IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.01.2023**

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33684 of 2022
and W.M.P.No.33147 of 2022

M/s Garudalaya Transports
Rep. By its Partner,
K.Shankara Pandian,
No.1A, Sama Colony, Trichy Road,
Ramanathapuram,
Coimbatore – 641 045. .. Petitioner

Vs

The Deputy Commissioner of GST & Central Excise,
Coimbatore III Division,
D.No.1441, LG Building, Trichy Road,
Coimbatore – 641 018. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the Respondent by proceedings in C.No. V / 15 / 198 / 2021 S.Tax ADJN dated 22.09.2022 and quash the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.Gajendran Ravi
for Mr.B.Ramana Kumar (CGSSC)

ORDER

Mr.P.Saravana Sowmiyan, learned counsel for writ petitioner and Mr.Gajendran Ravi, learned counsel representing

Mr.B.Ramana Kumar, learned Revenue counsel (CGSSC) who accepts notice on behalf of the sole respondent are before this Court.

2. Owing to the short perimeter within which captioned matter perambulates the main writ petition was taken up with the consent of both sides.

3. Short facts shorn of granular particulars are that the writ petitioner firm is engaged in the business of operating transport services (passenger transport) between Coimbatore and Chennai; that according to the writ petitioner, the buses are not air-conditioned; that in and by a notification dated 20.06.2012 (Notification No.25/2012) there is an exemption for non-air conditioned buses but 'order dated 22.09.2022 bearing C.No. V/15/198/2021 S.Tax ADJN' (hereinafter referred to as 'impugned order' for the sake of convenience and clarity) came to be made under Section 73 of Finance Act, 1994; that this impugned order was preceded by a 'show cause notice dated 18.10.2021' (hereinafter referred to as 'SCN' for the sake of convenience and clarity); that the writ petitioner had responded to this SCN by way of reply dated 20.12.2021; that the writ petition is predicated primarily on the ground that post-SCN and reply, the respondent

has obtained some material dated 26.08.2022 from a third party and the impugned order has been made on that basis.

4. The primary contention of learned counsel for writ petitioner is post-SCN and reply on 18.10.2021 and 20.12.2021 respectively, a document which came into existence thereafter and which was obtained by the respondent only on 26.08.2022 has been made the basis for making the impugned order. Therefore, the writ petitioner never had occasion to respond *qua* this document. Learned counsel for writ petitioner draws the attention of this Court to paragraph 13.5 of the impugned order, which reads as follows:

> *'13.5 In order to verify the genuineness of the claim made by the service provider regarding two buses owned by them were having the facility of Air conditioner or non-air conditioner, a reference made to M/s Redbus (Online ticket booking agent) vide letter C.No.V/15/190-2021-ST Adjn (DC) dated 22.08.2022 and M/s Redbus vide their letter dated 26.08.2022 replied that "all the bookings made for the Bus Operator (M/s Garudalaya Transport) through their portal in FY 2016-17, were in the category of AC bookings".'*

5. Responding to the above, learned Revenue counsel submitted that it is well open to the respondent to collect and rely on material in a legal drill under Section 73 of the Finance Act, 1994.

6. The issue is not collecting and relying on material but it is making an order on a document which is post-SCN and reply and obtained post-SCN and reply. On this short point, impugned order is set aside.

7. The respondent is directed to issue SCN afresh to the petitioner citing the aforementioned 22.08.2022 document (obtained on 26.08.2022) captured in paragraph 13.5 of the impugned order, give an opportunity to the petitioner to respond to the SCN, take into account the response and thereafter make an order afresh on merits of the matter and in accordance with law as expeditiously as the official business of the respondent would permit but in any event within eight weeks from today i.e., on or before 10.03.2023.

8. Though obvious it is made clear that all the rights

and contentions on both sides are left open for being adjudicated upon when SCN is issued afresh as per directive of this Court set out supra.

9. Captioned writ petition is disposed of in the aforesaid manner with the aforesaid directive. Consequently captioned WMP is disposed of as closed. There shall be no order as to costs.

06.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Deputy Commissioner of GST & Central Excise,
Coimbatore III Division,
D.No.1441, LG Building, Trichy Road,
Coimbatore – 641 018.

M.SUNDAR,J.,

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