



W.P.(MD)No.13152 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.04.2026

CORAM :

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)No.13152 of 2020

and

W.M.P.(MD)No.11033 of 2020

Gail (India) Ltd.,
Represented by its Chief General Manager (O and M),
L.Arumugam,
CGS 36, Alivalam Village,
Adiyakkamangalam,
Tiruvarur District,
Pin - 611 001.

... Petitioner

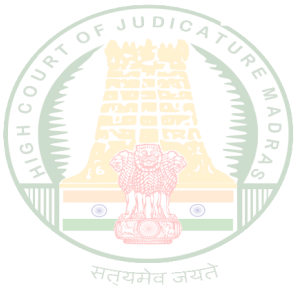
Vs.

The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in proceedings C.No.V/GST/01/2020-GST.Adj in Show Cause Notice No.02/2020 dated 17.08.2020 and to quash the same.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.R.Gowrishankar
Senior Standing Counsel



W.P.(MD)No.13152 of 2020

ORDER

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This Writ Petition is filed for a Writ of Certiorari challenging the impugned show cause notice dated 17.08.2020 issued under Section 76 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”).

GAIL’s Case :

2. The petitioner, Gas Authority of India Limited (GAIL), is a company incorporated under the Companies Act and a public sector undertaking with a majority holding by the Government of India. GAIL, *inter alia*, is engaged in two lines of business, namely, (i) the sale of natural gas to its customers; and (ii) the provision of transmission services for natural gas. In respect of transmission services, customers procure natural gas directly from suppliers such as ONGC, and GAIL provides pipeline infrastructure for transporting such gas to the customers’ premises.

2.1. Natural gas falls within the ambit of State taxation by virtue of its inclusion in Entry 54 of List II of the Seventh Schedule to the Constitution of India. Therefore, in respect of the sale of natural gas within the State of Tamil Nadu, tax is leviable under the provisions of the Tamil Nadu Value Added Tax



W.P.(MD)No.13152 of 2020

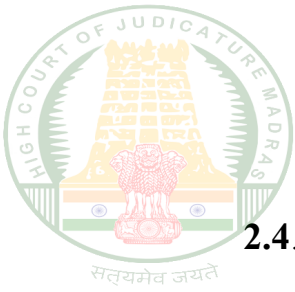
Act, 2006. Under the CGST Act, GAIL is liable to pay tax only on the

consideration received towards transmission charges.

2.2. Since GAIL is engaged in these two distinct activities across the country, it obtained separate GST registrations for the sake of uniformity, namely: (i) for the transmission vertical; and (ii) for the trading vertical. Accordingly, in the state of Tamil Nadu, the following GSTINs were assigned to each of the said verticals.

"Transmission vertical	-	33AAACG1209J1Z3
Trading vertical	-	33AAACG1209J2Z2"

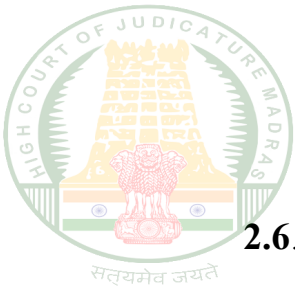
2.3. In a transaction involving the sale of natural gas, the seller undertakes to deliver the gas to the buyer's doorstep. Accordingly, the sale price agreed with the customer includes all expenses incurred up to the place of delivery, that is, the customer's premises. Such a composite transaction is subject to VAT in its entirety and, as a natural corollary, falls outside the ambit of GST. GAIL has been paying VAT at the applicable rate of 5% on such transactions and has been regularly filing VAT returns in respect thereof.



W.P.(MD)No.13152 of 2020

2.4. Insofar as the trading vertical is concerned, GAIL filed Form GSTR-3B and reported the sale of gas as “non-taxable supplies.” As per the GST regime, GAIL, on its own volition, bifurcated the transmission component embedded in the sale of gas and discharged GST under a separate registration pertaining to the transmission vertical. This arrangement was purely internal and adopted to ensure compliance with GST provisions. The transmission vertical paid GST at the applicable rate and raised invoices on the trading vertical. The trading vertical, in turn, while supplying gas to customers, recovered the said GST component through reimbursement, in addition to the base price, margin, and transmission charges. There is no discrepancy between the total amount collected from customers and the total tax remitted to the Government by the transmission vertical.

2.5. At this juncture, the respondent authorities entertained certain doubts regarding the said transactions and called upon GAIL to furnish documents and clarifications. GAIL duly submitted the required documents and explanations on 01.08.2019, 17.08.2019, 05.09.2019, and 24.09.2019. Further, officials of GAIL participated in discussions with the respondent Department, during which a detailed presentation explaining the transaction structure was made.



W.P.(MD)No.13152 of 2020

2.6. However, without properly appreciating the same, the impugned show cause notice dated 17.08.2020 was issued, alleging that GAIL had contravened Section 76(1) of the CGST Act and calling upon GAIL to show cause as to why interest, penalty, and an amount of Rs.14,63,42,506/- allegedly collected from customers should not be recovered. The documents relied upon for the issuance of the show cause notice have also been listed in the annexures thereto. Aggrieved by the same and contending that there is neither any evasion nor withholding of the amount collected, and when a detailed enquiry precedes the show cause notice and the findings are also in favour of GAIL, the issuance of the show cause notice is unwarranted and without jurisdiction, the present Writ Petition is filed.

The Contention of the Revenue:

3. The respondent has resisted the Writ Petition by filing a detailed counter-affidavit. It is contended therein that the GST component collected from customers has been retained by GAIL's trading vertical. The trading vertical neither availed Input Tax Credit (ITC) on the GST paid nor discharged GST on its outward supplies. On this basis, the respondent has formed a *prima facie* opinion that there is a violation of Section 76 of the CGST Act, which applies where a person collects an amount representing tax but fails to remit it to the



W.P.(MD)No.13152 of 2020

Government. It is further contended that the two verticals, having separate GST registrations, are to be treated as distinct persons under the GST law. After due application of mind, when the show cause notice has been issued, and the proceedings are at a preliminary stage, the Writ Petition is not maintainable against a show cause notice, and GAIL ought to submit its reply, which would be considered in accordance with law.

GAIL's Rejoinder:

4. In rejoinder, GAIL has contended that the impugned show cause notice is not a mere notice but, in substance, is in the nature of a predetermined order. The findings recorded therein are conclusive, leaving no real scope for adjudication. In such circumstances, it is submitted that the Writ Petition is maintainable and that this Court ought to exercise its jurisdiction to grant relief.

The Arguments for GAIL:

5. *Mr. Joseph Prabakar*, the learned counsel for GAIL, would submit that, to invoke Section 76 of the CGST Act, there must necessarily be two distinct persons involved in the transaction. In the present case, the transactions between the trading and transmission verticals of GAIL cannot be construed as transactions between two separate persons in the factual context. The bifurcation



W.P.(MD)No.13152 of 2020

into two verticals has been adopted purely for administrative convenience and accounting clarity. The raising of invoices between the transmission and trading verticals is only an internal arrangement. Ultimately, the customers bear the GST on transmission charges, which is duly collected and remitted. The entire amount collected has, in fact, been paid to the Government by the transmission vertical.

5.1. Even the impugned show cause notice records a categorical finding that there is no discrepancy between the amount collected and the amount remitted. In such circumstances, there is neither a collection of tax from another person in the legal sense contemplated under Section 76 of the CGST Act, nor any failure to remit the amount to the Government. The very foundation for invoking Section 76 of the CGST Act is therefore absent. On the face of it, the impugned show cause notice is without jurisdiction and liable to be quashed. It is further submitted that Section 76 of the CGST Act, being penal in nature, requires strict construction.

5.2. The learned counsel would further submit that an identical issue arose before the Gujarat authorities, where, after detailed consideration of the explanations furnished by GAIL, the proceedings were dropped by order dated 30.12.2024. It was specifically held that the GST component on transmission



W.P.(MD)No.13152 of 2020

charges was being reimbursed by the customers. On this ground as well, the

impugned show cause notice deserves to be interfered with.

5.3. In support of the above submissions, reliance is placed on the judgment of the Hon'ble Supreme Court of India in **Siemens Ltd. vs. State of Maharashtra**¹ to contend that where a show cause notice pre-determines the issue, a writ petition is maintainable. Reliance is also placed on the judgment of the Hon'ble Division Bench of this Court in **Canon India Pvt. Ltd. vs. State of Tamil Nadu**² for the proposition that where the revenue has taken a firm and final stand, the assessee need not be relegated to alternative remedies. Further reliance is placed on **Tiruchitrambalam Projects Ltd. vs. CESTAT, Chennai**³, to contend that writ petitions are maintainable where substantial questions of law arise.

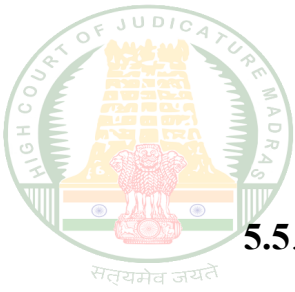
5.4. The learned counsel also relies on **Union of India vs. Kothari Petrochemicals Ltd.**⁴, wherein a show cause notice was interfered with on the ground of lack of jurisdiction.

1 2007 (5) S.T.R. 3 (S.C.)

2 2014 (305) E.L.T. 255 (Mad.)

3 2016 (43) S.T.R. 531 (Mad.)

4 2019 (367) E.L.T. 530 (Mad.)



W.P.(MD)No.13152 of 2020

5.5. Reliance is further placed on the judgment of the Hon'ble Division Bench of this Court in **Mahindra and Mahindra Ltd. vs. The Joint Commissioner (CT) (Appeals), Chennai⁵** , to contend that in exceptional circumstances, the writ jurisdiction can be invoked despite the availability of an alternative remedy.

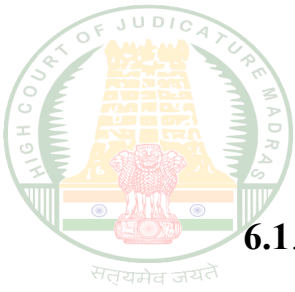
5.6. The judgment of the Hon'ble Supreme Court of India in **Magadh Sugar and Energy Ltd. vs. State of Bihar and others⁶** is also relied upon to contend that where exceptions to the rule of alternative remedy are made out, writ petitions are maintainable. On the above grounds, it is submitted that the impugned show cause notice, having been issued with predetermined findings and without jurisdiction, is liable to be quashed.

The Arguments for the Revenue:

6. Per contra, *Mr.AR.L.Sundaresan*, the learned Additional Solicitor General of India, placing reliance on Section 25(4) of the CGST Act, would submit that where a person obtains multiple registrations, each such registration is to be treated as a distinct person for the purposes of the Act. Accordingly, the transactions between the trading and transmission verticals cannot be treated as internal transactions of the same entity.

⁵ 2021-VIL-154-MAD [W.A.No.493 of 2021, 18.02.2021]

⁶ 2021 SCC OnLine SC 801



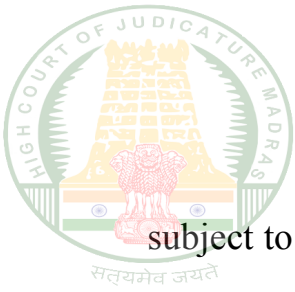
W.P.(MD)No.13152 of 2020

6.1. It is further submitted that the impugned proceedings are only at the show cause notice stage, and it is open to the petitioner to submit a detailed reply. The contentions raised by GAIL, including reliance on the order passed by the Gujarat authorities, can be effectively considered by the adjudicating authority. Entertaining the writ petition at this stage would amount to this Court acting as the assessing authority.

6.2. It is also contended that the position under the GST regime is distinct from that under the pre-GST regime. While earlier the transaction may have been treated as a composite one, the position is different under GST.

6.3. The respondent would further submit that any amount collected as representing tax is required to be remitted to the Government, irrespective of whether the underlying supply is taxable or not. GAIL's plea that the amounts represent mere reimbursement has not been accepted *prima facie*, leading to the issuance of the show cause notice.

6.4. *Mr.A.R.L.Sundaresan* would submit that GAIL must respond to the show cause notice and establish its case before the competent authority. The order passed by the Gujarat authorities is not conclusive and may itself be



W.P.(MD)No.13152 of 2020

subject to appellate proceedings. Once the authorities are vested with jurisdiction under Section 76 of the CGST Act, the Writ Petition is premature and not maintainable.

The Discussion & Findings:

7. At the outset, it is to be noted that on the very same set of allegations, the Gujarat Wing of the Revenue had issued identical show cause notices and, after hearing both sides, passed an order dated 30.12.2024, bearing ref: DIN-20241265TAOOOOOOF82D, taking into account that (a) it is the transmission service that is taxable under the CGST, 2017; (b) the transmission vertical had duly paid the tax at the applicable rate; and (c) the action of the trading vertical is not a collection of tax but a reimbursement of the sum paid by the transmission vertical. Accordingly, the proceedings are dropped. The exact defence of GAIL is extracted, the nature of the invoices is considered, and findings are made in para 8.9. of the said order. Relevant portions are excerpted as follows:

"8.9. I carefully examine the correspondence of the noticee, relevant in this matter, reproduced below, addressed to the Secretary, PNGRB, Government of India, along with "Annexure-A", clarifying that " GST charged by the transmission division is a cost to the trading division due to the exclusion of natural gas from the GST ambit. Accordingly, the GST cost incurred by the Trading Division is being recovered from the customer as a part of the sale price.

The different components which form part of the total gas sale



W.P.(MD)No.13152 of 2020

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price are shown separately on GAIL's invoice for the purpose of clarity and transparency. Accordingly, GAIL's invoice carries a footnote with respect to the transmission cost that 'transmission charges are inclusive of GST cost'.

.....

From the above, it is evident that GAIL (Trans) has to pay GST for the GAIL (NG) as the latter supplies natural gas only. It is also clear that GAIL (NG) has collected the amount along with GST as per the guidelines of their regulatory body, PNGRB, Govt. of India, only to issue a single invoice for outward supply and GAIL (Trans) correctly deposited to the Govt. exchequer and thereby discharged GST liabilities. I find that in the show cause notice there is no evidence to substantiate that the person concerned collected an amount representing tax or that such an amount was not paid to the government as alleged. Hence, I find the conditions stipulated under Section 76 are not satisfied, as the allegations in the show cause notice are not tenable."

7.1. The learned Additional Solicitor General's first submission is that the matter can be taken up by way of appeal. It must be noted that the order was passed in December 2024, and more than a year has lapsed. No proof of any appeal being filed. Thus, the subject matter inter-parties is decided and had become final.

7.2. The further argument on behalf of the Revenue is that here also the same explanation can be made, and the authority can consider. Normally, such an argument has to be accepted, since we are dealing only with a show-cause notice. But in the instant case, a detailed inquiry preceded the show cause. After

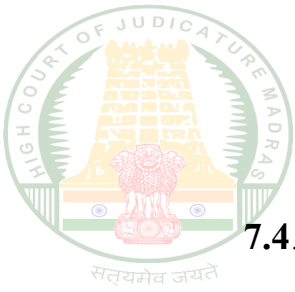


W.P.(MD)No.13152 of 2020

considering all the materials on record and accounts submitted by GAIL, a finding has been arrived at by the Revenue that the exact amount as collected from the customers of GAIL for the GST component is paid to the Government exchequer, and the relevant finding as contained reads as under:

"3. (iv) As regards the sales and supply of natural gas to various customers, the trading segment is only raising VAT invoices to the customers, through the gas supplied through the pipeline and the service of supply through the pipeline is liable to 12% GST. However, they were noticed to be collecting "reimbursement of GST cost on transmission charges" apart from the Basic price of gas, marketing margin, and the gas transmission tariff. It is also stated that the "reimbursement of GST cost on transmission charges" is retained by M/s. GAIL. The amount of GST paid by M/s. GAIL under its registration 33AAACG1209JIZ3 to the Government account is found to tally with the amount collected as "reimbursement of GST cost on transmission charges" from its customers under its registration 33AAACG1209J2Z2."

7.3. Thus, what remains is to consider the question of law pure and simple regarding the interpretation of Section 76 of the CGST Act, 2017. It is only in this context that this writ petition was entertained at the show cause notice stage in the year 2020, and the parties have completed their pleadings, and submissions have also been made on the merits. The matter has been pending for more than 5 years, and at this stage, it is not appropriate to relegate GAIL before the Assessing Authority. More importantly, to decide the issue, it is not necessary to look into any additional material from GAIL. From the contents and Annexure of the show cause notice itself, the matter can be decided.



7.4. The impugned show cause notice is issued in exercise of powers under Section 76 of the CGST Act, 2017, which is reproduced hereunder for ready reference:-

"76. Tax collected but not paid to Government.—(1) *Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.*

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

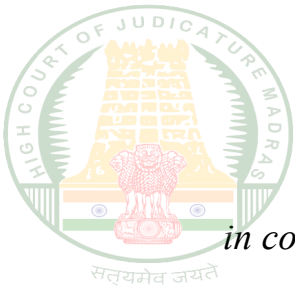
(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

*(4) **The person** referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.*

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the Court or Appellate Tribunal, the period of such stay shall be excluded



in computing the period of one year.

(8) *The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*

(9) *The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).*

(10) *Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.*

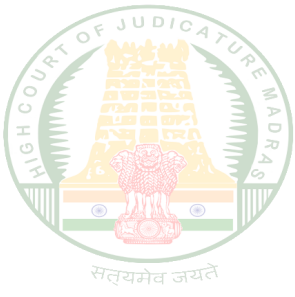
(11) ***The person** who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54."*

(Emphasis supplied)

7.5. The term "Person" is defined under Section 2(84) of CGST, Act, 2017 as under:-

"(84) "person" includes—

- (a) *an individual;*
- (b) *a Hindu Undivided Family;*
- (c) ***a company;***
- (d) *a firm;*
- (e) *a Limited Liability Partnership;*
- (f) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a co-operative society registered under any law relating to co-operative societies;*
- (j) *a local authority;*
- (k) *Central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860 (21 of 1860);*



W.P.(MD)No.13152 of 2020

(m) trust; and

(n) every artificial juridical person, not falling within any of the

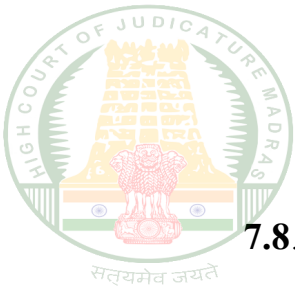
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(Emphasis supplied)

7.6. GAIL is a company and therefore a person. The incidence of tax falls on the transaction, *i.e.*, transmission services and the collection of charges by GAIL. There is no dispute about the rate of tax, the quantum of tax, the requirement that the incidence be borne by its customers availing the services, or that every penny collected has been paid to the Government. Section 76 of the CGST Act is clear and simple. Any person collecting any money as tax cannot retain it for himself, even if the tax is not chargeable. Ultimately, it is the person who wrongfully bore the incidence of tax who is entitled to a refund, and the person who collects has no say. Thus, neither is the tax amount wrongly collected, nor is it wrongfully retained.

7.7. In this regard, the Revenue relies upon Section 25(4) of the CGST Act which reads as under :

"25. (4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act."



W.P.(MD)No.13152 of 2020

7.8. There can be no two opinions that GAIL (Transmission Vertical) and GAIL (Trading Vertical), having obtained two registrations, are two distinct persons for the purposes of the Act. Even then, at best, it can be said that GAIL (Trading Vertical), instead of paying and remitting the tax under that registration, had paid the same through GAIL (Transmission Vertical). Section 22 of the CGST Act mandates registration in every State. Section 25 of the CGST Act prescribes the procedure by which, even within the state, separate registrations are permitted. In this regard, Section 25(4) of the CGST Act has to be read with Section 25(5) which reads as follows :

"25. (5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act."

7.9. In this case, the payment is not claimed through another distinct entity registered in another State, but rather through one in the same State. Thus, it is claimed as a payment-and-reimbursement arrangement by the same person, GAIL. It must be borne in mind that the proceedings are under Section 76 of the CGST Act, which itself starts with a *non-obstante* clause and purports to deal with the collection of tax and its non-remittance to the Government exchequer, and not with technical considerations of this kind. Neither a party using multiple



W.P.(MD)No.13152 of 2020

registrations in the same State can justify non-payment of any tax collected, nor can it justify invoking Section 76 of the CGST Act, despite honest and accurate payment, merely because the establishment is a distinct person in the same State.

7.10. A careful reading of the show cause notice shows that, in Paragraph 4, a finding is made that, under the GST regime, the concept of composite supply does not apply and that the transmission component is taxable. This finding is not contested by GAIL, as they are paying tax on the said component. The second finding in the show cause notice is that, as per Section 76 of the CGST Act, any amount representing tax under this Act is required to be remitted irrespective of whether supplies in respect of such amount were collected or taxable. There is no contest regarding this proposition either. Finally, in Paragraph 4.06, the finding is that GAIL has collected an amount representing tax, as discussed supra, and it appears that they are liable to pay the said amount to the Government. This finding is not taken exception to. Upon this finding, the payment by GAIL through the other registration in the same State is not taken into account at all, and the show cause notice completely ignores it, having recorded the payment in clear terms in the initial paragraphs. Section 76 proceedings are no method to justify double taxation. By just ignoring the same, the show cause notice proceeds to quantify the amount payable and the penalty.



W.P.(MD)No.13152 of 2020

Considering all the above, I am of the view that special and peculiar facts and circumstances of the instant case, warrant interference with the show cause notice.

The Result:

8. Accordingly, the writ petition stands allowed on the following terms:

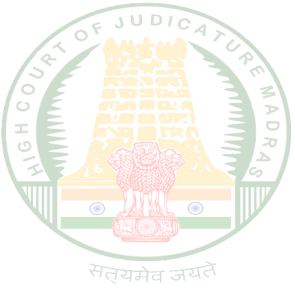
- (i) The impugned show cause notice issued by the respondent dated 17.08.2020 bearing ref: C.No.V/GST/01/2020-GST.Adj shall stand quashed;
- (ii) No Costs. Consequently, the connected miscellaneous petition shall stand closed.

15.04.2026

NCC : Yes
smn2

To

The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.



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