IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.1914 and 17524 of 2021
&
W.M.P.Nos.2156, 18624 and 18625 of 2021

W.P.No.1914 of 2021

M/s.JIT Auto Comp.
Represented by its Managing Director
Mr.K.Velmurugan
E-19J, SIPCOT Industrial Complex
SIPCOT, Phase II
Hosur - 635 109
Krishnagiri District ... Petitioner

Vs.

1. State Tax Officer
Tax Collection and Arrears
Assistant Commissioner's Office, Salem

2. The Assistant Commissioner
GST & Central Excise
Hosur II Division
67A, II Floor, SIPCOT Industrial Complex
Hosur 635 126
Krishnagiri District ... Respondents
in W.P.No.1914/2021

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the 1st respondent in connection with the notice bearing Na.Ka.No.A4/3880/2019 dated 01.10.2020 and quash the same and direct the respondent to lift the seizing of bank account.

For Petitioner : Mr.M.D.Thirunavukkarasu
For Respondents : Mr.T.N.C.Kaushik
Government Advocate for R1
Mr.R.Gunalan
Junior Standing Counsel for R2

W.P.No.17524 of 2021

M/s.JIT Auto Comp.
Represented by its Managing Director
Mr.K.Velmurugan
E-19J, SIPCOT Industrial Complex
SIPCOT, Phase II, Hosur - 635 109
Krishnagiri District ... Petitioner

Vs.

1. The Assistant Commissioner
GST & Central Excise
Hosur II Division
67A, II Floor, SIPCOT Industrial Complex
Hosur 635 126
Krishnagiri District

2. The Superintendent of GST & Central Excise
Hosur II-D Range
67A, SIPCOT Industrial Complex, Phase – I
Hosur 635 126
Krishnagiri District ... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the 2nd respondent in connection with the notice bearing reference No.DIN-20210759XP000000C598 dated 13.08.2021and quash the same.

For Petitioner : Mr.M.D.Thirunavukkarasu

For Respondents : Mr.Rajnish Pathiyil
Senior Panel Counsel

COMMON ORDER

This common order will dispose of both the captioned writ petitions.

2. 'W.P.No.1914 of 2021' shall be referred to as 'I writ petition' and 'W.P.No.17524 of 2021' shall be referred to as 'II writ petition', both for the sake of convenience and clarity.

3. Mr.M.D.Thirunavukkarasu, learned counsel for writ petitioner in both I and II writ petitions, Mr.T.N.C.Kaushik, learned Government Advocate for first respondent in I writ petition, Mr.R.Gunalan, learned junior Standing Counsel for second respondent in I writ petition and Mr.Rajnish Pathiyil, learned Senior Panel Counsel for both the respondents in II writ petition are before this Virtual Court.

4. With the consent of all aforementioned counsel, this Court takes up both the main writ petitions. Both the writ petitions pertain to 'Input Tax Credit' ('ITC' for the sake of brevity) qua 'Tamil Nadu Goods and Service Act, 2017' and 'The Central Goods and Service Act, 2017' (hereinafter 'TNGST Act' and 'CGST Act' respectively for the sake of brevity).

5. This Court is informed that writ petitioner is in the business of pressing and fabrication works and returns are being filed. Owing to the trajectory the matter has taken in the hearing today, short facts shorn of particulars/details or in other words shorn of elaboration, will suffice. Suffice to say that the first respondent in the I writ petition issued a 'notice dated 01.10.2020 bearing reference Na.Ka.No.A4/3880/2019' (hereinafter ' I impugned order' for the sake of convenience and clarity) demanding a sum of Rs.41,98,726/- towards the period from January 2019 to March 2019 and a sum of Rs.8,00,142/- towards the period commencing from the month of April 2019, totalling to Rs.49,98,868/-.

6. Post aforementioned I impugned order, there is no disputation that owing to the legal complexion of Section 50 of CGST Act having changed, the aforesaid sum of Rs.49,98,868/- now stands at Rs.24,75,183/-. To be noted, in this regard, a notice under Section 79(1)(C) dated 24.09.2020 bearing Demand No.04/2020 has been issued by the first respondent in the II writ petition and vide this notice, the demand now is Rs.24,75,183/-.

7. When things stood as above, the second respondent in the II writ petition issued a 'notice dated 13.08.2021 bearing reference No. DIN-20210759XP000000C598 ' ('II impugned order' for the sake of convenience and clarity) cancelling the writ petitioner's registration. To be noted, the cancellation is under Section 29(2)(a) of CGST Act for alleged contravention of Section 50 of CGST Act. To state with specificity, the cancellation under Section 29(2)(a) is inter alia for alleged non-payment of Rs.24,75,183/-.

8. Learned counsel for writ petitioner submits that under Section 29(2)(a), an opportunity of being heard ought to have been given before the II impugned order was made, but the same was not given to the writ petitioner. Learned counsel also drew the attention of this Court to a circular being Circular No.145/01/2021-GST issued by 'Central Board of Indirect Taxes and Customs' (hereinafter 'said Board' for the sake of convenience). Learned counsel placing reliance on the circular submitted that 30 days time and opportunity ought to have been given, but this Court at the moment does not express any opinion on the same owing to what has been ingrained in first proviso to Section 29(2)(a) of CGST Act, which reads as follows:

> 'PROVIDED that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.'

9. Learned counsel for Revenue i.e., learned counsel for both the respondents in the II writ petition, on instructions,

submits that as many as four notices have been sent but it is not clear as to whether they are notices for personal hearing or demand notices. Learned counsel for writ petitioner asserts that personal hearing has not been granted. As the sanctity of a personal hearing before cancellation registration has been ingrained in first proviso to Section 29(2)(a), it is only appropriate that the writ petitioner is given a personal hearing.

10. On the aforesaid short point, the II impugned order is set aside without expressing any opinion on the merits of the matter. To be noted, when this Court says I impugned order, it necessarily means impugned order wherein the quantum of Rs.49,98,868/- has been scaled down to Rs.24,75,183/-.

11. In the light of the narrative thus far, the following order is passed:

a) II impugned notice dated 13.08.2021, bearing reference No. DIN-20210759XP000000C598 is set aside solely for the purpose of personal hearing as ingrained in first proviso to Section 29(2)(a) being given to the writ petitioner;

b) Though obvious, it is made clear that no opinion or views are expressed on the merits of the matter and that II impugned order is set aside solely for the purpose of enabling personal hearing being given to the writ petitioner;

c) The writ petitioner shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the regular CGST account being a portion of demand of Rs.24,75,183/- within two weeks from today i.e., on or before 08.09.2021.

d) If the writ petitioner complies with the above condition, personal hearing shall be on 15.09.2021 (Wednesday) at half past 11 in the office of the first respondent in the II writ petition.

e) if the writ petitioner does not comply with the condition of deposit of Rs.10,00,000/- on or before 08.09.2021, first respondent in II writ petition will be under no obligation to afford personal hearing.

f) If the writ petitioner complies with the condition and if personal hearing is held on 15.09.2021, the respondent shall complete the exercise as expeditiously as possible and pass an order within three weeks therefrom i.e., by 06.10.2021 and communicate the same to the writ petitioner under due and proper acknowledgement, until then I impugned order will be kept in abeyance and its revival (in full or in part) or closure will follow based on the conclusion of this exercise of de novo decision making qua II impugned order.

g) If the writ petitioner does not comply with the aforesaid conditional order of deposit, II impugned order which has now been set aside will stand revived and the consequences will follow.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are also disposed of as closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gpa

To

1. State Tax Officer
Tax Collection and Arrears
Assistant Commissioner's Office
Salem

2. The Assistant Commissioner
GST & Central Excise
Hosur II Division
67A, II Floor, SIPCOT Industrial Complex
Hosur 635 126
Krishnagiri District

3) The Superintendent of GST & Central Excise
Hosur II-D Range
67A, SIPCOT Industrial Complex, Phase – I
Hosur 635 126
Krishnagiri District

+1cc to Mr.M.D.Thirunavukkarasu, Advocate, S.R.No.42590
+1cc to Mr.Rajnish Pathiyil, SCGSC Advocate, S.R.No.42707
+1cc to Mr.S.Gunalan, Advocate, S.R.No. 42927
+1cc to the Special Government Pleader(Taxes), S.R.No. 43138

W.P.Nos.1914 and 17524 of 2021 &
W.M.P.Nos.2156, 18624 and 18625 of 2021

CA(CO)
GN(25/08/2021)