IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

**W.P.No.33009 of 2022
and W.M.P.Nos.32428 & 32430 of 2022
in W.P.No.33009 of 2022**

M/s.Madurai Radha Travels,
A Partnership Firm,
Represented by its Partner Mr.RVN Kannan,
No.9, West Avani Moola Street,
Madurai 625 001.

.. Petitioner

Vs.

1.The Deputy Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
No.155-1, Lakshmanan Street,
Behind Ukkadam Bus Stand,
Ukkadam, Coimbatore 641 001.

2.The Assistant/Deputy Commissioner of CGST & Central Excise,
Madurai I Division, C.R.Building,
V.P.Rathnasamy Nadar Road,
Madurai 625 002.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in Show Cause cum Demand Notice No.121/2022-GST bearing F.No.DGGI/INV/GST/1755/2022-Gr C/1641 dated 31.10.2022 and quash the same as being arbitrary, ultra-vires the provisions of the Central Goods and Services Tax Act, 2017 and violative of principles of natural justice.

For Petitioner	:	Mr.Sathish Parasaran, Senior counsel for Mr.R.Parthasarathy
For Respondents	:	Mr.Sai Srujan Tayi, Senior standing counsel (GST)

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<u>O R D E R</u>

This order will now govern the captioned main writ petition and captioned two 'Writ Miscellaneous Petitions' ['WMPs'].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made by this Court in the listing on 09.12.2022, which reads as follows:

'Mr.Satish Parasaran, learned Senior Counsel instructed by Mr.Subhang Nair on behalf of learned counsel on record Mr.R.Parthasarathy is before this Court.

2.A 'show cause notice dated 31.10.2022 bearing reference F.No.DGGI/INV/GST/1755/2022-Gr C/1647' [hereinafter 'impugned SCN' for the sake of brevity, convenience and clarity] issued under Section 74 of 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for the sake of convenience and clarity] has been called in question.

3.Pivotal submission on which the challenge to impugned SCN is predicated on Sub rule (1A) of Rule 142 of 'The Central Goods and Services Tax Rules, 2017' [hereinafter 'C-G&ST Rules' for the sake of brevity, convenience and clarity] which provides for pre-show cause notice consultation. To be noted, the language in which Sub rule (1A) is couched underwent a amendment and the expression 'proper officer shall' now reads as 'proper officer may' on and from 15.10.2020.

4.The pre-show cause notice consultation notice is dated 28.09.2022, 11.10.2022 was the time line thereon and on 10.10.2022, the writ petitioner/assessee wrote to the respondent requesting for time (one month) but the impugned show cause notice was issued without either rejecting or acceding to the request is learned senior counsel's say.

5.It was also pointed out that the pre-show cause notice consultation does not talk about penalty.

6.Mr.Sai Srujan Tayi, learned Senior Standing Counsel (GST) accepts notice on behalf of the respondents, requests for time to get instructions and revert to this Court, more particularly instructions on whether closure option is still available.

7.As learned Revenue counsel requests for time to get instructions, Registry is directed to list this matter on Monday [12.12.2022] in the admission board. Registry is also directed to print the name of learned Revenue counsel in the cause list.

8.List on Monday in the Admission Board i.e., ***12.12.2022.'***

3. Today Mr. Sathish Parasaran, learned Senior Advocate instructed by Mr.Vishnu Mohan, learned counsel on record and assisted by Mr.N.Surya Narayanan, learned counsel is before this Court on behalf of the petitioner. Mr.Sai Srujan Tayi, learned Senior standing counsel (GST) [Revenue counsel] is before this Court on behalf of both the respondents.

4. Learned Revenue counsel, adverting to earlier proceedings submits that he has since taken instructions. Learned Revenue counsel submits that writ petitioner has not chosen to respond to the pre-show cause consultation notice but has only sought for time and therefore, the impugned SCN came to be issued. Pausing here for a moment, it is deemed appropriate to make it clear that the short forms and abbreviations used in the earlier proceedings dated 09.12.2022 shall continue to be used in the instant order for the sake of convenience and clarity.

5. Learned Revenue counsel drew the attention of this Court to Rule 142 of C-G&ST Rules and submitted that the writ petitioner had the option of either making full or partial payment.

6. Be that as it may, learned Senior counsel for writ petitioner submitted that in and by pre-show cause consultation notice dated 28.09.2022, the writ petitioner was called upon to show cause qua the

intended proceedings under Section 74(1). Learned Senior counsel submits that if there had been enlargement of time for responding to the pre-show cause consultation notice, writ petitioner would have pointed out that it would fall only under Section 73 of C-G&ST Act and not under Section 74 owing to the facts and circumstances of the case. Furthermore on a careful perusal of Rule 142 and more particularly Sub-rule (2) thereat it comes to light that besides payment and partial payment there is another option to the noticee and that is filing any submissions against the proposed liability. In the considered view of this Court, any submission against proposed liability would include a submission of writ petitioner-noticee in the case on hand that the writ petitioner-noticee would fall under Section 73 and not under Section 74 of C-G&ST Act. If the writ petitioner chooses to do so, the second respondent will have to necessarily deal with the same on its own merits and in accordance with law.

7. Therefore, this Court finds that the lone contention that has been projected (notwithstanding very many averments in the writ affidavit) as

regards the opportunity of responding to the pre-show cause consultation notice is still available to the writ petitioner and the sequitur is, there will be no interference qua impugned SCN and it will suffice if it is made clear that it is still open to the writ petitioner to make the submission that it has to be slotted under Section 73 of C-G&ST Act. The time honoured principles as regards interference qua show cause notice as in ***Union of India and another vs. Kunisetty Satyanarayana*** reported in ***(2006) 12 Supreme Court Cases 28*** and ***Siemens Ltd. Vs State of Maharashtra and others*** reported in ***(2006) 12 Supreme Court Cases 33*** do operate. It is made clear that ***Siemens*** case law also does not come to the aid of the writ petitioner in the case on hand as ***Siemens*** case was one where the authority had pre-determined the issue. To be noted, it is nobody's case that the impugned SCN is one without jurisdiction.

8. Owing to discussion and dispositive reasoning supra, captioned writ petition is disposed of making it clear that the impugned SCN shall proceed, writ petitioner shall respond within a fortnight from today i.e., by 04.01.2023 and if the writ petitioner chooses to raise aforementioned

Sections 73 and 74 of C-G&ST Act dichotomy, it is open to writ petitioner to do so and the second respondent shall consider the same on its own merits and in accordance with law. Though obvious it is made clear that all the contentions of the writ petitioner including those contentions raised in the captioned writ petition are left open to be raised in the writ petitioner's reply to the show cause notice.

9. This Writ Petition is disposed of as closed. Consequently, connected WMPs are also closed. There shall be no order as to costs.

21.12.2022

Index: Yes/No
Speaking / Non-speaking order
nsa/kmi

To

1.The Deputy Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
No.155-1, Lakshmanan Street,
Behind Ukkadam Bus Stand,
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2.The Assistant/Deputy Commissioner of CGST & Central Excise,
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M.SUNDAR, J.,

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