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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.19284 of 2021
and
W.M.P.(MD)Nos.16032 of 2021 and 5247 of 2023

M/s.Famina Shopping Mail Pvt. Ltd.,
Rep. by its Director,
S.M.I.Mohamed Abubacker,
107, A.Williams Road,
Contonment,
Tiruchirappalli – 620 001. ... Petitioner

versus

1. The Assistant Commissioner of
GST & Central Excise,
Division – I, Office of the Commissioner
of Central Excise & Service Tax,
No.1, Williams Road,
Contonment,
Tiruchirappalli – 620 001.

2. The Deputy Director,
Director General of G.S.T. Intelligence,
Trichy Regional Unit,
Tiruchirappalli – 620 001.

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3. Senior Intelligence Officer,
Director General of G.S.T. Intelligence,
Trichy Regional Unit,
Tiruchirappalli – 620 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the impugned proceedings issued by the second respondent in OR No.20/2019-GST dated 12.10.2021 which is arbitrary, illegal and wholly without jurisdiction from the file of the second respondent and quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Mr.N.Dilipkumar,
Standing Counsel

ORDER

This writ petition is filed challenging the impugned proceedings dated 12.10.2021, issued by the second respondent in OR No.20/2019-GST. By the impugned proceedings, the second respondent demanded the petitioner to pay the tax amount of Rs.47,41,748/- along with the interest and penalty under Section 74(5) of the Act, failing which, a show cause notice will be issued under Section 74(1) of the Act.

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2. The learned counsel appearing for the petitioner submits that the petitioner is running a Departmental Store. There was a search and seizure operation in the petitioner's premises, followed by which, the petitioner was issued with the impugned proceedings dated 12.10.2021. She further submits that the impugned proceedings has been issued by the second respondent, who is not the proper Officer and adjudicating authority as contemplated under Sections 73 and 74 of the CGST Act, which has been highlighted in Circular No.23/22021 dated 04.10.2021. She has also relied upon the Circular issued by the Commissioner of Commercial Tax, Government of Tamil Nadu, in No.23/2021, dated 04.10.2021, wherein, it is stated that the show cause notice can be issued only by the jurisdictional proper Officer concerned and not by the Inspecting Officers. Since the impugned proceedings has not been issued by the proper officer, it is liable to be quashed.

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3. The learned Senior Standing Counsel appearing for the respondents submits that inspection was conducted in the petitioner's premises on 06.06.2019 and 20.08.2019 and they found that the petitioner sold the goods, which were procured from the local suppliers in their own packaged unit containers. Since the petitioner did not discharge the GST amount, a summon was issued to the petitioner on 26.06.2019, which was challenged by the petitioner in W.P.(MD)No. 16842 of 2019 before this Court and this Court, by order dated 30.07.2019, directed the respondents to conduct an enquiry and issue a show cause notice and adjudicate the case, within a period of twelve weeks. Pursuant to the direction of this Court, a pre-show cause notice was issued in Form GST DRC-01A dated 12.10.2021, which is challenged in this writ petition.

4. The learned Senior Standing Counsel further submits that the circular No.23/2021 dated 04.10.2021, relied upon by the petitioner, was issued by the Commissioner of Commercial Tax (State) laying

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down the proper procedure of adjudication by the Intelligence Wing Officer. The said circular is applicable to the State GST Officers and it is not binding on the central tax officer. He further submits that CBIC has issued a Circular No.31/05/2018-GST dated 09.02.2018 assigning proper Officers under various Sections of the statute and giving powers to issue show cause notice. Therefore, the second respondent is the proper officer to issue the impugned proceedings.

5. The learned Senior Standing Counsel further submits that the impugned proceedings is only a pre-show cause notice and it has been issued in Form GST DRC 01A in order to afford an opportunity to the petitioner to resolve the dispute by depositing the tax and interest at pre-show cause notice stage and also to reduce the litigations.

6. This Court considered the rival submissions and perused the materials placed on record.

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7. The respondents have conducted an inspection on the petitioner's premises. During the inspection, they found that during the period from 22.09.2017 to 20.08.2019, the petitioner company has effected outward supply of taxable goods viz., certain grocery items, under the unregistered brand name, but, they have not paid the appropriate GST and not fulfilled either one of the conditions prescribed in the Notification No.27/2017-Central Tax (Rate) dated 22.09.2017 to avail exemption. Therefore, the impugned proceedings has been issued.

8. As per the Circular dated 09.02.2018 issued by the Central Board of Indirect Taxes and Customs, Central Government of India, the officers of Director General of G.S.T. (Intelligence) shall exercise the power to issue show cause notice. Therefore, this Court is not inclined to accept the submission of the petitioner that the impugned proceedings has been issued by the incompetent authority.

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9. Moreover, the impugned proceedings is only a pre-show cause notice. Therefore, this writ petition is dismissed, with liberty to the petitioner to offer his explanation, if any, before the second respondent. No costs. Consequently, connected miscellaneous petitions are closed.

14.03.2024

NCC : Yes / No.
Index : Yes / No.
Internet: Yes / No.
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To

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B.PUGALENDHI, J.

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