

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on	08.07.2024
Order pronounced on	16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR

RAMAMOORTHY

W.P.Nos.15307 & 15330 of 2024

&

WMP Nos.16631, 16633, 16656 & 16657 of 2024

W.P.No.15307 of 2024

Mandarina Apartment Owners Welfare
Association (MAOWA)
New No.7, Old No.35, mandarina,
Lock Street, Kotturpuram,
Chennai-600 085.

... Petitioner

-vs-

Commercial Tax Officer/State Tax Officer
Kotturpuram Assessment Circle
Integrated Registration and Commercial
Taxes Building, Nandanam,
Chennai-600 035.

... Respondent

W.P.No.15330 of 2024

M/s.Gani Fashion
Represented by its Proprietor,
Mr.Mohamed Gani,



W.P.Nos.15307 & 15330 of 2024

43, Golden Plaza, Ranganathan Street,
T.Nagr, Chennai, Tamil Nadu-600 017.

... Petitioner

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vs.

The Assistant Commissioner (ST)
Nandanam Assessment Circle,
No.46, III Floor, Greenways Road,
Chennai, Tamil Nadu-600 028.

... Respondent

PRAYER in W.P.No.15307 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the Respondent herein in Impugned order in GSTIN:33AAEAM5050F1ZZ/2018-19 dated 11.04.2024 and the consequential DRC 07 passed in Ref.No.ZD3304240861831 dated 11.04.2024 passed by the Respondent and quash the same.

PRAYER in W.P.No.15330 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records leading to the issuance of Order-in-Original reference No.ZD331223189373G dated 23-12-2023 FORM DRC-07 with connected proceedings reference No.GSTIN 33AGRPM6853A1ZC dated 23-12-2023, by the Respondent herein and afresh the same, and direct to consider the matter afresh, after giving full and fair opportunity to the Petitioner to submit its reply and after affording opportunity of personal hearing to the Petitioner.

For Petitioner : Ms.G.Vardini Karthik



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W.P.Nos.15307 & 15330 of 2024

(in W.P.No.15307/24)

For Petitioner : Mr.Prakash T.C.

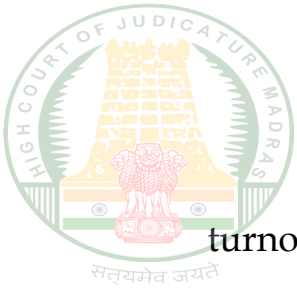
(in W.P.No.15330/24)

For Respondents : Mr.C.Harsha Raj
(in both WPs) Addl. Govt. Pleader (Taxes)

COMMON ORDER

The facts relating to W.P.No.15307 of 2024 may be summarized as follows: a show cause notice dated 28.12.2023 was uploaded on the GST portal. The petitioner asserts that such show cause notice was not communicated through any other mode and, therefore, the petitioner was unaware of proceedings and could not participate in the same. Eventually, the impugned order dated 11.04.2024 was issued.

2. The facts relating to W.P.No.15330 of 2024 may be summarized as follows: the petitioner received a show cause notice dated 05.09.2023 calling upon him to show cause with regard to disclosing a lower sales turnover in comparison to the purchase



W.P.Nos.15307 & 15330 of 2024

turnover. Upon receipt of two reminders, by reply dated 06.11.2023,

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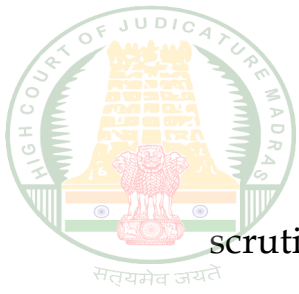
the petitioner informed the respondent that the sales turnover was reported in the subsequent month. The impugned order dated 23.12.2023 was issued in the said facts and circumstances.

Counsel and their contentions:

3. Oral arguments on behalf of the petitioner in W.P.No.15307 of 2024 were advanced by Ms.G.Vardini Karthik, learned counsel. As regards W.P.No.15330 of 2024, oral arguments were advanced by Mr.T.C.Prakash, learned counsel. In both writ petitions, Mr.C.Harsha Raj, learned Additional Government Pleader, advanced arguments on behalf of the respondent.

4. Ms.G.Vardini Karthik advanced the following contentions:

(i) The show cause notice discloses that proceedings were initiated against the petitioner on the basis of scrutiny of returns and the discrepancies noticed during such scrutiny. She contends that Section 61 of applicable GST enactments is attracted in relation to



W.P.Nos.15307 & 15330 of 2024

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scrutiny of returns. She further submits that Section 61 should be read with Rule 99 of applicable GST Rules and that Rule 99 prescribes that a notice in Form GST ASMT-10 shall be issued to the registered person if discrepancies are noticed upon scrutiny of the returns of such person. By further submitting that the non-issuance of such notice vitiates the subsequent adjudication proceedings, she submits that the petitioner's failure to reply to the show cause notice does not stand in the way of the above contention.

(ii) In respect of the identical discrepancy in the petitioner's returns for assessment period 2019-20, learned counsel submits that notice in Form ASMT-10 was issued. In this regard, she relied upon the judgment of this in Court in *CIT v. Hi Tech Arai Ltd*, [2014] 368 ITR 577 (Mad), particularly paragraph 11 thereof, wherein the rule of consistency was endorsed.

(iii) By relying on Instruction No.2/2022-GST dated 22.03.2022(Instruction No.2/2022), learned counsel submitted that a standard operating procedure (SOP) was prepared for the conduct of scrutiny. She also pointed out that the nature of discrepancies

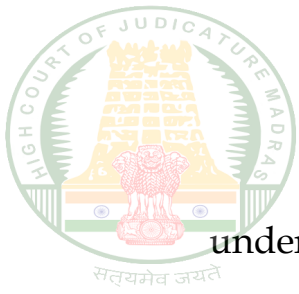


W.P.Nos.15307 & 15330 of 2024

specified in the show cause notice fall squarely within the scope of paragraphs 7 or 8 of the indicative list of parameters for scrutiny, which was annexed to Instruction No.2/2022 as Annexure B thereof.

(iv) By relying on paragraph 14 of the judgment of the Gauhati High Court in *Pepsico India Holdings (P.) Ltd. v. Union of India* [2023] 157 *taxmann.com* 428, learned counsel contends that the issuance of notice in Form GST ASMT-10 is mandatory in all cases wherein scrutiny of returns is undertaken. For the same proposition, learned counsel also referred to and relied upon the judgment of this Court in *Vadivel Pyrotech (P.) Ltd. v. Assistant Commissioner (ST) (Vadivel Pyrotech)*[2022] 144 *taxmann.com* 179 [Madras].

(v) By relying on the judgment of the Allahabad High Court in *Graziano Trasmissioni v. Goods and Services Tax (Graziano Trasmissioni)*[2024] 163 *taxmann.com* 126 (Allahabad), particularly paragraphs 73, 75, 94, 112, 117 & 119 thereof, she contended that the Division Bench of the Allahabad High Court held that scrutiny and audit are necessary preparatory works before adjudication. She also pointed out that the notification extending the period of limitation



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under Section 168A was upheld in the said judgment because scrutiny and audit work were impeded on account of the COVID-19 pandemic. When the limitation period was extended by reference to the time taken in scrutiny and audit work, she submitted that such scrutiny by issuance of an ASMT-10 notice in compliance with Section 61 read with Rule 99 is a mandatory pre-requisite for adjudication under Section 73.

(vi) By relying on the judgment of the Hon'ble Supreme Court in *Assistant Commissioner of Income-tax v. Hotel Blue Moon [2010] 188 Taxman 113 (SC)*, learned counsel submitted that the Supreme Court concluded that a notice under Section 143(2) of the Income Tax Act is mandatory when the assessing officer decides to repudiate the assessee's return of income. By analogy, she submits that the procedure under Section 61 read with Rule 99 is also mandatory before adjudication.

(vii) The last contention of learned counsel was that Rule 142 of applicable GST rules, which imposed the requirement of a pre-show cause notice intimation in Form DRC-01A, was held to be mandatory,



until such rule was subsequently amended, by recognizing the use of the mandatory word 'shall' in pre-amended Rule 142. For this proposition, she relied on the judgment of this Court in *Shri Tyres v. State Tax Officer (Shri Tyres)[2021] 133 taxmann.com 319 (Madras)*.

5. Mr.Prakash made the following submissions:

(i) By relying on the judgment of the Calcutta High Court in WPA.No.9391 of 2024, particularly paragraphs 1 and 6 thereof, learned counsel contended that the Calcutta High Court directed that the order under Section 73(9) be kept in abeyance until the notice in ASMT-10 was issued.

(ii) His last contention was that prejudice is caused to the tax payer if notice in Form ASMT-10 is not issued because such tax payer loses the opportunity of remitting the tax dues and interest before issuance of show cause notice under Section 73, and thereby avoiding payment of penalty in terms of sub sections 5 and 6 of Section 73.

6. The above contentions were refuted by Mr.C.Harsha Raj on the following grounds:



W.P.Nos.15307 & 15330 of 2024

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(i) He contended that GST statutes enable the proper officer to undertake scrutiny, audit, special audit or inspection. According to him, none of the above proceedings are a condition precedent for the initiation of adjudication either under Section 73 or Section 74. In other words, he contended that scrutiny, audit, special audit or inspection, on the one hand, and adjudication, on the other, operate in silos and the former does not constitute a pre-requisite for the latter. In support of this proposition, he relied upon the judgment of the Division Bench of the Allahabad High Court in *M/s.Nagarjuna Agro Chemicals Pvt. Ltd. v. State of U.P. and another (Nagarjuna Agro Chemicals)*, 2023:AHC:148454-DB, Writ Tax No.335 of 2023, wherein the Division Bench held that scrutiny of return proceedings and proceedings under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3) cannot be construed as a condition precedent for initiation of action under Section 74 of the Act. He also pointed out that the Allahabad High Court noticed the judgment of this Court in *Vadivel Pyrotech* and concluded that the said judgment does not lay down the proposition



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that jurisdiction under Section 74 cannot be exercised without issuing notice under Section 61(3). For the same proposition, he also relied upon the judgment of the Division Bench of the Andhra Pradesh High Court in *Devi Traders v. State of Andhra Pradesh (Devi Traders)*, [2023] 152 taxmann.com 22 (Andhra Pradesh), particularly paragraphs 8 and 9 thereof. He contended that the Andhra Pradesh High Court noticed the provisions relating to scrutiny and audit and concluded that Section 73 opens with the phrase “where it appears to the proper officer that any tax has not been paid”, thereby indicating that adjudication can be initiated not only on the basis of scrutiny under Section 61 or audit under Section 65 but also on the basis of credible information from a different source.

(ii) His next contention was that the object and purpose of Section 61 is to gather information with regard to discrepancies and provide an opportunity to the tax payer to remedy such discrepancies, wherever such discrepancies are remediable.

(iii) He countered the contention made by relying on *Graziano Trasmissioni* by submitting that the said judgment refers to scrutiny



W.P.Nos.15307 & 15330 of 2024

and audit as preparatory work for adjudication and not as a condition precedent.

(iv) By referring to the judgments of the Hon'ble Supreme Court in *Sathyanath & Another v. Sarojamani*, Civil Appeal No.3680 of 2022 and the judgment in *Amardeep Singh v. Harveen Kaur*, Civil Appeal No.11158 of 2017, he contended that the Hon'ble Supreme Court held that procedural provisions are intended to be a handmaid of justice. On the facts of these cases, he contended that the adjudication was initiated by issuing a show cause notice. Consequently, he contended that the tax payer had the opportunity to contest the tax proposal. In effect, he submitted that the non-issuance of notice in Form ASMT-10 did not cause any prejudice to the respective petitioner.

(v) His last contention was that any procedural defect in the assessment proceedings, which does not cause prejudice to the tax payer, would be saved by Section 160 of applicable GST statutes if such adjudication proceedings are in substance and effect in conformity with or according to the intents, purposes and



requirements of applicable GST statutes.

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7. By way of a brief rejoinder, Ms.G.Vardini Karthik, reiterated that her case falls squarely within sub-section 1 of Section 61 because there was a scrutiny of returns followed by the discovery of discrepancies therein. She also submitted that both *Nagarjuna Agro Chemicals* and *Devi Industries* deal with adjudication under Section 74, which cannot be equated with adjudication under Section 73. Her last submission was that Section 160 of applicable GST statutes is analogous to Section 292 of the Income Tax Act and would not shield the GST authorities from the consequence of non-issuance of notice under Section 61 read with Rule 99.

Discussion, analysis and conclusions

8. The adjudications in both these writ petitions were under Section 73 of applicable GST enactments. Since such adjudications are challenged primarily on the ground of non-issuance of notice in Form ASMT 10, the relevant provisions are set out below:



Section 61

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W.P.Nos.15307 & 15330 of 2024

61. Scrutiny of returns:

(1) *The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.(emphasis added)*

(2) *In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.*

(3) *In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed*



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W.P.Nos.15307 & 15330 of 2024

to determine the tax and other dues under section 73 or section 74.

Rule 99 Central Goods and Services Tax Rules, 2017

Scrutiny of returns

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.(emphasis added)

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and



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W.P.Nos.15307 & 15330 of 2024

inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

Section 73

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful- misstatement or suppression of facts.

73.(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the



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W.P.Nos.15307 & 15330 of 2024

refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. (emphasis added)

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition



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W.P.Nos.15307 & 15330 of 2024

that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which



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W.P.Nos.15307 & 15330 of 2024

falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

*(9) **The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. (emphasis added)***

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained



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W.P.Nos.15307 & 15330 of 2024

in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

9. On examining the language of sub-section (1) of Section 61, it is noticeable that the permissive word 'may' is used. The use of the permissive word 'may' is indicative of and raises the presumption that the prescription is not mandatory. In order to determine conclusively whether the prescription is directory or mandatory, it is useful to examine the immediate context and, thereafter, revert to the language of sub-section (1). Sections 61 to 64 are grouped under Chapter XII, which deals with assessment. Section 59 provides for self-assessment by every registered person by filing returns in terms of Section 39. Section 39 read with the relevant rules provide for not only filing of returns but payment of taxes by the registered person through a process of self-assessment. Such returns are required to be filed on monthly basis, except where otherwise specified.



WEB COPY 10. Against this backdrop, sub-section (1) prescribes that the proper officer may scrutinize the returns and related particulars furnished by the registered person to verify the correctness of the returns and to inform such person of discrepancies, if any, in such returns. The purpose of scrutiny under Section 61(1) is, therefore, to verify the correctness of the returns and inform the tax payer of any discrepancies. If construed as mandatory, it would mean that every return - mostly filed monthly - of every registered person shall be verified by the proper officer. Undoubtedly, self-assessment would be rendered otiose in that event, and tax administration would be a veritable nightmare given the volume and frequency of returns. Another significant aspect: Section 61 read with Rule 99, which opens with the phrase "*where any return of a registered person is selected for scrutiny*", reinforces the conclusion that scrutiny is undertaken at the option and not the obligation of the proper officer. This leads to the question as to whether the requirements of Section 61 and Rule 99 become mandatory once a return is selected for scrutiny, which I turn



to next.

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W.P.Nos.15307 & 15330 of 2024

11. The text of sub-section (1) of Section 61 indicates clearly that the obligation to issue notice to the registered person is not triggered merely by the selection of the returns of such person for scrutiny, but by the discovery of discrepancies in such returns on scrutiny. Thus, upon fulfilment of two conditions, namely, selection of returns for scrutiny and the discovery of discrepancies on such scrutiny, there is an obligation to issue notice. Rule 99(1) uses the language “*and in case of any discrepancy, he shall issue a notice to the said person in Form GST ASMT-10*”, thereby raising the presumption that the obligation is mandatory. Sub-sections (1) to (3) make it clear that the purposes of such notice are to: enable the registered person to provide an explanation; discontinue action if the explanation is in order; or, either if the explanation is not satisfactory or corrective measures are not taken, initiate action under Sections 65, 66 or 66, or determine the tax or other dues under Sections 73 or 74. Because the notice requirement is intended to enable the registered person to explain or



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accept the discrepancy and pay tax and interest and thereby avoid a penalty [see Section 73(5)], I conclude that the ASMT-10 notice is mandatory if the two conditions set out above are satisfied.

12. This conclusion, in turn, raises two inter-related legal questions and one factual question. The legal questions are: what is the consequence of non-compliance? Does it vitiate the subsequent adjudication either under Sections 73 or 74? The factual question: whether the two conditions specified above were fulfilled in this case? I discuss the legal questions first.

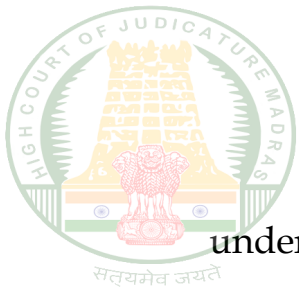
13. Sub-section 3 of Section 61 prescribes that the proper officer may initiate appropriate action under Sections 65 or 66 or 67 or proceed to determine the tax and other dues under Sections 73 or 74, if the explanation of the tax payer is not satisfactory. Two aspects are noticeable: a range of options are available to the proper officer if the explanation is not satisfactory; and, more importantly, the determination of tax and other liabilities is only under Sections 73 or



74 and not under Section 61. If determination of tax and other liabilities is not undertaken under Section 61, what is achieved by the

scrutiny process? First, it enables the proper officer to select and scrutinize returns and conclude that there are no discrepancies. Secondly, if there are discrepancies, the registered person is provided an opportunity to explain or accept the discrepancies. For that purpose, the proper officer is required to set out the discrepancies and, where possible, quantify the amount of tax, interest and other payables. The text of Rule 99(1) uses the words “*where possible*” before the word “*quantifying*” thereby clarifying that even quantification is not mandatory. The format of Form ASMT-10 also points in the same direction.

14. When read with sub-section (3) of Section 61, which provides the option of determining tax and other liabilities by resorting to Sections 73 or 74, it becomes clear that neither reassessment nor adjudication takes place under Section 61. Indeed, it should be noticed that unlike Section 60(provisional assessment

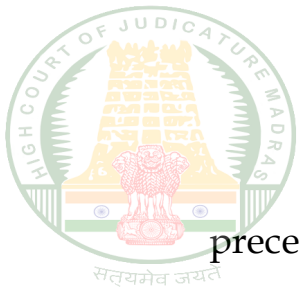


W.P.Nos.15307 & 15330 of 2024

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under conditions prescribed therein) or Section 62(best judgment assessment of non-filers subject to conditions prescribed therein) or Section 63(assessment of unregistered persons) or Section 64 (summary assessment), no assessment, including re-assessment, is undertaken under Section 61. Therefore, the consequence of not issuing the ASMT-10 notice, in spite of noticing discrepancies after selecting and scrutinizing returns, would be that it vitiates the scrutiny process, including the discrepancies noticed thereby and the quantification, if any, done in course thereof. As regards adjudication, the limited impact would be that the scrutiny under Section 61 cannot be relied upon for adjudication.

15. In view of the above conclusions on the legal questions, the factual question as to whether the respective petitioner's returns were selected for scrutiny under Section 61 has limited significance. This contention was advanced on the basis that the subject description in the impugned order in W.P. No.15307 of 2024 refers to scrutiny of returns and the discovery of discrepancies. On examining the



W.P.Nos.15307 & 15330 of 2024

preceding show cause notice, there is no reference to scrutiny under

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Section 61. Instead, data from the GSTR-01 and GSTR-3B returns are set out to indicate the mismatch. In addition, details of supplies received from two suppliers are set out and the petitioner was called upon to show cause as to why the input tax credit claimed in respect thereof should not be disallowed under Section 17(5) of applicable GST statutes. From the material on record, it is not possible to record a definitive conclusion that the petitioner's returns were selected for scrutiny under Section 61. In any event, nothing turns on the answer because such scrutiny was not the foundation for adjudication under Section 73.

16. As regards W.P. No.15330 of 2024, both the show cause notice and the impugned order refer expressly to a scrutiny under Section 61 and to discrepancies being noticed. Thus, the two conditions necessary to trigger the obligation to issue the ASMT-10 notice were fulfilled in this case. As a consequence of not issuing the ASMT-10 notice, any conclusions drawn in course of scrutiny would



W.P.Nos.15307 & 15330 of 2024

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stand vitiated and cannot be the basis for adjudication. In this case, the show cause notice specifies the outward supply value from the petitioner's GSTR-3B returns and the purchase value as reflected in the auto-populated GSTR-2A. Since the petitioner was provided an opportunity to show cause, it cannot be said that the adjudication was based only on the scrutiny under Section 61 or that the petitioner was prejudiced. In this regard, the contention that the petitioner could have avoided penalty if the ASMT-10 notice had been issued, as per Section 73(5), is devoid of merit in the factual context of the petitioner not paying tax and penalty after the show cause notice was issued. Put differently, such contention would be tenable only if the registered person paid the tax and interest upon receipt of show cause notice and then contended that penalty could have been averted by making such payment upon receipt of the ASMT-10 notice and before the show cause notice was received. This leads to the question whether Sections 73 or 74 contain any indication that scrutiny under Section 61 is a mandatory pre-requisite for adjudication under these provisions.



W.P.Nos.15307 & 15330 of 2024

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17. On examining the text of Section 73, the provision opens with the words “Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason”. Except for the replacement of the last three words “for any reason” with “by reason of fraud, or any wilful misstatement or suppression of facts to evade tax”, the opening phrases of Sections 73 and 74 are identical. As interpreted by the Andhra Pradesh High Court in *Devi Traders*, the use of the words 'where it appears to the proper officer' indicates that adjudication may be initiated not only as a consequence of scrutiny under Section 61, audit under Section 65, special audit under Section 66 or inspection under Section 67, but also upon receipt of information from other sources. On closely examining both Sections 61 and Section 73, I find no indication in either provision that scrutiny of returns and the issuance of notice in Form ASMT-10 constitute a mandatory pre-requisite for adjudication even in cases where returns were scrutinized. I am also inclined to accept the contention of learned AGP that *Vadivel Pyrotech* is distinguishable



W.P.Nos.15307 & 15330 of 2024

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inasmuch as, in that case, notice in Form ASMT-10 was issued and such notice was replied to. Thereafter, the adjudication covered discrepancies not covered in the earlier ASMT-10 notice and learned AGP agreed to issue a notice in Form ASMT-10 before proceeding further. All that remains is to examine the merits of the adjudication.

18. Since the order of adjudication was issued *ex parte*, Ms.G.Vardini Karthik made the fall-back submission that the petitioner in W.P.No.15307 of 2024 agrees to remit 10% of the disputed tax demand as a condition for remand in case the Court is not persuaded to accept the contention that the issuance of notice in Form GST ASMT-10 is mandatory. On perusal of the order impugned in W.P.No.15307 of 2024, it is clear that the tax proposal was confirmed because the tax payer failed to reply. Since the petitioner asserted that such failure to participate was on account of not being aware of proceedings, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits by putting the petitioner on terms.



WEB COPY 19. As regards the petitioner in W.P.No.15330 of 2024, it was contended that the petitioner's reply was not taken into consideration in the impugned order. On perusal of the impugned order, it is recorded therein that the tax payer failed to file a reply. The tax payer's reply has been placed on record. Such reply, albeit brief, appears to have been uploaded in Form GST DRC-06 on 06.11.2023, and the petitioner states therein that the sales turnover was reported in the following months. Although the reply is brief, in view of the non-consideration of such reply, the matter requires reconsideration.

20. In the above facts and circumstances, these writ petitions are disposed of with the following directions:

- (i) The impugned assessment order dated 11.04.2024 in W.P.No.13507 of 2024 is set aside on condition that the petitioner remits 10% of the disputed tax demand within fifteen days from the date of receipt of a copy of this order. Within



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W.P.Nos.15307 & 15330 of 2024

the said period, the petitioner is permitted to submit a reply to the show cause notice. Upon receipt thereof and on being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply.

(ii) The impugned assessment order dated 23.12.2023 in W.P.No.15330 of 2024 is aside aside by remanding the matter for reconsideration. The petitioner is permitted to submit an additional reply with supporting documents, if any, within fifteen days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the



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W.P.Nos.15307 & 15330 of 2024

petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of a copy of this order.

(iii) Consequently, connected miscellaneous petitions are closed in both writ petitions without any order as to costs.

16.07.2024

Index : Yes / No

Internet : Yes / No

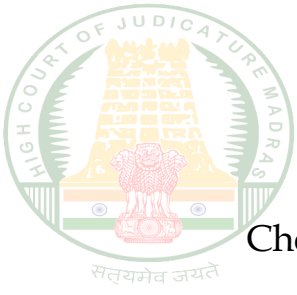
Neutral Citation: Yes

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To

1. Commercial Tax Officer/State Tax Officer
Kotturpuram Assessment Circle
Integrated Registration and Commercial
Taxes Building, Nandanam,

31/33



Chennai-600 035.



W.P.Nos.15307 & 15330 of 2024

WEB COPY 2. The Assistant Commissioner (ST)
Nandanam Assessment Circle,
No.46, III Floor, Greenways Road,
Chennai, Tamil Nadu-600 028.

SENTHILKUMAR RAMAMOORTHY,J

kal



WEB COPY



W.P.Nos.15307 & 15330 of 2024

Pre-delivery order made in
W.P.Nos.15307 & 15330 of 2024
&
WMP Nos.16631, 16633, 16656 & 16657 of 2024

16.07.2024