BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.8675 of 2025
and
W.M.P.(MD)Nos.6485 and 6487 of 2025

Tvl. J.G. Urecone,
Represented by its Proprietor Amarnat T C,
No.385/1, 9, 10, Near Mookuthipalam,
Anandhapuram Village,
Ukkonam,
Kanniyakumari – 629 851. ... Petitioner

-vs-

The State Tax Officer,
Nagercoil (Rural) Assessment Circle,
Nagercoil,
Kanniyakumari. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records of the impugned show cause notice of the respondent dated 08.11.2024 in From GST DRC 01 D for the period of December 2023 (financial year 2023-2024) and the quash the same as illegal and devoid of merits.

For Petitioner : Mr.VR.Shanmuganathan

For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

This writ petition is filed challenging the show cause notice issued by the respondent, dated 08.11.2024.

2. The learned counsel for the petitioner submits that the impugned summary show cause notice has been issued without considering the relevant provisions of law and judicial precedents and therefore, it should be set aside on the sole ground alone. The learned counsel for the petitioner further submits that the demand for GST tax by the respondent, without a proper demand being made via Form GST DRC-07, is illegal and lacks legal sanctity. It is well-established in law that without a speaking adjudication order, the respondent cannot initiate any recovery under Section 79 of the CGST/SGST Act.

3. The learned counsel for the petitioner further submits that the respondent issued the impugned show cause notice without considering the petitioner's explanation dated 30.04.2024 and representation dated 04.02.2025. A fair opportunity must be provided to the parties before passing any order. The petitioner was not given the opportunity of hearing as required under Section

75(4) of the CGST/SGST Act, 2017, before issuing the notices dated 05.04.2024 and 08.11.2024. The respondent has passed a non-speaking order, failing to provide any reasoning for the conclusion reached in the impugned order, which is in violation of principles of natural justice.

4. The learned counsel for the petitioner also submits that the respondent should have taken into account Rule 37 of the CGST/SGST Rules, 2017, which mandates the reversal of Input Tax Credit in cases where consideration has not been paid by the buyer. Since the buyer has not made the payment, the tax input credit should be reversed to the petitioner within 180 days.

5. Mr.J.K.Jayaselan, learned Government Advocate appearing for the respondent submits that the petitioner is having an appeal remedy before the appellate Deputy Commissioner (State Tax) (GST Appeal), Tirunelveli, under Section 107 of the GST Act, 2017. However, without invoking the appeal remedy, the petitioner has straightaway approached this Court.

6. Recording the submission made by the learned Government Advocate that the petitioner is having an appeal remedy before the appellate Deputy Commissioner (State Tax) (GST Appeal), Tirunelveli, under Section 107 of the GST Act, 2017, this writ petition is disposed of, with liberty to the petitioner to approach the appellate authority and raise all the grounds raised in this writ petition in the appeal. In the event, if any appeal is filed within a period of two weeks from the date of receipt of a copy of this order, the appellate authority shall entertain the appeal without reference to the period of limitation and dispose of the same in accordance with law, within a period of three months thereafter. In the interregnum, the respondent shall maintain status quo prevailing as on date. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No **27.03.2025**
Index : Yes / No
smn2

To:-

The State Tax Officer,
Nagercoil (Rural) Assessment Circle,
Nagercoil,
Kanniyakumari.

VIVEK KUMAR SINGH, J.

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W.P.(MD)No.8675 of 2025

27.03.2025