

W.P.(MD) Nos.24974 to 24979 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.24974 to 24979 of 2023

and

W.M.P.(MD)Nos.21168, 21170 to 21176, 21184, 21186, 21203 & 21204
of 2023 and 1553, 1593, 1596, 1618, 1620 & 2089 of 2024

Abhinaya Constructions,
Represented by its Proprietor,
C.N.Raja,
No.51, Court Road,
Nagercoil - 629 003.

... Petitioner in all the W.Ps.

Vs.

1.State of Tamil Nadu,
Represented by its Principal Secretary to the Government,
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The State Tax Officer,
Divisional Central Investigating Wing - 2,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai, Tirunelveli - 627 002.

3.The State Tax Officer,
Nagercoil 1 Assessing Circle,
Commercial Taxes Building,
No.131, Mead Street,
Nagercoil - 629 001.

... Respondents in all the W.Ps.



W.P.(MD) Nos.24974 to 24979 of 2023

Prayer in W.P.(MD)No.24974 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2017-2018 dated 30.08.2023, on the file of the second respondent and quash the same.

Prayer in W.P.(MD)No.24975 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2018-2019 dated 30.08.2023, on the file of the second respondent and quash the same.

Prayer in W.P.(MD)No.24976 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2019-2020 dated 30.08.2023, on the file of the second respondent and quash the same.

Prayer in W.P.(MD)No.24977 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2020-2021 dated 30.08.2023, on the file of the second respondent and quash the same.

Prayer in W.P.(MD)No.24978 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call



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upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2021-2022 dated 30.08.2023, on the file of the second respondent and quash the same.

Prayer in W.P.(MD)No.24979 of 2023: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call upon the records pertaining to the Order-in-Original No. 33ABOPR8491M1Z7/2022-2023 dated 30.08.2023, on the file of the second respondent and quash the same.

For Petitioner in all the W.Ps. : Mr.J.V.Niranjan

For Respondents in all the W.Ps.: Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.R.Sureshkumar
Additional Government Pleader

COMMON ORDER

By this common order, all these Writ Petitions are being disposed of.

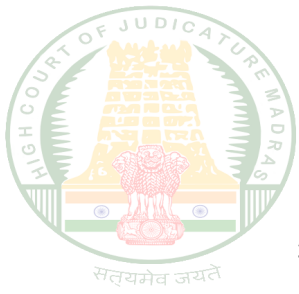
2. The impugned orders are primarily challenged on the ground that the Commissioner has no authority to delegate the power to the third respondent [wrongly mentioned as second respondent in the respective Writ Petitions] to pass the impugned order.



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WEB COPY 3. The learned counsel for the petitioner would submit that the definition of Adjudicating Authority in Section 2(4) of the Tamil Nadu Goods and Services Tax Act, 2017 [hereinafter referred to as "the TNGST Act"] does not include the Commissioner, Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling etc. It is therefore submitted that the Commissioner has delegated the powers to the third respondent in exercise of power under Section 5 of the respective GST Enactments, pursuant to which, the impugned orders have been passed, are liable to be declared as *non est* in law.

4. The above said submission of the learned counsel for the petitioner is contrary to the very scheme under the GST Act. The assessment has to be completed by a proper Officer and it is open for the Commissioner to designate such Officers as proper Officers as defined in Section 2(91) of the TNGST Act and therefore, the delegation in terms of Notification No.4 of 2017 issued under Section 5(1) of the TNGST Act, appointing proper Officers is proper. There is no merit in the submission of the learned counsel for the petitioner.



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5. As far as the challenge to the impugned orders on the ground that the show cause notice is not proper is concerned, it is also left open as such issue has to be decided only before the Appellate Authority. The petitioner has an alternate remedy under Section 107 of the respective GST Enactments. Therefore, liberty is given to the petitioner to file a statutory appeal within a period of 30 days from the date of receipt of a copy of this order.

6. 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

10.06.2024

To

1.The Principal Secretary to the Government of Tamil Nadu,
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.



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2.The State Tax Officer,
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C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.24974 to 24979 of 2023

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