



WEB COPY



W.P.No.19709 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.19709 of 2020
and WMP Nos.24352 and 24356 of 2020

M/s.My Home Industries Pvt. Ltd.,
1/174, Mela Arasadi Post,
Melamaruthur Village,
Ottapidaram Taluk,
Thoothukudi
Tamil Nadu – 628 002.

... Petitioner

Vs

State Tax Officer,
Ashok Nagar Assessment Circle
5th Floor, PAPJM Annexe Building
No.1, Greams Road, Chennai – 600 006.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus quashing impugned order 220702200078572 dt. 14.05.2020 along with summary of the order in Form GST-DRC 07 bearing reference No.ZA3305200003949 dt. 14.05.2020 uploaded in the GST portal and consequent attachment notice dated 05.12.2020 issued by the respondent to the petitioner's Banker, M/s.State Bank of India, Raj Bhavan Road, Somajiguda, Hyderabad, 500 082 as the same are arbitrary, illegal and in violation of the principles of natural justice; and are also in violation of Section 140 of the CGST Act and Articles 14 and 19(1)(g) of the Constitution.



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For Petitioner : Mr.G.Natarajan

For Respondents : Mr.TNC.Kaushik
Additional Government Pleader

ORDER

Heard Mr.G.Natarajan, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Additional Government Pleader for the respondent.

2. The main ground on which order dated 14.05.2020 passed in terms of the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'TNGST Act') is assailed is that no pre-assessment notice/show cause notice was issued prior to passing of the impugned order.

3. A perusal of the impugned order reflects at reference No.2, office notice GSTIN 33AACM9480C1ZM/2017-2018 dated 20.09.2019. The officer also states at paragraph 2 that notice dated 20.09.2019 that contained, inter alia, opportunity of personal hearing, was issued. He goes on to say that there was no response to the notice either by way of written reply or personal hearing and hence, DRC 01 dated 05.02.2020 was issued. He thus proceeds to raise a demand on the transitional credit allegedly wrongly availed along with interest at the rate of 24%.



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4. It is the petitioner's case that notice dated 20.09.2019 and Form DRC 01 dated 05.02.2020 were never received, either physically or by way of online modes of service.

5. In counter, the officer maintains that notice dated 20.09.2019 was issued to the tax payer online. However, the petitioner has placed on file at pages 13 and 14 of compilation dated 15.12.2020 accompanying the typed set the screen shot of the dash board of the user/tax payer on the Goods and Services Tax website setting out the sequence of notices issued between 30.10.2018 and 14.05.2020 to the petitioner. Nowhere, do notice dated 20.09.2019 or Form DRC 01 dated 05.02.2020 figure. There is no defence to this position.

6. In light of the documentary evidence that has been produced which is a print out of the virtual summary of notices issued to the petitioner and this being the admitted position, the impugned order is liable to be set aside and I do so.

7. This Writ Petition and the connected Miscellaneous Petitions are allowed. No costs.

15.03.2023

Index : Yes / No
Speaking/non-speaking Order
Neutral Citation: Yes/No
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DR.ANITA SUMANTH,J.



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