BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.26539 of 2024
and
W.M.P.(MD) Nos.22499 to 22501 of 2024

M/s.Sri Kaleeswari Stores,
Rep., by its Partner R.Venkateshwaran,
133, TSR Big Street, Kumbakonam,
Thanjavur District-612 001. .. Petitioner

Vs.

The Assistant Commissioner (ST),
Kumbakonam Town Assessment Circle,
Kumbakonam, Thanjavur District. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the orders of the 1st respondent in Form DRC-07 with reference no. ZD331223281654H dated 30.12.2023 r/w consequential notice in Form DRC-13 with reference no. 33ABZFS9475MIZW dated 16.05.2024 and quash the same as illegal, devoid of merits, erroneous and in violation of principles of natural justice and consequently direct the respondent not to appropriate any amount equivalent to the tax demand from my bank account in pursuant to impugned consequential notice.

For Petitioner : Mr.Varun Pandian

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

It is the case of the learned counsel for the petitioner that the assessment order had been made beyond the show cause issued to the petitioner and also that the show cause notice has been issued invoking the powers of Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "the TNGST Act"), whereas the ingredients of Section 74 of the TNGST Act have not been even specified in the show cause notice. Only because there was a belated initiation of proceedings and as the time limit for initiation of proceedings under Section 73 of the TNGST Act was long over, the proceedings had been initiated under Section 74 of the TNGST Act. Therefore, he seeks interference of the orders impugned herein.

2. The learned Additional Government Pleader, on the other hand, would submit that the order impugned is an appealable order and the said

issue can also be raised before the appellate authority under Section 107 of the TNGST Act. He would further submit that as regards the delay in initiation, the Government in G.O.(Ms) No.41, Commercial Taxes and Registration (B1) Department, dated 05.04.2023, extended the time limit in respect of assessment year 2017-2018 even to initiate action under Section 73 of the TNGST Act till 30.12.2023. In view of the same, even if it is to be treated as notice under Section 73, it is well within the time limit. Hence, he would submit that no interference is required to be made in the order impugned in this writ petition.

3. I have considered the rival submissions made by the learned counsel on either side.

4. It is trite law that the recipient of a show cause notice is only bound to answer to the details given in the show cause notice and that if any order is passed by the person issuing the show cause notice beyond the scope of the show cause notice, the same cannot be sustained. For the simple reason that an order had been passed in violation of the

principles of natural justice, as the recipient was not on notice with regard to the order passed in excess to the show cause notice, the order impugned is liable to be set aside. Further, a reading of the show cause notice issued by the respondent under DRC-01 would not indicate the ingredients required for initiation of proceedings under Section 74 of the TNGST Act. The learned Additional Government Pleader brought to the notice that even under G.O.(Ms) No.41, time limit had been extended for initiation of proceedings under Section 73 and that even treating this show cause notice under Section 73, it is well within the time. The petitioner had not challenged the Government Order in G.O.(Ms) No.41. In such view of the matter, the impugned order is set aside and the matter is remitted back to the authority by considering the said show cause notice as the show cause notice issued under Section 73 of the TNGST Act and thereafter, to proceed in accordance with law. The petitioner shall submit his reply to the show cause notice dated 29.09.2023 treating the same as has been issued under Section 73 of the TNGST Act, 2017 within a period of two weeks from the date of receipt of a copy of this order and thereafter, the respondent, after affording an opportunity of hearing as prescribed under law, shall pass orders on merits and in accordance with law.

5. In fine, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.01.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

The Assistant Commissioner (ST),
Kumbakonam Town Assessment Circle,
Kumbakonam, Thanjavur District.

K.KUMARESH BABU, J.

abr

W.P.(MD) No.26539 of 2024

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