

W.P.No.28092 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28092 of 2023

and

W.M.P.Nos.27606 and 27607 of 2023

Caterpillar India Private Limited,
Represented by its Authorised Signatory,
Mr.G.Srivathsan
7th Floor, Unit No.1, Ascendas Building,
International Tech Park, Taramani Road,
Chennai, Tamil Nadu – 600 113.

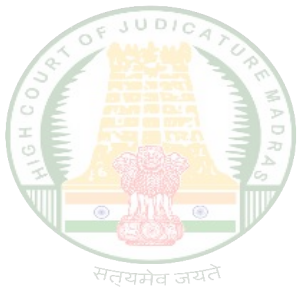
... Petitioner

Vs.

1.The Assistant Commissioner,
Office of the Deputy/Joint Commissioner of
CGST and Central Excise,
Perungudi Division,
692, M.H.U.Complex (8th Floor),
Anna Salai, Nandanam,
Chennai – 600 035.

2.The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
Audit II Commissionerate,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.

3.The Goods and Services Tax Council,



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GST Council Secretariat,
5th Floor, Tower-II,
Jeevan Bharti Building,
New Delhi – 110 001.

... Respondents

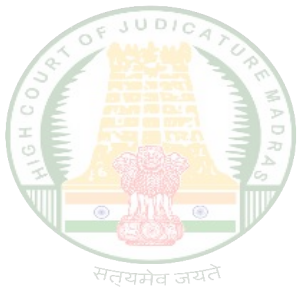
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Letter Bearing File No.C.No.GEXCOM/TECH/MISC/3627/2023-CGST-DIV per dated 13.09.2023 issued by the first respondent and quash the same and direct the respondents not to initiate recovery proceedings pursuant to the aforesaid letter dated 13.09.2023.

For Petitioner : Mr.Raghavan Ramabadrnan
for M/s.Lakshmi Kumaran
and Sridharan Attorneys

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
and
Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel and
Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel takes notice on
behalf of the respondents.



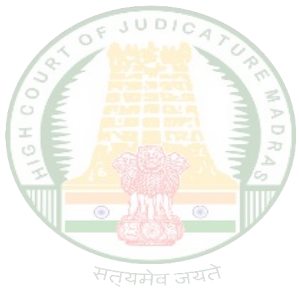
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2. Earlier, the petitioner had challenged the notice in GST DRC-01A dated 07.09.2023 in W.P.No.27296 of 2023. The writ petition was closed with liberty to challenge the recovery notice.

3. Accordingly, the petitioner has now filed this writ petition challenging the recovery notice dated 13.09.2023. The challenge to the impugned recovery notice is primarily on the ground that the procedural safeguard prescribed under Rule 88C inserted in the CGST Rules, 2017 vide Notification No.26/2022 dated 26.12.2022 has not been observed. It is submitted that the petitioner has replied the notice in GST DRC 01A dated 07.09.2023 on 11.09.2023. However, after the reply was given by the petitioner the impugned recovery notice seeks to invoke Section 75(12) read with Rule 88C of the CGST Rules, 2017.

4. It is submitted that the respondents ought to have mandatorily issued notice in Part A of Form GST DRC 01B electronically on the common portal. It is submitted that till date such an intimation has not been received by the petitioner either physically or in the electronic portal.



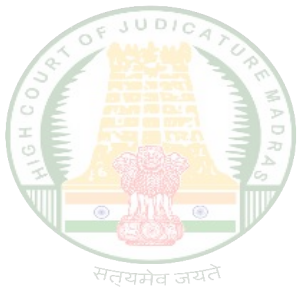
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5. That apart, it is submitted that the difference between the sales declared in the outward supplies and declared in Form GSTR 1 and the returns filed is primarily on account of the sales return which has been explained.

6. That apart, it is further submitted that the difference between amount in Form GSTR - 1 and Form GSTR3-B was explained by the petitioner, in reply dated 11.09.2023 in response to the notice in Form GST DRC - 01A dated 07.09.2023. Despite the same, the respondents have proceed to issue the impugned recovery notice which is impermissible. It is submitted that there is no scope for short circuiting in the procedural safeguards prescribed under Rule 88C of the CGST Rules, 2017.

7. It is further submitted that Rule 88C of the CGST Rules, 2017 also mandates the proceeding can be initiated based on the recommendations of the council. It is submitted that though GST council has deliberated on the issue in 49th Meeting held on 18.02.2023, there are no intimation to complying with the requirements of Rule 88C of the



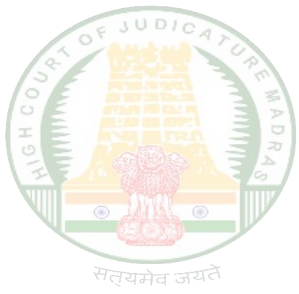
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CGST Rules, 2017 as inserted vide Notification No.26/22 dated 26.12.2022.

8.The learned Senior Standing Counsel and learned Junior Standing Counsel for the respondents has drawn attention to the Clarifications/Instructions/Orders issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing and GST Investigation Wing dated 07.01.2022 and 25.5.2022.

9.Specifically, the learned Senior Standing Counsel and learned Junior Standing Counsel for the respondents referred to Para 3.2 of the Clarifications/Instructions/Orders - GST dated 07.01.2022 bearing reference CBEC-20/16/05/2021-GST/23. Para 3.2 of the Clarifications/Instructions/Orders-GST, which reads as under:-

“3.2. There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B. For example, the person may have made a typographical error or may have wrongly reported any detail in GSTR-1 or GSTR-3B. Such errors or omissions can be rectified by the said person in a subsequent GSTR-1/GSTR-3B as per the provisions of sub-section (3) of Section 37 or the



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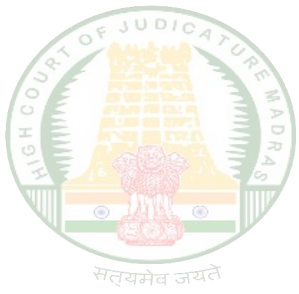


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provisions of sub-section (9) of Section 39, as the case may be. There may also be cases, where a supply could not be declared by the registered person in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the said supply in GSTR-3B. The details of such supply may now be reported by the registered person in the GSTR-1 of the current tax period. In such cases, there could be a mismatch between GSTR-1 and GSTR-3B (liability reported in GSTR-1 tax paid in GSTR-3B) in the current tax period. Therefore, in all such cases, an opportunity needs to be provided to the concerned registered person to explain the differences between GSTR-1 and GSTR-3B, if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under Section 79 of the Act is taken for recovery of the said amount.”

10.It is submitted that the petitioner has not replied and therefore the impugned recovery notice does not require any interference under Article 226 of the Constitution of India.

11.The learned Senior Standing Counsel and learned Junior Standing Counsel for the respondents further submits that the petitioner has not clearly stated notice in Form GST DRC-01B may be issued to the petitioner in the common portal as is contemplated under Rule 88C of the CGST Rules, 2017, but the petitioner has suppressed the same.



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12.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel and learned Junior Standing Counsel for the respondents.

13.This writ petition is disposed at the time of admission by directing the respondents to issue notice that is contemplated in Form GST DRC - 01B if it has not been issued on the common portal, within a period of seven days as is contemplated under Rule 88C of the CGST Rules, 2017 inserted vide Notification No.26/2022 dated 26.12.2022. Liberty is given to the respondents to issue appropriate notice calling upon the petitioner to explain the aforesaid difference in tax payable. The Clarifications/Instructions/Orders-GST dated 07.01.2022 bearing reference CBEC-20/16/05/2021-GST/23 is precursor to insertion to the GST Rules in 88C vide above mentioned. Without following the procedure prescribed the recovery cannot be made directly based on the difference noticed in Form GSTR - 1 and Form GSTR - 3B without complying with the mandatory requirements of Rule 88C of CGST Rules, 2017.



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14. Under these circumstances, the impugned recovery notice issued under Rule 79 of the CGST Rules, 2017 is quashed with liberty to the respondents to issue appropriate notice in Form GST DRC 01B before proceedings to recover any amount based on the difference noticed in Form GSTR1 and Form GSTR 3B.

15. This writ petition stands allowed with the above liberty. No costs. Consequently, connected writ miscellaneous petitions are closed.

25.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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C.SARAVANAN, J.



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