



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2023**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.4105, 4110 and 4108 of 2023

and

W.M.P.Nos.4164, 4168 and 4169 of 2023

Shree Shyam Granites and Marbles

Rep. by its Sole Proprietor,

Mr.Madan Gopal Sharma

... Petitioner

In all W.Ps.

Vs.

The Assistant Commissioner (ST) (FAC),

Hosur (South) - III Circle,

Hosur - 635 109.

... Respondent

In all W.Ps.

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records leading to the issuance of assessment order bearing reference GSTIN:33APQPS1115K1ZQ/2017-18, GSTIN:33APQPS1115K1ZQ/2018-19 and GSTIN:33APQPS1115K1ZQ/2019-20 all dated 25.10.2022 by the respondent herein and quash the same.

For Petitioner

In all W.Ps.

: Mr.Adithya Reddy



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For Respondents
In all W.Ps. : Mr.TNC Kaushik
Additional Government Pleader

COMMON ORDER

The petitioner has challenged the impugned orders, all dated 25.10.2022, passed by the respondent under the Tamil Nadu Goods and Services Act, 2017 (*Hereinafter referred to as TNGST Act, 2017*) on the ground of violation of principles of natural justice.

2. The petitioner has raised the following contentions:

a) They are non-speaking orders;

b) Eventhough, personal hearing was afforded, the same was afforded to the petitioner even before a reply was sent by the petitioner;

c) To the replies all dated 19.10.2022 sent to the show cause notices by the petitioner though acknowledged by the respondent, no reasons have been given by them for rejecting the petitioner's replies in the impugned assessment orders.

3. In the replies all dated 19.10.2022 sent by the petitioner to the show cause notices, the petitioner has informed the respondent that there is



no mismatch. According to them, the supplier Bills were reported in the GST return for the next month and a copy of the Bill as well as the return copy were also enclosed by the petitioner along with the respective replies.

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4. The defects pointed out by the respondent in the impugned show cause notices have been clarified by the petitioner in their replies. However, in the impugned assessment order, no reasons have been given by the respondent for rejecting the petitioner's replies wherein they have categorically stated that there is no mismatch for which they have also substantiated through documents which have not been considered in the impugned assessment orders. They are non-speaking orders with regard to the contentions raised in the replies all dated 19.10.2022 sent by the petitioner.

5. Further, it is also seen from the impugned assessment orders that eventhough personal hearing was afforded to the petitioner, the same was afforded to the petitioner only prior to the receipt of the replies of the petitioner by the respondent.



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6. In fact in a decision rendered by a learned Single Judge of this Court on 31.08.2020 in W.P.(MD).Nos.8133 of 2020, etc., batch, while interpreting Section 75 (4) of the TNGST Act, 2017 it has been observed that only after a reply is sent by the assessee, the Authority can apply its mind and if they contemplate an adverse decision they must provide an opportunity of hearing. Learned Single Judge has also observed that issuing a personal hearing notice even prior to the receipt of the explanation from the petitioner cannot be said to be in compliance of Section 75 (4) of the TNGST Act, 2017. Section 75 (4) of the TNGST Act, 2017 reads as follows:

" 75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person."

7. For the foregoing reasons, this Court is of the considered view that the principles of natural justice has been violated by the respondent before passing of the impugned assessment order for the following reasons:



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- a) No reasons have been given by the respondent for rejecting the petitioner's objections raised in the replies all dated 19.10.2022;
- b) Personal hearing was afforded to the petitioner even before the replies were received by the respondent;
- c) They are non-speaking orders.

8. Only after receipt of the reply and only in cases where the respondent contemplates an adverse decision against the petitioner, a personal hearing will have to be granted and not before a reply is received from the petitioner, that too when the reply has been duly acknowledged in the impugned orders.

9. In the result, the impugned assessment orders all dated 25.10.2022 are hereby quashed and the matters are remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order, after adhering to the principles of natural justice and after affording a personal hearing to the petitioner.



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10. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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The Assistant Commissioner (ST) (FAC),
Hosur (South) - III Circle,
Hosur - 635 109.

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ABDUL QUDDHOSE. J.,

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