



W.P.No.25972 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.25972 of 2024 &
W.M.P.Nos.28359, 28361 and 28362 of 2024

M/s.Sri Shivasakthi Mercantile Private Ltd,
Represented by its Director,
Mr.Vinod Kothari,
No.662/2, T.H.Road, Tondiarpet,
Chennai - 600 081.

... Petitioner

Vs.

1.The Assistant Commissioner (State Tax),
Tondiarpet Assessment Circle,
No.32, Elephant Gatre Bridge Road,
Chennai - 600 003.

2.The Additional Director,
Director General of GST Intelligence (DGGI),
Chennai Zonal Unit,
5th & 8th Floor, BSNL Building,
Greens Road, Chennai - 600 006.

4.The Additional / Joint Commissioner of CGST & Central Excise,
GST Chennai South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai - 600 035.

5.The Branch Manager,
Axis Bank,
549, Thiruvottiyur High Road,
Korukkupet, Old Washermenpet,
Chennai - 600 021.

... Respondents



W.P.No.25972 of 2024

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the respondent passed in GSTIN:33ABCCS1225K1ZL/2019-2020, dated 16.04.2024 and the connected Order under Section 73 of the summary of the order in Form GST DRC-07, dated 16.04.2024 both issued in Reference No.ZD330424126860N and quash the same impugned proceedings as passed contrary to Section 6(2)(b) of Tamil Nadu Goods and Service Tax Act, 2017 and also contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)
for R1 and R2

Mr.Sai Srujan Tayi
Senior Standing Counsel for R3

ORDER

The writ petition has been filed to challenge and quash the order issued under Section 73, along with the summary of the order in Form GST DRC-07, dated 16.04.2024, by the first respondent.

2. The learned counsel for the petitioner submits that the Central Authority, being the second respondent in this case, had already initiated proceedings reversing the ineligible input tax credit against the petitioner by



W.P.No.25972 of 2024

issuing a show cause notice No.39/2023 dated 31.03.2023 for the assessment year 2019-2020. He further submits that for the same subject matter, the first respondent again passed the impugned order on 16.04.2024 for the year 2019-2020, which is contrary to Section 6(2)(b) of the CGST/TNGST Act, 2017, and without authority of law.

3. The learned counsel further submits that the petitioner in their reply to the first respondent dated 13.03.2023 already stated that the Central Authority had already initiated the process by conducting inspections and recording statements from the petitioner. Hence, the ASMT notice dated 13.02.2023 should have been withdrawn. Despite this, the first respondent proceeded to issue a show cause notice in Form DRC-01, dated 16.11.2023, and later passed the impugned order on 16.04.2024 without jurisdiction. In light of these facts, the learned counsel argues that the impugned orders passed by the first respondent are in contravention of Section 6(2) of the CGST/TNGST Act, 2017, and are void for want of jurisdiction. Moreover, the first respondent's actions are in clear violation of the principles of natural justice and the statutory provisions governing the issue. In support of his contentions, the learned counsel refers to the clarifications issued by the Central Board of Excise and Customs, dated 05.10.2018, and by the GST Policy Wing, dated 22.06.2020. According to these clarifications, once the



W.P.No.25972 of 2024

Central Authorities have initiated proceedings, the State Authorities should not proceed independently on the same issue. Hence, the learned counsel prays that the impugned orders be set aside as they were passed without providing an adequate opportunity to the petitioner.

4. *Per contra*, the learned Additional Government Pleader appearing for the first and second respondents, and the learned Senior Standing Counsel appearing for the third respondent, who made their submissions supporting the orders impugned herein.

5. I have heard the submissions of both sides and perused the material available on record.

6. Upon thorough examination of the arguments presented and the material on record, this Court finds substantial force in the petitioner's contentions. It is evident that the Central and State Authorities should not proceed concurrently on the same issue, as clarified by the circulars issued by the Central Board of Excise and Customs dated 05.10.2018 and the GST Policy Wing dated 22.06.2020. These guidelines clearly stipulate that once proceedings have been initiated by one authority, the other authority must refrain from independently pursuing the same matter, ensuring that



W.P.No.25972 of 2024

taxpayers are not subjected to parallel proceedings for the same cause. In addition, the petitioner made a significant tax payment under CGST and SGST through Form GST DRC-03, even before the show cause notices were issued by both respondents. This payment, which amounted to more than 10% of the disputed tax, was not credited or acknowledged in the impugned order, further showing that the first respondent failed to properly consider the petitioner's efforts to comply with tax regulations. Furthermore, the reply dated 13.03.2023, filed by the petitioner in response to the ASMT-10 notice dated 13.02.2023, was not at all considered by the first respondent, who proceeded to pass the impugned orders without taking it into account.

7. In light of these findings, this Court concludes that the impugned orders are unsustainable in law, having been passed without providing the petitioner with a fair opportunity to present their case. Accordingly, the impugned orders are set aside and the matter is remanded to the first respondent / State Authority with the following directions:-

(i) The petitioner shall file their reply/objection along with the required documents, if any, to the respondent within a period of two weeks from the date of receipt of a copy of this order.



W.P.No.25972 of 2024

(ii) On filing of such reply/objection by the petitioner, the first respondent shall consider the same after issuing a 14 days clear notice by fixing the date of personal hearing and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible. It is made clear that the order to be passed by the state authority should be done without being influenced by the observations made by this Court.

(iii) In view of the bank attachment made in relation to the ongoing proceedings with the central authority, the bank is directed to defreeze the account upon production of this order.

8. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

**05.09.2024
(2/2)**

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

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W.P.No.25972 of 2024

To

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W.P.No.25972 of 2024

KRISHNAN RAMASAMY.J.,

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