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W.P.(MD)Nos.11143 to 11145 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.11143 to 11145 of 2023

and

W.M.P.(MD)Nos.9730 to 9732 of 2023

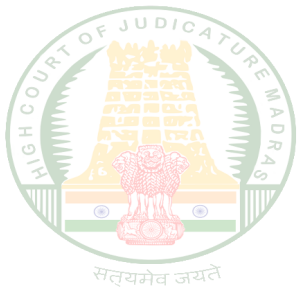
M/s.Vadivel Pyro Works,
represented by its Partner
A.Vasantha Vikash,
No.8/217, G, NA, Sathur Road,
Viswanatham Panchayat,
Anuppankulam – 626 189,
Virudhunagar District.

... Petitioner in all cases

vs.

The State Tax Officer (ST) (FAC),
Sattur II Assessment Circle,
Commercial Tax Buildings,
Sattur, Virudhunagar District.

... Respondent in all cases

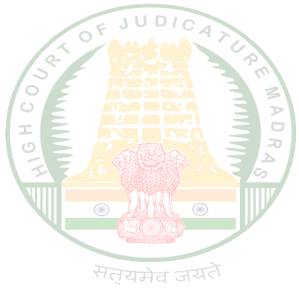


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W.P.(MD)Nos.11143 to 11145 of 2023

PRAYER in W.P.(MD)No.11143 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in assessment orders issued by the respondent in GSTIN 33AAKFV8790Q1Z2/ 2017-18, dated 10.12.2022, GSTIN 33AAKFV8790Q1Z2/ 2017-18, dated 30.11.2022 and consequential proceedings, dated 01.03.2023, in Reference No.ZD330323004367U and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply/ representation, dated 24.02.2023, filed by the petitioner within such time as may be directed by this Court.

PRAYER in W.P.(MD)No.11144 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in assessment orders issued by the respondent in GSTIN 33AAKFV8790Q1Z2/ 2018-19, dated 10.12.2022, GSTIN 33AAKFV8790Q1Z2/ 2018-19, dated

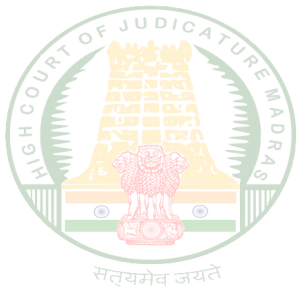


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30.11.2022 and consequential proceedings, dated 01.03.2023, in Reference No.ZD3303230045117 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply/ representation, dated 24.02.2023, filed by the petitioner within such time as may be directed by this Court.

PRAYER in W.P.(MD)No.11145 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in assessment orders issued by the respondent in GSTIN 33AAKFV8790Q1Z2/ 2019-20, dated 10.12.2022, GSTIN 33AAKFV8790Q1Z2/ 2019-20, dated 30.11.2022 and consequential proceedings, dated 01.03.2023, in Reference No.ZD3303230045117 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply/ representation,



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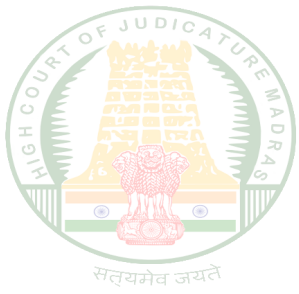
dated 24.02.2023, filed by the petitioner within such time as may be directed by this Court.

In all cases:

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.B.Saravanan
Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the assessment order, dated 10.11.2022 and rectification order, dated 30.11.2022 and the consequential proceedings, dated 01.03.2023. The writ petition in W.P. (MD)No.11143 of 2023 is filed for the assessment year 2017-2018, W.P. (MD)No.11144 of 2023 is filed for the assessment year 2018-2019 and W.P. (MD)No.11145 of 2023 is filed for the assessment year 2019-2020.

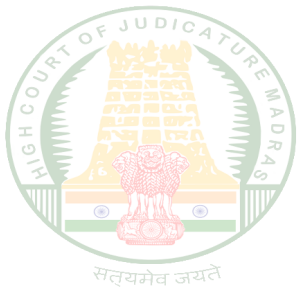


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2. The petitioner is the manufacturer and trader of fireworks and is an assessee under the Tamil Nadu Goods and Service Tax Act, 2017 bearing Registration No. in GSTIN No.33AAFKV8790QIZ2. The contention of the petitioner is that he used to purchase the raw materials and packing materials for manufacturing of fireworks from registered dealers within the State as well from outside the State. After manufacturing the fireworks, the petitioner sends the same to the registered dealers within the State and also to the registered dealers outside the State. The petitioner is paying the GST by filing monthly returns without default.

3. For the assessment year 2017-2018, 2018-2019 and 2019-2020 the Assistant Commissioner (ST)-2, Tuticorin visited for statutory audit

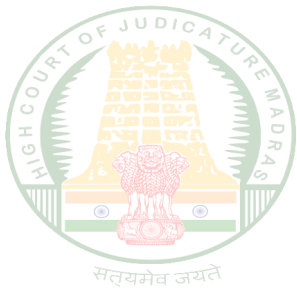


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and has forwarded his audit observation, dated 20.12.2021 and the petitioner has submitted reply on 24.01.2021, along with relevant records. On the basis of the audit report from the Assistant Commissioner (ST)-2, Tuticorin, the respondent had issued a show cause notice, dated 25.08.2022, in Form GST DRC 01 followed by Notices in ASMT-10 dated 23.06.2022 and Form DRC 01A, dated 27.07.2022, with a proposal to levy GST on other expenses, employees benefits expenses and expenses to creditors, Reversal of ITC on Trades Payable, Reversal of ITC for non-production of inward supply invoices.

4. With the above proposal, the respondent proposed to levy tax, penalty and interest under Sections 50(1), 125 and 73(9) of TNGST Act, 2017. On receipt of the show cause notice, dated 25.08.2022, the

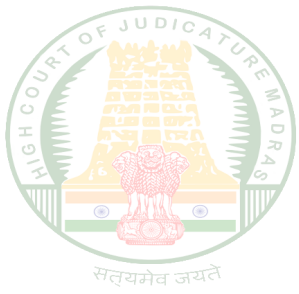


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petitioner had filed a representation, dated 22.09.2022, requesting to grant time till 17.10.2022, citing various problems. Again, considering the difficulty in tracing out the records, the petitioner submitted another representation, dated 11.10.2022, seeking further 30 days.

5. The contention of the petitioner is that the person who had managed the day-to-day affairs of GST matters was on medical leave. In the absence of the said person, he was not able to gather and collect all the records in time. The petitioner again filed 3rd representation, dated 09.11.2022 and prayed for 15 days to give an effective reply. Since voluminous records were involved in the present matters, the petitioner was under the bonafide impression that the respondents would grant time for further 10 days. However, the respondents the very next day has

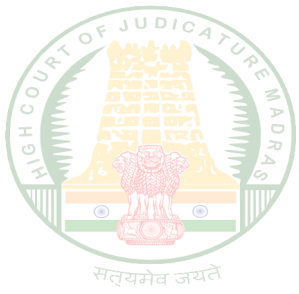


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passed an order, dated 10.11.2022, by confirming all the proposals and levied tax, interest and penalty which is more than one Crore rupees. Thereafter to rectify the miscalculation of interest an order dated 30.11.2022 was passed. The petitioner filed petitions under section 161 for rectification of the assessment order and the same was rejected vide order dated 01.03.2023. Aggrieved over the above three orders the petitioner has filed the present writ petition.

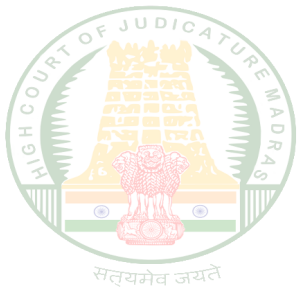
6. The respondent has filed a counter affidavit stating that based on the audit objection, copy of the report was given to the petitioner and directed him to submit his objections and the petitioner has submitted his objections, dated 24.01.2022, but without supporting records to audit officers. On the basis of the audit report in Form ADT-02, dated



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25.04.2002, the respondent issued notices in ASMT-10, dated 28.02.2022 and 23.06.2022. Thereafter, a show cause notice, dated 27.07.2022, in Form GST DRC-01A and Form DRC -01, dated 25.08.2022 was generated electronically and served through e-mail of the petitioner. The continuous follow up actions of the adjudicating officer on the matter was carried out and the respondent has elaborately narrated the same in the counter. In spite of several adequate opportunities for more than three times, the petitioner has not submitted any evidence which were pointed out in the audit objection. Therefore, left with no other option, the respondent has proceeded to pass the assessment order. The respondent further relied on proviso to Section 75(5) wherein it is stated that no adjournments shall be granted for more than three times to a person during the proceedings. Therefore, the respondents could not give

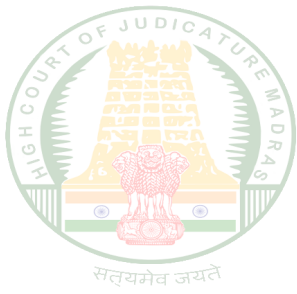


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further time and proceeded with the assessment order. Subsequently, the petitioner submitted a petition under Section 161 for rectification of the order. The said section is granted only to correct the errors apparent on the face of the record. The petitioner under the guise of submitting rectification is seeking to re-do the entire assessment order which is not admissible. Therefore, the respondent vehemently objected to the rectification petition as well as to interfere with the assessment order.

7. Heard Mr.S.Karunakar, learned Counsel appearing for the petitioner in all the writ petitions and Mr.B.Saravanan, learned Additional Government Pleader appearing for the respondent in all the writ petitions and perused the records.

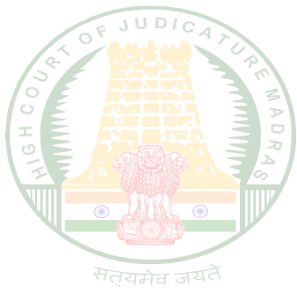


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8. The contention of the petitioner is that on 10.11.2022 at about 09.19 AM, the petitioner has submitted an adjournment letter and the respondent has received the same. But on the same date, i.e., on 10.11.2022 by 01.22 PM, the respondent has passed the assessment order without considering the adjournment letter presented by the petitioner. The respondent submitted that since the petitioner was granted three opportunities, as per Section 73, the respondent is not empowered to grant further adjournment, therefore, the respondent did not consider the adjournment letter and proceeded to pass the assessment order.

9. On perusal of the assessment order, it is seen that the respondent has not recorded the said adjournment letter at all. Even though the respondent is not empowered to grant further adjournment, the

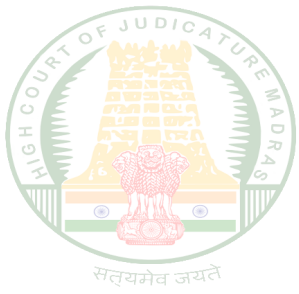


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respondent ought to have recorded the adjournment letter submitted by the petitioner, reject the same and thereafter ought to have passed an order. But the respondents failed to do so.

10. The petitioner in the earlier adjournment letter has submitted that since it is a voluminous transaction for three years and the person who was handling the GST records was on medical leave, the petitioner was not able to collect all the records in time and hence sought an adjournment. Even the respondent accepts that the assessment order was passed and a huge tax liability is fixed on the petitioner. It is an admitted fact that the voluminous transaction was involved, then the petitioner ought to be granted one more opportunity. Even though the respondents have no power to grant adjournment, this Court has power to direct the

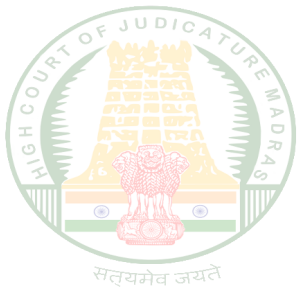


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respondents to grant one more opportunity by taking into the fact of voluminous transaction. Therefore, this Court is of the considered opinion that the petitioner is entitled to one more opportunity.

11. It is seen the petitioner filed a rectification petition under Section 161. Before filing the rectification petition, the petitioner collected all the records and filed the rectification petition along with the records. This would indicate that the petitioner was bonafide in seeking time to furnish all the records. If the petitioner has filed the rectification petition without any records, the claim of the respondent ought to be accepted, but in the present case it is for the genuine reason the petitioner has sought for adjournment. Therefore, this Court is of the considered opinion that the petitioner is entitled to one more opportunity.

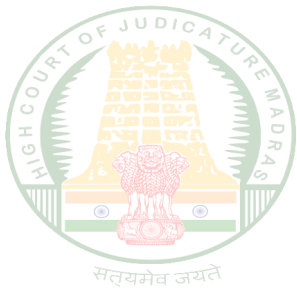


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12. In the present case, the petitioner has submitted a rectification petition along with the records as well as pointed out several discrepancies such as the respondent has not granted ITC claim wherever it is applicable and imposed tax on the certain expenses. The petitioner has relied on the proviso to section 161 and submitted that before passing any orders under the section 161 then opportunity should be granted to the assessee and the relevant section is extracted hereunder:

“Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the



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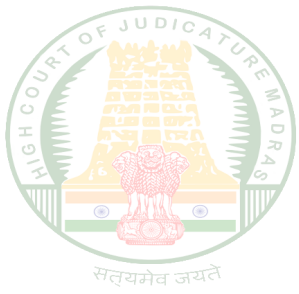
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State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”

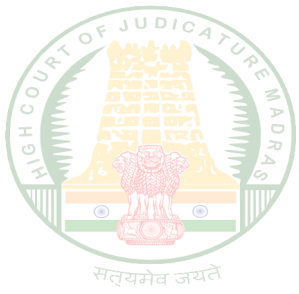


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13. The learned Counsel for the petitioner relied on the judgment of this Court passed in the case of ***Pinstar Automotive India Private Limited Vs. Additional Commissioner***, in W.P.No.8493 of 2023, dated 20.03.2023, reported in ***2023(3) TMI 1168***, wherein it is held the procedure followed by the authority is clearly contrary to the third proviso to section 161, where the authority proposed to take a view adverse to the applicant due process must be followed. In the present case the respondent had declined to grant ITC in certain cases as stated supra for want of documents. Hence the petitioner filed rectification petition, if any order is passed the same would adversely affect the petitioner, hence the respondent is bound to grant an opportunity.

14. In the present case, while passing the rectification order, the

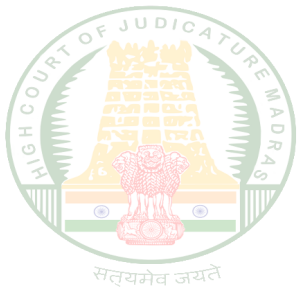


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respondent has not followed the proviso stated under Section 161. Therefore, following the above said order, this Court is also of the considered opinion that before passing the order under Section 161, the respondent should have followed the proviso and granted personal hearing to the petitioner. Therefore, while passing the rectification order there is violation of principles of natural justice.

15. Therefore, the impugned orders are set aside. However, since the tax liability is huge, the State cannot be made to suffer by the attitude of the petitioner as well. Therefore, in the interest of justice, the petitioner is directed to pay Rs.1,00,000/- (Rupees One Lakh only) for each year. On such deposit, the respondent shall re-do the assessment. The petitioner shall not take further adjournments. The petitioner is at



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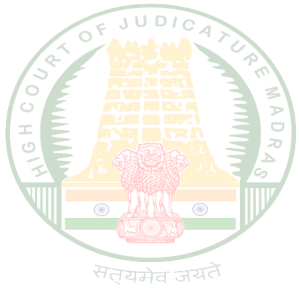
liberty to submit all the records and raise the pleas before the Assessing Officer and the assessment shall be completed within a period of six weeks from the date of deposit.

16. With the above said observation, the writ petitions are allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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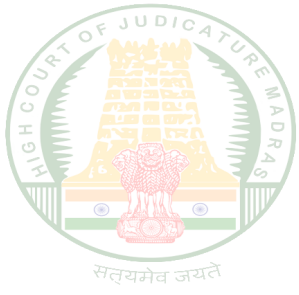


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To

The State Tax Officer (ST) (FAC),
Sattur II Assessment Circle,
Commercial Tax Buildings,
Sattur, Virudhunagar District



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S.SRIMATHY, J

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