



WEB COPY



W.P.No.19491 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19491 of 2023

and

W.M.P.Nos.18757 and 18758 of 2023

M/s.Kalaivani Enterprises,
Represented by its Proprietor G.Kalaivani,
29-A, Anna Street, Siruvalur,
Gobichettipalayam Taluk,
Erode District - 638 054.

... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Gobichettipalayam Circle,
Gobichettipalayam,
Erode District - 638 052.

2.The Joint Commissioner (ST) Intelligence,
Commercial Taxes Building,
Erode.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings in GSTIN No.33HQEPK6805A1Z7/2022-23 dated 16.03.2023 together with DRC-07 in Ref.No.ZD330323081629B dated



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16.03.2023 under TNGST Act, 2017 and quash the same and direct the first respondent to receive the reply to the Show Cause Notice in DRC-01 dated 13.02.2023 received on 21.02.2023, afford personal hearing and arrange cross examination with the third parties if adverse order is contemplated.

For Petitioner : Mr.M.Hariharan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondents.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

3. The petitioner was issued with a notice in DRC-01A on 31.10.2022. The allegations against the petitioner was that the petitioner had passed on Input Tax Credit to various recipients through GSTR-1 without actual supply of goods, attracting penalty under Section 122(2) of the Central Goods and Service Tax Act, 2017. Section 122(2) of the Central Goods and Services Tax Act, 2017, reads as under:-



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(1)

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized,-

(a) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher."

4. The aforesaid notice in DRC-01A was followed by a personal hearing notice dated 13.02.2023 asking the petitioner to appear for a personal hearing. On the same date i.e., on 13.02.2023, the respondents have also



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issued another notice in Form GST DRC-01, which is a Show Cause Notice confirming the notice in DRC-01A, as mentioned above. Accordingly, the petitioner has been called upon to pay tax and penalty mentioned in the impugned order, consequent to the Show Cause Notice dated 13.02.2023 in Form GST DRC-01, by the impugned order dated 16.03.2023.

5. Although, the petitioner has been issued with notices which has not replied, the impugned order has been passed directly without affording an opportunity of personal hearing to the petitioner pursuant to the Show Cause Notice in Form GSTDRC-01 dated 13.02.2023. It is clear that there is a violation of principles of natural justice.

6. Therefore, the impugned order dated 16.03.2023 passed by the first respondent is set aside and the case is remitted back to the respondents for passing *de novo* order. Impugned order shall be treated as a Show Cause Notice to be read along with the proposals in DRC-01A and GSTDRC-01 as mentioned above.



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7. The petitioner shall file a reply/file representation within a period of 15 days from the date of receipt of a copy of this order and thereafter, the respondents shall pass a speaking order after calling the petitioner for a personal hearing. The respondents shall endeavour to pass a final order within a period of 45 days from the date of receipt of this order.

8. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

03.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

- 1.The Assistant Commissioner (ST),
Gobichettipalayam Circle,
Gobichettipalayam,
Erode District - 638 052.
- 2.The Joint Commissioner (ST) Intelligence,
Commercial Taxes Building,
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C.SARAVANAN, J.

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