

Madras High Court

M/S.Anantham Silks vs State Tax Officer on 20 June, 2022

WP(MD)Nos.11391, 11399, 1140

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2022

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) Nos.11391, 11399, 11403 &11406 of 2022

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W.M.P.(MD)Nos.8101, 8103, 8107 and 8110 of 2022

M/s.Anantham Silks,
Rep. by its Partner, Shri S.Shanmuganathan,
33, Agraharam Road,
Ramanathapuram,
Tamil Nadu 623 501.

.. Petitioner in all the W.Ps.

Versus

State Tax Officer,
Ramanathapuram Assessment Circle,
KTM Complex, Salai Street,
Ramanathapuram 623 501.

.. Respondent in all the W

Prayer in all the W.Ps.:- Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the entire records relating to order dated 31.01.2022, bearing Assessment Nos. 33AASFA2666A1ZP/2019-20, 33AASFA2666A1ZP/2018-19, 33AASFA2666A1ZP/2020-21 and 33AASFA2666A1ZP/2017-18 respectively, passed by the respondent and quash the same holding the order as unlawful and improper.

For Petitioner : Mr.L.S.Karthikeyan
in all the W.Ps. for Mr.J.Shankarram

For Respondent : Mr.P.Subbaraj
in all the W.Ps.

<https://www.mhc.tn.gov.in/judis>

Special Government Pleader

WP(MD)Nos.11391, 11399,

COMMON ORDER

The petitioner has filed these Writ Petitions challenging the impugned assessment orders for the following assessment years.

Sl. No.	Writ Petition No.	Assessment year	Impugned order date
1	W.P. (MD)No. 11391/2022	2019-2020	31.01.2022
2	W.P. (MD)No. 11399/2022	2018-2019	31.01.2022
3	W.P. (MD)No. 11403/2022	2020-2021	31.01.2022
4	W.P. (MD)No. 11406/2022	2017-2018	31.01.2022

2.The background of the case is that the petitioner was engaged in trading of textiles and garments and they were also having showrooms in Kumbakonam and Thanjavur. The partnership firms were dissolved and a private limited company was formed in September 2019. The new entity continued with the same trading activities from the three showrooms of the separate partnership firms in Ramanathapuram, Kumbakonam and Thanjavur. While so, the Officers from the State Tax Department conducted inspection under Section 67 of the TNGST Act in the three showrooms from 14.09.2021 to 16.09.2021. During the course of surprise inspection, the inspection team had found certain irregularities in the transactions of the dealers and revision of assessment was made based on the inspection report. On the strength of that, show cause notice was issued to the dealers to explain the issue with documentary evidences.

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3.The learned counsel for the petitioner submits that the respondent had issued communication in Form DRC-01A in terms of Rule 142(1A) of the TNGST Rules, 2017, all dated 06.12.2021, for the years 2017-18, 2018-19, 2019-20 and 2020-21, pointing out the defects involving tax liabilities and for non-maintenance of accounts. The petitioner requested 30 days' time to submit their response to the above said communication, vide letter dated 22.12.2021. Thereafter, the respondent vide letter dated 28.12.2021, had directed the petitioner to appear for a personal hearing. The petitioner, vide letter dated 03.01.2022, replied in Part-B of Form DRC-01A stating that the liability to tax as stated in subject intimation as well as the quantification are not agreeable as the same are not correct on facts and law.

4.The learned counsel for the petitioner further submits that the inspection and investigation have been conducted by different officers in a wrong manner, resulting in misunderstanding of facts and misinterpretation of provisions, misapplication of tariff and exemption notifications. The learned counsel also submits that the proceedings carried out were completely perverse and information and statements collected with intimation, an inducement of dropping of proceedings, are in complete violation of principles of natural justice and unreliable and the demand made in Form DRC-01A has to be rejected.

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5.The contention of the petitioner is that, the Officers from the State Tax Department conducted inspection under Section 67 of the TNGST Act in three branches of the petitioner company from 14.09.2021 under orders issued by the Joint Commissioner of State Taxes (Intelligence) in Form GST INS-01 at Kumbakonam, Thanjavur and Ramanathapuram showrooms, statements recorded from the Manager and Directors of the petitioner company. Subsequently, the respondent issued communication in Form DRC-01A in terms of Rule 142(1A) of the TNGST Rules, 2017, dated 06.12.2021, separately on the petitioner's Firm for the years 2017-2018, 2018-2019, 2019-2020 and 2020-2021. The above said communications pointed out, narrated various defects noticed during the inspection and given details of taxes, interest and penalty as payable by the petitioner company under each head. In the said communications, it was stated that if the petitioner had any objection to the notice, reply in writings to be filed before the 'Proper Officer' within 15 days from the date of receipt of the notice, failing which, orders will be passed accordingly, confirming the tax, penalty and interest as already proposed in the notice, as per the provisions of the Act and the Rules. In the notice, defects have been pointed out.

6.The petitioner requested 30 days' time to submit their response to the above said communication, vide letter dated 22.12.2021. The respondent vide <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 letter dated 28.12.2021, had directed the petitioner to appear for a personal hearing. The petitioner vide letter dated 03.01.2022, replied in Part B of the Form DRC-01A, submitted that the liability to tax as stated in subject intimation as well as the quantification are not agreeable as the same is not correct on facts and law. Further, the inspection and investigation conducted by different officers in a wrong manner, resulting in misunderstanding of facts and misinterpretation of provisions, misapplication of tariff and exemption notifications. The proceedings carried out were completely perverse and information and statements collected with intimation and inducement of dropping of proceedings in complete violation of principles of natural justice and unreliable and the demand made in Form DRC-01A is to be rejected in accordance with law.

7.Further, the respondent without taking into account the serious objections raised by the petitioner, vide letter dated 03.01.2022, intimated vide letter dated 11.01.2022, that a final opportunity of personal hearing is provided and directed the petitioner to appear for the same on 24.01.2022. The authorised representative (Chartered Accountant) appeared before the respondent Office on 24.01.2022 and explained that personal hearing cannot be initiated at this stage of adjudication proceedings and reiterated the petitioner's stand that, the liability of tax and quantification are not agreeable. <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 Further, the respondent has observed that the petitioner did not raise any objection to the inspection carried out from 14.09.2021 to 16.09.2021 and also agreed to the defects pointed out during the course of inspection and had paid an amount of Rs.89,52,450/- and therefore, the objections at this stage, are only an afterthought and hence, not acceptable. Accordingly, the respondent proceeded to pass the order, confirming the proposals in the notice dated 06.12.2021. The above said order has been passed in violation of principles of natural justice inasmuch as no show cause notice as envisaged in Section 73 or 74 of the TNGST/CGST Act has been issued before passing the order, there is unfairness, unreasonableness in the action of the respondent. Further, referring to provision of law and stating an appeal against the order lies before the Deputy

Commissioner (GST-Appeal), Madurai, under Section 107(1) of the TNGST Act, within three months of receipt of the order, is not proper, only confirms that a preconceived notional assessment made.

8. In view of the above, filing an appeal as provided in the CGST Act / TNGST Act against the order would amount to acceptance of legality of the order and participating in the proceedings. The order has been received by the petitioner company on 13.02.2022 and the time limit for filing an appeal, if required, was available upto 12.05.2022. Further, in terms of the order dated 10.01.2022, passed by the Hon'ble Supreme Court taking suo motu cognizance <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 for extension of limitation on account of COVID-19, the time limit of 90 days for filing an appeal has been provided from 01.03.2022. In view of the above, these petitions have been filed before the due date for filing appeal.

9. Further, the petitioner referring to Form GST DRC-01A submitted that as per Rule 142(1A) of the TNGST Rules, the said Form is contemplated. In the Form, it has been mentioned that "You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under Section 74(5) by, failing which show cause notice will be issued under Section 74(1)". In this case, the respondent vide Form GST DRC-09, directed the Branch Manager, Axis Bank, Ramanathapuram, to recover the amount due from the petitioner consequent to the impugned order. The impugned order dated 31.01.2022, is not proper and is in gross violation of principles of natural justice. Further, not following the procedures as contemplated under law, the above order has been passed.

10. In support of his submissions, the learned counsel for the petitioner relied on the following circulars and decisions:-

(i) Circular No.10/2019, Commercial Taxes Department, dated 31.05.2019.

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(ii) Circular No.72/2019-TNGST, Commercial Taxes Department, dated 31.05.2019.

(iii) Mahindra and Mahindra Ltd., vs. The Joint Commissioner (CT) Appeals, The Deputy Commissioner (CT) II, Large Tax Payers Unit, Chennai 8 [2021 (3) TMI 82 Madras High Court]

(iv) Mahindra and Mahindra Ltd., vs. The Deputy Commissioner (CT) II, Standard Chartered Bank, Chennai 1 [2021 (4) TMI 187 Madras High Court]

(v) M/s.NKAS Services Private Limited, Kolkata vs. The State of Jharkhand and others [2022 (02) LCX 0147 Jharkhand High Court, W.P.(T)No.2659 of 2021, decided on 09.02.2022]

(vi) M/s.V.R.S. Traders vs. Assistant Commissioner (State Taxes) Poonamallee Assessment Circle, Varadharajapuram, Chennai [2022 (3) TMI 490 Madras High Court]

(vii) Agrometal Vendibles Pvt. Ltd., vs. State of Gujarat [2022- TIOL-517-HC-AHM-GST]

11.The respondent has filed counter affidavit narrating the sequence of events. The learned Special Government Pleader appearing for the respondent submits that the burden of proof is lying with the dealers as per the provisions of the TNGST Act, 2017. The dealer has to satisfy the assessing authority that <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 there is no evasion of tax on the part of the dealer. Further, the dealer has to prove that there is no issue related to the show cause notice. Hence, the notice was issued in accordance with the Act and the Rules. The learned Special Government Pleader further submits that based on the defects pointed out during the course of surprise inspection, the notice was properly served on the dealers and then, personal hearing notice was also given, which was also properly served on the dealers and finally, considering the objections filed by the dealers, orders were passed, which are in accordance with law and without deviating the principles of natural justice.

12.The learned Special Government Pleader further submits the petitioner's principal place of business viz., Ramanathapuram and additional places of business viz., Thanjavur, Kumbakonam, Pudukkottai [constructions of new building] and godowns were inspected by the Intelligence Wing Officials from 14.09.2021 to 16.09.2021, certain defects were pointed out based on the business transactions and hence, notice was issued to the dealers. On receipt of the notice, the dealers have requested time for filling objections and however, the dealers were given an opportunity of personal hearing on 28.12.2021 (personal hearing on 03.01.2022) and on 11.01.2022 (personal hearing on 24.01.2022) and requested to appear in person with the documentary proof in support of their claims. The petitioner's authorized <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 representative appeared, made objections. Since their objections were not convincing and not acceptable, there is no other option to confirm the proposals already made in the notice dated 06.12.2021 and orders were passed on 31.01.2022, levying tax, interest and penalty. The said order is a detailed one, giving sequence and also giving reasons for levying tax, interest and penalty. Against the impugned order, the petitioner can file an appeal before the Deputy Commissioner (GST-Appeal), Madurai, under Section 107(1) of the TNGST Act, 2017, within three months from the receipt of that order and therefore, prayed for dismissal of the writ petitions.

13.Considering the rival submissions and on perusal of the materials, it is seen that there was a surprise inspection in the petitioner's showrooms, Office and Godown from 14.09.2021 to 16.09.2021 and certain defects were pointed out and thereafter, explanation sought for. Though the petitioner had sent their objections and their authorized representative/Chartered Accountant appeared before the respondent, but they were unable to give proper explanation with supporting documents. This is a merit of the case. It is seen that after issuance of notice in Form DRC-01A, dated 06.12.2021, the respondent has issued Form GST DRC-01A. Thereafter, if the petitioner has got any objection and not paid tax as ascertained, a show cause notice has to be issued under Section 74(1) of the TNGST Act and after receiving <https://www.mhc.tn.gov.in/judis> WP(MD)Nos.11391, 11399, 11403 &11406 of 2022 objections, giving personal hearing, the assessment order ought to have been finalised. In this case, procedure not followed. It is also seen that following the impugned order, the respondent vide Form GST DRC-09, issued a communication, directing the Branch Manager, Axis Bank, Ramanathapuram, to recover the amount due from the petitioner under Section 79 of the TNGST Act, 2017, which is not proper. In view of the same, the assessment orders, bearing Assessment Nos.33AASFA2666A1ZP/2019-20, 33AASFA2666A1ZP/2018-19,

33AASFA2666A1ZP/2020-21 and 33AASFA2666A1ZP/2017-18, dated 31.01.2022, are hereby quashed. The consequential recovery notice, dated 10.06.2022, issued to the Branch Manager, Axis Bank, is also hereby quashed. The respondent is directed to issue notice after following the procedures prescribed under the TNGST Act and issue show cause notice and after giving an opportunity to file their objections, pass appropriate orders on merits and in accordance with law. The entire process is to be completed as expeditiously as possible without delay.

14. Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

20.0

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M.NIRMAL KUMAR, J.

To

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