HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.26993 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner Educational Trust reads as under:

> "For the reasons stated in the accompanying affidavit, the petitioner prays that the Hon'ble Court may pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari, by calling for the records relating to the 2nd respondent's notices in Rc.No.100/2017/A6, dt.22.06.2018 in FORM GST DRC-01 (CGST Act 2017) and in FORM GST DRC-01 (APGST Act 2017) and quash the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Perusal of the impugned notices dated 22.06.2018 reflects that they are in the nature of show-cause notices. The petitioner Educational Trust was called upon to produce evidence in support of its stand and avail a personal hearing through an authorized representative or in person. Scope for interference with a show-cause notice under Article 226 of the Constitution is limited, *viz.*, lack of jurisdiction of the authority who issued the same or patent non-application of mind by the said authority.

In the case on hand, it is not the argument of Sri A.Sudershan Reddy, learned senior counsel appearing for Sri P.Roy Reddy, learned counsel for the petitioner Educational Trust, that the Joint Commissioner (Service Tax), Vijayawada-2 Division, Commercial Taxes Department, Government of Andhra Pradesh, lacks jurisdiction to issue the impugned show-cause notices. He would however contend that the show-cause notices demonstrate total non-application of mind by the said authority.

Reliance is placed upon the order dated 03.04.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, Hyderabad, in Appeal No.ST/21253/2014 and batch pertaining to Sri Chaitanya Educational Committee in the context of the service tax regime obtaining under the Finance Act, 1994. Learned senior counsel would assert that the issue presently raised under the impugned show-cause notices stands settled by way of the aforestated adjudication which has attained finality and though the same was brought to the notice of the Joint Commissioner (ST), he ignored the same while issuing the impugned show-cause notices.

Be it noted that the present show-cause notices were issued under the Goods and Services Act, 2017, while the adjudication referred to was under the earlier regime. The principle applicable may or may not be the same but the issue would still be required to be looked into by the authority in the context of the present regime. Therefore, mere failure on the part of the authority to refer to the adjudication in relation to the earlier regime may not, by itself, indicate a pre-determined mind or non-application of mind. It is for the petitioner Educational Trust, being the addressee of the impugned show-cause notices, to appear before the authority and demonstrate the validity of its stand. Be it viewed from any angle, we see no grounds to entertain this writ petition at a stage when the authority concerned is yet to apply its mind and take a decision in the matter.

The petitioner Educational Trust is accordingly given liberty to respond to the impugned show-cause notices, along with supporting material, within two weeks from the date of receipt of a copy of this order. It is also left open to the petitioner Educational Trust to seek personal hearing in terms of the invitation in the impugned show-cause notices. The Joint Commissioner (ST) shall thereafter take an appropriate decision in the matter in accordance with law.

The writ petition is dismissed subject to the above observations and liberty.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

Dt: 01.08.2018.
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