



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.6588 of 2021

and

W.M.P. (MD) No.5107 of 2021

M/s.Balaji Traders,
Rep. by its Partner Dinesh Patel ...Petitioner

-Vs-

The State Tax Officer,
Manapparai Assessment Circle,
Commercial Taxes Buildings,
Manapparai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in GSTN No.33AAOFB2142A1Z5/Tran 1 dated 04.06.2020 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of Section 140(1) of the Tamil Nadu Goods and Services Tax Act, 2017 and direct the respondent to pass order afresh after affording opportunity of personal hearing as contemplated under Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017.

For Petitioner : Mr.N.Sudalai Muthu

For Respondent : Mr.R.Suresh Kumar
Government Advocate

O R D E R

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records in GSTN No.33AAOFB2142A1Z5/Tran 1 dated 04.06.2020 issued by the respondent and quash the same as wholly without jurisdiction and clear violation of Section 140(1) of the Tamil Nadu Goods and Services Tax Act, 2017 and direct the respondent to pass order afresh after affording opportunity of personal hearing as contemplated under Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017.



2. For the financial year 2017-18, though monthly returns had been filed by the petitioner, the respondent revenue wanted to revisit that issue and therefore, a notice had been given on 13.09.2019, followed by which, a summary of the notice in Form GST-DRC-01 should have been issued as per the Rule 142(1) of the Central Goods and Services Tax (CGST) Rules, (in short 'the Rules') and this can be even issued electronically, that is, uploading the same through the web portal, and thereafter only, the order of assessment shall be passed by the Authorities.

3. However, here in the case in hand, the summary of show cause in Form GST-DRC-01 under Rule 142(1) of the Rules, has been generated or uploaded electronically on 04.06.2020. However, without giving any slightest breathing time to the petitioner Assessee to respond on the very same date, that is, on 04.06.2020, the impugned assessment order has been passed. Therefore, on that ground, it is being challenged by the petitioner.

4. The uploading or serving of summary of show cause in Form GST-DRC-01 under Rule 142(1) is not a mere formality, but it is mandated under the Rule, so that, the Assessee would have a chance of getting summary of show cause and to respond the same and without giving such a breathing time, on the very same day, that is, the date on which GST-DRC-01 notice, that is, summary of notice was uploaded, the impugned order was passed. Therefore, on that ground, this Court feel that the impugned order can not be sustained, accordingly, it is liable to be quashed.

5. In the result, the impugned order is quashed and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, if notice has already been issued, summary of such show cause in Form GST-DRC-01 shall be freshly uploaded to the petitioner by giving some breathing time, and on noticing the same being served through electronically, the petitioner Assessee shall respond with their available records and after giving an opportunity of being heard in this regard to the petitioner, a fresh assessment order can be passed by the respondent in the manner known to law.

6. With these directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PNM/PJL

<https://hcservices.ecourts.gov.in/hcservices/>



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,
Manapparai Assessment Circle,
Commercial Taxes Buildings,
Manapparai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-30416[F] dated 27/09/2021)

+1 CC to M/s.SPL.GP (SR-30336[F] dated 27/09/2021)

W.P. (MD) No. 6588 of 2021

Dated:

24.09.2021

MGJ(25.10.2021) 3P 4C