

W.P.(MD)No.22642 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22642 of 2022

and

W.M.P.(MD)Nos.16803 and 16804 of 2022

M/s.Vadivel Pyrotech Private Limited,
No.217/G, Sattur Road,
Sivakasi-626 123
Rep.by its Director,
Shri A.Vasanthi Vikas.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Circle-II, Commercial Tax Department,
NGO Colony, Satchiyapuram,
Sivakasi West - 626 124

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records connected with order Ref.No:33AADCV5898H1ZV dated 09.05.2022 passed by the respondent herein and quash the same for having been passed in gross violation to the principles of natural justice besides being excessive and without the authority of law.



W.P.(MD)No.22642 of 2022

WEB COPY

For Petitioner : Mr.N.Viswanathan
For Respondent : Mr.M.Prakash
Additional Government Pleader

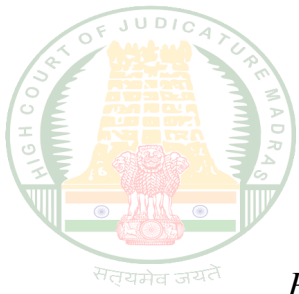
ORDER

This Writ Petition is filed challenging the impugned order in Ref.No:33AADCV5898H1ZV dated 09.05.2022 passed by the Respondent herein as having been made in gross violation of principles of natural justice and the procedure provided/prescribed under the Tamil Nadu Goods and Service Tax Act, 2017.

2. The impugned order is apparently made pursuant to the Scrutiny of the GST returns filed by the petitioner under Section 61 of the Tamil Nadu Goods and Service Tax Act, 2017 (herein after referred to as TNGST Act) for the period 2018-2019 as would be evident from the Preamble to the Show Cause Notice in GST DRC-01 and the impugned Order in GST DRC-07, which reads as under:

“Summary of Show Cause Notice:

*M/s. VADIVEL PYROTECHS PRIVATE LIMITED,
Door No. 217/G, Setur Road Sivakasi, 626123 are dealing in*



WEB COPY

Fireworks registered under the TNGST Act, 2017. This is to inform that during the scrutiny of the return under section 61 of Tamilnadu Goods and Service Tax Act, 2017 (hereinafter referred as TNGST Act, 2017) for the year 2018-2019, the following differences were noticed.

Summary of the Order:

M/s. VADIVEL PYROTECHS PRIVATE LIMITED, Door No. 217/G, Setur Road Sivakasi, 626123 are dealing in Fireworks registered under the TNGST Act, 2017. This is to inform that during the scrutiny of the return under section 61 of Tamilnadu Goods and Service Tax Act, 2017 (hereinafter referred as TNGST Act, 2017) for the year 2018-2019, the following differences were noticed.

3. Though a number of grounds have been raised challenging the impugned order, the learned counsel for the Petitioner would confine his challenge to the impugned proceedings on the ground that the same stands vitiated, inasmuch as Rule 99 of the Tamil Nadu Goods Service Tax Rules, has not been complied with, which would prove fatal to the validity of the impugned order dated 09.05.2022.

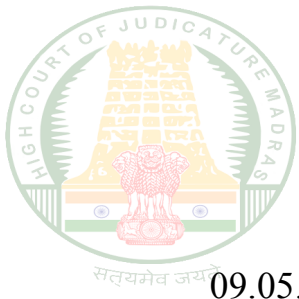


WEB COPY

4.The brief facts of the case are as follows:

(i) The petitioner is engaged in the business of manufacture and supply of pyrotechnic products (fireworks) and is registered under the TNGST Act. The petitioner had filed the GST returns under the TNGST Act periodically discharging appropriate taxes, while availing the Input Tax Credit in terms of Section 16 of the TNGST Act. The Respondent had undertaken Scrutiny of the GST returns in terms of Section 61 of the TNGST Act and a notice in Form ASMT 10 dated 22.12.2021 was issued pointing out certain discrepancies between GSTR3B, GSTR 1 and GSTR 2A returns filed by the petitioner for the year 2018-19 calling upon the petitioner to pay taxes to the extent of Rs.13,54,250/- along with interest. The petitioner in response paid the interest and furnished GST-DRC 03 dated 27.12.2021, while submitting his explanation in Form ASMT 11 on 18.01.2022 by furnishing the relevant details.

(ii) While so, after more than six months, the petitioner was enquired over telephone by the office of the Respondent as to whether the petitioner had paid taxes, interest and penalty demanded vide order dated



WEB COPY

09.05.2022. It is stated that the petitioner was until then unaware of any proceedings other than the Scrutiny under Section 61 of the Act resulting in the issuance of Form ASMT 10 dated 22.12.2021, which was responded to by the petitioner in Form ASMT 11 dated 18.01.2022. Thereafter, on enquiry with the office of the Respondent on 12.08.2022, the petitioner was informed that an order dated 09.05.2022 was passed by the Respondent and a Summary of the Notice in GST DRC-01 and Order in GST DRC-07 had also been uploaded in the GST portal. On being so informed, the petitioner logged in to the GST portal and found that the Notice and Order had in fact been uploaded. Thereafter, the petitioner downloaded GST DRC-01 and GST DRC-07.

(iii) On perusal of the downloaded summary of Show Cause Notice in GST DRC-01 and Order in GST DRC-07, the petitioner found that pursuant to alleged Scrutiny of the returns, six defects were noticed, viz.,

[1] Difference of turnover reported in the audited financial statement and in the GSTR 9 C involving tax amounting to Rs.35,33,657/-;



WEB COPY

[2] Availment of input tax credit of Rs.4,22,08,872/- based on the invoices of their sister concerns without issue of e-way bills thereby assuming non-receipt of goods violating Sec. 16 of the TNGST Act, involving tax of Rs.4,22,08,872/-;

[3] Difference of input tax credit between the input tax credit available as per GSTR2A and the input tax credit availed as GSTR3B involving credit amount of Rs.13,54,250/-;

[4] Denial of ITC of Rs.6,34,252/-(CGST of Rs. 3,17,126/- and SGST of Rs.3,17,126/-) on the alleged 'Non accounting of purchases as per 2A Statement' for the reason that they have not availed IGST input tax credit of Rs.5,25,260/- which was otherwise available to the petitioner as per GSTR-2A, on the value of Rs.35,23,620/-;

[5] Availment of 'ineligible' 'Blocked Credit' Rs. 1,91,520/ and

[6] Demand of Rs.15,70,148/- under reverse charge presuming the value accounted as towards freight calculating the same @ 5% of the inward supplies received.

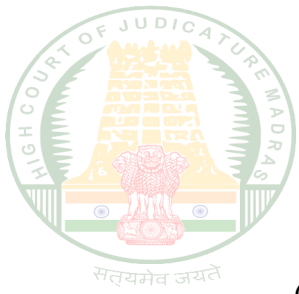
The aforesaid defects are different from the defects/discrepancy which were pointed out in the Form ASMT 10 issued on 22.12.2021. The petitioner submits that the entire proceedings has been made behind their



WEB COPY

back and they were completely unaware of either the summary of the Notice in GST DRC-01 or the Order in GST DRC-07 until being informed by the Respondent. It was submitted that the entire proceedings stands vitiated for violation of principles of natural justice inasmuch as neither the show cause notice nor the orders under GST DRC-07 passed under Section 74 of the Act was served on the petitioner. In this regard, reliance was sought to be placed on the decision of this Court in W.P.No.27651 of 2021 to submit that it has been suggested by this Court that though Section 169 prescribes different modes for service of orders, summons, notice etc., in view of the technical difficulties in implementing GST, unless the technical issues are resolved, a physical copy through registered post or speed post or courier with acknowledgement may be followed for service of orders, summons, notices etc. The relevant portion of the order reads as follows:

“11. Though Section 169 of the respective enactments allows the authorities to communicate any decision, order, summons, notice or other communication under this Act by any one of the methods specified, unless the proper conformation that notices and impugned orders which were uploaded in the web portal of the State Government in tngst.cid.tn.gov.in are



WEB COPY

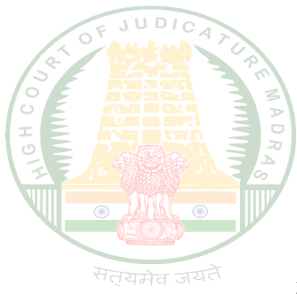
auto populated, it cannot be said that there is a sufficient compliances of the aforesaid Section.

12. GST Act was implemented in the year 2017 with effect from 01.07.2017. The web portal maintained by GST has faced problems on several occasions and steps were taken for correcting the technical glitches. Even as on date, there are problems arising out of intercommunication between the State GST and Central GST and the web portal which has to be resolved.

13. The respondents can therefore continue the service of notice through registered post or speed post or courier with acknowledgment to the petitioners at their last known place of business or residence and upload the same in the web portal. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the Act and through web portal.

14. Once all technical problems are resolved, the practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.

15. Considering the same, I am inclined to set aside the impugned assessment orders and remit the cases back to the



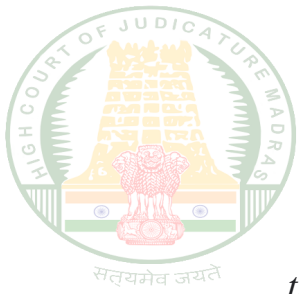
WEB COPY

respondents to pass speaking on merits and in accordance with law.

16. The petitioners are directed to file a reply to the respective Show Cause Notices which have been served on the learned counsel for the petitioners. The impugned orders which stand quashed by this order shall be treated as supplementary Show Cause Notices.”

5. It is submitted by the learned counsel for the petitioner that the impugned proceedings is in gross violation of the procedure contemplated under Rule 99 of the Tamil Nadu Goods and Service Tax Rules, which prescribes the method and the manner for verification of the correctness of the returns and to correct any discrepancy that may be noticed or to initiate appropriate proceedings under Sections 65, 66, 67, 73 or 74 of the GST Act pursuant to a Scrutiny under Section 61 of the Act. To appreciate the above contention, it may be relevant to extract Section 61, 74 and Rule 100(2) of the Tamil Nadu Goods and Service Tax Act and Rules which reads as under:

“Section 61. Scrutiny of returns: “(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of



WEB COPY

the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

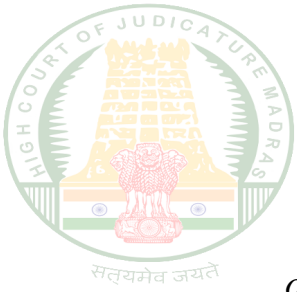
(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Section 74:

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.—

(1) Where it appears to the proper officer that any tax has not been paid short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud,



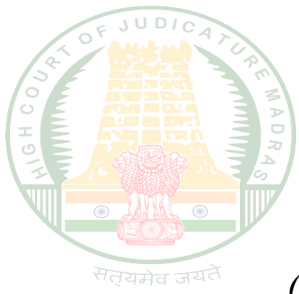
WEB COPY

or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.



WEB COPY

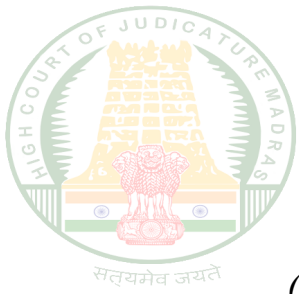
(5) The person chargeable with tax may, before service of notice under subsection (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.



WEB COPY

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax with in thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.— For the purposes of section 73 and this section,-

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under 1[sections 122 and 125] are deemed to be concluded.

Explanation 2.— For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the



WEB COPY

return, statement, report or any other document furnished under this Act or the rules made thereunder; or failure to furnish any information on being asked for, in writing, by the proper officer.

Rule 100(2):

*(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.”*

On a cumulative reading of the above provisions and the corresponding Rules, the following position appears to emerge:

a) The proper officer may scrutinize returns and related particulars and in case any discrepancies are noticed, the same shall be informed in ASMT 10 seeking explanation from the taxable person (As a matter of fact in the instant case ASMT 10 was issued on 22.12.2021 pointing out certain discrepancies).



WEB COPY

b) If the explanation offered by the petitioner in ASMT 11 is acceptable, no further action shall be taken (As a matter of fact ASMT 11 was submitted by the petitioner in response to the ASMT 10 dated 22.12.2021).

c) In case the explanation is not satisfactory or no explanation is offered or the taxable person fails to take corrective measures in the return for the month in which the discrepancies were noticed and accepted, the proper officer may proceed to initiate appropriate action under Section 65, 66, 67, 73 or 74 of the Act.

d) Thereafter, the proper officer shall proceed to pass order in GST DRC-07 under Section 73 and 74 after issuing GST DRC-01A in terms of Rule 142 (1A) and GST DRC-01.

e) It is thus clear that any proceeding in GST DRC-01A/1 culminating in an Order in GST DRC-07, if pursuant to Scrutiny under Section 61 of the TNGST Act ought to be preceded by issuance of Form ASMT 10. In the present case, though ASMT 10 was issued on 22.12.2021 pointing out certain discrepancies, the GST DRC-01 dated 15.02.2022 and the impugned order in GST DRC-07 dated 09.05.2022 are made on the basis



WEB COPY

of issues that are completely different from what was set out in Form ASMT 10 dated 22.12.2021. As this Court is of the view that ASMT 10 is mandatory before proceeding to issue GST DRC-01, failure to issue the same in respect of the discrepancies forming the subject matter in GST DRC-01 dated 15.02.2022 culminating in GST DRC-07 dated 09.05.2022 would vitiate the entire proceedings. It is trite law that when the Act prescribes the method and manner for performing an act, such act shall be performed in compliance with the said method and manner and no other manner.

6. To a pointed question as to whether Form ASMT 10 which ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22.12.2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in



W.P.(MD)No.22642 of 2022

WEB COPY

respect of the aspects forming the subject matter of the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including Section 61.

7. Recording the same, the impugned order dated 09.05.2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings.

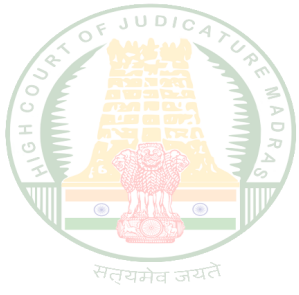
8. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

27.09.2022

Index : Yes / No

Speaking Order : Yes / No

vji



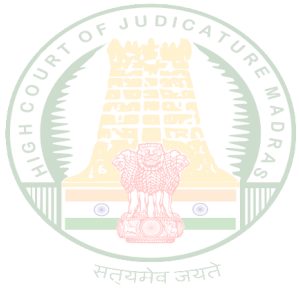
W.P.(MD)No.22642 of 2022

WEB COPY

Note: Issue order copy by 14.10.2022.

To

The Assistant Commissioner (ST),
Circle-II, Commercial Tax Department,
NGO Colony,
Satchiyapuram,
Sivakasi West - 626 124



W.P.(MD)No.22642 of 2022

MOHAMMED SHAFFIQ, J.

WEB COPY

vji

**W.P.(MD)No.22642 of 2022
and
W.M.P.(MD)Nos.16803 and 16804 of 2022**

27.09.2022