IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.35949, 35953
and W.M.P.Nos.35948, 35949, 35952 of 2023

M/s.KPR Concrete Readymix
Represented by its Managing Partner
Shri V.Selvaraju
3/520A7 Salem Main Road
Chemical Nagar, Akkampet PO
Sankari, Salem, T.N - 637 301. ... Petitioner in both WP's

-vs-

The State Tax Officer,
Intelligence Salem. ... Respondent in both WP's

PRAYER in W.P.No.35949 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in Notice passed by the Respondent herein vide Show Cause Notice SCN GSTIN: 33AATFK4601J1Z8 dated 31.08.2023, issued along with Form GST

DRC-01 Reference No.ZD330723001946H dated 31.08.2023 and seeking quash of the same with a consequential direction to the Respondent to drop the proceedings taking into consideration the facts of the case and the submissions made by the Petitioner.

PRAYER in W.P.No.35953 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records in Notice passed by the Respondent herein vide Show Cause Notice SCN GSTIN: 33AATFK4601J1Z8 dated 31.08.2023, issued along with Form GST DRC-01 Reference No.ZD330823187708W dated 31.08.2023 and seeking quash of the same with a consequential direction to the Respondent to drop the proceedings taking into consideration the facts of the case and the submissions made by the Petitioner.

For Petitioner in both WP's	:	Ms.M.N.Bharathi
For Respondent in both WP's	:	Mr.Prasanth Kiran, GA (Taxes)

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COMMON ORDER

The petitioner assails two separate notices issued on 31.08.2023 in Form GST DRC-01 in these two writ petitions. Except for the assessment periods being different, the issue is common and is, therefore, disposed of by this common order.

2. The petitioner states that transportation services are provided to customers and that such services are classifiable under Services Accounting Code (SAC). Accordingly, the petitioner paid GST at 12% on such services. In those circumstances, it is stated that the respondent issued a notice in Form DRC-01A alleging short payment on the ground that the services provided by the petitioner should be classified under SAC 996601, which attracts GST at 18%. The petitioner replied to the said notice and explained that its services are classifiable under SAC 996511 and also produced relevant documents such as the consignment note. A notice in Form

DRC-01 came to be issued thereafter by not accepting the reply of the petitioner. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner submits that the impugned notices are in the nature of an adjudicatory order. He further submits that the nature of services provided by the petitioner cannot reasonably be classified under any heading other than SAC 996511. Since the impugned notices are in the nature of adjudicatory orders, learned counsel submits that replying thereto could become an empty formality.

4. In response to these contentions, Mr.Prasanth Kiran, learned Government Advocate, who accepts notice on behalf of the respondent, submits that the impugned notices are undoubtedly show cause notices. He also points out that the petitioner responded to the show cause notices by seeking further time. Even if adverse

orders were to be issued after examining the petitioner's reply, learned counsel submits that the petitioner is entitled to file statutory appeals in respect thereof. Therefore, learned counsel submits that the impugned notices contain no infirmity and that no interference is called for.

5. In exercise of discretionary jurisdiction, there are limited circumstances in which a show cause notice may be interfered with. The foremost of such circumstances is if the show cause notice was issued without jurisdiction. A show cause notice may also be interfered with if no case is made out even assuming that the statements made in the show cause notice are correct. In the case on hand, the dispute revolves around the classification of services provided by the petitioner. In the impugned notices, the respondent has taken the view that the services provided by the petitioner qualify as rental services which are classifiable under the SAC 996601 because of the extent of control exercised by the person availing of

the services.

6. Upon examining the notices in Form DRC-01, the replies thereto and the impugned notices, I am of the view that this case does not fall within the limited category of cases in which a show cause notice may be assailed in a proceeding under Article 226 of the Constitution of India.

7. For reasons set out above, W.P.Nos.35949 and 35953 of 2023 are disposed of by declining to interfere with the impugned order. The petitioner is at liberty to reply to the impugned show cause notices and raise all objections in respect thereof. The respondent, in turn, is directed to consider all such objections before taking a decision in the matter. Consequently, W.M.P.Nos.35948, 35949, 35952 of 2023 are closed.

08.01.2024

rna
Index : Yes / No
Internet : Yes / No

Neutral Citation: Yes / No

To

The State Tax Officer,
Intelligence Salem.

SENTHILKUMAR RAMAMOORTHY,J

rna

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