



W.P.(MD) Nos.17237 to 17240 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.17237 to 17240 of 2024

and

W.M.P(MD).Nos.14851, 14863, 14867 & 14854 of 2024

Tvl.Vibis Natural Bee Farms,
Represented by its Proprietor S.Josephine Arokia Mary. ... Petitioner in all W.Ps

Vs.

The Deputy State Tax Officer-1,
O/o. the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai.

... Respondent in all W.Ps

PRAYER in W.P.(MD)No.17237 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned assessment order on the file of the respondent vide GSTIN: 33AIBPJ3432C1Z1/2020-21, dated 31.07.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2020-21.

PRAYER in W.P.(MD)No.17238 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to



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call for the impugned assessment order on the file of the respondent vide GSTIN: 33AIBPJ3432C1Z1/2021-22, dated 31.07.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2021-22.

PRAYER in W.P.(MD)No.17239 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned assessment order on the file of the respondent vide GSTIN: 33AIBPJ3432C1Z1/2019-20, dated 01.08.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2019-20.

PRAYER in W.P.(MD)No.17240 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned assessment order on the file of the respondent vide GSTIN: 33AIBPJ3432C1Z1/2018-19, dated 31.07.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2018-19.

For petitioner : Mr.Raja.Karthikeyan
in all W.Ps

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



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COMMON ORDER

By this common order, these four Writ Petitions are taken up for disposal.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3. The petitioner claims to be a dealer in selling live honey bees. In these Writ Petitions, the petitioner has challenging the respective assessment orders passed for the assessment years 2018-19 to 2021-22 as detailed below:

S.No	W.P.(MD)Nos.	Assessment year	Assessment order/ dated	Demand Rs.
1.	17237/2024	2020-21	33AIBPJ3432C1Z1/2020-21/ 31.07.2023	8,61,634
2.	17238/2024	2021-22	33AIBPJ3432C1Z1/2021-22/ 31.07.2023	5,23,488
3.	17239/2024	2019-20	33AIBPJ3432C1Z1/2019-20/ 01.08.2023	6,94,948
4.	17240/2024	2018-19	33AIBPJ3432C1Z1/2018-19/ 31.07.2023	4,05,458

4. The case of the petitioner is that the petitioner is a small time operator



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and was unaware of the notices that preceded the respective assessment orders and thus, failed to participate in the proceedings before the respondent, which is culminated in the impugned order.

5. It is submitted that for the same reason that the petitioner was also unaware of the impugned orders passed as detailed above, the petitioner has failed to approach this Court at an earlier point of time.

6. Specifically, the learned counsel for the petitioner submits that the petitioner is engaged in sale/supply of live honey bees, which is exempted from tax in terms of serial No.6 to the Schedule 1 to the GST Act, 2017.

7. It is submitted that the respondent has treated the value of the packing material for selling live honey bees as a value of supply and has demanded tax from the petitioner.

8. In this connection, the learned counsel for the petitioner has drawn attention to Section 8(a) of the respective GST enactments, in which, in terms of



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composite supply comprising two or more supplies, one of which is a principal supply shall be treated as a supply of such principal supply.

9. It is submitted that the petitioner cannot be mulcted with the tax on the value of packing material as the petitioner is engaged in sale of live honey bees.

10. The learned counsel for the petitioner submits that the petitioner is willing to abide by the reason with conditions, which the Court may impose so that the petitioner can explain the case afresh before the respondent.

11. On the other hand, the learned Additional Government Pleader for the respondent would submit that these Writ Petitions are liable to be dismissed on account of laches, in the light of the decision of the Hon'ble Supreme Court in the case of *Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited* reported in *2020 SCC Online SC 440*.

12. It is submitted that the appellate remedy is also time barred in terms of



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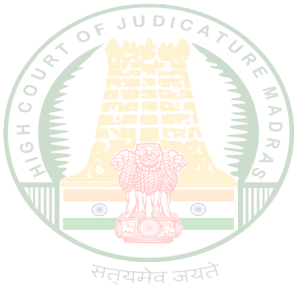
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limitation under Section 107 of the respective GST Enactments as held by the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70*** and submitted that these Writ Petitions are liable to be dismissed.

13. Having considered the submissions made by the learned counsel for the petitioner and learned Additional Government Pleader for the respondent, the Court is of the view that the petitioner has made out *prima facie* case as the live honey bees traded by the petitioner may not be liable to GST in terms of Schedule 1 of the GST Act, 2017. The Schedule has been downloaded by the petitioner from the Central Board of Indirect Taxes and Customs website.

14. As far as the packing materials are concerned, it appears to be a part of the composite supply with the exempted product as defined in Section 2(30) read with Section 8(a) of the respective GST enactments.

15. Thus, in my view, the petitioner has made out a *prima facie* case on merits and warranting interference. Further, the petitioner has neglected in not



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responding to the respective notices that preceded the respective impugned orders.

16. Considering the same, the Court is of the view that the impugned orders can be set aside on terms. The petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) to the credit of the respondent from its Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order.

17. The impugned orders, which stand quashed, shall be treated as addendum to the respective show cause notices that preceded the respective impugned orders.

18. It is expected that the petitioner shall file reply within a period of 30 days from the date of receipt of a copy of this order together with above deposit. The respondent shall thereafter pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of two months. Needless to state, the petitioner shall be heard before passing the order.



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WEB COPY These Writ Petitions are disposed of with above directions. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

26.07.2024

To

The Deputy State Tax Officer-1,
O/o. the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai.



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C.SARAVANAN, J.

apd

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