IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27296 of 2023
and
W.M.P.Nos.26729 and 26731 of 2023

Caterpillar India Private Limited,
7th Floor, Unit No.1, Ascendas Building,
International Tech Park, Taramani Road,
Chennai, Tamil Nadu – 600 113.
Represented by its Authorised Signatory,
Mr.Vivek Anand. ... Petitioner

Vs

1.The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
Audit II Commissionerate,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.

2.The Assistant Commissioner,
Office of the Assistant Commissioner of GST and Central Excise,
Perungudi Division,
EVR Periyar Malligai,
No.690, Anna Salai,
Nandanam, Chennai – 32. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to Form GST DRC-01A Notice bearing DIN No.20230959XS0000000F14 dated 07.09.2023 issued by the 1st respondent and quash the same and direct the 1st and 2nd respondents not to initiate recovery proceedings until proper adjudication of all the issues contained therein.

For Petitioner	:	Mr.Raghavan Ramabadran for M/s.Lakshmi Kumaran and Sridharan
For Respondents	:	Mr.A.P.Srinivas Senior Standing Counsel

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel takes notice on behalf of the respondents.

2. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

3.This writ petition is disposed of at the time of admission, as the petitioner has merely challenged the impugned notice dated 07.09.2023 issued in Form GST DRC-01A bearing reference Case ID No.DAR No.751/2023(GST) by the first respondent. Impugned notice in Form GST DRC-01A bearing reference Case ID No.DAR No.751/2023(GST) is pursuant to audit conducted under Section 65 of the GST Act for the Assessment Years 2017-2018 up to 2021-2022.

4.A reading of the impugned notice indicates that it is only a proposal under Section 73(5) of the CGST Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017. There is no final determination as is evident from a reading of the last paragraph of the impugned notice. It reads as under:

> "In case you wish to file any submissions against the above ascertainment, the same may be furnished by 15.09.2023 in Part B of this Form."

5.There is a police threat in penultimate paragraph of the impugned notice in Form GST DRC-01A bearing reference Case ID No.DAR No.751/2023(GST) as it asks the petitioner to pay the amount. However, such threat cannot be enforced directly. The Jurisdictional Assessing Officer namely the second respondent to issue a proper notice under Section 79 after observing procedure prescribed under Rule 88C of the CGST Rules, 2017. Rule 88C of the CGST Rules, 2017 which reads as under:

> “**88C.Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return:-**
>
> 1.Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01 B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to-
>
> a. pay the differential tax liability, along with interest under section 50, through FORM GSTDCC-03, or
>
> (b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.
>
> (2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,-
>
> a. pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part

B of FORM GST DRC-01 B electronically on the common portal, or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM COST DRC-01B, within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provision of Section 79."

6.As a matter of fact, the second respondent now has invoked Section 79 by referring to Rule 88C of the CGST Rules, 2017 and has issued none on 13.09.2023. It appears to have been in contravention of the procedure prescribed under Rule 88C of the CGST Rules, 2017. However, the aforesaid recovery notice has to be challenged separately. At the same time, the proceedings initiated pursuant to the impugned DRC can neither be stayed nor interfered with. Therefore, this writ petition challenging the impugned notice in DRC-01A dated 07.09.2023 bearing reference Case ID No.DAR No.751/2023 (GST) is liable to be dismissed.

7.Therefore, this writ petition is closed with the above observations. Liberty is given to the petitioner to challenge the recovery notice dated 13.09.2023 in the manner known to law. The petitioner shall also give its reply to the impugned notice in Form GST DRC-01A bearing reference Case ID No.DAR No.751/2023(GST).

8.Considering the fact that the notice under Section 79 has been issued only on 13.09.2023 under Section 79 of the CGST Act, 2017, recovery proceedings under the aforesaid recovery notice shall be kept in abeyance for a period of 10 days for the petitioner to work out remedy in the manner known to law.

9.This writ petition stands dismissed with the above liberty. No costs. Consequently, connected writ miscellaneous petitions are closed.

15.09.2023

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

1.The Additional Commissioner,
Office of the Commissioner of GST and
Central Excise,
Audit II Commissionerate,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam,
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2.The Assistant Commissioner,
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C.SARAVANAN, J.

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