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W.P.No.23047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.10.2024
Pronounced on	27.01.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23047 of 2024
and
W.M.P.Nos.25135 & 25136 of 2024

Mukti Gold Private Limited,
Represented by Authorised Signatory Mr.Mahendrakumar Babulal Jain,
First Floor, Old No.15/6 and 7, New No.26/6 and 7,
Mangesh Street, T.Nagar,
Chennai, Tamil Nadu 600 017.

... Petitioner

Vs.

State Tax Officer,
Adjudication (Intelligence), Cuddalore,
Cuddalore Intelligence Division,
Commercial Taxes Building,
No.1, Vallalar Nagar, Manjakuppam,
Tamil Nadu 607 001.

... Respondents

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
respondent and quash the impugned notice under Section 130 of the
Tamil Nadu Goods and Service Tax Act, 2017 [“TNGST Act”]/Central



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Goods and Service Tax Act, 2017 [“CGST Act”] issued by the respondent dated 02.08.2024 in GDN/1236/24-25 in GSTIN 33AAHCM9068J2Z0.

For Petitioner : Mr.Vijay Narayan, Senior Advocate,
for Mr.N.V.Balaji

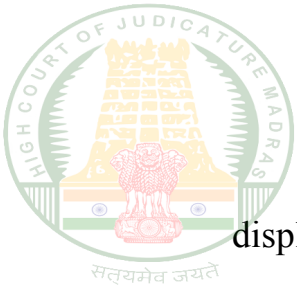
For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the confiscation notice issued by the respondent dated 02.08.2024 under Section 130 of the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter called as “TNGST Act”).

2. Petitioner's Submissions:

2.1 Mr.Vijay Narayanan, learned Senior counsel appearing for the petitioner would submit that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956. It operates a jewelery business and moved gold ornaments from Mumbai to Tamil Nadu for



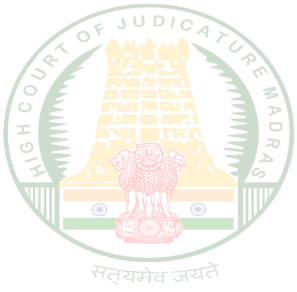
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displaying to the potential re-sellers and at exhibitions. To manage these activities, the petitioner had appointed Sri Bala Vasavi Jewels and Gems, a Coimbatore-based agent (hereinafter called as “Agent”), by virtue of agreement dated 10.12.2012, to procure orders and handle logistics. The said agreement subsist as on date.

2.2 On July 18, 2024, the petitioner sent gold ornaments weighing 11,835.16 grams, valued at Rs.8.37 Crores, to the Agent with returnable delivery challans. The Agent displayed the jewelry across Tamil Nadu, including at M/s.Bhima Jewellery, to solicit feedback before transporting the goods to Chennai.

2.3 Further, he would submit that the only intention of the petitioner was to display the jewelry at exhibition, where the re-sellers will participate and interact with the petitioner, which may possibly result in them placing orders with the petitioner.



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2.4 On 25.07.2024, the goods were moved from the Agents to Bhima Jewelery, Madurai, to display the goods and invite them for IIJS Show, which was scheduled to be conducted at Mumbai during the month of August, 2024.

2.5 On July 26, 2024, while returning to Chennai, the transport vehicle was stopped by the local police near Panruti and the gold ornaments were seized. After seizure of the gold ornaments, the statement of one Mr.Jayakrishnan was recorded in Form GST MOV-01 on 26.07.2024. Thereafter, the notice under Section 129(3) of the TNGST Act/CGST Act in Form GST MOV-07 was issued.

2.6 The learned Senior counsel would contend that Rule 138(4) of CGST Rules, 2017, exempts the e-way bill, in the event if the goods were carried for exhibition or showcasing the samples to the customers, i.e., other than by way of sale. That apart, Rule 55 of CGST Rules permits the petitioner to carry the delivery challan with the goods without e-way bill. In such case, Since no sale was taken place, the



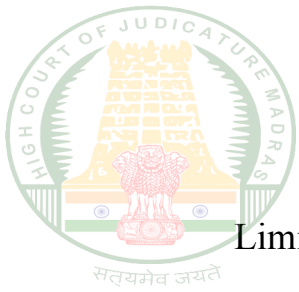
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goods were carried with the delivery challan, which is duly in accordance with the provisions of Rule 138(4) read with Rule 55 of the CGST Rules. Hence, he would submit that the said goods were carried only for display purpose and not for sale and thus, there is no need for any invoices.

2.7 Further, he would submit that on 27.07.2024, the Gems and Jewellery Export Permission Council had allotted the Stall Nos.48 and 482B to the petitioner in IIJS PREMIERE Exhibition, 2024. Therefore, he would contend that the intention of the petitioner was only to move the goods to its Agent for showcasing the same. After showcasing, the goods were moved directly from Dindugal to Chennai. When the vehicle arrived at Panruti, the goods were seized by local police and thereafter, it was informed to GST Authorities for appropriate action.

2.8 On 27.07.2024, the Central Government's approved valuer had valued the seized goods. On the same day, the officials of the GST has conducted the inspection at the petitioner's premises-Mukti Gold Private



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Limited, Chennai and Coimbatore. The statement of one Sridhar, Director was recorded. Thereafter, on 29.07.2024, the submissions were made by the Authorised Representative of the petitioner to the Deputy State Tax Officer. Once again, the summons were issued to S.Sridharan and on the same day, the Stock Registers were submitted during inspection.

2.9 On 01.08.2024, the said Sridhar made his submission for the summon dated 29.07.2024. Under these circumstances, the impugned confiscation notice under Section 130 of the TNGST Act was issued on 02.08.2024 on the following aspects:

a) The staff of the Agent are not authorised by the petitioner for moving and selling the gold ornaments as per the agreement between the petitioner and the agent.

b) the petitioner has executed a Jewellers Block Protector Policy [“insurance policy”] with IFFCO-Tokio General Insurance Co.Ltd., from 30.11.2023. However, the Agent does not hold any valid insurance at the time of interception of goods.



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c) The insurance taken by the petitioner cannot be extended to the agent.

d) The Agent has not used the three logistics firms with whom the petitioner has contracts for moving consignments and the agent ought to have moved the consignment only through the three logistics firms and the reason for not doing so are not explained.

e) No supporting documents were submitted during detention as well as during enquiry.

f) There is no packing list for the goods moved.

g) The delivery challans issued by the petitioner were held by Mr.S.Sridharan and Karthick who are staff of the agent.

h) The delivery challans do not contain any description of goods, quantity, weight, value, vehicle details, etc.

i) The petitioners have not given any evidence of restrictions of usage of seal to show that the ornaments having seal with “MR/MA” belong to the peittioner.

j) The movement of goods to Cuddalore is suspicious as the goods have moved away from the route to Chennai and the reasons are inexplicable.

k) The movement of goods to Cuddalore might be for supply to a taxable person at Cuddalore which needs to be found out and the goods are moved in the disguise of display at exhibition.



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l) The person in charge of transporting the goods does not have proof that he is transporting on behalf of the agent.

m) The goods are considered to be goods without original owner.

n) It is strongly suspected that there is a possible attempt of evasion.

2.10 With regard to the allegations, the learned Senior counsel made the following submissions:

i) The goods were moved only for the display purpose in order to promote the petitioner's market and product and there is no sale or supply involved in the transaction.

ii) Further, the purpose of sending the goods to the customers was primarily to get first hand feedbacks from them before participating in the jewellery show IIJS Premier and inviting them to see more such collection.

iii) There is no requirement to generate invoice for transactions of goods other than by way of supply and the goods can be transported with the issue of delivery challan as per Rule 55 of the CGST Rules.



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iv) The petitioner has not under taken any sales at the potential customers places, where the products were displayed.

v) The gold jewelery were transported have been accounted for in the stock register at the time goods were taken out of display purpose.

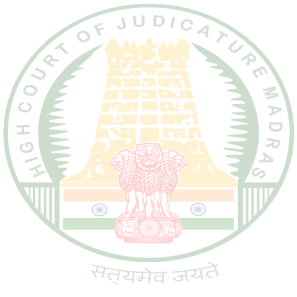
vi) Circular No.10/10/2017-GST dated 18.10.2017 provides that where the goods are moved within the State or from the State of registration to another State for supply on approval basis, the invoice may be raised at the time of delivery of goods but in petitioner's case, there is no sale/supply involved at all.

vii) The generation of e-way bill is also exempted under Rule 138(14) of the CGST Rules and TNGST Rules.

viii) The purchase invoices pertaining to the jewelery which will have bar code tag for measuring gross and net weight.

ix) The petitioner produced confirmation from M/s.Bhima jewelery to the effect that the jewelery were in fact show cased to them on the dates mentioned above.

x) There is no intention on the part of the petitioner to evade payment of tax at all and thus no penalty can be levied.



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xi) The detention of goods will seriously hamper the business prospects of the petitioner.

xii) He would also submit that the petitioner is willing to furnish security in accordance with Section 129(1)(c) of the GST Acts for the release of goods.

2.11 Further, he would contend that Section 129 of the TNGST Act starts with a non-obstante clause and thus, overrides Section 130 of the TNGST Act.

2.12 That apart, in this case, the respondent was supposed to pass orders under Section 129 of the TNGST Act, within a period of 7 days as contemplated in the Act, however, without passing of any such order, the confiscation notice was issued under Section 130 of the Act, which is beyond the scope of the law as well as the Act and Rules.

2.13 Further, he would contend that in this case, there was no sale or supply and the goods were transported for the purpose of showcasing alone and hence, there is no *prima facie* materials for the purpose of



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issuance of impugned confiscation notice. He would also contend that the provisions of Section 130 of the TNGST Act may be invoked only if the goods were moved for the purpose of sale or supply. However, in the case on hand, the said provisions of the Act were wrongly invoked by the Officials. Therefore, he requests this Court to quash the impugned notice dated 02.08.2024. In support of his contentions, he referred to the following judgments of the Hon'ble Division Bench of the Gujarat High Court:

- i) *Synergy Fertichem (P) Ltd., vs. State of Gujarat* reported in *[2019] 112 taxmann.com 370 (Gujarat)*;
- ii) *Anant Jignesh Shah vs. Union of India* reported in *[2021] 123 taxmann.com 317 (Gujarat)*;

3. Respondent's Submissions:

3.1 Per contra, Mr.C.Harsha Raj, learned Additional Government Pleader, appearing for the respondent would strongly opposed for the contentions made by the learned Senior counsel for the petitioner and would submit that in the present case, the goods were moved by the petitioner with the sole intention to evade the payment of tax.



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3.2 Further, he would fairly admit that if goods are moved for any purpose, other than the purpose of sale or supply, there is no need for any e-way bill in terms of the provisions of Rule 138(4) of CGST Rules and also the goods may be moved with the delivery challan in terms of the provisions of Rule 55 of the CGST Rules.

3.3 In the present case, according to the petitioner, they have moved the goods with the delivery challan for showcasing purpose. However in the delivery challan, only the net weight of the gold has been mentioned and nothing has been stated with regard to the item-wise details of gold ornaments. That apart, as per the delivery challan, the net weight of the gold mentioned in the invoice is 11.840 kg, whereas based on the Government approved value, it contains 11.991 kg.

3.4 Further, in the delivery challan, the name of the Agent has been mentioned as if the goods were transported to the Agent. However, upon mere perusal of the delivery challan, the receiver's signature is not



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available and thus, there is no evidence to show that the goods were delivered to the Agent namely Sri Bala Vasavi Jewels and Gems.

According to the petitioner, the goods were already transported to the Agent and the Agent has only carried on the goods for showcasing it to the possible buyers and thereafter, they would have brought the gold back to the petitioner. When such being the case, the signature of the Agent should have been appeared in the “receiver's sign” column in the delivery challan. However, the same is not available.

3.5 Based on these aspects and materials, the officials had arrived at a conclusion that the goods have been transported for the purpose of sale under the pretext of showcasing the gold for the purpose of inviting the buyers for the exhibition, which is scheduled to be held at Mumbai during the month of August, 2024. The suspicion of the Department with regard to the evading of tax stands confirmed with the materials, information and evidences, which were collected during the course of inspection conducted at the business premises of the petitioner by Chennai-01 (Intelligence) Officials on the following aspects:



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i) During the inspection of Business Place of Tvl. Mukti Gold Private Limited at Chennai no stock of Gold was present.

ii) The Business had no cash. The lockers were found to be empty. The tax payer is having more than hundred crores turnover and such a stock/ cash situations is dubious.

iii) A notice was displayed outside the Business place that it is closed for 26.07.24 to 29.7.24 for which no valid reason was given by the Staff. The Business place was opened by Manager on 27.07.24 and inspections were commenced.

iv) There were many carbon papers for which second copies were not traceable at the business place.

v) One of the staff Thiru. Saurabh turned up only last day with the Gold. It was informed that he had taken leave but a statement has been recorded that he was visiting Business places for showing Gold.

vi) The House search of Ritesh, Manager and Saurabh was made and no incriminating documents could be collected.

vii) The copies of Quotations, Delivery Slips etc., were not traceable at the business place.



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viii) The DVR of CCTV camera of Tvl. Mukti Gold Private Limited was under repair. The DVR was collected from one Vijay, CCTV repairing person by the Roving Squad officials. On verification the Hard Disk was empty. The Data Retrieval person retrieved the deleted data and found that the Hard Disk was a new one and not related to Tvl. Mukti Gold Private Limited. The CCTV camera was fixed only in October 2023 and there was distant possibility of Hard Disk getting repaired.

ix) It is suspected that subsequent to retention of Gold at Cuddalore without documents, Tvl. Mukti Gold Private Limited, Chennai had removed all the incriminating documents at Chennai Office and has also removed the CCTV footage. On subsequent call made to DVR repair person Vijay it was informed by him that he had trashed the old Hard Disk. The earlier statement made him and his current version was contradictory.

x) The Statement recorded at Tvl. Mukti Gold Private limited regarding goods movement has contradictory versions from each of the involved person.

xi) On verification of System Data it was made clear that the Delivery Challan and Receipt Challan are both made by Tvl. Mukti Gold Private Limited. The person who is moving the Gold or commission agent is not making any



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Documents. The Receiver is making documents for the person bringing the Gold. The receiver is just passing matching Documents in the system to equalize the stock.

xii) There is every possibility of sales suppression with goods movement in the name of receipt and issue. The absence of packing list confirms this suspicion.

3.6 Therefore, he would contend that in the present case, it is not that the impugned notice has been issued under Section 130 of the CGST Act without any *prima facie* materials or evidences as contended by the petitioner. Hence, prior to the issuance of notice under Section 130 of CGST Act, for confiscation of goods, the Officials were fully satisfied and formed a clear cut opinion that the goods were transported for the purpose of sale with the intention to evade the payment of Tax (GST and Income Tax). Therefore, he requests this Court to dismiss the present petition.

4. I have given due consideration to the submissions made by Mr.Vijay Narayan, learned Senior counsel appearing for the petitioner

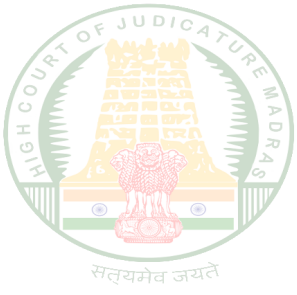


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and Mr.C.Harsha Raj, learned Additional Government Pleader,
appearing for the respondent and also perused the materials available on
record.

5. It was contended by the learned Senior counsel appearing for the petitioner that the goods were transported to its Agent only for the displaying purpose, so as to invite its customers for Exhibition, which was scheduled to be held at Mumbai in the month of August, 2024. The petitioner has also received an invitation for the said Exhibition on 27.07.2024.

6. In this case, the goods were transported only with the delivery challan. If the goods were transported for any purpose other than sale or supply, the same can be transported with the delivery challan and no e-way bill is necessary for such transportation in terms of the provisions of Rule 138(4) read with Rule 55 of the CGST Rules and there is no dispute on this aspect.



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7. However, it was contended by the learned Additional Government Pleader appearing for the respondent that in this case, under the pretext of showcasing the jewelery to the customers to invite them to participate in the Exhibition, the petitioner had attempted to transport the goods for the purpose of sale by evading the payment of tax (GST as well as income tax).

8. According to the petitioner, initially, the goods were transported from the petitioner at Chennai to its Agent at Coimbatore. Thereafter, the Agent took the goods for displaying it to the customers, including M/s.Bhima Gold at Madurai. After displaying the gold, the goods were brought back to the petitioner by its Agent from Dindugal to Chennai. At the en route from Dindugal to Chennai, the goods were intercepted at Panruti by the local police. Thereafter, it was informed to the GST Authorities and subsequently, it was seized and notice under Section 129 of the GST Act was also issued after recording the statements.



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9. The respondent suspects the petitioner on the aspect of route. In the statements recorded from the person, who carried the goods as well as the Directors, they have categorically stated that the goods were brought back after showcasing the same to its customers by its Agent. When such being the case, the route to Chennai from Dindugal is via Villupuram and Dindivanam. However, in this case, the route was diverted and no customer was situated at Panruti and also no valid reason was provided for the such diversion.

10. As per the contention of the petitioner, they transport the goods by virtue of delivery challan to the Agent of the petitioner, thereafter, the Agent took the same to its possible buyers and subsequently, after showcasing, the goods were brought back to Chennai. When such being the case, the Agent should have received the goods. However, no proof was provided by the petitioner with regard to the receipt of goods by the Agent. Even in the invoice, which was shown to the Officials, nothing has been mentioned in this regard.



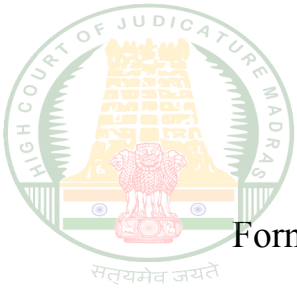
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11. That apart, in the agreement between the petitioner and its Agent, it has been categorically mentioned that the goods have to be carried to the Agent only by the employees of the petitioner. However, in the present case, the person, who carried the goods, was not in a position to state anything about the details, under whom he was working, which created suspicion in the minds of the Officials.

12. Further, though a huge quantity of gold worth about 11.990 kg was transported, no details with regard to the description of gold ornaments were available in the delivery challan and merely it was stated as “new gold ornaments 22 Charat HSN Code 71131940”. It was also found by the Officials that there was a little different in the quantity of gold as mentioned in the invoice and as per the report of the Government Officials.

13. Immediately, the Goods Detention Notice was issued on 26.07.2024 along with the Form GST MOV 02, Form GST MOV-06 and



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Form GST MOV-07. In such case, the petitioner ought to have proved the veracity of their statements, that their real intention is only to showcase the gold to their customers, by way of filing a detailed reply along with appropriate documents. However, no such reply has been filed and no documentary evidence has been furnished for the satisfaction of the Officials.

14. In the gold ornaments, the seal with “MR/MA” is used. However, there was no evidence to prove that the said seal with “MR/MA” belongs to the petitioner. Further, no evidence has been shown to the Officials with regard to the restrictions of usage of seal with “MR/MA”.

15. Further, though the petitioner has stated that they have provided the Stock Register, according to the respondent, during the course of investigation at the petitioner's premises at Chennai, neither the stock of gold nor the cash was available. Even the lockers were found to be empty at their business place.



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16. That apart, a notice was displayed outside the business place of the petitioner that it was closed from 26.09.2024 to 29.07.2024, for which, no valid reason was given by the staffs. On 27.07.2024 only, the premises was opened by the Manager and thereafter, the inspection was commenced by the Officials. It was also noticed by the Officials that many carbon papers, for which second copy was not traceable, were found at the business place of the petitioner. The DVR of CCTV of that premises was under repair.

17. The petitioner had also removed all the incriminating documents, including the CCTV footage, at their Chennai Office. The statements, with regard to the movement of goods, are found to be contrary from each of the persons, who were involved in the transaction.

18. After considering all these reasons and material evidences, the Officials have come to the conclusion that the goods were transported



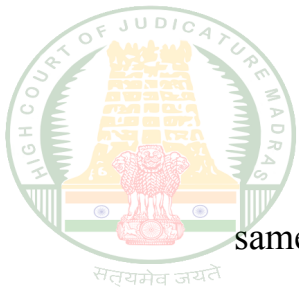
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only with the intention of evading the payment of tax under the pretext that the gold jeweleries were carried to showcase the same to its customers, by misusing the provisions of Rules 138 and Rule 55 of the CGST Rules. In the impugned notice also, the Officials have clearly stated all the aforesaid aspects.

19. Under these circumstances, it is a bounded duty of the petitioner to file an appropriate reply and satisfy the respondent on the aspects of the various opinion formed against the petitioner as indicated in the impugned confiscation notice.

20. As far as the over-riding effect of Section 129 of TNGST Act over Section 130 of the of TNGST Act due to the non-obstante clause is concerned, it would be applicable with regard to the detention and seizure of goods and not for the confiscation, i.e., the non-obstante clause available in Section 129 would be applicable only for the seizure. In other words, if there is any provision contained in the Act with regard to the seizure in any other manner, Section 129 will supersede over the



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same. Therefore, as far as confiscation is concerned, the said non-obstante clause available in Section 129 will not supersede the provisions of Section 130, since Section 129 only talks about the seizure of the goods and not about confiscation. Thus, both these Sections are independent in nature.

21. In the judgment of ***Synergy Fertichem***, it has been held that any opinion of the authority to be formed is not subject to objective test. The purpose of invoking Section 130 of the Act at the very threshold, the authorities need to make out a very strong case. Merely on suspicion, the authorities may not be justified in invoking Section 130 of the Act straightway. In this case, the officials had formed clear cut *prima facie* opinion to make out a very strong case in their favour for issuing notice under Section 130 of the TNGST Act.

22. In ***Anant Jignesh Shah*** case, the show cause notice was issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules, for



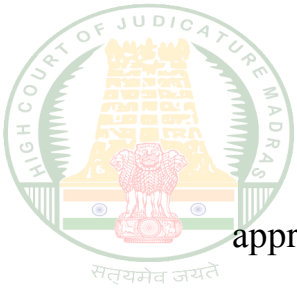
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which, the Court has held that the entire basis for issuance of said show cause notice is conjectures and surmise. However, in the present case, it is not that only on the ground that the petitioner diverted the regular route but also on many other ground, based on which, the respondent formed a clear cut opinion and issued notice.

23. Therefore, both the cases, which were relied upon by the learned Senior counsel appearing for the petitioner, may not be applicable for the present facts of the case.

24. When the Officials have raised several issues based on the material evidences collected by them, which are all disclosed in the confiscation notice, this Court, sitting under Article 226 of the Constitution of India, cannot interfere with the said notice issued by the Authorities prior to the filing of any appropriate reply by the petitioner. Therefore, it is for the petitioner to file their reply, along with the material evidences, by clarifying all the issues raised by the Officials. Thereafter, it is for the respondent to consider the said reply and pass



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appropriate orders.

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25. For all the above reasons, this Court is of the view that there is no merits in this writ petition. Therefore, this writ petition is liable to be dismissed. Accordingly, this petition is dismissed by granting liberty to the petitioner to file their reply for the impugned confiscation notice dated 02.08.2024, issued by the respondent, within a period of 15 days from the date of receipt of copy of this order. Thereafter, the respondent shall decide the matter independently, on its own merits and in accordance with law, after affording an opportunity of personal hearing, without influenced by any of the observations made by this Court. No costs. Consequently, the connected miscellaneous petitions are also closed.

27.01.2025

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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State Tax Officer,
Adjudication (Intelligence), Cuddalore,
Cuddalore Intelligence Division,
Commercial Taxes Building,
No.1, Vallalar Nagar, Manjakuppam,
Tamil Nadu 607 001.



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KRISHNAN RAMASAMY.J.,

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