IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15390 of 2021
and W.M.P.No.16279 of 2021

Maya Appliances Pvt. Ltd.,
Represented by its Assistant Gveneral manager – Finance & Accounts,
Mr.K.Uma Shankar,
10/5, Royal Enclave, Besant Avenue,
Adyar, Chennai 600 020. .. Petitioner

Vs.

1.The Assistant Commissioner,
Circle 8, GST Audit-II Commissionerate,
No.692, 6th Floor, M.H.U. Complex, Anna Salai,
Nandanam, Chennai 600 035.

2.The Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No.692, 6th Floor, M.H.U. Complex, Anna Salai,
Nandanam, Chennai 600 035.

3.Union of India,
Rep. By its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001.

4.Goods and Services Tax Council
5th Floor, Tower II,
Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi 110 001.

5.Central Board of Indirect Taxes and Customs,
815, Nehru Place,
Market Road, New Delhi 110 019.

6.The Chairman, GSTN, East Wing, Word Mark-1,
4th Floor, Tower B, Aerocity,
Indira Gandhi International Airport,
New Delhi 110 037. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the Show Cause Notice No.56/2021 (GST)-AC dated 11.06.2021 issued by the 1st respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.Rajnish Pathiyil (Senior Panel Counsel)

O R D E R

The show cause notice, dated 11.06.2021, asking the petitioner to submit their reply within 30 days is under challenge in the present Writ Petition.

2.The petitioner is a manufacturer and supplier of LPG stoves, wet grinders, juicers, salad makers and mixer grinders. The petitioner is a registered tax payer under the Goods and Services Tax regime and is fully compliant with the provisions of the Central Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017, Integrated Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Rules, 2017, Tamil Nadu Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Rules, 2017.

3.The learned counsel for the petitioner made a submission that the similar issues raised in the present Writ Petition are already pending and in one such Writ Petition, the Madras High Court set aside the order impugned and remanded the matter back to the authority for fresh consideration. Therefore, the Writ Petition is to be admitted on the similar line. The learned counsel cited the interim orders passed by the High Court of Andhra Pradesh in a Writ Petition. However, this Court is of the considered opinion that the interim order granted by the Andhra Pradesh High Court cannot be followed as a precedent for the purpose of admitting the present Writ Petition.

4.The petitioner has raised several grounds, both on merits as well as on the principles elaborately. However, this Court is not inclined to adjudicate all such issues on merits, in the present Writ Petition, as the relief sought for is to quash the show cause notice issued by the 1st respondent. All such factual issues are to be adjudicated by the competent authority with reference to the documents and evidences made available and High Court cannot adjudicate those issues on merits in a writ proceedings.

5.No writ against a show cause notice needs to be entertained in a routine manner. A writ against a show cause notice may be entertained only if it is established that the authority issued the show cause notice has no jurisdiction to issue such notice under the statute or rules or allegation of malafides are raised against official concerned. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised must be impleaded as party respondent in his personal capacity in the writ proceedings. Therefore, the factual grounds or the mixed question of law and facts deserves complete adjudication on the hands of the competent authority. Only if incompetency of the authority is established through statutory provisions, the writ may be entertained and not otherwise.

6.The practise of raising the point of jurisdiction coupled with the facts are in ascending mode and the Courts cannot encourage such grounds raised, which all are to be decided with reference to the facts on merits. Even in case, the point of jurisdiction is raised and such point involves adjudication of facts, then also the matter should be placed before the competent authority and the appellate authority thereafter, for complete adjudication of disputed facts. The High Court cannot conduct the process of adjudication of such disputed facts merely based on the affidavits filed by the party or the selective xerox copy of the documents filed along with the Writ Petition. Such adjudication, in piece-meal, is always dangerous and there is possibility of commission, omission and error and allowing some persons to escape from the clutches of law. Thus, it is always preferable that the adjudication on merits are conducted by the authorities competent and thereafter, by the appellate authority, who is the final fact finding authority, which will be of greater assistance for the High Court for the purpose of exercise of powers of judicial review under Article 226 of the Constitution of India.

7.The power of judicial review is to scrutinise the processes through which the jurisdiction is taken by the competent authorities in consonance with the law, but not the decision itself. Thus, the Courts always exercise restraint in entertaining a Writ Petition filed against the show cause notices.

8.In the present case, the impugned show cause notice provides all the details regarding allegations. The petitioner is asked to submit their representations/defence or documents to defend their case by availing the opportunity. Therefore, the petitioner is expected to defend their case before the competent authority by submitting their explanations/defence statements and thereafter, the authorities are bound to consider the materials available on record as well as the grounds raised by the petitioner in their defence statement and take a decision and pass speaking order by furnishing reasons for such a decision. This being the procedures to be followed, the petitioner is at liberty to submit their explanations/defence statement along with documents and evidences, if any, as sought for in the impugned show cause notice by availing the opportunity.

9.This being the principles to be followed, this Court is of the considered opinion that the writ petitioner has not established any acceptable ground for the purpose of entertaining the Writ Petition and accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Assistant Commissioner,
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No.692, 6th Floor, M.H.U. Complex, Anna Salai,
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2.The Commissioner of GST and Central Excise,
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6.The Chairman, GSTN, East Wing, Word Mark-1,
4th Floor, Tower B, Aerocity,
Indira Gandhi International Airport,
New Delhi 110 037.

+1cc to Mr.Lakshmi kumaran, Advocate, S.R.No.35906
+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.36140

W.P.No.15390 of 2021

GPL(CO)
CB(11/08/2021)