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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.19339 of 2022
and
W.M.P.(MD)Nos.14108 and 14110 of 2022

C.S.Rengaraj .. Petitioner

Versus

1.The Principal Additional Director,
Directorate General of Goods and Service Tax (Intelligence),
Chennai Zonal Unit,
5th Floor, Tower II,
BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

2.The Deputy Director,
Directorate General of Goods and Service Tax (Intelligence),
Chennai Zonal Unit,
5th Floor, Tower II,
BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

3.The Additional Commissioner of GST and Central Excise,
Trichirappalli Commissionerate,
Cantonment,
Trichy.

4.The Deputy/Assistant Commissioner,
GST and Central Excise,
Trichirappalli I Division,
Trichirappalli Commissionerate,
Cantonment, Trichy.

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5.The Superintendent of GST and Central Excise,
Mofussil Range,
Trichirappalli I Division,
Trichirappalli Commissionerate,
Cantonment,
Trichy.

6.The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai. .. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the show cause notice issued by the first respondent in show cause Notice No.168/2021 in F.No.DGGI/INV/ST/273/2021-Gr.E-O/o.Pr.ADG-DGGI-CZU/5209, dated 21.10.2021, issued by the first respondent and quash the same.

For Petitioner	:	Mr.B.S.Manjunath
For R1 to R5	:	Mr.N.Dilipkumar Standing Counsel
For R6	:	Mr.M.Lingadurai Special Government Pleader

ORDER

The petitioner was issued with Show Cause Notice No.47/2021, by the first respondent in O.R.No.168/2021. Against which, he has filed this Writ Petition.

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2.The case against the petitioner is that the respondent Department gathered intelligence and found that in most of the Temples, in the State of Tamil Nadu, the activity of preparation of sale of Prasadams and other articles inside the Temples is given to the private contractors/business entities. Likewise, as far as the other services on behalf of the local Panchayats and Municipalities, the private entities are awarded with contracts/licence after paying appropriate licence fee to the respective authorities for cycle and motorbike stand, collection for daily and weekly markets. The petitioner is the holder of PAN No.ADFPR7208B, residing at Samayapuram, Trichy, engaged in preparation and sale of Prasadams and other miscellaneous works namely, sale of coconut and banana worship package, sale of salt and Seesaw etc. inside various Temples namely, Arulmigu Venkatachalapathy Swamy Temple (Uppilliappan Temple), Thirunageswaram; Arulmigu Mariamman Temple, Samayapuram, Trichy; Vaazhaithottathu Ayyan Temple, Ayyampalayam, Saamalapuram. Further, he is also involved in providing various amenities for the local Panchayats and Municipalities namely, Nammakkal Weekly Market, Avinashi Scooter/Cycle Stand and Sulur Weekly Market. The petitioner is not registered with the service tax authorities under the Service Tax Act.

3.According to the learned counsel for the petitioner, the petitioner was only running a Prasadam Stall and selling pooja articles inside the Temple

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premises and therefore, no show cause notice can be issued. The petitioner as a licence holder, has to pay the licence fee to the Temples. Hence, on the point of jurisdiction, the petitioner questioned the show cause notice and filed this Writ Petition to quash the same.

4.Mr.M.Lingadurai, learned Special Government Pleader, takes notice for the sixth respondent and submits that show cause notice was issued on 21.10.2021 and the present Writ Petition is filed on 18.08.2022, after lapse of 10 months. The Commissioner, H.R. & C.E. Department alone arrayed as sixth respondent in the Writ Petition. The petitioner had been granted licence and contract with the Executive Officers of the Temples and made payments in the account of the Temples. As far as the sixth respondent/Commissioner is concerned, he is only supervising authority for all the Temples. Without arraying the Executive Officers of the Temples, the petitioner had filed this Writ Petition. Hence, for not arraying proper parties, this Writ Petition is liable to be dismissed.

5.Mr.N.Dilipkumar, learned Standing Counsel, takes notice for the respondents 1 to 5 and submits that in the Writ Petition, the petitioner challenged the show cause notice. On the basis of the intelligence gathered, the Directorate General of Goods and Services Tax Department found that the

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petitioner was carrying on business in the name of Prasadam stalls in various Temples, further, taken cycle stand, market tender and other tenders with the Panchayats and Municipalities. He had not registered himself under the Service Tax Act and not paid any tax to the Department. As far as Municipalities are concerned, only Namakkal Municipality alone had deducted tax at source. Applying the Reverse Charge Mechanism with regard to the Temples and with regard to other Municipalities, service tax have been deducted. The petitioner is providing service, hence, falls under the Service Tax Act. The activities of the petitioner is neither exempted nor under the negative list. Further, the petitioner was required to produce all the evidences in support of his defence at the time of show cause to the adjudicating authority. Further, he was given opportunity to file his written reply. No reply has been filed within 30 days of pre-show cause notice and thereafter only, the impugned show cause notice issued, informing that in terms of clause (i) of second proviso to Section 78(1) of the Finance Act, 1994, interest to be paid within 30 days from the date of service of the notice. The petitioner neither made any reply nor paid the tax amount, hence, the authorities deemed fit to proceed against him in accordance with the show cause notice issued. If at all the petitioner has got any objections, he shall appear before the first respondent, submit documents and make his representation. The learned Standing Counsel further submits that the impugned show cause notice has

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been issued on 21.10.2021, the petitioner not taken any steps for almost 10 months from thereon, instead, filed this Writ Petition only on 18.08.2022. In view of the same, the learned Standing Counsel seeks dismissal of the Writ Petition.

6.Considering the rival submissions and on perusal of the materials, it is seen that the show cause notice is dated 21.10.2021, this Writ Petition has been filed on 18.08.2022, *i.e.,* almost after lapse of 10 months from the show cause notice. There is no reason given in the affidavit why the delay occurred. This Court finding that it is only a show cause notice, it is for the petitioner to send reply to the concerned authorities, giving explanation. In view of the same, this Court is not inclined to entertain this Writ Petition. In the event of show cause notice and the proceedings thereon not concluded, the petitioner may be given an opportunity to give reply and personal hearing, thereafter, the show cause notice proceedings to be concluded. The petitioner to submit his objection to the second respondent within a period of two weeks from the date of receipt of a copy of this order.

7.With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
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M.NIRMAL KUMAR, J.

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Order made in
W.P.(MD)No.19339 of 2022

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