BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM

**THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) Nos.25548 & 26389 of 2023**
and
**W.M.P.(MD) Nos.21730, 21731, 22700 & 22701 of 2023 and 1572 & 1588 of 2024**

W.P.(MD) No.25548 of 2023

M/s.Rasathe Garments
Represented by its Partner,
No.443, Main Bazaar,
Virudhunagar. ... Petitioner

Vs.

The State Tax Officer (ST) (Inspn.),
Office of the Deputy Commissioner (Inspn.),
Tirunelveli. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in GSTIN : 33AAHFR7102F1ZK/2017-18 and quash the Notice in Form GST DRC-01 dated 25.09.2023 issued therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.S.Raja Jeya Chandra Paul

For Respondent : Mr.Veerakathiravan
Additional Advocate General
Asst. by Mr.R.Suresh Kumar
Additional Government Pleader

W.P.(MD) No.26389 of 2023

M/s.Rasathe Garments
Represented by its Partner,
No.443, Main Bazaar,
Virudhunagar. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2.The State Tax Officer (ST) (Inspn.),
Office of the Deputy Commissioner (Inspn.),
Tirunelveli. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the first respondent in his proceedings in Circular No.13/2022-TNGST (PP2/GST-15/114/2022) dated 08.11.2022 and quash the same.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.S.Raja Jeya Chandra Paul

For Respondents : Mr.Veerakathiravan
Additional Advocate General
Asst. by Mr.R.Suresh Kumar
Additional Government Pleader

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**COMMON ORDER**

By this common order, both these Writ Petitions are being disposed of.

2. In W.P.(MD) No.25548 of 2023, the petitioner has challenged the impugned Show Cause Notice in Form GST DRC-01 dated 25.09.2023.

3. In W.P.(MD) No.26389 of 2023, the petitioner has challenged the *vires* of the Circular No.13/2022-TNGST (PP2/GST-15/114/2022) dated 08.11.2022 issued by the first respondent therein namely, Commissioner of Commercial Taxes [hereinafter referred to as 'first respondent' for the sake of convenience and clarity].

4. The case of the petitioner both on merits and on law is that the petitioner's premises was inspected by the State Tax Officer (ST) (Inspn.), respondent in W.P.(MD) No.25548 of 2023/second respondent in W.P.(MD) No.26389 of 2023 [hereinafter referred to as 'second respondent' for the sake of convenience and clarity] between 14.06.2023 and 16.06.2023. Based on the inspection and the statement obtained from the petitioner,

the second respondent issued the impugned Show Cause Notice in Form GST DRC-01 dated 25.09.2023 to the petitioner.

5. The learned Senior Counsel for the petitioner would submit that taking note of the difficulties faced by the assessees, the Principal Secretary/Commissioner had withdrawn Circular No.72/2019-TNGST dated 31.05.2019 bearing reference RC.No.26/2019/A1/Taxation *vide* Circular No.23/2021 dated 04.10.2021 bearing reference No.PP2/GST-15/54/2021.

6. It is submitted that in Circular No.23/2021 dated 04.10.2021, it has been clarified that for the inspection completed and adjudication initiated as on 04.10.2021, by way of issue of Notice etc., such cases have to be pursued by the Inspecting Officers themselves and in those cases where inspections are complete and adjudication have not been initiated by the Inspecting Officers, Inspection Reports must be sent to the jurisdictional Officer for further action. Paragraph 5.2 and 5.3 read as under:-

| ***Paragraph 5.2*** | ***Paragraph 5.3*** |
|---|---|
| 5.2) On receipt of the inspection report from the inspecting officers, the Joint Commissioner should examine the same with the defects noticed in the IF approved. They have to see whether all the issues to be examined as contained in the IF, have been examined and discussed in the said inspection report and on satisfying the same, the inspection report could be approved by them. If any point/s as contained in the IF has/have been omitted to be discussed in the inspection report then the inspection officers concerned should be directed to examine the omitted point/s of the IF and resubmit the inspection report to the Joint Commissioner. | 5.3) Once the inspection report is approved, the group head of Inspecting team shall send his report along with documents collected at the time of inspection to the jurisdictional proper officer within the stipulated time of 30 days from the date of conclusion of inspection. The inspection team shall send the inspection report through back office system itself to the jurisdictional proper officer concerned. A task for adjudication has to be auto generated to the proper officer login once the inspection team sent the inspection report in the portal. A separate MIS report will be created to watch the progress on the follow up action on the number of inspection report sent by inspection team and status of adjudication from proper officer side. However, until the development of the back office, the inspecting officer must send the inspection report manually to the proper officer concerned. Both inspecting officer and jurisdictional proper officer shall maintain suitable registers for this purpose and these registers have to be checked by the Deputy Commissioner concerned during the time of inspection of the subordinate offices. |

7. It is submitted that a well considered Circular issued by the Principal Secretary/Commissioner on 04.10.2021 in Circular No.23/202

bearing reference No.PP2/GST-15/54/2021 was later withdrawn *vide* impugned Circular No.13/2022-TNGST dated 08.11.2022 bearing reference No.PP2/GST-15/114/2022 by the first respondent in W.P.(MD) No.26389 of 2023. It is submitted that there is scope of patent bias and therefore, not only the Circular No.13/2022-TNGST dated 08.11.2022 impugned in W.P.(MD) No.26389 of 2023 but also the Show Cause Notice in Form GST DRC-01 dated 25.09.2023 impugned in W.P.(MD) No.25548 of 2023 are liable to be quashed.

8. The learned Senior Counsel for the petitioner would draw attention to a similar Circular issued by the Principal Commissioner (GST) in Circular No.169/01/2022-GST dated 12.03.2022 bearing reference F.No.CBIC-20016/2/2022-GST which was later withdrawn.

9. Defending the impugned Show Cause Notice dated 25.09.2023 issued in Form GST DRC-01 and the impugned Circular No.13/2022-TNGST dated 08.11.2022, the learned Additional Advocate General for the respondents would submit that there are no merits in both Writ Petitions. He would further submit that the second respondent who has issued the impugned Show Cause Notice in Form GST DRC-01 dated

25.09.2023 is a proper officer within the meaning of Section 2(91) of the TNGST Act, 2017. It is therefore submitted that since the second respondent State Tax Officer (ST) (Inspn.) was a proper officer, there was no embargo on the said officer to issue the Show Cause Notice and adjudicate the issue.

10. He would further submit that the Principal Secretary/Commissioner of State Tax in the impugned Circular No. 13/2022-TNGST dated 08.11.2022 bearing reference No.PP2/GST-15/114/2022 has clearly provided for adequate safeguards and a reference is made to Paragraphs 3 & 4 of the aforesaid Circular which read as under:-

| ***Paragraph 3*** | ***Paragraph 4*** |
| --- | --- |

| | |
|---|---|
| 3. The inspecting officer who conducted inspection at the place of business of a taxpayer, shall issue show cause notice covering the entire issues identified for adjudication along with summary in FORM GST DRC-01A. If the taxpayer makes entire payment of tax, interest and penalty depending on the proceedings initiated under section 73 or 74 of the TNGST Act, 2017 through FORM GST DRC-03, within the reasonable time of fifteen days from the date of service of notice in FORM GST DRC-01A, the inspecting officer who issued FORM GST DRC-01A has to verify and issue FORM GST DRC-04 and conclude the proceeding by issuing FORM GST DRC-05. | 4. If the taxpayer fails to pay the tax, interest and penalty as ascertained by the inspecting officer or made partial payment or files objection in Part B of FORM GST DRC-01A within the reasonable time of fifteen days from the date of service of notice in FORM GST DRC-01A, then the inspecting officer has to issue notice along with FORM GST DRC-01 covering all the issues without any omission. **Immediately on issue of FORM GST DRC-01 along with notice, the Inspecting officer has to obtain orders of the Joint Commissioner (Intelligence) concerned for transfer of file to other proper officers working under the control of the Joint Commissioner (Intelligence) based on the revenue effect involved in the show cause notice issued as mentioned below for adjudication**:<br><br>i. Assistant Commissioner- Where revenue effect exceeds Rs.two crore.<br>ii. State Tax Officer- In all other cases, where revenue effect is upto Rs.two crore.<br><br>Where in any of the financial year, revenue involved in inspection exceeds Rs. two crore as per FORM GST DRC-01, it has to be reckoned for the purpose of transferring the file covering all the financial year for adjudication.<br><br>For example: The period of inspection covered the financial years 2017-18, 2018-19, 20l9-20 and 2020-21 and the revenue effect is as follows:<br><br>(i) Financial year 2017-18 - Rs.1.50 Cr.<br>(ii) Financial year 2018-19 - Rs.2.10 Cr.<br>(i) Financial year 2019-20 - Rs.1.80 Cr.<br>(i) Financial year 2020-21 - Rs.1.40 Cr. |

11. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Additional Advocate General for the respondent.

12. In my view, there is no embargo under the Scheme of the respective GST Enactments on the inspecting officer to issue Show Cause Notice. In fact, there is also no embargo on such officer to adjudicate the issue as long as such officer also satisfies the definition of a "proper officer" in Section 2(91) of the respective GST enactments which reads as under:-

> **2. In this Act, unless the context otherwise requires,**—
> (91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner;

13. However, with a view to eliminate the scope of bias, the inspecting officer acting as a adjudicating officer has been discharged. The impugned circular has clarified the position in Paragraphs 3 and 4. Therefore, there are no merits in the challenge to the impugned Show Cause Notice in Form GST DRC-01 dated 25.09.2023 and the impugned Circular No.13/2022-TNGST dated 08.11.2022.

14. Therefore, these Writ Petitions are disposed of by directing the second respondent State Tax Officer (ST) (Inspn.) to transmit the aforesaid Notice to the jurisdictional proper officer for adjudication in accordance with Paragraphs 4 and 5 of the impugned Circular No. 13/2022-TNGST dated 08.11.2022. This exercise shall be carried out by the second respondent State Tax Officer (ST) (Inspn.), within a period of 2 weeks from today.

15. The proper officer shall pass appropriate orders on merits and in accordance with law within a period of 90 days thereafter. The petitioner shall file reply, if any, within a period of 30 days from today. Needless to state, the petitioner shall be heard before the order is passed.

16. In the result, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.06.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:

1.The Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2.The State Tax Officer (ST) (Inspn.),
Office of the Deputy Commissioner (Inspn.),
Tirunelveli.

**C.SARAVANAN, J.**

JEN

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