

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.2391 of 2023

and

W.M.P.No.2481 of 2023

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M/s.VGN Projects Estates Private Limited,
153, Wallace Garden 2nd Street,
Nungambakkam,
Chennai - 600 036.
Rep. by its Managing Director

... Petitioner

Vs.

1. Assistant Commissioner (State Taxes),
Nungambakkam Assessment Circle,
Chennai - 600 036.

2.Joint Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore - 641 001.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of



the first respondent in the impugned show cause notice in Form GST DRC-01 (Ref. No.ZD331022029519P) dated 21.10.2022, quash the same as it has been issued in consequence of proceedings initiated without jurisdiction in violation of the embargo laid down by Section 6(2)(b) of the TNGST Act, 2017.

For Petitioner : Ms.Radhika Chandra

For Respondents : Ms.Amirtha Dinakaran
Government Advocate
for R1

Mr.V.Sundareswaran
Senior Panel Counsel
for R2

ORDER

The petitioner has challenged the impugned show cause notice in Form GST DRC-01 (Ref. No.ZD331022029519P) dated 21.10.2022 on the ground that the same has been issued in violation of Section 6(2)(b) of the TNGST Act, 2017.

2. According to the petitioner, a similar show cause notice was issued by the Central Authority under CGST Act, 2017 on 29.07.2022 against the petitioner, involving the very same defects and therefore, as per the



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provisions of Section 6(2)(b) of the Tamil Nadu Goods and Service Tax Act, 2017 when the proper officer under the CGST Act has already initiated any proceedings against the petitioner on the very same subject matter, no proceedings shall be initiated by the proper officer under the provisions of the TNGST Act, 2017.

3. Heard Ms.Radhika Chandra, learned counsel for the petitioner. Ms.Amirtha Dinakaran, learned Government Advocate accepts notice on behalf of respondent No.1 and Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice on behalf of respondent No.2.

4. Learned Government Advocate appearing for the respondent No.1 has placed before this Court the written instructions received by her from the Office of the Assistant Commissioner (ST), Nungambakkam Assessment Circle, Chennai - 600 031 dated 28.01.2023. As per the written instructions a detailed reply has not been sent by the petitioner to the impugned show cause notice. In the written instructions, it is also stated that if the petitioner submits the same then accordingly those similar defects for which notice has been issued by the Central Authority will be omitted and action shall be



initiated in respect of the balance defects alone.

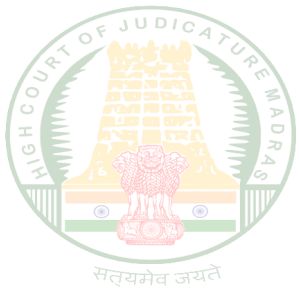
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5. Learned counsel for the petitioner would however submit that the defects pointed out in the show cause notice issued by the Central Authority and the defects pointed out under the impugned show cause notice by the State Authority are one and the same and therefore, as per the provisions of Section 6(2)(b) of the TNGST Act, 2017, no fresh proceedings can be initiated against the petitioner under the said Act with regard to the very same subject matter.

6. Section 6(2)(b) of the TNGST Act, 2017 reads as follows:

"6(2)(b) where a proper officer under the Central Goods and Service Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter."

Admittedly, a challenge has been made only to the show cause notice.



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7. The respondents have also stated in their written instructions that once a detailed reply is sent by the petitioner stating their objections with regard to the impugned show cause notice, the same will be considered by them on merits. They have also categorically stated in their written instructions that if the defects are similar to the one mentioned in the show cause notice issued by the Central Authority, the said defects will be omitted and no proceedings will be initiated against the petitioner with regard to the defects which are already the subject matter of consideration by the Central Authority.

8. While that be so, this Court is of the considered view that necessarily the petitioner will have to submit a detailed reply to the impugned show cause notice to the respondents to enable the respondents to consider the petitioner's grievance that no fresh proceedings can be initiated against them under the TNGST Act, 2017, in view of the fact that the Central Authority has already initiated action against the petitioner for the very same subject matter under the show cause notices dated 29.07.2022 and 31.12.2022. When the respondents have undertaken before this Court



that they shall consider the grievance of the petitioner as raised in this Writ

Petition, the question of entertaining this Writ Petition at this stage and granting relief to the petitioner will not arise.

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9. The only limited relief that can be granted to the petitioner is to permit them to file a detailed reply to the impugned show cause notice, stating all their objections that have been raised in this Writ Petition including the objection with regard to Section 6(2)(b) of the TNGST Act, 2017 and on receipt of the said reply, a direction can be issued to the respondents to consider the said reply on merits and in accordance with law within a time frame to be fixed by this Court.

10. For the foregoing reasons, this Writ Petition is disposed of by directing the petitioner to submit a reply to the impugned show cause notice within a period of three weeks from the date of receipt of a copy of this order and on receipt of the said reply, the first respondent shall pass final orders on merits and in accordance with law, after giving due consideration to the objections raised by the petitioner in the reply, within a period of four



weeks thereafter. No Costs. Consequently, the connected Writ

Miscellaneous Petition is closed.

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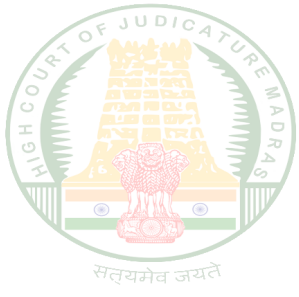
30.01.2023

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

1. Assistant Commissioner (State Taxes),
Nungambakkam Assessment Circle,
Chennai - 600 036.

2. Joint Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
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ABDUL QUDDHOSE. J.,

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