

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.3033 of 2023
and
W.M.P.No.3125 of 2023

Tvl Metal Trade Incorporation,
Rep. by its Proprietor,
No.15, Raghavan Colony,
Vadapalani, Chennai - 600 026..... Petitioner

Vs.

1.The Special Secretary,
Head of the GST Council Secretariat,
Office of the GST Council Secretariat,
5th Floor, Tower - II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi - 110 001.

2.Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Commissioner of State Taxes,
Chepauk,
Chennai - 5.

4.Assistant Commissioner of GST & Central Excise,
Audit-II Commissionerate,
No.692, 6th floor,

MHU Complex, Anna Salai,
Nandanam, Chennai - 600 035.

5.State Tax Officer,
Group -VII (Inspection - I),
Office of the Deputy Commissioner (ST),
Chennai Intelligence - I,
No.1, PAPJM Buildings,
Greams Road,
Thousand Lights, Chennai - 600 006..... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent's Summons in Ref.No.GST/INS- 01/182/2021-22/Group-VII/Intelligence-I, Chennai dated 18.10.2022 and quash the same and further direct the respondents 3 and 5 to refrain from exercising any control over the petitioner in the guise of cross- empowerment of tax authorities under the provisions of Chapter XIV (inspection, search, seizure and arrest) of Central Goods and Service Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017 till relevant notifications are issued in this regard pursuant to the recommendations of the 1st respondent, and until such time, to transfer all the proceedings initiated by the 5th respondent to the proper officer working under the control of the 2nd respondent, for taking further action.

For Petitioner : Mr.Adithya Reddy For

Respondents : Mr.Sai Srujan Tayi
Standing Counsel
for R1, R2 and R4

Mrs.K.Vasantha Mala
Government Advocate
for R3 and R5

ORDER

The petitioner has challenged the impugned Summons dated 18.10.2022 issued by the fifth respondent under Section 70 (1) of the Tamil Nadu Goods and Services Tax Act, 2017 (*Hereinafter referred to as TNGST Act, 2017*) and under Section 70 (1) of the Central Goods and Services Tax Act, 2017 (*Hereinafter referred to as CGST Act, 2017*).

2. The petitioner has challenged the impugned Summons on the ground that both the Central and State Authorities do not have powers to initiate proceedings against the petitioner simultaneously under the respective GST Acts with regard to the same subject matter. The petitioner contends that he is already facing proceedings initiated by the Central Authority and therefore, the question of the State Authority viz., the fifth respondent, initiating proceedings against the petitioner will not arise as per Section 6(2)(b) of the GST Act, 2017.

3. The petitioner has also submitted a reply to the impugned Summons issued by the fifth respondent on 27.10.2022. However, the petitioner apprehends that even without communicating the outcome of the decision taken by the fifth respondent pursuant to the reply dated 27.10.2022, the respondents are, on a day to day basis, threatening the petitioner and they have been calling upon the petitioner to come for personal hearing.

4. Admittedly, no final decision has been taken by the fifth respondent to initiate action against the petitioner under the TNGST Act, 2017. The petitioner has only been called upon to produce documents under the impugned Summons dated 18.10.2022 and he has also been called to come for personal hearing. Admittedly, the petitioner has not participated in the personal hearing and instead he has chosen to file this Writ Petition, challenging the impugned Summons. Necessarily, to substantiate his defence that he cannot be once again prosecuted by the State Authority under the TNGST Act, 2017, he has to participate in the enquiry to be conducted by the fifth respondent and only then it can be ascertained whether the proceedings initiated by the Central and State Authority are one

and the same involving the same subject matter. Truth will come out only when the petitioner appears before the respondent pursuant to the Summons received by him and not otherwise. If it is the same subject matter, the State Authority cannot prosecute the petitioner once again as the Central Authority has already initiated action against the petitioner in respect of the very same subject matter. The petitioner has sent a detailed reply on 27.10.2022 to the impugned Summons dated 18.10.2022 and even without allowing the same to be considered by the fifth respondent on merits, the petitioner has approached this Court prematurely by filing this Writ Petition.

5. As observed earlier, necessarily, the petitioner will have to participate in the personal hearing and state all his objections with regard to the action launched by the State Authority under the TNGST Act, 2017. Unless and until the petitioner participates in the impugned proceedings viz., the impugned Summons dated 18.10.2022, truth cannot be unearthed with regard to the petitioner's contentions.

6. Since the petitioner did not participate in the personal hearing afforded to him as per the impugned Summons, this Court deems it fit to

grant one more opportunity for the petitioner to participate in the personal hearing. The personal hearing is fixed by this Court on 16.02.2023 and on that date, he has to appear before the fifth respondent and state all his objections with regard to the impugned Summons.

7. For the foregoing reasons, this Writ Petition is disposed of by directing the petitioner to appear before the fifth respondent on 16.02.2023 at 10:30 a.m. without fail and state all his objections in line with his reply dated 27.10.2022 sent to the impugned Summons and the fifth respondent shall consider the petitioner's objections on merits and in accordance with law and thereafter, decide as to whether the petitioner can be prosecuted once again under the TNGST Act, 2017 when the Central Authority has already prosecuted him under the CGST Act, 2017. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

06.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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