BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.16842 of 2019 & 6483 of 2020
and
W.M.P.(MD)Nos.13436 & 13435 of 2019

S.M.I.Mohamed Abubacker ... Petitioner in both W.Ps.

-Vs-

1.The Assistant Commissioner of GST & Central Excise,
Division-I,
Office of the Commissioner of Central Excise & Service Tax,
No.1-Williams Road, Cantonment,
Tiruchirapalli-620 001.

2.The Deputy Director,
Director General of G.S.T.Intelligence,
Regional Unit,
Trichirappalli- 620 001.

3.Senior Intelligence Officer,
Director General of
G.S.T.Intelligence Regional Unit,
Trichirappalli-620 001. ... Respondents in both W.Ps.

Prayer in W.P.(MD)No.16842 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the proceedings F.No.INV/DGGI/TRU/06/2019-GST, dated 26.06.2019 issued by the third respondent and quash the same and consequently, forbearing the respondents from in any manner proceedings any further pursuant to the said proceedings.

Prayer in W.P.(MD)No.6483 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the third respondent herein to refund the amount of advance tax of Rs.20,00,000/- Rs.66,266/- and Rs.34,740/- collected by way of spot collection.

For Petitioner in WP.6483/2020 : Mr.Athithya Reddy
For Petitioner in WP.16842/2019 : Mr.V.Haribala babu
For Respondents (in both W.Ps.) : Mrs.S.Ragaventhre

ORDER

Heard the learned counsel on either side.

2.The petitioner Thiru.S.M.I.Mohamed Abubucker is the Managing Director of M/s.Femina Shopping Mall Private Limited. As the name indicates, the petitioner is running a shopping Mall where the consumable products are sold on retail basis. M/s.Femina Shopping Mall Private Limited has registered itself under GST and the case of the petitioner is that the returns are being properly filed and the tax obligations were correctly discharged. While so, the third respondent herein issued summon under Section 70 of the CGST Act, 2017 calling upon the petitioner to appear for enquiry. According to the third respondent, enquiry is being conducted in contravention of CGST Rules, 2017 against the company. The issuance of the said summon was put to challenge in W.P.(MD)No.16842 of 2019. The matter was listed for admission on 26.08.2019. It was made clear that the proceedings initiated by the authorities can go on as per the schedule. But that proceedings will be conducted strictly in accordance with law. The matter was again listed on 05.09.2019 and on the said date, it was directed that the petitioner's business premises will not be closed down till the disposal of the writ petition. Since there was no interim order granted in favour of the petitioner, there was a search of the petitioner's business premises on 06.06.2019 and again on 20.08.2019.

3.The learned counsel appearing for the petitioner would claim that on the said date, the petitioner as well as the other staff were put to great stress and under threat of closure, the petitioner was made to pay sums to the tune of Rs.20,00,000/- which was the spot collection on the said date. Subsequently, vide order dated 05.09.2019, this Court had directed that the petitioner's business shall not be closed down before finalising the proceedings. Since without a formal adjudication, the petitioner had been made to cough up more than Rs.20,00,000/-, seeking its refund, W.P.(MD)No.6483 of 2020 has been filed.

4.The respondents have filed a counter affidavit controverting the stand of the petitioner.

5.The learned counsel for the petitioner produced a bunch of photographs and submitted that from a bare perusal of the photos, one can come to the conclusion that the petitioner was made to hand over the spot collection of Rs.20,00,000/- under coercion. He further submitted that the respondent officials had threatened to seal the premises. Therefore, the petitioner was left with no other option but to make the aforesaid remittance.

6.Of-course, the respondent would deny the version projected by the petitioner in their counter affidavit. The learned standing counsel would submit that W.P.(MD)No.16842 of 2019 is clearly not maintainable and that it is liable to be summarily dismissed. She also would state that the respondent would conclude their assessment as early as possible and that remittance made by the petitioner can abide by the final outcome of the proceedings.

7.I carefully considered the rival contentions and went through the materials on record. I must sustain the stand of the learned standing counsel that W.P.(MD)No.16842 of 2019 is not maintainable. What is under challenge in the said writ petition is a mere summon issued by the third respondent. It cannot be the case of the petitioner that the third respondent is not competent to issue the summon. The impugned summon by itself does not infringe the right of the petitioner. The petitioner was only called upon to appear for enquiry. The third respondent had received information that the provisions of CGST Act, 2017 and CGST Rules, 2017 had been contravened. Hence, the respondents are definitely entitled to hold an enquiry. The third respondent only called upon the petitioner to appear along with the relevant records. It is well settled that at the stage of show cause notice, a person cannot come to the writ Court, unless it is without jurisdiction. In the case on hand, what has been issued is not even a show cause notice. A mere summon has been issued. Therefore, I must concur with the stand of the standing counsel. W.P.(MD)No.16842 of 2019 is not maintainable. It is accordingly dismissed.

8.However, I find considerable force in the stand of the petitioner that the petition mentioned amounts were virtually extracted from the petitioner. A mere look at the photographs produced by the petitioner's counsel is sufficient. The subject business is a running concern. If during business hours, the official conduct a raid, it would certainly cause considerable embarrassment. I also find from one of the photographs that the shutters are being shut down and closed. In these circumstances, the petitioner was obviously left with no other option, but to make the said payment of Rs.20,00,000/- which must have been the spot collection. While the petitioner's counsel would claim that the petitioner subsequently attended the enquiry and that investigation is already over, the standing counsel would state that investigation is still pending. Be that as it may, the respondents are directed to conclude the investigation and if they proceed to initiate adjudication proceedings, show cause notice will be issued immediately thereafter. The petitioner has to necessarily respond to the show cause notice and after following due process of law, final order will be passed. Remittance already made by the petitioner will abide by the final order that may be passed by the competent authority. The entire exercise shall be over within a period of twelve (12) weeks from the date of receipt of a copy of this order. W.P.(MD)No.6483 of 2020 is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Director General of
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Trichirappalli-620 001.

+1cc to V.Haribabu, Advocate Sr.No.10384
+1cc to M/s.Athithya Reddy Advocate Sr.No.10385
+1cc to M/s.S.Ragaventhra Advocate Sr.No.10624

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