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W.P.No.9654 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.No.9654 of 2021

and

WMP.No.10223 of 2021

[Video Conferencing]

M/s.Aditya Energy Holdings
Represented by its Partner Mr.L.Uday Metha
No.6A, 6th Floor, #112 Eldorado Building
Nungambakkam High Road
Chennai – 600 034.

.....Petitioner

-Vs.-

Directorate General of GST Intelligence
DGGI, Chennai Zonal Unit,
No.16, Greams Road, BSNL Building
Tower 2, 5th & 8th Floors, Chennai – 600 006.

.....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondent herein to forthwith refund Rs.17,27,790 (IGST Rs.12,60,472 + CGST Rs.2,33,659 + SGST Rs.2,33,659) collected on 12.03.2021 vide this reference DRC-03 Reference ARN Nos.AD330321008399C (for Rs.12,60,472) and AD330321008411Y (for Rs.4,76,318) dated 12.03.2021.



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For Petitioner : Mr.I.Zuriyath Fathima
For Respondent : Mr.V.Sundareswaran,
Senior Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking for a Mandamus to direct the respondent to pay a sum of Rs.17,27,790/- and Rs.12,60,472/- which was paid by the petitioner during the course when the officers of the respondent visited the premises of the petitioner and investigated regarding the alleged wrong availment of Input Tax Credit.

2.It is the case of the petitioner that the aforesaid amount was paid under coercion and therefore, the amount should be paid back to the petitioner.

3.The learned Senior Standing Counsel for the respondent would submit that there is no merits in this Writ Petition and as the Input Tax Credit was wrongly availed, the petitioner had paid the aforesaid amount after admitting to wrong doing.



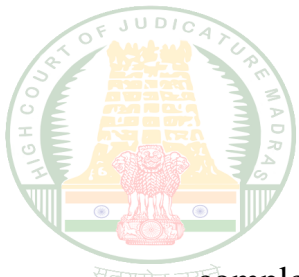
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4.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

5.The amount paid by the petitioner are only deposits pending proper adjudication under Section 73 / 74 of the CGST Act, 2017. It appears that the amounts were collected from the petitioner during March 2021, at the time when summons were also issued to the petitioner, Mahazar was drawn and seizure memo was also issued to the petitioner on the same date. The petitioner also appears to have sent a representation on 01.04.2021.

6.There is no merits in this Writ Petition at this stage. The amount paid by the petitioner shall be treated as amount paid by the petitioner “under protest” and will be subject to the final appropriation in the proceedings to be initiated under Sections 73 / 74 of CGST Act, 2017. The respondents perhaps are investigating and therefore, seized the documents from the petitioner. Considering the same, I am inclined to dispose the Writ Petition by directing the respondent or the proper officers concerned to

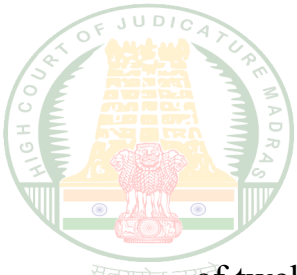


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complete the investigation and proceed to issue appropriate show cause notice to the petitioner within a period of six months from the date of receipt of a copy of this order.

7.The respondent is also directed to return the photo copies of the seized documents to the petitioner, if they have not been already returned to the petitioner. In any event, in the show cause notice under Sections 73 / 74 of CGST Act, 2017, the respondent shall clearly spell out the reasons and give details of the Relied Upon Documents based on which the demand is proposed to be made against the petitioner and why the amount already paid by the petitioner should not be appropriated. The entire exercise may be completed by the respondent preferably within a period of twelve months from the date of receipt of a copy of this order, i.e., show cause notice should be issued within six months from the date of receipt of a copy of this order together with all Relied Upon Documents. The respondent shall also return the originals of all the documents which are not required for the investigation. The petitioner shall cooperate with the respondent and file a reply within a period of thirty days from the date of issuance of show cause notice. The respondent shall pass appropriate orders within a period



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of twelve months as stipulated above. In case, there is no case made out in the show cause proceedings, the respondent shall refund the amount to the petitioner, in accordance with law.

8.The Writ Petition stands disposed with the above observations.
Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No



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