IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.21006 OF 2021
AND
W.M.P.NOS.22261 AND 22262 OF 2021

Amarchand

...Petitioner

-Vs.-

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax
   Income Tax Department,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. Commissioner Chennai-Outer Circle
   GST and Central Exercise,
   Chennai-600 040.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for records on the file of the 1st respondent passing the impugned Assessment Order DIN No.ITBA/AST/S/143(3)/2021-22/1032832821(1) for the Assessment Year 2018-19 dated 07.05.2021 and quash the same.

For Petitioner : Mr.G.Ashokapathy
M/s.Pass Associates
For Respondents : Ms.Hema Muralikrishnan
Senior standing counsel for Income Tax for R1
Mr.Rajendran Raghavan
Senior standing counsel for GST(Customs) for R2

ORDER

Mr.G.Ashokapathy, learned counsel of M/s.Pass Associates (Law Firm) on behalf of the lone writ petitioner is before this Virtual Court.

2. An 'assessment order dated 07.05.2021 bearing reference DIN No.ITBA/AST/S/143(3)/2021-22/1032832821(1)' [hereinafter 'impugned assessment order' for the sake of convenience and clarity] pertaining to assessment year '2018-2019' [hereinafter 'said AY' for the sake of convenience and clarity] made by the first respondent under 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] has been called in question i.e., assailed in the captioned main writ petition.

3. It is the case of writ petitioner that he was a dealer under 'Value Added Tax Regime' [hereinafter 'VAT Regime' for the sake of convenience and clarity] from 01.11.2014 to 19.07.2016, but the writ petitioner cancelled the registration on and from 19.07.2016. Thereafter, the writ petitioner filed Income Tax Returns for said AY. To be noted, said AY is financial year 2017-2018 and the writ petitioner was visited with a notice demanding difference between sales and purchase turn over said to have been reported in GSTR in his returns. On further verification, writ petitioner came to know that besides the registration in the name of Vimal pipe which was cancelled, two other registrations have been obtained in two different names using writ petitioner's PAN number. Learned counsel submits that the writ petitioner did not migrate to GST portal as he had cancelled the lone registration which he had and he has no other registration as of today. It is the specific and categoric case of the writ petitioner that some one has misused writ petitioner's PAN number and obtained registration. The writ petitioner has sent a complaint/representation to the second respondent being complaint/ representation dated 11.02.2021 and the same has been duly received by the second respondent on 12.02.2021. A scanned reproduction of the complaint/representation dated 11.02.2021 together with acknowledgement is as follows:

From

11/02/2021.

Amarchand,
337, VII Block, 7th Main Road,
K.K.D. Nagar,
Chennai 600 118.
Mobile: 98843 69421
Mail : amarchand4996@gmail.com

To
The Commissioner,
Chennai – Outer Circle,
GST & Central Excersise
Chennai – 600 040.

Sub: Multiple GST allotted – under single Pan – Without Applying – regd.

Ref: My Vat Registration No. 33446267165; Income Tax Notice Dated 18/12/2020

Respected Sir,

I am a registered Dealer under Vat from 01/11/2014 to 19/07/2016, in Kodungaiyur Assessment Circle, in Chennai, and Cancelled the Registration from the above mentioned date i.e. 19/07/2016. I don't know that I had been allotted a GSTIN for my above registration, as I have cancelled my registration a year before.

But after I filed my Income Tax Return For the Accounting year 2017-2018, I had received a notice seeking difference between the sales and purchases turnover reported in GSTR and my ITR. When I approached my Auditor, Mr. Vimal Malani, whose registered office is in Vyasarpadi, (mob: 63804 45308) Chennai 600 118, last month, he informed me that there is multiple registration Under GST has been allotted under your Pan No. namely

1)	Vimal Pipe	33AHZPA4996P1ZB	Status: Inactive (01-07-17)
2)	Sri Ganesh Traders	33AHZPA4996P2ZA	Status: Cancelled(01-06-18)
3)	JM Agencies	33AHZPA4996P3Z0	Status: Cancelled(07-11-19)

Now: The First GSTin Was allotted to me as per the VAT registration and Since I Cancelled my VAT Registration on previous year, I didn't know, it and Hence I didn't MIGRATE to the new GST Portal. Hence it became inactive since the first day of GST applicable.

But, The remaining two GSTin's above mentioned was not applied by me, but it was applied and allotted in your Jurisdiction: Kanchipuram Assnt. Circle. Since I didn't apply for this registration and someone has misuse my PAN and hence the turnover done in that GSTN does not belongs to me.

I hereby urge yourselves to check the above two registrations and take severe action against the culprit who has done this.

Always Assuring my help in this act.

Yours Truly

4. Though it is more than seven months from the date of receipt of complaint/representation, the second respondent has not acted on the same is learned counsel's say.

5. Ms.Hema Muralikrishnan, learned Senior standing

counsel for Income Tax accepts notice on behalf of the first respondent and Mr.Rajendran Raghavan, learned Senior standing counsel for GST (Customs) accepts notice on behalf of the second respondent.

6. Learned counsel for first respondent submitted that the assessment has been made based on the registration and the first respondent may have nothing to do with the registration.

7. Therefore, solution to the problem projected by the writ petitioner is, second respondent looking into writ petitioner's aforementioned complaint/representation dated 11.02.2021, making a thorough enquiry and doing the needful. If that is done, depending on the outcome the same will impact the impugned assessment order.

8. Owing to the aforesaid trajectory, captioned main writ petition was taken up, with the consent of all the aforementioned counsel, to be noted, captioned main writ petition is taken up though the matter is in the Admission Board and the same is disposed of by making the following order:

(a) The second respondent is directed to take up the complaint/representation of the writ petitioner dated 11.02.2021 regarding obtaining two registrations allegedly misusing the writ petitioner's PAN number, make a thorough enquiry, conclude the same/remedy the situation (depending on the outcome of enquiry) and communicate the outcome to the writ petitioner as expeditiously as business of the second respondent would permit and in any event within twelve weeks from today i.e., on or before 23.12.2021;

(b) In the course of above exercise, it is open to the second respondent to call for further inputs from the writ petitioner or any other person deemed appropriate;

(c) As a sequitur to the aforesaid two directives, the impugned assessment order will be kept in abeyance for fourteen weeks from today i.e., up to 06.01.2022;

(d) Post twelve weeks whether the impugned assessment order gets resuscitated or flattened will depend on the outcome of enquiry or the disposal of 11.02.2021 complaint/representation of the writ petitioner by the second respondent;

(e) Aforementioned fortnight post 23.12.2021 is to enable the writ petitioner to take necessary further action if the conclusion of enquiry by the second respondent does not enure to the benefit of writ petitioner;

(f) Writ petitioner shall co-operate with the second respondent for enquiry qua 11.02.2021 complaint/ representation;

(g) Though obvious, it is made clear that this Court has not expressed any view on merits of the matter;

9. Captioned Writ Petition is disposed of with the above directives. Consequently, connected writ miscellaneous petitions being W.M.P.Nos.22261 of 2021 and 22262 of 2021 are also disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

mk/nsa

To

1. The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax
Income Tax Department,
Ministry of Finance,
Government of India,
New Delhi.

2. The Commissioner Chennai-Outer Circle
GST and Central Exercise,
Chennai-600 040.

+1cc to Ms.Hema Muralikrishnan, Senior Standing Counsel,
S.R.No.50811

W.P.No.21006 of 2021
and
W.M.P.Nos. 22261 and 22262 of 2021

AJS(CO)
RLP(12/10/2021)