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W.P.No.1756 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.1756 of 2024
and W.M.P.No.1810 of 2024

M/s.ABT Limited,
Represented by its Company Secretary,
Mr.S.Elavazhagan,
180, Race Course Road,
Coimbatore-641 018.

... Petitioner

-VS-

The Additional Commissioner of GST & Central Excise,
O/o.the Commissioner of GST & Central Excise (Audit),
6/7, A.T.D.Street, Race Course Road,
Coimbatore-641 018.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in show cause notice No.34/2023 (ADC) (DIN:20231259XT000000DE22) dated 14.12.2023 along with a summary of show cause notice (Form GST DRC-01) dated 14.12.2023 on the file of the respondent for the period July 2017 to March 2021 and quash the same.



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For Petitioner : Mr.I.Dinesh
for Mr.Baskar G.

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

The petitioner assails a show cause notice dated 14.12.2023.

2. The petitioner asserts that it is a public limited company engaged in the business of supply of light vehicles and parts thereof as also the servicing of such vehicles. The petitioner further asserts that it is a registered person under GST laws in respect of multiple places of business. The books of account of the petitioner for the financial years 2017-2018 to 2020-2021 were audited by an audit group by issuing notice in Form GST ADT-01. Pursuant to such audit, a draft audit report containing audit observations was issued. This was followed by a revised draft audit report and eventually the issuance of an audit report in Form GST ADT-02 on 07.09.2023. Thereafter, a show cause notice dated 13.09.2023 was issued under Section 73 of the Central Goods and Services Tax Act, 2017 (the CGST Act) in respect of about 11 audit observations and a separate show cause notice under Section 74 of the CGST Act on 14.12.2023 in respect of about 5 audit



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observations. The later show cause notice is the subject of challenge herein.

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3. Learned counsel for the petitioner challenges the show cause notice on about three grounds. The first ground of challenge is that the audit report did not record findings of fraud, wilful-misstatement or suppression of fact in respect of any of the observations made therein. Learned counsel contends that in the absence of such findings in the audit report, the proper officer does not have the jurisdiction to proceed under Section 74. The second ground of challenge is that intimation in Form GST DRC-01A was not issued to the petitioner. While learned counsel admits that Rule 142(1) of the Central Goods and Services Tax Act Rules, 2017 (the CGST Rules) were amended by replacing the word 'shall' with 'may', he contends that the said amendment is prospective and, therefore, would not apply to the present proceedings which relate both to the period prior to and after amendment. The third ground of challenge is that the show cause notice relates to the unit of the petitioner bearing GST Registration No.33AABCA8398K1ZA and, therefore, expenditure relating to only such unit should have been taken into consideration. By referring to the expenditure figures for the petitioner on a



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consolidated basis and comparing it with the stand alone figures for the relevant unit, it is submitted that the show cause notice was issued by disregarding this aspect. Learned counsel further contends that the petitioner would have been in a position to provide relevant documents if the respondent had uploaded the communication issued on 04.07.2023 on the GST portal instead of sending the same by way of e-mail.

4. Mr.A.P.Srinivas, learned senior standing counsel, accepts notice on behalf of the respondent. He submits that Section 65 of the CGST Act does not prescribe that the audit report should contain findings that it is an appropriate case for action under Section 74 of the CGST Act. Therefore, he submits that the show cause notice was issued by the proper officer in accordance with law. He further submits that the petitioner is in a position to respond to the show cause notice and raise the objections raised in the writ petition. Hence, he submits that writ petition is liable to be dismissed.

5. Ordinarily, interference with a show cause notice may be warranted in exercise of discretionary jurisdiction only where such show cause notice was issued without jurisdiction or where, even if one proceeds on the basis



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that statements in the show cause notice are correct, no case is made out for the threatened action.

6. The principal contention of the petitioner was that the audit report did not contain findings of fraud, wilful-misstatement or suppression of facts. Section 65 of the CGST Act deals with audit by a tax authority and sub-section (7) thereof is particularly relevant for this case. Sub-section (7) is set out below:

“Section 65(7):

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74.”

The text of sub-section (7) indicates that the audit conducted under sub-section (1) thereof should result in the detection of tax not paid or short paid or erroneously refunded, or that Input Tax Credit (ITC) was wrongly availed or utilised. On examining the audit report, undoubtedly, it indicates that tax was not paid or short paid or that ITC was wrongly availed or



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utilised. Thus, the obligation imposed by statute with regard to the content of the audit report appears to be satisfied. Learned counsel for the petitioner contended that the audit report should also contain findings of fraud or wilful-misstatement or suppression of facts. There is nothing in the language of Section 65 to indicate that the audit report should contain such findings. On the contrary, subject to the audit report disclosing the aforesaid, sub-section (7) of Section 65 prescribes that the proper officer may initiate action under Section 73 or 74. Thus, the relevant provision indicates that the proper officer has the option. It is needless to say that the proper officer has to allege fraud, wilful-misstatement or suppression of fact, if he initiates action under Section 74. It is not the petitioner's case that such assertions or allegations are not contained in the show cause notice.

7. The second ground canvassed by the petitioner was that intimation in Form GST DRC-01A was not issued. Although Rule 142(1) of the CGST Rules was amended, learned counsel submits that such amendment is prospective. The show cause notice in Form GST DRC-01A was issued on 14.12.2023, which is subsequent to the date of amendment. Therefore, even



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if the amendment is prospective, the amendment would apply with regard to the impugned show cause notice. The last objection of the petitioner to the show cause notice was on the basis that expenses were taken from the consolidated balance sheet. This contention does not justify interference with the show cause notice under Article 226 of the Constitution of India.

8. For reasons set out above, no case is made out to interfere with the impugned show cause notice. Therefore, W.P.No.1756 of 2024 is dismissed by leaving it open to the petitioner to reply to the show cause notice. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J



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To

The Additional Commissioner of GST & Central Excise,
O/o.the Commissioner of GST & Central Excise (Audit),
6/7, A.T.D.Street, Race Course Road,
Coimbatore-641 018.

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