IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM :

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR. JUSTICE M.S. RAMESH

WRIT APPEAL NOS.170 AND 172 OF 2020
AND C.M.P.NOS.2444 AND 2488 OF 2020

1.The Additional Director General,
The Director General of Goods and Service Tax Intelligence,
Coimbatore Zonal Unit,
No.115-1, Lakshmanan Street,
Behind Ukkadam Bus Stand,
Ukkadam, Coimbatore - 641 001.

2.The Senior Intelligence Officer,
Office of the Deputy Director,
Directorate General of Goods and Service Tax Intelligence,
Hosur Regional Unit,
221/1A1, SRM Tower,
Near RC Church, Outer Ring Road,
Shanthi Nagar, Hosur - 635 109. ... Appellant Nos.1 & 2 in both WAs'

Vs.

1.Prime Gold International Limited,
Represented by its Authorised Signatory Mr.Rohit Goel,
Survey No.284/2B, 289/2A, Uliveeranapally Village,
Thally Road, Denkanikottai Taluk,
Hosur - 635 114.

2.The Branch Manager,
State Bank of India,
Electronic City Branch,
Bangalore. ... Respondent Nos.1 & 2 in W.A.No.170 of 2020

1.M/s.Prime Gold International Limited,
Rep. by its Director Mr.Achin Aggarwal,
Survey No.284/2B, 289/2A,
Uliveeranapally Village,
Thally Road, Denkanikotta Taluk,
Hosur - 635 114.

2.Assistant Commissioner (ST)
Hosur (South). ... Respondent Nos.1 & 2 in W.A.No.172 of 2020

PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.Nos.13281 and 33864 of 2019, respectively, dated 06.01.2020.

Prayer in WP.No.13281 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the impugned proceedings of the first respondent in Form GST DRC-22 issued in F.No.INT/DGGI/HRU/08/2019-GST/864 dated 27.03.2019 addressed to the third respondent and quash the same as issued contrary to the provisions of the Central Goods and Services Tax Act, 2017 and further direct the first and second respondents not to take coercive steps against the petitioner company, its directors and its employees to recover the alleged taxes without passing assessment order after granting reasonable opportunity to the petitioner as contemplated under the provisions of the Central Goods and Services Tax Act, 2017.

Prayer in WP.No.33864 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Mandamus, directing the respondents to forthwith intimate proceedings against the petitioner for determination of liability under Sec.73/74 of Central Goods and Service Act, 2017 by issuing show cause notice, pursuant to the search and investigation conducted against the petitioner under Sec. 67 of the Central Goods and Service Act, 2017.

For Appellants : Mr.R.Sankara Narayanan
(in both WAs') Additional Solicitor General
assisted by Mr.V.Sundareswaran
Senior Standing Counsel

For Respondent-1: Mr.I.Abrar Md. Abdulla
(in both WAs')

COMMON JUDGMENT

The present Writ Appeals have been filed by Revenue, aggrieved by the order dated 06.01.2020, passed by the learned Single Judge, disposing of the Writ Petitions filed by M/s.Prime Gold International Limited / Assessee, with the observations that the show cause notice on the basis of the materials collected against the Assessee during investigation may be issued, within the stipulated time frame, as per Section 83 of the Central Goods and Service Tax Act, 2017 and that if show cause notice is not issued within two weeks from the date of the order of the learned Single Judge, the attachment of the goods in question shall be lifted forthwith. The request of refund of Rs.2.10 Crores prayed for by the Assessee was not accepted, in view of the proceedings being pending with the concerned Authority and not concluded so far.

2.After the order of the learned Single Judge, various overriding circumstances, including the spread of COVID-19, have happened worldwide including India, and therefore, it seems that these proceedings could not be concluded and even the expected show cause notice, which was to be issued in pursuance of the directions of the learned Singe Judge, could not be issued within the period of two weeks, as directed in the order dated 06.01.2020.

3.The learned Additional Solicitor General, appearing on behalf of the Revenue, submitted that the Assessee is not cooperating in the matter and has not presented himself for verification of certain preliminary materials collected by the concerned Authority, for which, his presence was necessary.

4.On the other hand, Mr.I.Abrar Md. Abdulla, learned counsel appearing for the Assessee, drawing the attention of this Court towards the Additional Affidavit dated 02.06.2020 of the petitioner/Appellant sworn by R.Boopathi, has submitted that the imaging of data could be completed only during the second week of March, 2020, i.e., from 11.03.2020 to 13.03.2020 and on 16.03.2020. But still, even by now, the said show cause notice has not been issued by the concerned competent Revenue Authority and therefore, the Appeals of the Revenue deserve to be dismissed.

5.Having heard the learned counsel for the parties, we are of the view that no significant interference is required in the directions given by the learned Single Judge, except for extending the time limit to comply with the directions given by the learned Single Judge and setting a new time frame for the said purpose. It goes without saying that the Assessee is bound to cooperate and present himself before the concerned competent Authority, whenever he is summoned for any enquiry in the matter. Of course, it is expected that the concerned Authority also was expected to comply with the directions of the learned Single Judge and issue the show cause notice within a period of two weeks from the date of the order of the learned Single Judge viz., 06.01.2020. However, since that could not be done for some reasons beyond the control of either of the parties and a fresh attachment order has been made on 28.03.2020, we are of the opinion that the concerned show cause notice should be issued now by the competent Revenue Authority latest within a period of three months from today. This will be conditional upon the Assessee fully cooperating in the matter.

6.The learned counsel for the first respondent/Assessee has assured the Court that the Assessee is always cooperating in the matter and has further undertaken to cooperate with the said Authority in the proceedings pending before the concerned authority.

7.Accordingly, we direct the first respondent / Assessee to appear before the concerned Authority in the first instance on 02.11.2020 and present himself with the relevant materials, information, submissions, on all such dates, when he is summoned by the concerned Authority. With the outer time limit of three months from today, for issuing show cause notice, we further fix the time frame of three months thereafter to conclude the assessment proceedings itself. We make it clear that no further extension of time would be granted to the Revenue Department for this purpose and if beyond the period of three months from today, the show cause notice is not issued or concluded by way of a final order in the matter, the attachment order dated 28.03.2020 shall stand automatically quashed and the attachment shall be removed forthwith, unless the Revenue Authority establishes on record with evidence that the delay has happened on account of the non-cooperation or fault on the part of the Assessee. At the same time, the Assessing Authority shall also act diligently, efficiently and in an appropriate and fair manner.

8.Therefore, with these observations and directions, setting a new time frame for the proceedings to be concluded in the matter, we dispose of the present Writ Appeals filed by the Revenue, with no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mkn/tk

To

1.The Additional Director General,
Director General of Goods and Service Tax Intelligence,
Coimbatore Zonal Unit,
No.115-1, Lakshmanan Street,
Behind Ukkadam Bus Stand,
Ukkadam, Coimbatore - 641 001.

2.The Senior Intelligence Officer,
Office of the Deputy Director,
Directorate General of Goods and Service Tax Intelligence,
Hosur Regional Unit,
221/1A1, SRM Tower, Near RC Church,
Outer Ring Road, Shanthi Nagar,
Hosur - 635 109.

3.The Assistant Commissioner (ST)
Hosur (South).

4. The Branch Manager,
State Bank of India,
Electronic City Branch,
Bangalore.

+1cc to Mr.I.Abrar Md. Abdulla, Advocate SR.No.33834

+1cc to Mr.V.Sundareswaran, Advocate SR.No.33803

SRA(CO)
GMY(22/10/2020)