



W.P. No.615 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.615 of 2021 and
W.M.P. Nos.681 and 683 of 2021

Tvl.Shanthi Vijay Granites,
Represented by its partner Mr.Kalurammali,
SF No.756/1-A-2B, Kelamangalam Road,
Kundamaranpalli, Denkanikottai,
Krishnagiri, Tamil Nadu - 635 113. .. Petitioner

Vs.

The Assistant Commissioner (ST),
Hosur South Assessment Circle,
Hosur. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the impugned order of Respondent in Reference No.ZA330320001552G dated 19/03/2020 and quash the same.

For Petitioner : Mr.K.Narayanan for
Adithya Reddy and
Swarnam Rajagopal

For Respondent : Ms.Amrita Dinakaran
Government Advocate



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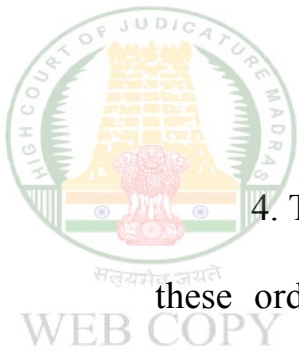
ORDER

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This writ petition is filed challenging the impugned order dated 19.03.2020 on the premise that it has been made within 2 days of issuance of Form GST DRC-01 which is the summary of the show cause notice.

2. It is submitted by the learned counsel for the petitioner that Form GST DRC-01 served on the petitioner contains only the summary, however, the annexure to DRC-01 was not furnished to the petitioner to enable them to respond. It is further submitted that the very fact that the order has been made and demand under Form GST DRC-07 has been made 2 days after issuance of GST DRC-01 is indicative of the fact that the opportunity granted was not real but illusory.

3. Today, another order dated 17.03.2020 Form GST DRC-01 has been circulated by the Revenue. It is submitted by the learned counsel for the petitioner that if assessment order in Form GST ASMT-07 has been made on the very same day viz., 17.03.2020 on which GST DRC-01 was issued, there was no real opportunity for the petitioner to respond.



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4. The learned counsel for the Respondent would submit that in any view all these orders are appealable and therefore the writ petition ought not to be entertained. It was further submitted by the learned counsel for the Respondent that DRC-07 dated 17.03.2020 was preceded by another notice dated 27.11.2018 followed by a reminder notice on 29.11.2018 and therefore the submission of the petitioner that they have not been provided with adequate opportunity is contrary to the facts. Thus, there are two orders of assessment one dated 17.03.2020 and the other dated 19.03.2020, in respect of the very same period. The Revenue is unable to explain the same.

5. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.



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6. This Court finds merit in the submission of the learned counsel for the petitioner inasmuch as the impugned order suffers from more than one infirmity.

Firstly, DRC-01 is not supported by the Annexure to show cause notice and thus the petitioner was not provided with the particulars necessary to respond. Secondly, the assessment order is made on 17.03.2020. One fails to understand as to how the show cause notice as well as the assessment order has been made on the very same day. Thus, the impugned order is made without affording any opportunity. Assuming that the order is made on 19.03.2020, it is submitted that 48 hours notice is nevertheless inadequate to respond. This Court finds that the opportunity granted was not real but illusory, thereby vitiating the proceedings.

7. In view of the above infirmities, which this Court finds to be fatal, the impugned order is set-aside. It is however open to the Respondent to re-do the assessment after providing the petitioner a reasonable opportunity in accordance with law. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

Spp/ Mka

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To:
The Assistant Commissioner (ST),
Hosur South Assessment Circle,
Hosur.



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MOHAMMED SHAFFIQ, J.

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