IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.22536 OF 2021
&
WMP.NO.23760 OF 2021

Manisha Arunraj

... Petitioner

Vs

1. Commissioner of Commercial Taxes (GST),
   Commercial Taxes Department,
   Government of Tamil Nadu
   Ezhilagam, Chepauk, Chennai - 600 005.
2. The State Tax Officer,
   Group II/ Inspection, Intelligence-I,
   Station No.1, C.T.Admn. Building,
   Greams Road,
   Chennai - 600 006.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 2nd respondent herein leading to issuance of impugned order (vide GSTIN. 33CVHPM5327C1ZU/2020-21) dated 08.02.2021.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Ms.Amirta Dinakaran
Government Advocate

ORDER

When this matter was taken up, Mr.S.Sathiyanarayanan, learned counsel for writ petitioner was before this Virtual Court and Ms. Amirta Dinakaran, learned Revenue counsel accepted notice on behalf of the respondents.

2. There is no disputation or disagreement that the captioned writ petition is directly and squarely covered by an order dated 22.10.2021 made in W.P.No.22536 of 2021 and W.M.P.No.23760 of 2021, which reads as follows:

> 'Captioned main writ petition has been filed assailing an 'order dated 08.02.2021 bearing reference GSTIN.33CVHPM5327C1ZU/2019-20' [hereinafter 'impugned order' for the sake of convenience and clarity] made by first respondent. The impugned order is under 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of convenience and clarity]. Impugned order is a sequel to a surprise inspection and the impugned order has been made on the basis that taxable person has committed the offence of issuing invoice without supply of goods in violation of TN-GST, C-GST Acts and rules thereunder. To be noted, the impugned order is passed on the opinion of the Adjudicating Authority that taxable person has committed such an offence. Further to be noted, penalty has also been levied inter alia under Section 122(1)(ii) of TN-GST and C-GST Acts.
>
> 2. Mr.S.Sathiyanarayanan, learned counsel for writ petitioner submits that this has been the consistent case of writ petitioner (even as before the Adjudicating Authority) that someone has misused Aadhar and PAN cards of writ petitioner and got fake registration saying business has been carried on in the name and style of MMM Enterprises. The fact that this has been the consistent plea of writ petitioner is evident from the impugned order. Though this is captured in many parts of the impugned order, paragraph No.11 of the impugned order is of relevance and the same reads as follows:

'11. The non-service of the show cause notices dated 04.01.2021 and 25.01.2021 sent to the principal place of business address and their return by the postal authorities establishes the fact that the named individual has not done business at the registered place. The notices sent to the residential address of the Taxable person/Authorised representative have been received by the taxable person. The details of said addresses and the details of return of the summons and show cause notices sent to the said addresses is furnished supra in preceding paragraphs. The taxable person as per records as her business address clearly prove that the taxable person is not doing any business from that address. She has never been an occupant of that premises and no business has been done by her from that address. The information furnished at the time of registration in this regard is established to be false.'

3. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of both the respondents.

4. This Court is of the view that owing to the nature of the stand taken by the writ petitioner and owing to this Court noticing that a criminal complaint has been lodged by the writ petitioner and investigation is under-way, it would only be appropriate to set aside the impugned order without expressing any view or opinion on the merits of the matter, leaving it open to respondents to proceed afresh either against writ petitioner or any other entity or person depending on the outcome of investigation that is under-way qua alleged misuse of writ petitioner's Aadhar and PAN cards to obtain a fake registration. Therefore, with the consent of both sides, the main writ petition

is taken up.

5. It is seen that even prior to the impugned order, writ petitioner in her reply dated 05.02.2021 (reply to summons and notice dated 25.01.2021 from the department) in paragraph No.11 mentioned that she has lodged a complaint on-line to the Police department.

6. Be that as it may, post impugned order, the writ petitioner has lodged a police complaint physically in the jurisdictional police station vide CSR No.219/2021 and the CSR receipt is as follows:

TAMILNADU POLICE

PETITION RECEIPT

Police Station : THIRUMANGALAM District : ANNA NAGAR

CSR No. [illegible]/2021

1. Date & Time of Receipt : [illegible]-03-2021 14:[illegible]
2. Place of Occurrence : GT [illegible] RESIDENCY KOYAMBEDU
3. Petitioner : MANISHA [illegible] [illegible] GT [illegible] RESIDENCY, KOYAMBEDU CHENNAI [illegible]
4. [illegible] Petitioner :
5. [illegible] Petitioner Description :
6. Nature of the Petition : MISCELLANEOUS
7. Mode of Information : WRITTEN
8. [illegible] of the Petition :

[illegible] 734628597[illegible] [illegible] CVHPM5327C [illegible] MMM Enter Prices [illegible] GST [illegible] Sales Tax [illegible]

Thumb impression / Signature of the Petitioner

Signature

KUMAR [illegible] INSPECTOR OF POLICE [illegible]

Note [illegible]

7. Thereafter, 'First Information Report' ['FIR'] for alleged offence punishable under

Sections 419 and 420 of 'Indian Penal Code, 1860' ['IPC'] besides Sections 66C and 66D of Information Technology Act, 2000, has been registered. In the interregnum, the second respondent has passed a consequential order dated 23.07.2021.

8. In the light of writ petitioner having demonstrated her bona fides by lodging an FIR, it is only appropriate that an order as on the lines alluded to supra is made.

9. Captioned main writ petition is disposed of by making the following order:

(a) Impugned order being order dated 08.02.2021 bearing reference GSTIN.33CVHPM5327C1ZU/2019-20 made by first respondent and consequential order being order dated 23.07.2021 bearing reference GSTIN.33CVHPM5327C1ZU /(2) 2019-20 made by second respondent are set aside solely on the ground that alleged misuse of writ petitioner's Aadhar and PAN Cards and obtaining of fraudulent registration is under investigation;

(b) In the light of aforementioned limb of the order, though obvious, it is made clear that no opinion or view on the merits of the matter has been expressed in this order;

(c) Rights of the Revenue i.e., respondents are preserved to proceed against the writ petitioner or any other person or entity being natural person or juristic entity, subject to progress in the investigation i.e., subject to further facts unfurling in the investigation;

(d) Owing to this Court interfering in this matter, limitation if any, will stand preserved for both parties;

(e) The outcome of investigation or updation shall be given by the writ petitioner to the respondent within three months from today i.e., by 21.01.2022. If it is updated, this process shall continue once in three months till the completion of investigation.

10. Captioned Writ Petition is disposed of with above directives. Consequently, writ miscellaneous petition is also disposed of as closed. There shall be no order as to costs.'

3. Therefore, captioned writ petition is disposed of by making the following order:

(a) Impugned order being order dated 08.02.2021 bearing reference GSTIN.33CVHPM5327C1ZU /2020-21 made by first respondent and consequential order being order dated 23.07.2021 bearing reference GSTIN.33CVHPM5327C1ZU /(2) 2020-21 made by second respondent are set aside solely on the ground that alleged misuse of writ petitioner's Aadhar and PAN Cards and obtaining of fraudulent registration is under investigation;

(b) In the light of aforementioned limb of the order, though obvious, it is made clear that no opinion or view on the merits of the matter has been expressed in this order;

(c) Rights of the Revenue i.e., respondents are preserved to proceed against the writ petitioner or any other person or entity being natural person or juristic entity, subject to progress in the investigation i.e., subject to further facts unfurling in the investigation;

(d) Owing to this Court interfering in this matter, limitation if any, will stand preserved for both parties;

(e) The outcome of investigation or updation shall be given by the writ petitioner to the respondent within three months from today i.e., by 26.01.2022. If it is updated, this process shall continue once in three months till the completion of investigation.'

Consequently, connected WMP is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

gpa/nst

To

1. The Commissioner of Commercial Taxes (GST),
   Commercial Taxes Department,
   Government of Tamil Nadu
   Ezhilagam, Chepauk, Chennai - 600 005.

2. The State Tax Officer,
   Group II/ Inspection, Intelligence-I,
   Station No.1, C.T.Admn. Building,
   Greams Road,
   Chennai - 600 006.

+1cc to M/s.S.Sathiyanarayanan, Advocate, S.R.No.55233

+1cc to the Special Government Pleader, S.R.No.55931

W.P.No.22536 of 2021
&
WMP.No.23760 of 2021

RP(CO)
RLP(17/11/2021)