



- As petitioner failed to pay collected tax, subsequently, respondent issued show cause notice dated 19-5-2023 for conducting audit
 - Contention of respondent was that audit could be conducted for a period from 2017-18, 2021-22 as petitioner was a registered firm at that time
- HELD :** When section 65 specifically states 'any registered person', then it ought to be construed as existing concern and unregistered person is exempted from purview of section 65
- Further, when section 65 provides for periodical audit, respondent having failed to conduct audit for all these years, suddenly could not wake up and conduct an audit
 - However, respondent could initiate assessment proceedings for petitioner concern under sections 73 and 74 [Section 65, read with sections 73 and 74 of Central Goods and Services Tax Act, 2017.

W.P.(MD).No.15291 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT



DATED : 11.08.2023

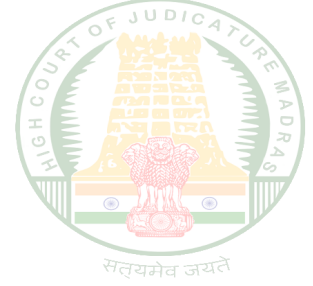
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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15291 of 2023

and

W.M.P.(MD).No.12890 of 2023



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Tvl.Raja Stores,

Represented by its Partner Mr.Pitchai Nadar,
86, S.S.Colony, Bye Pass Road,
Madurai.

... Petitioner

Vs.

The Assistant Commissioner (ST),
West Veli Street Circle,
Madurai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the respondent in Form GST ADT-01 Reference No. ZD330423086800K (Tax Period: 2019-2020) dated 19.05.2023 and quash the same.

For Petitioner : Mr.M.V.Mani Babu

For Respondent : Mr.A.K.Manikkam,
Special Government Pleader.



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ORDER

This Writ Petition is filed to quash the impugned order dated 19.05.2023.

2. The petitioner is a partnership firm doing business in the name and style of Raja Stores, which is the registered Tax payer under the Goods and Services Tax Act, 2017. The petitioner was paying monthly returns without fail. The petitioner intended to close his business and submitted a petition before the authorities. The authorities after considering the same vide order dated 03.03.2023 has allowed the petitioner to close his business with effect from 31.03.2023. The petitioner however failed to pay the collected tax. Subsequently, the respondent has issued impugned show cause notice dated 19.05.2023 for conducting audit. After receiving the notice, the petitioner sought adjournment but subsequently filed the Writ Petition by challenging the show cause notice, before this Court.

3. The respondents have filed a counter stating that the petitioner had challenged the show cause notice, the petitioner is bound to submit a reply before the authorities. The Writ Petition cannot be maintained against the show



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cause notice stage itself. Further the respondents submitted that the grounds

raised in the Writ Petition cannot be accepted, since it is a recently closed unit

and the respondent is having every right to conduct audit. Therefore, the

respondents prayed to dismiss this Writ Petition.

4. Heard Mr.M.V.Mani Babu, learned counsel for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader, for the respondent.

5. The first contention that was raised by the petitioner is that under Section 65, the respondents are empowered to conduct audit if the concern is a registered unit. As on the date, the petitioner's registration is cancelled, he is an unregistered concern. Therefore, the respondent is not having any jurisdiction to conduct an audit. For better understanding, Section 65 of CGST Act is extracted hereunder:

Section 65 of CGST Act

(1) The Commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a



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notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.--For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorized officer may require the registered person,--

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74.

The said Section states that the Commissioner or any other officer authorized through a general or specific order to conduct audit for any



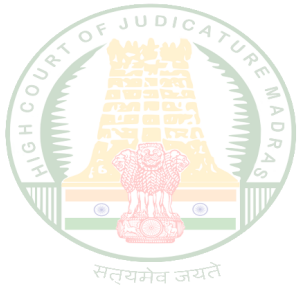
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registered person. When the section specifically states 'any registered person', then it ought to be construed as existence concern and the unregistered person is exempted from the purview of the said section 65. But the contention of the respondent is that the audit is being conducted for a period from 2017-2018, 2021-2022. Therefore, the respondent claims that for the said period, the petitioner was a registered firm and for the said period, the respondent is empowered to conduct audit.

6. On perusing Section 65, it is stated that the audit can be conducted to the said registered persons “for such period”, “for such frequency” and “in such manner”. When a Section provides for periodical audit, the respondent having failed to conduct audit for all these years, suddenly cannot wake up and conduct an audit. However, this will not preclude the respondent from initiating assessment proceedings for the said concern under Sections 73 and 74. Therefore, the said impugned order is liable to be quashed. Hence, the impugned order is quashed with liberty to the respondent to initiate assessment proceedings under Sections 73 and 74 of the Act.



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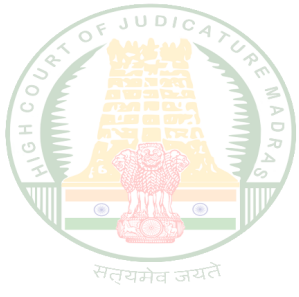
WEB COPY 7. In view of the above, this Writ Petition is allowed. There shall be no order. Consequently, connected miscellaneous petition is closed.

11.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

The Assistant Commissioner (ST),
West Veli Street Circle,
Madurai.



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S.SRIMATHY, J.

Nsr



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