



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. [MD]No.11977 of 2020

and

W.M.P. [MD]No.10323 of 2021

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M/s.Hi-Tech Arai Pvt. Ltd.,
Represented by its
Senior Manager - Taxation T.Raathakrishna,
No.33, Sarojini Street,
Chinna Chokkikulam,
Madurai.

... Petitioner

Vs.

The Assistant Commissioner,
Central Goods and Service Tax & Central Excise,
Madurai I Division,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in MAD-CGST-000-ASC-04-2020 dated 03.06.2020 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of Section 140(1) and 140 (7) of the Central Goods and Services Tax Act, 2017.

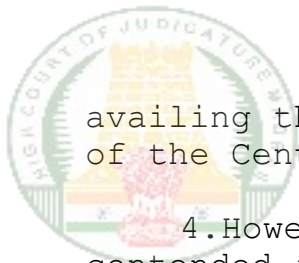
For Petitioner	: Mr.N.Sudalaimuthu
For Respondent	: Mr.S.Ragaventhre Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari, calling for the records in MAD-CGST-000-ASC-04-2020 dated 03.06.2020 issued by the respondent and quash the same as wholly without jurisdiction and in clear violation of Section 140(1) and 140 (7) of the Central Goods and Services Tax Act, 2017.

2.As against the order passed by the adjudicating authority, ie., the order-in-original dated 03.06.2020, the petitioner has filed this writ petition, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

3.It was canvassed primarily by the learned Counsel for the petitioner that there has been an error apparently on the face of the record, and in such case of error, if appeal is filed, there may not be some proper interpretation and therefore, justice may not be rendered to the petitioner. Therefore, learned Counsel wants to justify the act of the petitioner to approach this Court, without



availing the appeal remedy as has been provided under the provisions of the Central Goods and Service Tax Act, 2017.

4. However, learned Counsel for the respondent vehemently contended that as against the impugned order which is the order-in-original, appeal is provided under Section 107 of the Act and in this context, learned Counsel relied upon the following averments in the counter affidavit:

"16. It is submitted that the petitioner has stated that the Order suffers from error apparent on the face of the record. If the petitioner had felt so, they need not have wasted the Hon'ble Court's time. They can very well approach the respondent to rectify the error in terms of Section 161 of the CGST Act, 2017. The petitioner has stated that there is every possibility to the respondent for resorting to recover the same by coercive methods which would cause grave damage to the petitioner. It is submitted to the Hon'ble Court that in terms of Section 107 of CGST Act, 2017.

"(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."

Sub-section (6) and (7) of the above section reads as below:

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid -

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty - five crore rupees,] in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.



As such the petitioner has appellate remedy to the impugned order, on filing of which they got stay of recovery proceedings. Thus the claim of the petitioner is without any legal basis and it is an undue charge on the Department, which is highly condemnable.

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Therefore, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the writ petition filed by the petitioner with cost and thus render justice."

5.The learned Counsel also placed reliance on the following averments in the counter affidavit:

"3.It is submitted to the notice of the Hon'ble High Court that the present writ petition has been filed against the order-in-original dated 03.06.2020 passed by the respondent, which is a speaking order passed after due process of law and following principle of natural justice which is evident from the order itself. The petitioner has their right to appeal against the said order by filing appeal before Additional Commissioner of Appeals with the sufficient grounds in their defence. It is not fair / appropriate to resort to writ remedy before exhausting appeal remedy. The Hon'ble High Court of Madras in the case of Stromtech Automation Pvt. Ltd., Vs. Additional Commissioner of GST & CEX, Chennai as reported in 2019 (28) GSTL (436) (Mad) has held that

"Writ jurisdiction - Alternate remedy - Availability of - Alternate remedy essentially not absolute Rule - Same to be rule of discretion and not rule of compulsion - Writ jurisdiction to be exercised notwithstanding alternate remedy only when there are certain specific exceptions such as lack of jurisdiction and violation of Natural Justice Principles (NJP) - In facts and circumstances of instant case there is no lack of jurisdiction on part of first respondent and no violation of Natural Justice Principles (NJP) - Hence fit case for relegation of writ petitioner to alternate remedy of filing an appeal to Commissioner (Appeals) - II."

The Hon'ble Supreme Court in the case of Karnataka Chemicals Vs. UOI as reported in 1999(113) ELT 17 (S.C) has held that



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"2.We find that the question involved in this appeal essentially turns on the interpretation of the provisions of the statute. There are decisions of this Court where these provisions have been interpreted. In any case, when there is no challenge to the validity of any statutory provision, we see no reason as to why a writ petition should have been filed by-passing the alternative remedy which is provided under the statute. On this short ground we dismiss this appeal, vacate the interim orders, direct the payment of the balance amount of duty along with interest @ 15% per annum with yearly rests."

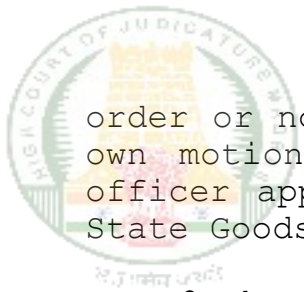
The Hon'ble High Court of Kerala in its recent decision dated 23.06.2020 in the case of Abdul Saleem A.I. Vs. State Tax Officer, SGST Dept, Kalamassery as reported in 2020 (38) GSTL 590 (Ker) has held that

"Writ jurisdiction - respondent's order is a speaking order, reasons assigned being cogent and no error attributable to such order - Writ Jurisdiction not invocable - Article 226 of Constitution of India."

Hence it is submitted that the present writ petition is liable for dismissal on this very ground itself."

6.By relying upon these averments made in the counter affidavit, learned Counsel would submit that as against the impugned order, appeal can very well be filed by the petitioner under Section 107 of the Act r/w. Section 161. In order to appreciate the said contention raised by the respondent side, I have gone through the said provisions, namely, Sections 107 and 161 of the Act, where, under Section 107 of the Act, it has been made clear that "any person aggrieved by any decision or order passed under this Act (Central GST Act) or the State GST Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person".

7.Like that, in Section 161 of the Act, it has been made clear that "without prejudice to the provisions of Section 160 and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or



order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act, etc.

8. Therefore, in both way, the petitioner has got alternative appeal remedy or remedy of review to rectify the error under Section 161 of the Act as stated supra. While that being so, in view of the settled legal position, where except under two exceptions for want of jurisdiction and violation of principles of natural justice, writ petitions are not entertained without exhausting the appeal remedy, especially, in respect of revenue matters (tax matters), the hierarchy of forums by way of appeals as has been provided, the assessee / petitioner is expected to exhaust the said appeal remedy and without exhausting the same, no writ petition can be entertained, straightaway without the two circumstances available as indicated above.

9. In that view of the matter, without going into the merits of the matter, this Court is inclined to dispose of this writ petition, by relegating the petitioner to approach the appellate authority or the adjudicating authority as the case may be, as indicated above, within a particular period and if such endeavour is made by the petitioner, within the time to be stipulated in this regard, the same may be entertained by the appellate authority and decided. Hence, this Writ Petition is disposed of, with the following order:

"In view of the appeal remedy available for the petitioner, the petitioner is hereby relegated to approach the appellate authority and also the original authority, if in case he wants to invoke Section 161 of the Act, within a period of two [2] weeks from the date of receipt of a copy of this order and once such endeavour is made by the petitioner, the same shall be entertained by the concerned authority, either by the appellate authority or by the original adjudicating authority and decide the same on merits and in accordance with law, as early as possible, preferably within a period of three [3] months thereafter."

However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

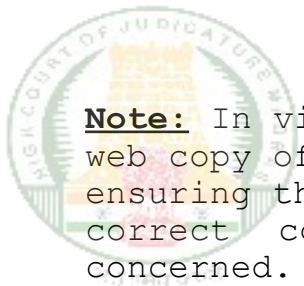
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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.

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To
The Assistant Commissioner,
Central Goods and Service Tax & Central Excise,
Madurai I Division,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-25303[F] dated 05/08/2021)

W.P.[MD]No.11977 of 2020

04.08.2021

RK (24.08.2021) 6P 3C