BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).Nos.14641, 14645 & 14648 of 2020
and W.M.P.(MD).Nos.12290, 12292 & 12299 of 2020

M/s.Sree Maruthi Traders,
Represented by its Proprietor,
S.Suresh,
2-54, Anjukandaraj Junction, Main Road,
Kulasekaram,
Kanniyakumari District. .. Petitioner in all petitions

Vs.

The State Tax Officer, (Inspection Cell)
Virudhunagar,
Tirunelveli Division. .. Respondent in all petitions

COMMON PRAYER: Writ Petitions are filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records of the impugned show cause notices issued by the respondent herein in his proceedings vide No.33AXSPS9623A1Z8/2017-18, 33AXSPS9623A1X8/2018-19 and 33AXSPS9623A1X8/2019-20 (Case ID No.TVL-009-5) dated 21.09.2020 and quash the same as illegal.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In all cases)

COMMON ORDER

These writ petitions have been filed challenging the impugned show cause notices issued in respect of three assessment years namely 2017-2018, 2018-2019 and 2019-2020.

2.Heard Mr.B.Brijesh Kishore, learned counsel for the petitioner. Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice on behalf of the respondent.

3.By consent of both parties, these writ petitions are taken up for hearing at the admission stage itself.

4.It is the case of the petitioner that the impugned show cause notices are bad in law, since the respondent instead of taking action against the Seller, who has given a statement before the respondent, on 05.11.2019, that he alone is liable to pay the tax, has by total non application of mind, has issued the impugned show cause notices to the petitioner, who is the purchaser, calling upon him to pay the tax.

5.According to the petitioner, the respondent issued notices under Section 74 (5) of the Tamil Nadu Goods and Services Tax Act, on 20.05.2020, calling upon him to pay the determined tax or otherwise send a reply as per Part-B of the said notices. It is the case of the petitioner that he sent a detailed reply as per Part-B of the notices dated 20.05.2020, issued under Section 74 (5) of the Act, on 05.06.2020. Thereafter, on receipt of the said reply, the respondent has sought for a clarification from the petitioner on 18.08.2020. The petitioner has also clarified the queries raised by the respondent by his reply dated 09.09.2020, along with supporting documents. It is the contention of the petitioner that arbitrarily, without application of mind to the reply dated 05.06.2020 as well as the reply dated 09.09.2020, the respondent has issued the impugned show cause notices all dated 21.09.2020. In such circumstances, these writ petitions have been filed.

6.It is settled law that a show cause notice can be challenged through a writ petition, only, if it has been issued without authority under law. In the case on hand, the petitioner has admittedly challenged the show cause notices issued by the respondent. Admittedly, no final orders have been passed by the respondent. The apprehension of the petitioner is that the respondent has not applied his mind and has not considered the replies dated 05.06.2020 & 09.09.2020 sent by the petitioner. According to him, arbitrarily and without considering the said replies, the impugned show cause notices have been sent to the petitioner. As observed earlier, while passing final orders, pursuant to the impugned show cause notices, all the objections raised by the petitioner in his reply dated 05.06.2020 & 09.09.2020, as well as the supporting documents placed by him before the respondent will have to be necessarily considered. This Court is of the considered view that the challenge made by the petitioner to the impugned show cause notices is pre-mature as no final orders have been passed by the respondent.

8.For the foregoing reasons, these writ petitions are disposed of by directing the respondent to consider the petitioner's replies dated 05.06.2020 & 09.09.2020, as well as the supporting documents placed by him with the respondent including the statement of Seller, Mr.Charles that he alone is liable to pay the tax and pass final orders, in the impugned show cause notices, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9.With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer, (Inspection Cell)
Virudhunagar,
Tirunelveli Division.

+1 CC to Mr.R.BRIJESH KISHORE, Advocate SR-20730.

W.P(MD).Nos.14641, 14645 & 14648 of 2020
28.10.2020

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CS(10.11.2020) 3P 3C