



According to page 3, the petitioner's argument is that the respondent had issued bunching of show cause notices dated 28.09.2023 for five Assessment Years starting from 2017-18 to 2021-22. They argue that in terms of Section 73 of CGST Act, 2017, bunching of show cause notices is not permissible and it only provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or willful misstatement or suppression of facts. Further, sub-section 10 of Section 73 provides that an order determining the tax from a person should be passed within three years from the due date for furnishing of annual return for the financial year.

According to page 3, the main argument of the petitioner was that bunching of show cause notices was not allowed in law and it is against the provisions of Section 73 of CGST Act, 2017. Section 73(10) of the Act specifically provides a time limit of three years from the due date for furnishing of annual return for the financial year to which the tax due relates to. In the petitioner's opinion, determination of tax due under Section 73 is with reference to a financial year, and the limitation date to complete the proceedings and issue an order is three years from the due date to file the annual return for that particular financial year. Simply put, based on the Act, tax proceeding can only relate to a specific financial year, and each year has its limitation time of three years

According to page 7, the respondent argued that there is no provision under Section 73 of the CGST Act prohibiting them from issuing a bunching of show cause notices and in the absence of such provision, the petitioner cannot come before the court and submit that the respondent is not empowered to issue a bunching of show cause notices. The respondent also stated that in the event if the court is inclined to order splitting up of bunching of show cause notices issued by the respondent, the limitation for the Assessment Year 2017-18 is going to expire on 31st December 2023 and before that, the respondent has to finish adjudication and pass orders. They also contended that since the petitioner was enjoying the stay of proceedings granted by the Court for a period of 26 days, the said period may be excluded for calculating the period of limitation.

According to page 8, the court observed that issuing a bunching of show cause notices is against the spirit of provisions of Section 73 of the CGST Act and the Constitution Bench of the Hon'ble Apex Court in the State of Jammu and Kashmir and Others v. Caltex (India) Ltd case has held that where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The court therefore quashed the process of issuing bunching of show cause notices and ordered the first respondent to dispose of the representation dated 25.10.2023 made by the petitioner keeping in mind the above order passed by the court. The court also ordered the respondent to defer all the proceedings until the date of disposal of the representation of the petitioner to split up the show cause notices for each year separately.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **18.12.2023** W.P.No.33164 of 2023

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.33164 of 2023 and

W.M.P.No.32855 of 2023



Titan Company Ltd.,

Represented by its Authorized Signatory Mr.P.Manivannan
No.3, SIPCOT Industrial Complex Hosur, Tamil Nadu –
635126.

... Petitioner

-Vs-

1.The Joint Commissioner of GST & Central Excise

Salem Commissionerate, Salem, GST Bhavan
Foulks Compound, Annai Road, Salem.

2.The Additional Commissioner of GST & Central Excise

Office of the Commissioner of GST & Central Excise (Audit)
6/7, ATD Street, Race Course Road, Coimbatore, T.N. -
641018.

... Respondents



W.P.No.33164 of 2023



Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the first respondent to consider and pass orders on the representations dated 25.10.2023 submitted by the Petitioner before proceeding with the adjudication of the Show-cause notice No.28/2023 ADDL.COMM.-AUDIT dated 28.09.2023 with the reference C.No.III/10/32/2023 AUDIT on the file of the first respondent.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.Natesan Murali.

For Respondents : Mr.M.Santhanaraman, Sr. Standing Counsel

ORDER

The petitioner has come up with the present Writ Petition seeking for issuance of a Writ of Mandamus directing the first respondent to consider and pass orders on the representation dated 25.10.2023 submitted by the petitioner before proceeding with the adjudication of show cause notice dated 28.09.2023.



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2.Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the petitioner would submit that the first and foremost grievance of the petitioner is that the respondent had issued bunching of show cause notices dated 28.09.2023 for five Assessment Years starting from 2017-18 to 2021-22. According to the learned Senior Counsel, in terms of Section 73 of CGST Act, 2017 [hereinafter referred to as the 'Act'], bunching of show cause notices is not permissible and it only provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or willful misstatement or suppression of facts.

3.Further, he would submit that sub-section 10 of Section 73 provides that an order determining the tax from a person should be passed within three years from the due date for furnishing of annual return for the financial year to which the tax due relates to and therefore, he would submit that determination of tax due under Section 73 is with reference to a financial year and the limitation date to complete the proceedings and issue an order is three years from the due date to file annual return for that particular financial year.



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4. By referring to the aforesaid provision, learned Senior Counsel would further submit that though in the present case, the time limit specified under Section 73(10) of the Act has been extended from time to time, the respondent is still issuing show cause notices and in the event if they have not extended the said period, virtually the bunching of show cause notices issued on 28.09.2023 is barred by limitation for the Assessment Years 2017-18. He would further submit that if the respondents are allowed to issue bunching of show cause notices, it would set a bad precedent and in future, it would pave way for issuance of show cause notices even for the cases where limitation is not available.

5. Section 73(10) of the Act has categorically fixed the limitation for the purpose of making assessment under Section 73. What the respondents cannot do directly, they cannot do the same indirectly by issuing bunching of show cause notices to extend the period of limitation, is the further submission of the learned Senior Counsel appearing on behalf of the petitioner.

6. Learned Senior Counsel would further submit that the GST council



in its 49th Meeting held on 18.02.2023 had observed that it may not be

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desirable to extend the timelines in such a manner so that it may lead to bunching of last date of issuance of SCN/order made under Section 73 and 74 for a number of financial years and they have extended the limitation period specified under Section 73(10) separately for each financial year and accordingly, the time limit is extended as follows:

-For FY 2017-18, time limit under Section 73(10) is extended from the present 30th September 2023 to 31st December 2023. -

For FY 2018-19, time limit under Section 73(10) is extended from the present 31st December 2023 to 31st March 2024.

-For FY 2019-20, time limit under Section 73(10) is extended from the present 31st March 2024 to 30th June 2024.

7.To support his contention, learned Senior Counsel appearing on behalf of the petitioner relied on the decisions reported in ***AIR 1966 SC 1350, State of Jammu and Kashmir and Others v. Caltex (India) Ltd*** and ***(2011) 39 VST 184, Kesar Enterprises Ltd., v. State of U.P and Others.***

8.Thus, by placing the above submission learned Senior Counsel would submit that the petitioner has made a representation to split the show cause notices and to adjudicate the same independently and the said representation



is not disposed of till date and hence, the petitioner is constrained to approach this Court by filing the present Writ Petition.

9. On the other hand, learned Senior Standing Counsel appearing on behalf of the respondents would submit that there is no provision under Section 73 of the Act prohibiting the respondents from issuing bunching of show cause notices and in the absence of such provision, the petitioner cannot come before this Court and submit that the respondent is not empowered to issue bunching of show cause notices.

10. He would further submit that in the event if this Court is inclined to order splitting up of bunching of show cause notices issued by the respondent, in which case, for the Assessment Year 2017-18, the limitation is going to expire on 31st December 2023 and before that the respondent has to finish the adjudication and pass orders. He would contend that since in the instant case, the petitioner was enjoying the stay of proceedings granted by this Court for a period of 26 days, the said period may be excluded for calculating the period of limitation.



11. Considered the submissions made by the learned Senior Counsel appearing on behalf of the petitioner and the learned Senior Standing Counsel appearing on behalf of the respondents and perused the materials placed before this Court.

12. The prayer in this Writ Petition is for issuance of Writ of Mandamus directing the first respondent to consider and pass orders on the representation dated 25.10.2023 submitted by the petitioner before proceeding with the adjudication of show cause notice dated 28.09.2023. It is the case of the petitioner that the respondent had issued bunching of show cause notices dated 28.09.2023 for five Assessment Years starting from 2017-18 to 2021-22.

13. The main contention of the petitioner was that bunching of show cause notices was not allowed in law and it is against the provisions of Section 73 of the Act. Section 73(10) of the Act specifically provides a time limit of three years from the due date for furnishing of annual return for the financial year to which the tax due relates to. In the present case, notice was issued under Section 73 of the Act for determination of the tax and



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therefore, the limitation period of three years as prescribed under Section 73(10) would be applicable. Therefore, the contention of the respondent that there is no time limit contemplated under Section 73 of the Act is not correct.

14. Further, by issuing bunching of show cause notices for five Assessment Years starting from 2017-18 to 2021-22, the respondents are trying to do certain things indirectly which they are not permitted to do directly and the same is not permissible in law. If the law states that a particular action has to be completed within a particular year, the same has to be carried out accordingly. The limitation period of three years would be separately applicable for every assessment year and it would vary from one assessment year to another. It is not that it would be carried over or that the limitation would be continuing in nature and the same can be clubbed. The limitation period of three years ends from the date of furnishing of the annual return for the particular financial year.

15. Therefore, issuing bunching of show cause notices is against the spirit of provisions of Section 73 of the Act and the Constitution Bench of



the Hon'ble Apex Court in the decision reported in **AIR 1966 SC 1350, State**

of Jammu and Kashmir and Others v. Caltex (India) Ltd has held that where

an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said law was laid down keeping in mind that each and every Assessment Year will have a separate period of limitation and the limitation will start independently and that is the reason why the Hon'ble Supreme Court has held that each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said principle would apply to the present case as well.

16. For all these reasons, I do not find force in the submission made by the learned Senior Standing Counsel appearing on behalf of the respondents. Therefore, I find fault in the process of issuing of bunching of show cause notices and the same is liable to be quashed. However, since the petitioner has made an representation before the authorities concerned for splitting up of the show cause notices and pass separate adjudication order, this Court is inclined to pass the following order:



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(i) The first respondent is directed to dispose of the representation dated 25.10.2023 made by the petitioner, keeping in mind the above order passed by this Court.

(ii) As far as splitting up of the show cause notice pertaining to the Assessment Year 2017-18 is concerned, the period of stay granted by this Court viz., **26 days will be excluded and accordingly, the time period of passing the adjudication order pertaining to the Assessment Year 2017-18 is extended upto 26.01.2024, subject to the orders to be passed in the W.P.Nos.34065, 34073 and 34074 of 2023.**

(iii) In view of the aforesaid direction, the respondent is directed to defer all the proceedings, until the date of disposal of the representation of the petitioner to split up the show cause notices for each year separately.

17.The Writ Petition is disposed of with the above observations.

Consequently, connected miscellaneous petition is closed. No costs.

18.12.2023



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Neutral Citation : Yes/No

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KRISHNAN RAMASAMY, J.

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