IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.33 of 2020
and
WMP Nos.39 and 40 of 2020 and 8435 of 2021

M/s.Rayan Traders
No.10-A, 6th Street,
Uma Maheswari Nagar,
Kolathur, Chennai – 600 099.

... Petitioner

Vs

1 Principal Chief Commissioner
of GST Central Excise 26/1 Uthamar Gandhi
Rd Thousand Lights West Nungambakkam
Chennai Tamil Nadu 600 034

2 Addl. Director General of Goods
and Service Tax Directorate General of
Goods and Services Tax Southern Regional
Unit GST Bhawan 26/1 Mahatma Gandhi Road
Nungambakkam Chennai-600 034.

3 Deputy Commissioner (Preventive
Office of Principal Chief Commissioner
of GST and Central Excise Chennai North
Nungambakkam Division - No. 26/I Mahathma
Gandhi Road Nungambakkam, Chennai 600 034.

4 Superintendent of GST and Central

Excise Excise HPU Central North
Commissionerate Nungambakkam Chennai Tamil
Nadu 600 034

5 HDFC Bank Ltd
Represented by its Branch Manager Korattur
Branch L 253/26 2nd Street TNHB Colony
Korattur Chennai 80

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the notice of 3rd respodnent dated 27.12.2019 in Form GST DRC-13 bearing reference C.No.IV/6/221/2019-HPU.Gr.8 and quash the same and consequently direct respondents 1 to 5 to release the petitioner's bank account with the 5th respondent bank.

For Petitioner	:	Mr.Senniappan for Mr.Hari Babu
For Respondent	:	Mr.K.Umesh Rao Junior Standing Counsel – R1 to R4 Mr.Rohith for M/s.King & Patridge - R5

ORDER

The petitioner is an assessee under the Central Goods and Services Tax Act, 2017 (in short 'Act') and challenges attachment notice issued to the HDFC Bank, Korattur Branch dated 27.12.2019 in Form GST DRC-13. In terms of the aforesaid impugned notice, the bank has been directed to withhold the amount of upto a sum of Rs.74,52,943/- and pay the same forthwith to the Government.

2. This direction is premised upon the aforesaid sum becoming due from the petitioner in terms of the provisions of the CGST Act/TNGST Act, 2017. The Assessing Officer in the impugned notice refers to the petitioner as a defaulter and the relevant portion of the form of the impungned notice reads thus:

> *'Particulars of defaulter – GSTIN – 33BRMPS7722P1ZY*
> *Name – M/s.Rayan Traders (Shri.Mohammed Samsudeen Proprietor)*
> *- Account No.50200013842861*
> *Demand order no.: Date:*
> *Reference no. of recovery:C.No.IV/6/221/2019-HPU.Gr.8*
> *Date : 2.12.2019*
> *Period : 8/2017 to 4/2018*
> *Whereas a sum of Rs.74,52,943/- on account of tax, cess, interest and penalty is payable under the provisions of the CGST Act/Tamilnadu GST Act, 2017 by M/s.Rayan Traders (Shri.Mohammed Samsudeen, Proprietor) New No.4, Old No.17/2, Agathiyar Street, TMP Nagar, Padi, Chennai – 600 050 holding GST No.33BRMPS7722P1ZY*
> *who has failed to make payment of such amount; and/or*
> *It is observed that a sum of Rs.74,52,943/- is due or may become due to the said taxable person from you;*
> *or*
> *It is observed that you hold or are likely to hold a sum of Rs.74,52,943/- for or on account of the said person.*
> *You are hereby directed to pay a sum of Rs.74,52,943/- to the Government forthwith or upon the money becoming due or being held in compliance of the provisions contained inclause (c)(i) of sub-section (1) of section 79 of the Act. ....'*

3. It is an admitted position in this case that there has been no order of assessment or any other order passed under the applicable provisions making a determination of the aforesaid amount as being 'due' from the petitioner. Neither has the petitioner been assessed under Sections 73 or 74, nor has there been any order passed reversing the Input Tax Credit that is claimed by the petitioner.

4. In such circumstances, it is my considered view that the impugned notice has no legs to stand. The respondent relies on the fact that there was a statement made by the petitioner in the course of an enquiry conducted by the Intelligence Officer under Section 70 of the Act. However, a statement recorded cannot substitute a determination of liability under an order of assessment or any other order passed under the applicable provisions under the Act.

5. Learned counsel for the official respondents would submit that the petitioner has, in fact, filed a return in GSTR 1 and 3B admitting liability, but has set off the output tax liability as against the available credit. According to the respondents, there is no credit that the petitioner could have sought to set off as against the liability.

6. However, and admittedly, though the provisions of Section 42 provide for a procedure for matching, reversal and re-claiming of input tax credit in

order that a proper determination of the credit may be made, the officer has not initiated/undertaken the procedure. Having not done so, recourse to coercive recovery alone, is unsustainable.

7. This Court was concerned with a similar factual and legal position in the case of *VN Mehta & Company v. The Assistant Commissioner (*W.P.No.26187 of 2019 order dated 08.11.2019), and that Writ Petiton came to be allowed, this Court holding that the impugned proceedings were not maintainable under law, so too in the present case. The Impugned Notice dated 27.12.2019 is set aside in light of there being no statutory santion for the issuance of the same in terms of Section 83 of the Act.

8. This Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

18.11.2022

Index : Yes
Speaking Order
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