

W.P.(MD) Nos.1148 to 1153 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.1148 to 1153 of 2024

and

**W.M.P.(MD)Nos.1160, 1162, 1173, 1175, 1180, 1181, 1164, 1165, 1177,
1178, 1166 and 1167 of 2024**

Tvl. Sri Paranjothi Traders,
Represented by its Authorised Representative,
Ramalingam Rajalakshmi,
No.5/4, Sakthi Complex,
Dindigul Main Road, Salaipudur,
Oddanchatram,
Dindigul District – 624 619.

... Petitioner in all the W.Ps.

Vs.

The State Tax Officer (Intelligence),
Review Unit-II,
O/o.The Deputy Commissioner (ST),
Commercial Taxes Building,
Dr.Thangaraj Salai,
K.K.Nagar,
Madurai - 625 020.

... Respondent in all the W.Ps.

Prayer in W.P.(MD)No.1148 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 04.08.2023 in GSTIN/33BZOPR2407Q1ZR/2017-18 issued by the respondent and quash the same.



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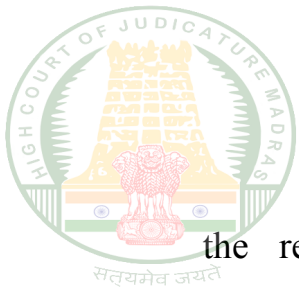
Prayer in W.P.(MD)No.1149 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned rectification order dated 14.08.2023 having Reference No.ZD330823071593A issued by the respondent and quash the same.

Prayer in W.P.(MD)No.1150 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 04.08.2023 in GSTIN/33BZOPR2407Q1ZR/2018-19 issued by the respondent and quash the same.

Prayer in W.P.(MD)No.1151 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned rectification order dated 14.08.2023 having Reference No.ZD330823073240P issued by the respondent and quash the same.

Prayer in W.P.(MD)No.1152 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 04.08.2023 in GSTIN/33BZOPR2407Q1ZR/2019-20 issued by the respondent and quash the same.

Prayer in W.P.(MD)No.1153 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for



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the records pertaining to the impugned rectification order dated 08.08.2023 having Reference No.ZD330823040088I issued by the respondent and quash the same.

For Petitioner in all the W.Ps. : Mr.L.Gokulraj

For Respondent in all the W.Ps. : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

This is a second round of litigation before this Court. Earlier, the assessment orders passed on 02.03.2020 by the Officer of the same rank as the respondent herein were challenged before this Court in W.P. (MD)No.8161 of 2020 etc. batch [**M/s.Srinithi Enterprises Pvt. Ltd. Rep. by its Director vs. The State Tax Officer (Intelligence), Ajudication – I, Madurai**]. The said Writ Petitions were disposed of on 31.08.2020 at the time of admission, with the following observation:-

"4.A reading of the above provision shows that after the explanation is received from the writ petitioners, the authority must apply their mind and if they contemplate an adverse decision, then they must provide an opportunity of hearing. Therefore, issuing a personal hearing notice even prior to the receipt of the explanation cannot be said to be compliance of the aforesaid statutory requirements. That stage would arise only after the authority prima facie considers the explanation and contemplates an adverse decision.



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5. Since there is a clear violation of the aforesaid requirement, the orders impugned in the writ petitions stand quashed and the writ petitions are allowed. The matters are remitted to the file of the respondents to pass orders afresh in accordance with law. The respondents will issue personal hearing notice to the writ petitioners herein and thereafter pass orders afresh. No costs. Consequently, connected miscellaneous petitions are closed."

Thereafter, the impugned orders have been passed on 04.08.2023 and have been *suo motu* rectified by the respondent vide orders dated 14.08.2023 for the Assessment Years 2017-2018 and 2018-2019 and for the Assessment Year 2019-2020 on 08.08.2023.

2. The case of the petitioner is that the issue now stands clarified by the Circular issued by the Principal Secretary/Commissioner of Commercial Taxes, vide Circular No.23/2021 [PP2/GST-15/54/2021], dated 04.10.2021. It is submitted that in the light of the above clarification, the impugned orders which have been passed subsequently are liable to be quashed.

3. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.



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WEB COPY 4. Already, a similar issue came up for consideration before this Court in **M/s.Rasathe Garments, Rep. by its Partner vs. The State Tax Officer (ST) (Inspn.), Office of the Deputy Commissioner (Inspn.), Tirunelveli** [W.P.(MD)Nos.25548 and 26389 of 2023, decided on 03.06.2024]. The relevant portions of the said order read as under:-

"12. In my view, there is no embargo under the Scheme of the respective GST Enactments on the inspecting officer to issue Show Cause Notice. In fact, there is also no embargo on such officer to adjudicate the issue as long as such officer also satisfies the definition of a "proper officer" in Section 2(91) of the respective GST enactments which reads as under:-

"2. In this Act, unless the context otherwise requires,—

(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner;"

13. However, with a view to eliminate the scope of bias, the inspecting officer acting as a adjudicating officer has been discharged. The impugned circular has clarified the position in Paragraphs 3 and 4. Therefore, there are no merits in the challenge to the impugned Show Cause Notice in Form GST DRC-01 dated 25.09.2023 and the impugned Circular No.13/2022-TNGST dated 08.11.2022.



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14. Therefore, these Writ Petitions are disposed of by directing the second respondent State Tax Officer (ST) (Inspn.) to transmit the aforesaid Notice to the jurisdictional proper officer for adjudication in accordance with Paragraphs 4 and 5 of the impugned Circular No.13/2022-TNGST dated 08.11.2022. This exercise shall be carried out by the second respondent State Tax Officer (ST) (Inspn.), within a period of 2 weeks from today.

15. The proper officer shall pass appropriate orders on merits and in accordance with law within a period of 90 days thereafter. The petitioner shall file reply, if any, within a period of 30 days from today. Needless to state, the petitioner shall be heard before the order is passed.

16. In the result, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed."

5. The relevant portion of the Circular issued by the Principal Secretary/Commissioner of Commercial Taxes, vide Circular No.23/2021 [PP2/GST-15/54/2021], dated 04.10.2021, reads as under:-

"14. The transition provision to the new system will be as follows:

For the Inspection completed and adjudication initiated as on 04.10.2021, by way of issue of Notice etc., such cases have to be pursued by the inspecting officers themselves and in those cases where inspections completed and adjudication have not been initiated by the inspecting officers, inspection reports as stated in para 5.2 and 5.3 must be sent to the jurisdictional officer for further action."

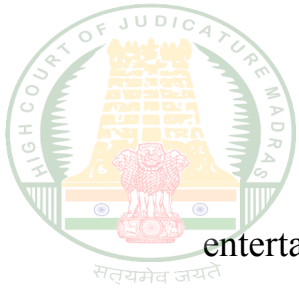


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WEB COPY 6. In my view, the petitioner cannot be said to have been prejudiced merely because the Officer from the Intelligence Department has passed the order. The Officer who investigated and passed the order also is different from the Officer who has passed the impugned order although from the same Department.

7. As mentioned in **M/s.Rasathe Garments's case** [cited supra], the scheme of the Act also does not contemplate an embargo on an Intelligence Officer from passing the order. In this case, there was a specific direction by this Court in the earlier round vide order dated 31.08.2020 in W.P.(MD)No.8161 of 2020 etc. batch and the content of which has been extracted above.

8. Under these circumstances, I am inclined to reject the Writ Petitions. However, liberty is given to the petitioner to file a statutory appeal before the Appellate Authority within a period of 30 days from the date of receipt of a copy of this order, subject to the petitioner complying with the other requirements of Section 107 of the respective GST Enactments. In case, such an appeal is filed, the Appellate Authority shall



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entertain the appeal and dispose the same on merits and in accordance with law.

9. These Writ Petitions are dismissed with the above liberty. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

01.07.2024

To

The State Tax Officer (Intelligence),
Review Unit - II,
O/o. The Deputy Commissioner (ST),
Commercial Taxes Building,
Dr.Thangaraj Salai,
K.K.Nagar,
Madurai - 625 020.



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C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.1148 to 1153 of 2024

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