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W.P.No.1936 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.1936 of 2023
and
W.M.P.No.2020 of 2023

M.Thangavel

... Petitioner

Vs.

1.The Government of India,
Rep. by its Secretary,
Ministry of Finance,
New Delhi - 110 001.

2.The Commissioner of GST & Central Excise,
Salem Commissionerate,
No.1, Foulkes Compound,
Anaimedu, Salem - 636 001.

3.The Assistant Commissioner of GST & Central Excise,
Salem I Division, No.106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road, Salem - 636 007.

4.Office of the Executive Engineer P.W.D. (C&M),
Salem.

5.The Commissioner of Panchayat and Municipality,
Magudanchavadi, Sankari Tk, Salem.

6.The Commissioner of Panchayat and Municipality,
Magudanchavadi, Sankari Tk, Salem.



W.P.No.1936 of 2---

7. Office of the Executive Engineer, P.W.D. (C&M),
Medical Works, Salem.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in respect of the show cause notice SCN.SI.No.09/2022 (AC-SLM-I) dated 18.04.2022 and quash the same and consequently direct the 1st respondent to grant the petitioner exemption from payment of the service tax in respect of the works contract service other than for commercial work rendered to the Government, Local Bodies, Statutory Authorities, etc., with effect from 01.04.2015 within the stipulated time as fixed by this Court.

For Petitioner : Mr.C.Balaji

For Respondents : Mr.M.Santhana Raman
Senior Panel Counsel

ORDER

The petitioner has challenged the impugned show cause notice dated 18.04.2022 issued by the third respondent in this Writ Petition. The petitioner has already sent a reply to the impugned show cause notice on 14.06.2022.

2. It is settled law that a show cause notice can be challenged only if the same has been issued without jurisdiction, without Authority under Law or has predetermined the issue.



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3. The petitioner has challenged the impugned show cause notice primarily on the ground that the same is barred by limitation. Infact, he has already sent a reply to the same as early as on 14.06.2022. The question of entertaining this Writ Petition at this stage, that too when the petitioner has already sent a reply in the month of June, 2022 itself, will not arise.

4. The only relief that can be granted to the petitioner is to permit him to send an additional reply, stating the grounds which have been raised in this Writ Petition, to the respondents and to direct the respondents to consider the same on merits and in accordance with law and pass final orders, pursuant to the impugned show cause notice dated 18.04.2022. No prejudice would be caused to any of the parties, if such a direction is issued by this Court.

5. For the foregoing reasons, this Writ Petition is disposed of by permitting the petitioner to send an additional reply to the impugned show cause notice, raising the grounds which have been raised in this Writ Petition, to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said additional reply



W.P.No.1936 of 2---

WEB COPY

from the petitioner, the third respondent shall pass final orders on merits and in accordance with law, with regard to the impugned show cause notice dated 18.04.2022, within a period of eight weeks thereafter. The petitioner shall co-operate in the enquiry proceedings pursuant to the show cause notice dated 18.04.2022.

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

24.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
vsi2



W.P.No.1936 of 2017

To
WEB COPY

- 1.The Secretary,
The Government of India,
Ministry of Finance,
New Delhi - 110 001.
- 2.The Commissioner of GST & Central Excise,
Salem Commissionerate,
No.1, Foulkes Compound,
Anaimedu, Salem - 636 001.
- 3.The Assistant Commissioner of GST & Central Excise,
Salem I Division, No.106, 3rd Floor, Varalakshmi Orchid,
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WEB COPY



W.P.No.1936 of 2023

ABDUL QUDDHOSE, J.

vsi2

W.P.No.1936 of 2023

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