



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.16271 of 2020

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and

W.M.P. (MD)No.13600 of 2020

M/s.Thangamayil Jewellery Ltd.,
Rep. by its Joint Managing Director,
No.25/6, Palami Centre,
New Natham Road, Near Ramakrishna Mutt,
Madurai - 625 014.

... Petitioner

Vs.

1. The Additional Director General of
GST Intelligence, Coimbatore Zonal Unit,
No.165-1, Lakshmanan Street,
Ukkadam, Coimbatore - 641 001.
2. The Additional Director General (Adjudication),
DGGI, Mumbai Zonal Unit,
3rd Floor, NTC House,
No.15, N.M.Road, Ballard Estate,
Mumbai - 400 001.
3. The Deputy Director of
GST Intelligence,
Madurai Regional Unit,
No.4, Sri Lakshmi Complex,
P&T Nagar Main Road, Madurai - 625 014.
4. The Commissioner of Central GST
and Central Excise,
Madurai Commissionerate,
Central Revenue Building,
Bibikulam, Madurai - 625 002.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent in the impugned Show Cause Notice No.03/2020-CE dated 26.06.2020 in F.No.INV/DGGSTI/CoZU/M/35//2018-CE/1256 quash the same as it has been issued usurping jurisdiction, assigning adjudication to another Commissionerate without authority of law, contrary to Section 174 of the Central Goods and Services Act, 2017.



For Petitioner : Mr.K.Vaitheeswaran
For Respondents : Mr.R.Aravindan,
Standing Counsel.

* * *

ORDER

The writ petitioner is engaged in the manufacture and sale of jewellery. The petitioner is having their registered head office at Madurai. They are also having a number of retail outlets in other places in the State of Tamil Nadu. The petitioner had manufactured and cleared gold coins by printing "TMJ" on the products. Branded gold coins of purity above 99.5% alone were exempted from payment of excise duty. According to the respondents, the petitioner's case fell below the said limit. Therefore, the issue of non-payment/short payment of excise duty was being enquired into. On 24.10.2017, the Senior Intelligence Officer, Directorate General of Goods and Services Tax Intelligence, Madurai Regional Unit, Madurai issued summons calling upon the petitioner to appear before them and give a statement. In response to the same, an authorised employee appeared and gave a statement. Subsequently on 15.12.2017, the very same Senior Intelligence Officer called upon the petitioner to pay duty on the ground that dutiable products had been cleared during the period from 01.03.2016 to 30.06.2017 without payment of duty. That was followed by a show cause notice from the first respondent/Additional Director General of GST Intelligence, Coimbatore Zonal Unit, Coimbatore, proposing to levy central excise duty with interest and penalty. The notice read that the petitioner should show cause before the second respondent/Additional Director General (Adjudication), DGGI, Mumbai within thirty days from the date of receipt of the notice. This notice is put to challenge in this writ petition.

2.The respondents have filed a detailed counter affidavit opposing the prayer made in the writ petition. A typed set of papers has also been filed along with the counter affidavit.

3.The authority of the first respondent to issue the show cause notice cannot really be questioned. This is because, Notification No.14/2017-Central Tax, dated 01.07.2017 issued by the Central Board of Excise and Customs under Sections 3 and 5 of the Central Goods and Services Tax Act, 2017 gives power to Additional Director General/first respondent to issue show cause notice. The contest is more around the competence of the second respondent to adjudicate the matter. Office Order No.574/CE/41/2020/INV14352 dated 12.05.2020 issued by the Principal Director General, DGGI, Hqrs, New Delhi orders that Show Cause Notices which will be issued on or after the date of issuance of this officer, by the Zonal Units falling in the West Zone and the South Zone, and involving Central Excise duty/Service Tax amount of Rs.5.00 crores will be made answerable to ADG (Adj), Mumbai, for adjudication. Thus, this office order enclosed at Page No.70 of the respondents' typed set answers the



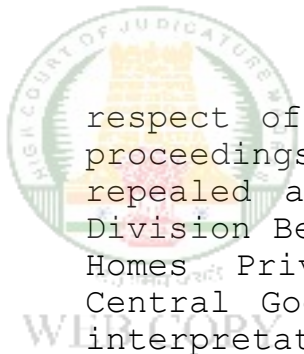
question as to why the petitioner has been asked to show cause before ADG (Adj), Mumbai.

4.Of course, the next question would be as to whether the Principal Director General, DGGI, Hqrs, New Delhi is competent to issue such an officer order. The answer is found in CIR No.994/01/2015-CX, dated 10.02.2015 and CIR No.1000/07/2015-CX, dated 03.03.2015 issued by the Central Board of Excise and Customs. Clause (ii) of the Circular dated 03.03.2015 states as follows :

"Director General, CEI may issue general orders assigning the show cause notices involving duty of more than Rs.5 crore issued by the specified Zonal Units and/or the DGCEI Headquarters to a particular ADG (Adjudication)."

5.Since the impugned show cause notice is only in terms of the instructions/circulars issued by the Central Board of Excise and Customs, the petitioner's counsel trained his guns on the aforesaid circulars dated 10.02.2015 and 03.03.2015. It is obvious that those circulars were issued under the Central Excise Act, 1944 and the Rules framed thereunder. The said Act had been repealed by Section 174 of the Central Goods and Services Tax Act, 2017 which came into force on 01.07.2017. The said Repeal and Saving provision did not expressly save the subordinate legislation issued under the repealed statute. As a result, according to the petitioner's counsel, the aforesaid circulars ceased to exist and that the respondents cannot fall back on the same. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court reported in **(1995) 4 SCC 734 (Air India v. Union of India)** in support of his contention. He therefore submitted that the impugned show cause notice has been issued without jurisdiction.

6.I am not persuaded by the aforesaid submission of the learned counsel for the petitioner. As rightly pointed out by the learned standing counsel, Section 174 (e) of the CGST Act, 2017 categorically states that the repeal of the earlier enactments shall not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed. In other words, in respect of any liability under the repealed Act, fresh proceedings may be instituted. The employment of the expression "may be instituted" as if the earlier Acts had not been repealed is highly significant. In other words, investigation and assessment proceedings can be instituted even after 01.07.2017 in



respect of the liability incurred under the repealed Act and the proceedings can be instituted as if the said Act had not been repealed at all. As held by the Hon'ble Judges comprising the Division Bench of the Delhi High Court in WP(C)No.2245/2020 (Vianaar Homes Private Limited vs. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II, Delhi & ors), a contrary interpretation would mean that all cases of duty evasion, where the adjudicatory process has not commenced, have to be ignored. That is clearly not the intent of the saving clause. The Hon'ble Division Bench had also shown as to how the Air India decision relied on by the noticee in the said case would be of no avail. The proposition laid down in (1995) 4 SCC 734(AIR INDIA V. UNION OF INDIA AND OTHERS) is that if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. But this proposition cannot be applied in the abstract. The Hon'ble Supreme Court was concerned with Section 8 of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. In the said repealing provision, the language corresponding to Section 174(2) of the Central Goods and Services Tax Act, 2017 was not present. I respectfully concur with Vianaar Homes decision of the Delhi High Court and I am able to see that all the contentions urged by the learned counsel for the petitioner stand answered in the said decision. I am not persuaded by the contention of the counsel for the petitioner that the said decision does not lay down the correct law.

7.The petitioner has been proceeded against for nonpayment of the Central Excise Duty on branded gold said to have been manufactured and cleared by them during the period from 01.03.2015 to 30.06.2017. Therefore, if the petitioner was liable to pay any duty under the repealed Act, namely, the Central Excise Act, 1944, certainly it was open to the authority to initiate action. This is because Section 174(2)(e) as the Central Goods and Services Tax Act, 2017 enables the authority to do so.

8.The Hon'ble Supreme Court in the decision reported in **AIR 1962 SC 486 (Bidi, Bidi Leaves and Tobacco Merchants' Association v. State of Bombay)**, held as follows :

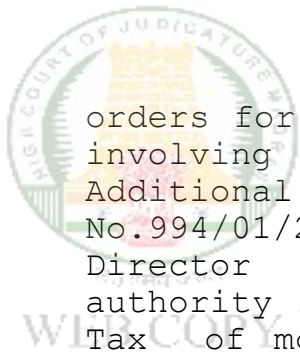
"20. "One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view [Craies on Statute Law, p. 239] ". The principle on which this doctrine is based is contained in the legal maxim "Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa ease non potest". This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself



would be of no effect". Dealing with this doctrine Pollock, C.B., observed in Michael Fenton and James Fraser v. John Stephen Hampton [(1857-1859) 117 R.R. 32 at p. 41 : II Moo. PC. 347] "it becomes therefore all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus: Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be also done, then that something will be supplied by necessary intendment". This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied."

9. When the legislation specifically permits the institution of the assessment proceedings even after coming into force of the Central Goods and Services Act, 2017 in respect of the liability incurred under the repealed Act, the only inference can be that the earlier statutory regime remains intact for the purpose of the proceeding against the petitioner for the aforementioned liability. If Section 174(2) of the Central Goods and Services Act, 2017 enables institution of assessment proceedings under the Repealed Act, then this Court has to necessarily conclude that it gives power to the authorities to do everything for carrying out the aforesaid purpose. The doctrine of implied powers has to be applied to the case on hand.

10. A combined reading of the various notifications and office orders referred to above would show that the first respondent has not acted on his own. That the demand of duty from the petitioner is above Rs.5.00 crores is apparent. The Central Board of Excise and Customs has authorised the Director General of CEI to issue general



orders for assigning cases and for issuing show cause notice. Duty involving more than Rs.5 Crores shall be adjudicated by the Additional Director General(Adjudication). In the Circular No.994/01/2015-CX, dated 10.02.2015, it is seen that the Additional Director General(Adjudication), Mumbai, is the adjudicating authority for all matters involving the Central Excise Duty/Service Tax of more than Rs.5 Crores. Therefore, I have to necessarily hold that the second respondent is having the territorial jurisdiction to go into the issue on hand. In view of the foregoing discussion, I hold that the impugned show cause notice cannot be rejected as lacking in jurisdiction. I find no merit in this writ petition. I make it clear that I have only decided the issue of jurisdiction. All the other contentions available to the writ petitioner are left open.

11.This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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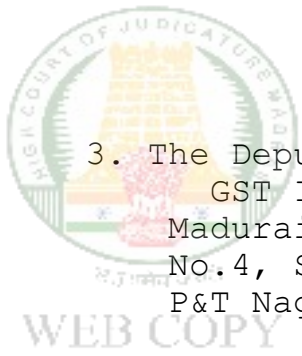
Sub Assistant Registrar(CS)

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.

Skm

To:

1. The Additional Director General of
GST Intelligence, Coimbatore Zonal Unit,
No.165-1, Lakshmanan Street,
Ukkadam, Coimbatore - 641 001.
2. The Additional Director General(Adjudication),
DGGI, Mumbai Zonal Unit,
3rd Floor, NTC House,
No.15, N.M.Road, Ballard Estate,
Mumbai - 400 001.



3. The Deputy Director of
GST Intelligence,
Madurai Regional Unit,
No.4, Sri Lakshmi Complex,
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4. The Commissioner of Central GST
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