IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.5200 of 2023
and
W.M.P.No.5197 of 2023

S.Kaja Mohideen ... Petitioner

Vs.

1.The Commissioner of GST & Central Excise,
Newry Tower No.2054, I Block,
II Avenue, Anna Nagar, Chennai - 600 040.

2.The Joint Commissioner of GST & Central Excise,
Head Quarters Preventive Unit,
GST Chennai Outer Commissionerate,
Newry Tower No.2054, I Block,
II Avenue, Anna Nagar, Chennai - 600 040.

3.The Additional Commissioner of GST & Central Excise,
GST Chennai Outer Commissionerate,
Newry Tower No.2054, I Block,
II Avenue, Anna Nagar, Chennai - 600 040.

4.The Additional Commissioner of Central Tax (Adjudication),
GST Chennai Outer Commissionerate,
Newry Tower No.2054, I Block,
II Avenue, Anna Nagar, Chennai - 600 040.

5.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007. ... Respondents

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 from the second respondent in SCN No.25/2022-HPU dated 08.03.2022 and quash the same.

For Petitioner : Mr.M.Fazulul Haq

For Respondents : Mr.S.Gurumoorthy
Standing Counsel

ORDER

This Writ Petition has been filed challenging the show cause notice dated 08.03.2022 issued under the GST Act.

2. The petitioner has challenged the aforementioned show cause notice on the following grounds:

a) The petitioner having closed down his business in the year 2013 itself, the allegations levelled in the show cause notice are arbitrary and illegal. The petitioner is not liable to pay the amount towards reversal of Input Tax Credit as well as the penalty as claimed in the show cause notice dated 08.03.2022;

b) The petitioner has not committed any irregularity and the fifteen suppliers mentioned in the show cause notice are no way connected with the petitioner and are not known to him;

c) The petitioner obtained GST No.33ATFPK3033P2ZL for his current business viz., M/s.MKS Traders in 2021 and he has been doing his business legally;

d) Any further delay by the respondents in conducting a detailed investigation and proceedings against the persons who have misused the earlier GST Registration of the petitioner would put the petitioner to irreparable loss and hardship.

3. A show cause notice can be challenged only if the same is issued without Authority under Law or has been issued without jurisdiction or has predetermined the issue. In the instant case, none of the above mentioned requirements have been satisfied.

4. Based on the alleged wrong availing of Input Tax Credit, the respondents have issued the impugned show cause notice. The petitioner has also sent a detailed reply to the impugned show cause notice on

10.02.2023, reiterating the contentions that have been raised by the petitioner in this Writ Petition. Even before a final order could be passed by the respondents, after giving due consideration to the petitioner's reply, the petitioner has approached this Court challenging the impugned show cause notice which in the considered view of this Court is premature. However, the respondents will have to certainly give due consideration to the objections raised by the petitioner in his reply dated 10.02.2023 and only after affording a personal hearing to him, is entitled to pass a final order.

5. As seen from the documents filed along with this Writ Petition, the petitioner has been afforded a personal hearing on 21.02.2023.

6. Learned counsel for the petitioner also submits that the petitioner shall appear for the personal hearing today (21.02.2023) and he also requests for one more personal hearing for the petitioner. No prejudice would be caused to the respondents if one more personal hearing is afforded to the petitioner. The petitioner shall appear before the respondents for another personal hearing on 02.03.2023 at 10:30 a.m. without fail.

7. For the foregoing reasons, this Writ Petition is disposed of by directing the petitioner to appear for personal hearing with the respondents on 02.03.2023 at 10:30 a.m. and the respondents, after affording a personal hearing to the petitioner, after giving due consideration to the reply dated 10.02.2023 submitted by the petitioner and after adhering to the principles of natural justice, shall pass final orders on merits and in accordance with law, pursuant to the impugned show cause notice dated 08.03.2022, within a period of eight weeks from the date of the personal hearing. The petitioner is also permitted to produce Additional documents in support of their contentions to the respondents.

8. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

21.02.2023

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

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ABDUL QUDDHOSE. J.,

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(1/2)