IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 3048 of 2021
and
CMP. No.20990 of 2021

1. The Principal Additional Director General
DGGI, Chennai Zonal Unit
No 16, BSNL Building Tower II
5th and 8th Floor, Greams Road
Nungambakkam,Chennai - 600 006

2. The Senior Intelligence Officer
DGGI, Chennai Zonal Unit
No 16, BSNL Building Tower II
5th and 8th Floor, Greams Road
Nungambakkam,
Chennai - 600 006 ... Appellants

Versus

1. M/s. Mutharamman & Co.,
Represented by its Proprietor
Mr.P.Sivakumar
No.240/5, Nagathamman Nagar
Nemilicherry, Thiruninravur
Chennai - 602 024.

2. The Branch Manager
Indian Bank
PB No.3452, W-100
II Avenue, Anna Nagar
Chennai - 600 040. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.10.2021 made in W.P. No. 32 of 2021.

Prayer in W.P. No. 32 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying to writ of Certiorari to call for the impunged proceedings of the first respondent in Form GST DRC 22 issued in F.No. / INT /DGGI / CZU / GST / 66 / 2020 / 8185 dated 23.11.2020 addressed to the third respondent and quash the same in so far as against the petitioner is concerned as issued contrary to the provisions of the central Goods and services Tax.

For Appellants : Mr. V. Sundareswaran

For Respondents: Mr. P. Rajkumar for R1

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order dated 05.10.2021 passed by the learned single Judge in W.P. No. 32 of 2021, whereby, the proceedings dated 23.11.2020 issued by the first appellant attaching the first respondent’s bank accounts in terms of Section 83 of CGST Act, was set aside and the appellants were directed to complete the process of assessment within a period of six weeks.

2.The necessary facts leading to the filing of this writ appeal would runt thus:

The first respondent is a dealer in Scraps and an assessee under the provisions of the Central Goods and Service Tax (CGST) Act, 2017. While so, on 09.01.2020, a search was conducted in the head office of the first respondent company by the second appellant's officials. During the course of such search, statement was obtained from an employee of the company and certain documents were recovered, which revealed that the first respondent availed fraudulent input tax credit based on the invoices received from other non-existent / bogus units, without actual receipt of any goods for the period from 01.07.20017 to 31.03.2021. Following the same, summons were issued to the first respondent company and its sister concerns, to give explanation along with documentary evidence. Accordingly, the representative of the first respondent company appeared and submitted their statement. However, it was found that there are serious financial irregularities relating to fraudulent availment of ITC by the first respondent and tax evasion amounting to more than a crore of rupees. Therefore, in order to protect the interest of the Government revenue, the bank account of the first respondent was attached invoking Section 83 of the CGST Act, by order dated 23.11.2020. Aggrieved by the same, the first respondent preferred W.P. No. 32 of 2021, which was allowed by the learned single judge, by setting aside the order of attachment. Challenging the said order dated 05.10.2021, the appellants are before this court with this writ appeal.

3.The learned counsel for the appellants contended that the proceedings initiated under section 67 and search of the business premises of the first respondent on 09.01.2020 are in respect of investigation initiated against M/s.SH Electronics Pvt. Ltd, who indulged in clandestine removal of goods of various types of metal scraps to the first respondent without any tax invoices; the first respondent received certain goods from SHEIPL without proper GST invoices and also received tax invoices from non-existent suppliers without actual receipt of goods, however, they availed and utilized ineligible ITC based on such invoices to offset their output tax liability, which resulted in evasion of GST; the attachment action was taken, only after a thorough study of documents, such as GSTR2A filed by the first respondent and GSTR 1 filed by the suppliers of the first respondent; and therefore, based on the report of the investigation officer and the decision arrived at by the second appellant, the first appellant has proceeded to provisionally attach the bank account of the first respondent. Thus, according to the learned counsel, there is no error in passing the order impugned in the writ petition, in the interest of the Government revenue, but the learned single judge erred in setting aside the same. The learned counsel further submitted that summons were duly sent to the first respondent calling upon them to furnish their reply along with documentary evidence, however, they have not respond to the same; and the appellants are burdened with some other investigation works. Therefore, the learned counsel prayed that the appellants may be permitted to complete the investigation within a statutory time limit as prescribed in CGST Act, 2017, instead of within 6 weeks as ordered by the learned single judge.

4.Resisting the grounds of appeal raised in the writ appeal, the learned counsel for the first respondent submitted that the learned single judge after taking note of all the factual as well as the legal position, has set aside the attachment order passed by the first appellant and hence, the same warrants no interference at the hands of this court. With regard to the further submission made by the learned counsel for the appellants, the learned counsel submitted that in response to the summons issued by the appellants, the first respondent made appearance and produced all the documentary evidence available to them and they are fully cooperating with the investigation conducted by the appellants. Therefore, according to the learned counsel, there is no merit in the contentions so raised on the side of the appellants and the writ appeal will have to be dismissed.

5.Heard both sides and perused the materials placed before this court, more particularly, the order impugned herein, wherein, the learned single Judge while setting aside the order of attachment, has observed that the 'opinion' of the second appellant is far more cryptic revealing total non-application of mind and merely repeating what the first appellant has stated in the request for sanction and accordingly, allowed the writ petition and directed the appellants to complete the process of assessment within a period of six weeks.

6.Considering the facts and circumstances of the case and as agreed by the learned counsel appearing for both sides, this court, without going into the merits of the order impugned herein, finds it appropriate to modify the order passed by the learned single judge, only in respect of the direction issued to the appellants. Accordingly, the order impugned herein is modified to the effect that the appellants are at liberty to issue show cause notice to the first respondent within a period of four weeks from the date of receipt of a copy of this judgement and on receipt of the same, the first respondent shall file their objections and documentary evidence, if any, within a period of two weeks thereafter. On such filing, the appellants shall examine the same and pass assessment order, on merits, within a time frame, as stipulated in the CGST Act, 2017.

7.With the above modification, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dhk/rsh

To

1. The Principal Additional Director General,
   DGGI, Chennai Zonal Unit,
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   Chennai - 600 006.

3. The Branch Manager,
   Indian Bank
   PB No.3452, W-100 II Avenue, Anna Nagar
   Chennai - 600 040.

+1cc to Mr.V.Sundareswaran, Advocate Sr.68509
+1cc to Mr.P.Rajkumar, Advocate Sr.68892

WA No. 3048 of 2021

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