07.02.2020, without considering the objections filed by the petitioner and without offering opportunity of personal hearing of being heard as contemplated under Sections



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75(4) and 126 of the TNGST Act, the first respondent concluded the impugned ex-parte assessment, for the tax period 2017-18, 2018-19 and 2019-20.

3. Mr.B.Sivaraman, the learned counsel appearing for the petitioner would submit that the impugned ex-part assessment orders of the 1st respondent are ex-facie illegal and in violation of principles of natural justice, as contemplated under Section 75(4) and 126(3) of the TNGST Act. The learned counsel, inviting the attention of this Court in the Judgment of a Division Bench of this Court in ***SRC Project Private Limited Vs. Commissioner of Commercial Taxes, Chennai and Another*** reported in **(2010 33 VST 333)**, wherein this Court held that the Assessing Authority ought to have given an opportunity of personal hearing to the Assessee, when sought for. Further, the learned counsel, in support of his contention, relied on the Judgment of this Court in ***Shri Mariamma Fire Works Vs. Commissioner of Commercial Taxes and Another*** reported in **(2011 (38) VST 345)** wherein this Court held that the Department should provide an opportunity of personal hearing, before passing a final order of assessment.



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4. It is his further submission that the order of assessment was passed on 07.02.2020, but notice for personal hearing was issued on 31.12.2020, which apparently shows non-application of mind on the part of the 1st respondent. Further, the Deputy Commissioner (ST)(Int), Madurai, has filed appeals under Section 107 of TNGST Act, before the Appellate Deputy Commissioner (Appeal), Goods and Service Tax, Madurai, against the above said assessment orders passed by the 1st respondent, dated 07.02.2020 pointing out certain defects. Therefore, the learned counsel prays for allowing of the Writ Petitions by setting aside the impugned order of assessments.

5. Ms.J.Padmavathi Devi, the learned Special Government Pleader appearing for the respondents filed counter and would submit that the petitioner has not filed the monthly returns in compliance of the Tamilnadu Goods and Service Tax Act, 2007, though the petitioner has done their business continuously and therefore, the petitioner's place of business was inspected and defects notice issued for the Tax period 2017-18, 2018-19 and 2019-20. Further, the learned Special Government Pleader refused the contention of the petitioner that the order of



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assessment was passed without affording the petitioner a reasonable opportunity of being heard. If the petitioner have any grievance, appellate remedy available to the petitioner to redress the grievance and therefore, she prayed for dismissal of the Writ Petitions.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the impugned order would show that the impugned order of assessment has been passed on 07.02.2020, whereas personal hearing has been on 03.12.2020, after much latter the impugned order of assessment made, which clearly shows non-application of mind on the part of the 1st respondent. Even the Deputy Commissioner (ST)(Int), Madurai, has filed an appeal under Section 107 of TNGST Act, before the Appellate Deputy Commissioner (Appeal), Goods and Service Tax, Madurai, as against the above said assessment orders passed by the 1st respondent, dated 07.02.2020, pointing out certain deficiency. In such view of the matter, no doubt in my mind that there is total non-application of mind on the part of the 1st respondent in passing the impugned order of assessment, dated 07.02.2020. In the



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considered opinion of this Court, the petitioner is entitled to be heard in person, before the order of assessment was made.

8. In view of the forgoing reasons, this Writ Petition is allowed and the impugned order of assessment passed by the 1st respondent in GSTIN: 33ANPR8730L129/2017-18, GSTIN: 33ANPR8730L129/2018-19 and GSTIN: 33ANPR8730L129/2019-20 respectively dated 07.02.2020, are set aside and the matters are remanded back to the 1st respondent to pass fresh orders, after affording an opportunity of personal hearing to the petitioner. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

सत्यमेव जयते

23.04.2021

Index:Yes/No
Internet:Yes/No
MPK

WEB COPY



Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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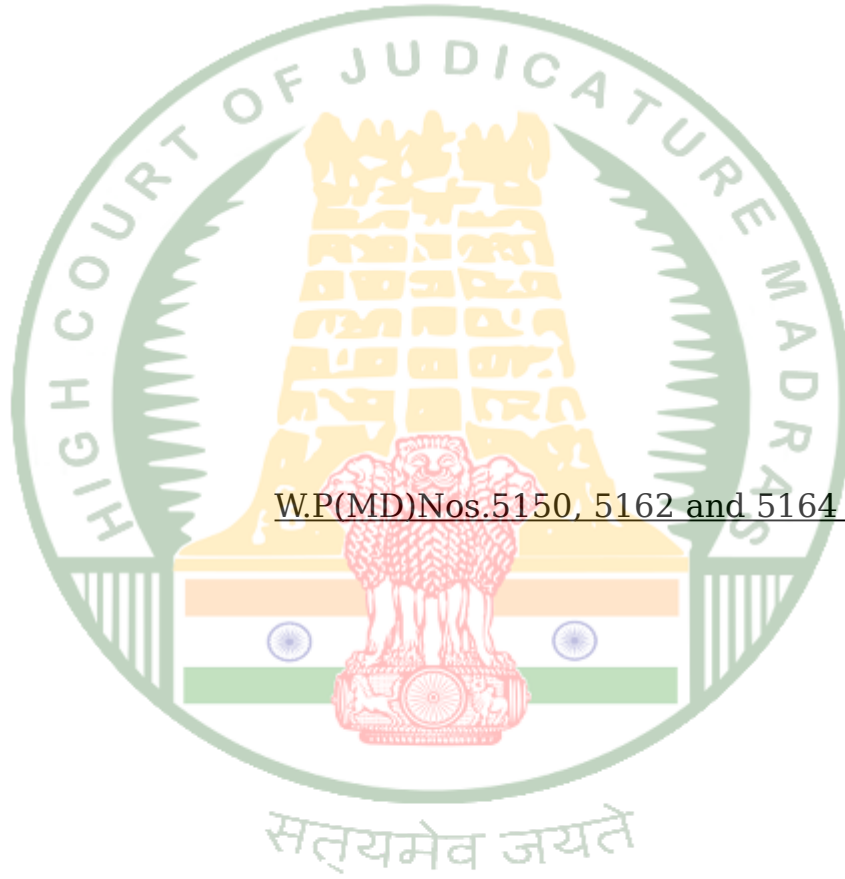
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