

CrI.O.P.No.7318 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : **11.04.2022**



CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.7318 of 2022

1. Anup Dalmia
2. Nisha Dalmia

... Petitioners

Vs.

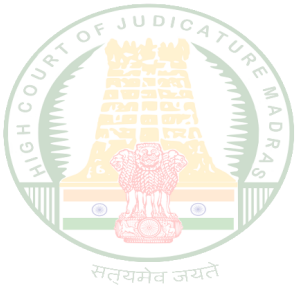
The Superintendent of GST,
O.o. The Superintendent office of
the Deputy Commissioner of GST,
No.1, Vallalar Nagar,
Manjambakkam,
Cuddalore – 607 001.

... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to direct the respondent not to harass the petitioners during enquiry in connect on with the case in GST 3333BGIPD 2160D1Z3 of AKM Traders.

For Petitioners : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor



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ORDER

The Criminal Original Petition has been filed seeking to direct the respondent not to harass the petitioners during enquiry in connect on with the case in GST 3333BGIPD 2160D1Z3 of AKM Traders.

2. Learned counsel appearing for the petitioners would submit that the 2nd petitioner is a Proprietrix of M/s.AKM Traders, having administrative office at No.29, Maruthi Nagar, Chinnakangarakuppam, Cuddalore, involved in trading of steels and allied products. The 1st petitioner is the husband of the 2nd petitioner, who is helping the 2nd petitioner in the business of trade. The said Trading company was registered with Cuddalore GST. While so, the 1st petitioner was orally summoned by the respondent to appear on 14.03.2022, accordingly, the 1st petitioner appeared and explained the activities of the business. When the 1st petitioner had gone there, he was made to stay from 11.00 a.m., to 11.00 p.m., thereafter, he was asked to come again on 15.03.2022 and again he went to the office of the respondent, he was once again made to

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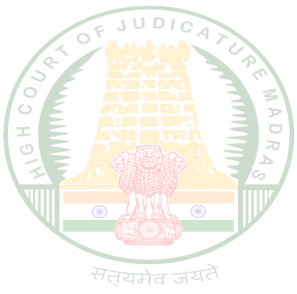
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stay from 11.00 a.m., to 02.30 p.m., and at the end he was allowed to go with the instruction to appear again on 16.03.2022. On that day, he was made to stay from 11.00 a.m., to 08.00 p.m., and the 1st petitioner was compelled to pay Rs.72,49,580/- GST tax and repeatedly the 1st petitioner was summoned and made to wait inordinately in the respondent office.

3. He would further submit that the 1st petitioner had submitted all the relevant records as claimed by the respondent and also all the account details were furnished. Whereas, the respondent is harassing and they have also directed the 2nd petitioner to appear before the respondent. He would also submit that the 2nd petitioner being a lady, apprehends great hardship and humiliation and the respondent have also exceeding their limits and trying to adopt 3rd degree method. Thereby, the present petition has been filed seeking to direct the respondent not to harass.

4. The respondent have also filed their counter. It is useful to refer the relevant portion of the counter, which is extracted hereunder:

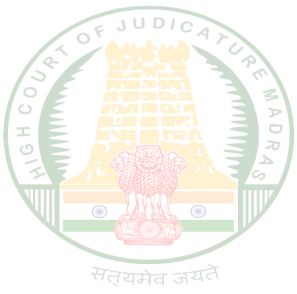


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“4. The Respondent submits that in his voluntary statement, A1 admitted the liability and furnished the details of availed total in-eligible ITC of Rs.72,49,580/- (CGST@9% - Rs.33,48,067/- (Approx.), SGST @9% - Rs.33,48,067/- (Approx.) & IGST @ 18% Rs.5,53,446/- (Approx.), on Inward supply of Total taxable value of Rs.4,02,75,441/-(Approx.), invoiced through fake invoices and other ineligible invoices. He undertook to reverse the same immediately with interest and penalty as applicable.

5. For confirmation of the payment and further facts & evidences, when he was contacted on 24.03.2022, A1 came to the office on its own at about 12:30 Hrs, and promised to make complete payments by 25.03.2022 and will furnish a copy of payment challan & other proof by 14.00 Hrs. While awaiting their response, we have received a call from unknown no, introducing himself Advocate, Practicing in Hon'ble High Court of Madras and intimated about a petition filed by the Petitioner 1& 2 against us.

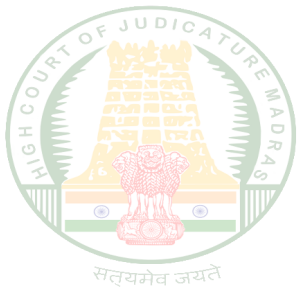


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6. *It is also submitted that Petitioner No.1 has never been asked to appear in the office on 14.03.2022 & 15.03.2022. In fact, he has never been in the office on 14.03.2022, and also reason for his appearance on 15.03.2022 have mentioned above.*

7. *The Respondent further submits that whenever A1 came to the office, either on its own will or being called for, came only after 12:00Hrs, which can be verified from the visitor's book available at the entrance of the building, and dear taxpayers / their representatives / other visitors are requested to make entry into the register on its own while coming in / out of the building. Above records says that the Petitioner No.1 have made only 02 entries for the alleged period and also never made any entry for timing, while leaving the office building, with an intention to make allegation on the investigating officer. It Is also submitted that so far only one SUMMON dt. 16.03.2022 have been served upon the Petitioner No.2, but instead, Petitioner No.1 has appeared on 17.03.2022 under an authorization letter. No other SUMMON have been served to the Petitioner No.2. The Respondent submits that Petitioner*



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1 & 2 doesn't want to co-operate in the investigation proceeding and keeps on making false promises for making payment of self - calculated & admitted ineligible availment of GST liability as detailed above in the light of records available in this office. In order to get immunity from the investigation proceeding all the allegation were made it is mere an exaggerated submission devoid of facts. A2 who is running the business but failed to appear in the official proceedings, if required that too of grave nature within the purview of Acts & rules applicable. It is also submitted that Petitioner No.2 have never appeared in this office, so far.”

5. Mr.N.P.Kumar, Special Public Prosecutor appearing for the respondent would submit that the respondent are not harassing the petitioners. The petitioners have claimed the benefits based on fake invoice received from the third parties. For the purpose of investigation, the respondent have summoned the petitioners and third parties in accordance with Section 70 of the GST Act, 2017 and the petitioners are duty bound to appear before them. He would also reiterate that the respondent are not harassing the petitioners and

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that the petitioners are not cooperating for the investigation. He would also submit that only in order to scuttle the investigation, the present petition has been filed.

6. At this Juncture, learned counsel for the petitioners would further submit that the petitioners may be permitted to be assisted by an Accountant.

7. Mr.N.P.Kumar, Special Public Prosecutor appearing for the respondent would submit that the 2nd petitioner can be assisted by an Accountant if necessary.

8. Heard the learned counsel and perused the materials available on record.

9. It is seen that the respondent finding materials regarding fake GST claims, had summoned the 2nd petitioner for enquiry in accordance with Section 70 of the GST Act, 2017. In such circumstances, the 2nd petitioner is bound to



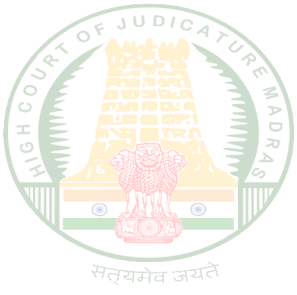
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appear for enquiry. The enquiry shall be conducted in accordance with the
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procedures. The 2nd petitioner shall be permitted to be assisted by her
Accountant of necessary. The respondent shall not harass.

10. Accordingly, the Criminal Original Petition stands disposed of
with the above said directions.

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Index :Yes/No
Internet:Yes/No

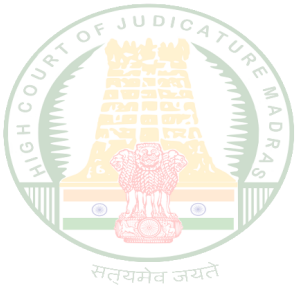


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To

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A.D.JAGADISH CHANDIRA,J.

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