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W.P.No.18311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.18311 of 2023

and

W.M.P.Nos. 17515 & 17516 of 2023

Karmaxx Infotech
Rep. By its Proprietor,
Mohammed Salem
New No.30, Old No.11,
AKR Comiche Center, 4th floor,
Second line beach road,
George town,
Chennai 600 001.

.. Petitioner

vs

The Assistant Commissioner (ST)
Harbour Assessment Circle,
Room No. 325, 3rd Floor,
Integrated Commercial Taxes Building,
No. 32, Elephant Gate Road,
Chennai 600 003.

.. Respondent

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari to call for the impugned
proceedings of the respondent passed in Reference Number
ZA3306230324032 dated 07.06.2023 and quash the same.

For Petitioner	:	Mr.N.Murali
For Respondent	:	Mrs.E.Ranganayaki Additional Government Pleader

ORDER

The petitioner has challenged an order of cancellation of
registration dated 07.06.2023 passed in terms of the provisions of



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the Tamil Nadu Goods and Service Tax Act, 2017 ('Act'). The main ground of challenge is that the impugned order is non-speaking, merely referring to Section 29(2)(e) of the Act.

2. In addition, learned counsel for the petitioner would also state that there is reference therein to the instructions of the Joint Commissioner (North) and thus, according to him, cancellation has been done only based on his instructions.

3. Reference is made to a judgment of the Hon'ble Supreme Court in the case of *Kaur & Singh v Collector of Central Excise, New Delhi* [1997 (94) ELT 289] and an order passed by the Delhi High Court in the case of *Fayiz Nangaparambil vs Union of India* [W.P.(c) No. 7477 of 2023 dated 26.05.2023], in support of the submission that show-cause notice being bereft of specific reasons, could not be addressed effectively by the noticee.

4. Per contra, Mrs.E.Ranganayaki, learned Additional Government Pleader, who appears for the respondent would submit that the petitioner has filed a detailed reply to the show-cause notice and hence it is not that he has not understood the import or contents of the notice. The notice specifically refers to Section



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29(2)(e) which provides for cancellation of registration obtained by means of fraud / wilful misstatement / suppression of facts and hence it is quite clear as to the basis on which the cancellation was proposed to be confirmed.

5. The reply filed by the petitioner on 29.05.2023 makes the following points clear.

(i) The principal place of business has admittedly changed from one address to another but has not been uploaded in the portal. The petitioner states that the defect will be rectified once the suspension imposed on the registration is lifted. Thus, it is clear that there is an error on the part of the petitioner in changing the principal place of business without intimation to the Department. It also makes it clear that the show-cause notice has some basis in law.

(ii) The petitioner refers to an inspection by the officer and in that context refers to Section 15(5) of the CGST / TNGST dealing with valuation. This submission is made in the



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context of valuation of second hand goods. Para 3.2 sets out various submissions of the petitioner in regard to valuation of second hand goods.

6. The aforesaid two points makes it clear that the unregistered premises of the petitioner was subject to a visit / inspection by the authorities, even prior to the issuance of impugned notice and thus the petitioner is well aware of the sequence of events leading upto the issuance of notice itself. The query raised at the time of, and post relates to valuation of the goods exemption and thus, this aspect of the matter is also well within the petitioner's knowledge. In all, the submission that the show-cause notice was non-speaking and the petitioner was aware of the details of the proposals, is found to be misconceived as all facts relating to the same were well within the petitioner's knowledge.

7. In the body of the reply, the petitioner has referred to certain purchase invoices that they state that they are enclosing with the reply, in support of the valuation, as well as other documents, such as profit and loss account and statutory



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documents. Upon a consideration of the aforesaid material, they seek for restoration of the suspended registration. To be noted, that the documents, have not been specifically mentioned at the end of the response as 'enclosures' and thus whether at all these documents form part of records, is unknown to this Court at this juncture.

8. However, this Court is really not required to look into this question since, quite apart from the fact that the basis of show-cause notice is well known to the petitioner as may be seen from reply dated 29.05.2023, the petitioner has admittedly not appeared before officer on 22.05.2023 despite receipt of the notice well in time. Thus, the petitioner has not cooperated in the proceedings leading to suspension of registration. This is a critical aspect of the matter which militates against the petitioner's prayer for intervention under Article 226 of the Constitution of India.

9. That apart, the petitioner was directed to furnish reply within seven working days of service of notice. But the reply has been manually filed only on 29.05.2023 which is far beyond the seven day period provided.



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10. The petitioner appears to be suggesting that the very fact of filing of a reply should be construed as an act of grace on its part and that the reply ought to have been taken note of by the assessing authority, and that this fact deserves intervention by the Court, since the order was passed subsequent to receipt of the order. I disagree as the petitioner is not seen to have cooperated in the assessment proceedings, which, in my considered view, is a critical pre-requisite to entitle itself to writ remedy.

11. In the present case, the petitioner has neither appeared for personal hearing nor has filed reply within the timeline as stipulated by the officer. The mere fact that the reply has been filed at the will and pleasure of the petitioner, beyond the period granted by this officer would not, in my view, entitle the petitioner to the relief sought. For the reasons as aforesaid, I am disinclined to intervene in this matter and dismiss the writ petition. No costs. Connected miscellaneous petitions are closed.

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Index:Yes/No
Neutral Citation:Yes
ssm



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To:

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DR. ANITA SUMANTH,J.

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