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W.P.No.3693 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.3693 of 2023
and
W.M.P.No.3788 of 2023

M/s.Adithya Force,
Rep. by its Partner Mr.Ajay Adhithyan,
No.37 and 38, Kesari Nagar,
Enathur Village,
Chennai-Bangalore High Way,
Kancheepuram - 631 552.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Kancheepuram Circle,
Commercial Taxes Building, 1st Floor,
Collectorate Campus,
Kancheepuram - 631 501.

... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in the summary of order in Form DRC-07 dated 31.03.2022 in Ref.No.ZD330322009564T and Notice Bearing No.GSTIN.33AAUFA8170D1ZE/2018-19 dated 19.10.2022 passed by the respondent and quash the summary of the order and notice as arbitrary and illegal.



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For Petitioner : Mr. Joseph Prabakar
For Respondent : Mr. V. Prasanth Kiran
Government Advocate

ORDER

The petitioner has challenged the impugned attachment notice dated 19.10.2022 under which the respondent has proposed to attach the bank account of the petitioner under Section 79 of the Goods and Services Tax Act, 2017 (*Hereinafter referred to as GST Act*) on the ground that they have not paid the tax and penalty amount as stipulated under the summary of the order in Form GST-DRC-07 dated 31.03.2022.

2. The petitioner has challenged the impugned attachment notice on the ground that the petitioner was not informed in the show cause notice dated 20.01.2022 for levying GST amounting to Rs.90,23,668.05. The said levy was made on account of the alleged output tax mismatch between GSTR-3B and GSTR-1 and tax mismatch between GSTR-7 and GSTR-1.



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3. The petitioner also contends that only the summary of the order dated 31.03.2022 was served on them subsequent to the show cause notice dated 20.01.2022. The petitioner also contends that as seen from the summary of the order dated 31.03.2022, the respondent has included the penalty though in the show cause notice dated 20.01.2022, the petitioner was not called upon to submit an explanation with regard to the penalty amount. According to the petitioner, only after they received the attachment notice dated 19.10.2022, they were aware of the aforementioned facts.

4. On the last hearing date on 09.02.2023, learned Government Advocate appearing for the respondent sought time to get instructions with regard to the petitioner's statement made in this Writ Petition. Learned Special Government Pleader (Taxes) has received written instructions from the Assistant Commissioner (ST) (FAC), Kancheepuram Assessment Circle, Collectorate Campus, Kancheepuram, the respondent herein, on 27.02.2023.

5. As seen from the written instructions, it is clear that only the summary of the impugned order was sent to the petitioner and no speaking order has been passed by the respondent. Since a speaking order has not



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been passed by the respondent with regard to the petitioner's contentions, necessarily the impugned order has to be quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting them the right of personal hearing.

6. For the foregoing reasons, the impugned assessment order dated 31.03.2022 and the consequential recovery notice dated 19.10.2022 are hereby quashed and the matters are remanded back to the respondent for fresh consideration on merits and in accordance with law. The petitioner is permitted to file a reply to the show cause notice within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said reply, after affording a fair hearing to the petitioner including granting them the right of personal hearing, the respondent is directed to pass final orders on merits and in accordance with law. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

27.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab



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To

The Assistant Commissioner (ST),
Kancheepuram Circle,
Commercial Taxes Building, 1st Floor,
Collectorate Campus,
Kancheepuram - 631 501.



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ABDUL QUDDHOSE. J.,

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**27.02.2023
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