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W.P. No. 34447 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No. 34447 of 2024

and

W.M.P. Nos. 37322 and 37323 of 2024

Sarala Rajendran

... Petitioner

Vs.

1.Union of India,
Rep. By its Secretary Revenue,
Ministry of Finance,
128 A, North Block,
New Delhi-110 001.

2.The Additional Commissioner of GST and Central Excise,
Central Goods and Service Tax Commissionerate,
Chennai North, M.G.Road,
Nungambakkam,
Chennai-600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call upon the records pertaining to the show cause notice No.GEXCOM/AE/INV/GST/4744/2024-AE dated 01.08.2024 and the DIN No.20240759XM000000B2B0 on the file of the 2nd Respondent and to quash the same.



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For Petitioner : Mr.J.V.Niranjan
For Respondents : Mr.K.S.Ramaswamy
Senior Standing Counsel

ORDER

The present writ petition is filed challenging the impugned demand/ show cause notice dated 01.08.2024 on the premise that jurisdictional fact necessary for invoking Section 122 (1A) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as “CGST Act”) does not exist.

2. The learned counsel for the petitioner placed reliance upon Section 122 (1A) of the Act, which reads as under:

“122. (1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”

3. It was then submitted that the jurisdictional fact to invoke Section 122(1A) of the Act is to find that the petitioner has retained the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of sub-section (1) to Section 122 of the CGST Act, and it is at their instance that such transactions



were conducted. It is submitted that in the absence of finding of the above jurisdictional fact, the show cause notice itself is bad for want of jurisdiction.

4. To the contrary, it is submitted by the learned counsel for the Respondents by placing reliance upon the show cause notice which runs to more than 40 pages that filing of the present writ petition challenging the show cause notice is premature and in any view there are findings in the impugned notice setting out the involvement of the petitioner. Illustratively the learned counsel for the Respondents would place reliance upon paragraph 26, which is extracted hereunder:

“26. Since Shri. Thehsu Ethiraj Gridharaj and his wife Smt. Sarala Gajendran are directors of CIIP as well as HIPL and ETPL, they have well planned and executed this modus operandi so as to pass on the input tax credit wrongly to CIPL. Further they have aided/abated CIPL to avail and utilise input tax credit fraudulently by issuing invoices without supply of goods/services. Further, Shri. Senthilvelan, working as Production Manager in HIPL in his statement dated 07.06.2023 has stated that all the activities in their firm are being done with prior approval of their MD, Shri.Thehsu Ethiraj Gridharaj. Thus it appears that for the reasons stated above, each of them is individually liable for the penalty under Section 122(1A) which states that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (x) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on, or under section 122(3)”



5. This Court is not inclined to examine the merits or otherwise of the case. This Court would only agree that the writ petition ought not be entertained at the stage of show cause notice except in exceptional circumstances. In this regard, it may be relevant to refer to the following judgments:

i) Union of India v. Hindalco Industries, reported in (2003) 5 SCC 194:

“12. There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution either at the stage of the show-cause notice or at the stage of assessment where alternative remedy by way of filing a reply or appeal. ...”

ii) State of U.P. v. Anil Kumar Ramesh Chandra Glass Works, reported in (2005) 11 SCC 451:

“6. ...In any event, this Court had repeatedly held that Article 226 should not be permitted to be invoked in order to challenge show-cause notices. ...”

iii) Union of India v. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28:

“15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.”



iv) Special Director v. Mohd. Ghulam Ghouse, reported in (2004). 3 SCC 440 :

“5.This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. ...”

6. It may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *CIT v. Vijaybhai N. Chandrani, reported in (2013) 14 SCC 661* wherein while dealing with the challenge to the high court rejecting the writ petition filed against the show cause notice it was observed as under:



“14.In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the assessing authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.”

7. It is submitted that the show cause notice has been issued without even issuing a summon. It is further submitted by the learned counsel for the petitioner that without even obtaining any statement from the petitioner, the impugned show cause notice has been issued.

8. To a pointed question as to if there is any provision which mandates that obtaining a statement was a condition precedent for issuance of show cause notice, the learned counsel for the petitioner was unable to point out any provision.



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9. In view thereof, it is open to the petitioner to file their objections to the notice within a period of 4 weeks from the date of receipt of a copy of this order.

If any such objections/ reply is filed by the petitioner needless to say the Respondents shall consider the same in accordance with law and after affording the petitioner a reasonable opportunity of hearing proceed with assessment/ adjudication process keeping in view that this Court has not expressed any view of merits.

10. The writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

19.11.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

MSM



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MOHAMMED SHAFFIQ, J.

MSM

To:

1.The Secretary Revenue,
Union of India, Ministry of Finance,
128 A, North Block,
New Delhi-110 001.

2.The Additional Commissioner of GST and Central Excise,
Central Goods and Service Tax Commissionerate,
Chennai North, M.G.Road,
Nungambakkam, Chennai-600 034.

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