

W.P.(MD)No.13181 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.13181 of 2022

and

WMP(MD) No.9367 of 2022

M/s.Gemini Coach Builders,
Rep. by Partner Muniyappan,
546/B, Govindampalayam,
Andankoil, Karur District

..... Petitioner

Vs

- 1.The Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.
2. The Chairman
Central Board of Indirect Taxes and Customs,
North Block, New Delhi 110001
3. Goods and Services Tax Council,
Through its Secretary,
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi- 110 001



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

5. The Superintendent of Central GST and Central Excise
Karur -II, Range
Karur Division No.15, Ground Floor,
Gowripuram Extension,
Anna Nagar, Karur- 639 002.

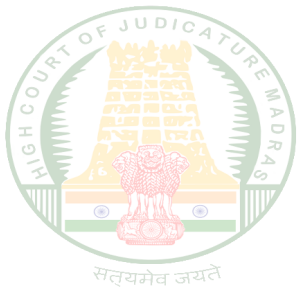
...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to impugned Notice of the 4th respondent dated 29.03.2022 having File No.GEXCOM/ADJN/GST/ADC/96/2022-ADJN SCN No. 02/ADC/2022/GST, DIN.20220359XN0000313851 and quash the same

For Petitioner	: Mr.V.Sukumar
For Respondents No.2 to 5	: Mrs.S.Ragaventhree Junior Standing Counsel

ORDER

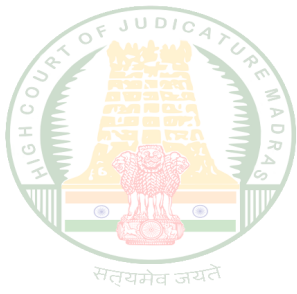
This writ petition has been filed to quash the impugned notice of the fourth respondent dated 29.03.2022 having File No.GEXCOM/ADJN/GST/ADC/96/2022-ADJN SCN No.02/ADC/2022/GST, DIN. 20220359XN0000313851.



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2. The contention of the learned counsel for the petitioner is that the petitioner was earlier issued summons on 15.11.2019, thereby calling for his explanation with regard to the 10 items listed therein. The petitioner appeared before the Superintendent of GST and Central Excise on 06.12.2019 and gave his explanation in detail. With regard to the question No.13 in Ministry's F.No.354/17/2018-TRU dated 01.03.2018, the petitioner had given detailed explanation referring to circular No. 52/26/2018-GST dated 09.08.2018, wherein in para 2.03, it has been clearly clarified that in case of fabrication of body on chassis provided by the principal (not on account of body builder) the supply would merit classification as service and 18% GST as applicable will be charged. Thereafter, again the petitioner was issued notice under Section DRC-01A, for a short payment of Rs.11,17,33,272/-. The petitioner again given his reply on 14.03.2022. This being so, now the third notice has been issued, for which also the petitioner has given explanation that the department circular No.52/26/2018—GST has clearly clarified that GST applicable on job work is 18% only, which the petitioner has paid.

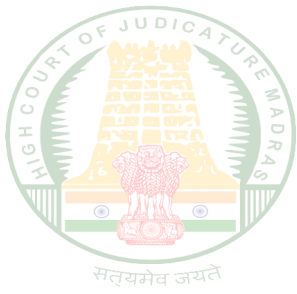


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3. The contention of the learned Standing Counsel for the respondents 2 to 5 is that the first respondent issued summons calling the petitioner to give his receipts, produce documents and give his explanation. Thereafter, another notice was issued to the petitioner and again the petitioner appeared and given his reply on 06.12.2019, which was considered and thereafter DRC-01A notice has been issued in O.C.No.37 of 2022. The petitioner is now issued with a show cause notice under Section 73 of the CGST Act,2017. The petitioner if at all has got any objection to the show cause notice, then his objections will be heard and thereafter only the order in original can be passed. Even before passing any order, the petitioner has rushed to this Court, hence seeks dismissal of the petition.

4. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents 2 and 5 and perused the materials available on record.



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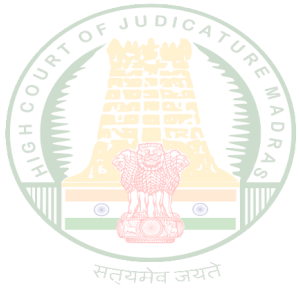
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5. It is seen that the petitioner has not only received the show cause notice but also earlier the petitioner was issued with summons and thereafter only DRC-01A has been issued, intimating the tax ascertained as being payable. Now, the show cause notice has been issued, for which, the petitioner has to give reply and thereafter personal hearing would be given, where he can make his submissions along with supporting documents, thereafter only order in original would be passed and it is the procedure as contemplated under law. Hence, this Court is not inclined to entertain the petition.

6. In the result, the petition stands dismissed. No cost. Consequently connected miscellaneous petition is also closed.

24.06.2022

Index: Yes/No
Internet : Yes/No
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M.NIRMAL KUMAR, J.

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