IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.01.2020
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.No.33864, 13289 & 13281 of 2019
& WMP.No.34385, 13388, 13387, 13384 & 13391 of 2019

M/s.Prime Gold International Limited
Represented by its Director
Mr.Achin Aggarwal ...Petitioner in WP.No.33864 of 2019

M/s.Prime Gold International Limited
Represented by its Authorized Signatory
Mr.Rogit Goel ...Petitioner in WP.Nos.13289 & 13281 of 2019

--Vs--

1.The Additional Director General,
The Directorate General of Goods and Services 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
.... Respondents 1 & 2 in the above W.Ps

3.Assistant Commissioner (ST)
Hosur (South)
... Respondent No.3 in WP.No.33864 of 2019

3.The Branch Manager,
State Bank of India,
Electronic City Branch,
Bangalore
... Respondent No.3 in WP.No.13281 of 2019

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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.

Prayer in WP.No.13289 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 refund the amount of Rs.2.10 crores collected from the petitioner in the absence of an opportunity by way of show cause notice and orders of assessment passed under the provisions of the Goods and Services Tax Act, 2017 despite the direction of the Hon'ble Madras High Court in the Judgment reported in (1992) 87 STC 513 in the case of Hotel Blue Nile Vs. State of Tamil Nadu and others.

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.

For Petitioner : Mr.Adthya Reddy
in W.P.No.33864 of 2019
Mr.P.Rajkumar
WP.Nos.13289 & 13281 of 2019

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel
in all WPs

COMMON ORDER

The petitioner has challenged an attachment of bank account by the Additional Director General of Goods and Service Tax Intelligence in Form GST Doc.22 in terms of Rule 159(1) of the of the Goods and Service Tax Rules, 2017 ('GST Rules') in W.P.No.13281 of 2019.

2. The attachment of the petitioners' account in the State Bank of India, Electronic City, Branch Bangalore, was on the ground that proceedings had been launched against it in terms of Section 67(2) of the Central Goods and Service Tax Act, 2017 (in short 'CGST ACT') to determine the tax or any other amount that may be due from it. Thus and in order to protect the interests of the revenue, the respondent had proceeded to attach the bank account of the petitioner in exercise of powers conferred in terms of Section 83 of the Act.

3. When the matter had earlier come up for hearing in the presence of both learned counsel i.e., counsel for the petitioner as well as the Senior Panel Counsel for the official respondents, this Court had noted that the petitioner had approached the Additional Director General/R1 by way of representation dated 01.04.2019 in terms of Rule 159(5) of the GST Rules seeking lifting of the attachment.

4. While granting time to the Department to file a counter, liberty was also extended to the petitioner to pursue its representation before R1, who was directed to pass orders on the representation after hearing the petitioner.

5. It is thus that the impugned order dated 31.05.2019 has come to be passed by R1 rejecting the request of the petitioner for lifting of the bank account. At paragraph 9.4.4 of the order, R1 states as follows:

> 9.4.4. Therefore, the proceedings initiated under section 67(2) have transformed into a full-fledged investigation to determine the tax liability under section 74 and hence, there is nothing illegal and improper in invoking the authority vested in terms of section 83, in the interest of securing revenue.

6. The petitioner has thus approached this Court seeking a mandamus directing the respondents to initiate proceedings against the petitioner for determination of liability under CGST Act by issuing a show cause notice.

7. A counter has been filed by R1 and R2 to the effect that, in summary, the respondents had required the presence of the petitioner for verification of electronic gadgets, in the absence of which the respondents are unable to proceed with the

investigation. It is only upon completion of the verification that a show cause notice could, according to learned Panel Counsel, be issued.

8. The provisions of Section 83 mandate that the attachment of bank account be only during the pendency of proceedings in terms of Section 62/63/64/67/73/74 of the Act. In the counter filed by the respondents, they confirm at paragraph 5(ii), that the proceedings contemplated at the moment are in terms of Section 74. Having stated so as early as in June 2019, no action has been taken till date by issuance of show cause notice. In the light of the mandate contained in Section 83, either the respondents should initiate proceedings by issuing a show cause notice forthwith or should proceed to lift the attachment in question, also forthwith.

9. Upon consideration of the submissions of both parties and in the interests of justice, the following order is passed:

The petitioner will appear before the respondent on 21.01.2020 and co-operate in the completion of verification process to enable immediate issuance of show cause notice. The show cause notice shall be issued within a period of two weeks, from 21.01.2020, i.e., on or before 04.02.2020. If the show cause notice is not issued by the date as stipulated aforesaid, the attachment of the bank account will be lifted forthwith that is, on 05.02.2020.

10. With these directions W.P.Nos.13281 and 33864 of 2019 stand disposed.

11. W.P.No.13289 of 2019 prays for a refund of a sum of Rs. 2.10 crores, stated to have been collected from the petitioner in the course of inspection. In the light of the order passed in the preceding paragraphs, to the effect that proceedings be initiated forthwith for assessment in terms of Section 74, a consideration of the mandamus sought would not be appropriate and would be pre-mature. The retention/adjustment of the amount of Rs.2.10 crores will be subject to determination to be made in assessment. W.P. No. 13289 of 2019 is closed. No costs. Connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional Director General,
The Directorate General of Goods and Services Tax Intelligence
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3.Assistant Commissioner (ST)
Hosur (South)

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

+3 ccs to Mr.V.Sundaraswaran Advocate sr917,916,915

+1 cc to M/s.P.Rajkumar Advocate sr680
+1 cc to Mr.Adithya Reddy Advocate sr1040
+1 cc to Special Govt Pleader sr1374

W.P.No.33864, 13289
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13387, 13384 & 13391 of 2019

aa09/01/2020