



W.P.(MD)No.23137 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.23137 of 2022

and

W.M.P.(MD)No.17235 of 2022

Smt.Manivel Murugan Leelavathy

... Petitioner

Vs.

The Deputy Commissioner of CGST & Central Excise,
Madurai – 1 Division,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records in Order in Original No.MAD-ST-000-ASC-07-2022 dated 05.01.2022 issued by the Respondent and quash the same as arbitrary, illegal, non-application of mind against the principles of judicial discipline and direct the Respondent to pass order afresh after affording opportunity of being heard.



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W.P.(MD)No.23137 of 2022

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.R.Nandhakumar
Senior Standing Counsel

ORDER

This Writ Petition is filed challenging the order dated 05.01.2022 on the ground that the show cause notice / personal intimations have not been served to the Petitioner or any of her representatives and consequently, *ex-parte* order in original demanding service tax stands vitiated for having been made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the Petitioner that the Petitioner did not undertake any civil work contract services or construction activities for Public Works Department or any other taxable service activities and the entire impugned order proceeds on the premise that the Petitioner has undertaken work contract for Public Works Department which is contrary to the facts and not supported by any materials whatsoever. He further submitted that if the Petitioner was put on notice, they would have



W.P.(MD)No.23137 of 2022

furnished the documents, which would clearly demonstrate that they are mechanical sub-contractors. According to the Petitioner, such contract is exempted in view of the fact that the Contractor has discharged his liability on the entire contract value including the portion that has been subcontracted. The learned Senior Standing counsel for the Respondent has no records to show that the notice was duly served.

3. In the circumstances, the impugned order passed by the Respondent dated 05.01.2022, is hereby set aside and the matter is remanded back to the Respondent for fresh consideration on the short ground that admittedly notice has not been served and intimations have not been given, which suffers from violation of principles of natural justice. It is open to the Respondent to issue a fresh notice and pass orders in accordance with law after granting reasonable opportunity to the Petitioner. It is made clear that this Court has not expressed any view with regard to the merits of the case.



W.P.(MD)No.23137 of 2022

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4. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2022

Index : Yes / No

Speaking Order : Yes / No

vji

To

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W.P.(MD)No.23137 of 2022

MOHAMMED SHAFFIQ, J.

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