

W.P.Nos.2600, 2603 & 2606 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.2600, 2603 & 2606 of 2024

&

WMP Nos.2856, 2858, 2851, 2852, 2846 & 2847 of 2024

SIP Academy India Pvt. Ltd.,
Represented by its Director Ms.Sarala Kulasekaran,
No.7A, 7th Floor, Kences Tower, No.1 Ramakrishna Street,
Off North Usman Road, T.Nagar,
Chennai-600 017. ... Petitioner in all WPs

vs

State Tax Officer,
Anna Salai Assessment Circle,
Greens Road, Annex Building,
Chennai 600 006. .. Respondent in all WPs

PRAYER in W.P.No.2600 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records in Order bearing No.GSTIN/33AAHCS4041B1ZX/2020-21 dated 14.10.2023 and Summary of Order in Form GST DRC-07 bearing Reference No.ZD3310230859949 for the Year 2020-21 dated 14.10.2023 passed by the Respondent and quash the same.



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PRAYER in W.P.No.2603 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records in Order bearing No.GSTIN/33AAHCS4041B1ZX/2018-19 dated 14.10.2023 and Summary of Order in Form GST DRC-07 bearing Reference No.ZD3310230859882 for the Year 2018-19 dated 14.10.2023 passed by the Respondent and quash the same.

PRAYER in W.P.No.2606 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records in Order bearing No.GSTIN/33AAHCS4041B1ZX/2019-20 dated 14.10.2023 and Summary of Order in Form GST DRC-07 bearing Reference No.ZD331023085991F for the Year 2019-20 dated 14.10.2023 passed by the Respondent and quash the same.

In all WPs.

For Petitioner : Mr.Joseph Prabakar

For Respondents: Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)

COMMON ORDER

In these writ petitions, the petitioner challenges the assessment orders pertaining to assessment years 2018-19, 2019-20 and 2020-21, respectively. The petitioner states that it is a private limited company



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that carries on the business of providing services to children for skill development. Pursuant to an inspection of the petitioner's premises in March, 2022, it is stated that the respondent issued an intimation in Form DRC-01A in May 2023. The petitioner replied thereto on 15.06.2023. Meanwhile, a show cause notice in Form DRC-01 was issued on 01.06.2023. This was followed by reminders. Upon receipt of reminder dated 29.08.2023, the petitioner submitted a reply dated 01.09.2023. The orders impugned herein were issued in these circumstances.

2. Learned counsel for the petitioner submits that the impugned assessment orders were issued without considering the petitioner's replies and that such orders disclose non-application of mind. By inviting my attention to the findings recorded with regard to director's remuneration, learned counsel submits that the financial statements of the company for the relevant financial year disclose that remuneration was paid to the managing director of the



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company. He also points out that the salary paid to an employee of a company is exempt from GST under Section 7(2)(a) of the Tamil Nadu Goods and Services Tax Act, 2017 read with Schedule III thereof. He also relies upon circular No.140/10/2020-GST, dated 10.06.2020 and the earlier order of this Court in *M/s.Global Calcium Private Limited v. Assistant Commissioner (ST), Hosur (North)-1, 2024-VIL-73-MAD*.

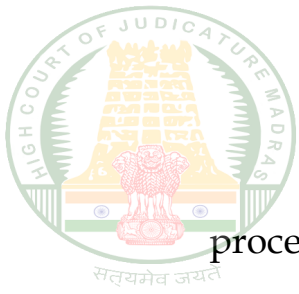
3. The next contention of learned counsel is that the findings recorded in the impugned assessment orders with regard to miscellaneous expenses are also completely unreasoned. He points out that the expenses incurred towards advertisement and business promotion, repairs and maintenance, and computer and software maintenance for the relevant financial years were drawn from the respective financial statement and liability was imposed on the assumption that these expenses were incurred in respect of supply of services by unregistered persons to the petitioner. He further submits



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that such conclusions were drawn without examining particulars of the suppliers, without ascertaining whether such suppliers were registered or not and without examining the applicability of exemption notifications in that regard. The third ground on which the impugned assessment orders are assailed is with reference to the findings recorded in respect of exempted turnover. By referring to notification No.12/2017-Central Tax, dated 28.06.2017, learned counsel submits that the provision of services by way of training or coaching in recreational activities relating to art or culture falls within the heading '9996' and that such services are fully exempt from GST. By referring to the findings in respect of this tax demand, learned counsel submits that GST was imposed on the assumption that the petitioner is engaged in the sale of painting and other art works.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondent. With reference to the

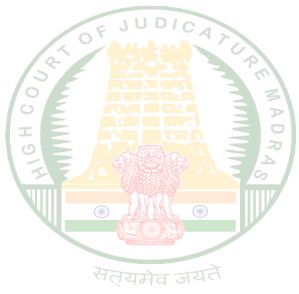


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proceedings culminating in the impugned assessment orders, learned

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Additional Government Pleader submits that the petitioner was provided several opportunities to contest the tax demands. Therefore, he submits that principles of natural justices were followed and that there is no scope for interference on that count. As regards the contention that GST should not be levied on director's remuneration, learned counsel submits that the petitioner did not provide supporting documents to indicate whether the director concerned was a whole time director, independent director or part time director. Necessary documents with regard to TDS and the like were also not submitted. Similarly, as regards exempted turnover, he submits that the petitioner did not place on record relevant documents, such as bills of supply, student attendance register, etc. Since all these determinations were made on the basis of appraisal of evidence, learned Additional Government Pleader submits that the petitioner should be directed to avail of the statutory remedy.



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5. Upon taking stock of these contentions, as regards director's remuneration, I find that the impugned assessment orders record the finding that the tax payer did not clarify whether the director is a whole time director, independent director or part time director. It is further recorded therein that the company did not clarify whether such director was paid salary. On examining the reply dated 15.06.2023 of the petitioner, I find that the petitioner has stated categorically that remuneration was paid to Dinesh Victor, Managing Director of the company. In view of such reply, the conclusion that the petitioner did not clarify the category of directorship is unsustainable. Material documents such as the employment contract, if any, or the terms of employment, TDS deduction particulars and the like were, however, not submitted by the petitioner.

6. Similarly, as regards the conclusions with regard to miscellaneous expenses, the petitioner, in its reply of 15.06.2023, relied upon notifications under which registered persons are exempt

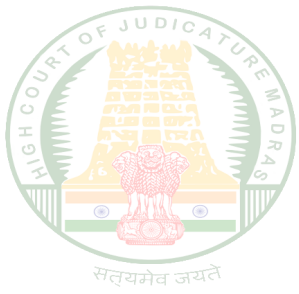


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from paying GST under reverse charge mechanism up to a specified limit or for a specified period. The petitioner also explained that some of the purchases under each head were from registered dealers. In these circumstances, the imposition of tax, penalty and interest on the basis of the total expenditure incurred towards advertisement and business promotion, repairs and maintenance, and computer and software maintenance, by drawing on figures provided in the respective financial statement is a conclusion reached without proper application of mind.

7. As regards exempted turnover, the petitioner relied upon Notification No.12/2017 and submitted that it provides training or coaching in relation to art and culture which are exempted supplies. In spite of the petitioner's replies to such effect, the Assessing Officer recorded the bizarre conclusion that the petitioner was engaged in the sale of painting and art works. These conclusions indicate non-application of mind to the material placed on record. Hence, the orders impugned herein warrant interference.



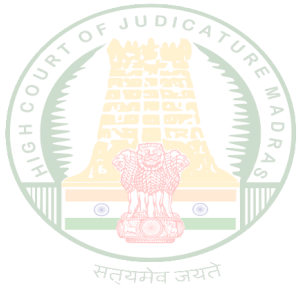
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8. It should, however, be reiterated that the petitioner does not appear to have placed all relevant materials on record. Therefore, it is necessary to direct the petitioner to do so.

9. For reasons set out above, these writ petitions are allowed and the orders impugned herein are quashed. As a corollary, these matters are remanded for reconsideration by the Assessing Officer. The petitioner is directed to submit all relevant documents within a maximum period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Assessing Officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within two months from the date of receipt of documents from the petitioner. Consequently, connected miscellaneous petitions are closed.

08.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

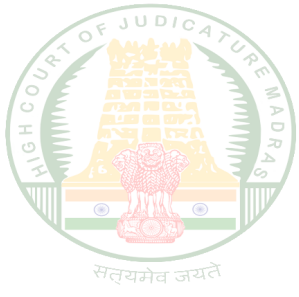


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To

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Anna Salai Assessment Circle,
Greens Road, Annex Building,
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