IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.5852 OF 2022
AND
W.M.P.NOS.5949 & 5952 OF 2022

Bhor Engineering Private Limited,
26/A, NA, SIPCOT Industrial Complex,
Phase II, Hosur,
Krishnagiri – 635 109
Represented by its Authorised Signatory,
Mr.B.Abdul Rafiq

... Petitioner

Vs.

1. The State Tax Officer (Intelligence)
   Legal and Revision-1, Salem.

2. The Deputy Commissioner (ST) (Int.)
   Commercial Taxes Building
   2nd Floor, Pitchards Road
   Salem – 636 007.

3. The Branch Manager,
   YES Bank, GSN Arcade, Bye Pass Road,
   Hosur – 635 109.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of assessment order bearing Reference No.:001/2019 dated 04.09.2019 passed by the first respondent and the consequent bank attachment notice bearing reference RC.3308/2019/B4 dated 28.12.2021 issued by the second respondent and quash the same, and direct the second respondent to refrain from issuing recovery notices to the customers of the petitioner.

For Petitioner	:	Mr.Hari Radhakrishnan for Mr.Adithya Reddy
For Respondents	:	Mr.R.Siddarth Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of assessment order bearing Reference No.:001/2019 dated 04.09.2019 passed by the first respondent and the consequent bank attachment notice bearing reference RC.3308/ 2019/B4 dated 28.12.2021 issued by the second respondent and quash the same and direct the second respondent to refrain from issuing recovery notices to the customers of the petitioner.

2. The petitioner is a dealer under the GST regime, with regard to the period between August 2018 and March 2019, no return had been filed, no tax had been paid by the petitioner admittedly.

3. Therefore, notice was issued by the Revenue on 01.07.2019 and 16.08.2019, both the notices having been, according to the Revenue, served on th petitioner, not been responded and therefore, the Revenue having no other option proceeded to complete the assessment and passed the order of assessment on 04.09.2019 directing the petitioner/assessee to pay the tax, interest and penalty also. Challenging the same, the present writ petition has been filed.

4. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner has submitted that, though initially the return was not submitted for the said period till the order impugned was passed, however, since the said order has not been served or the earlier notices have not been served, it could not be noticed immediately. However, on 02.01.2020, 10.01.2020, 21.01.2020 and 28.01.2020, on these dates, return had been submitted and tax had been paid for the relevant period i.e., between August 2018 and October 2019 along with interest. Therefore, the penalty now imposed by invoking Section 73 of the GST Act is not inconsonance with the provisions as such a penalty could not be imposed against the petitioner by invoking Section 73, because, in this case, it is not an escapement of tax and a tax in fact has been paid by filing return, of course belatedly, for which interest also has been paid. Therefore, the penalty component which has been imposed through the impugned order may not be justifiable. Therefore, against the penalty proceedings alone, this writ petition has been filed, he contended.

5. Heard Mr.R.Siddarth, learned Government Advocate appearing for respondents, who would submit that, since every month return has to be filed, they failed to file the return for several months between August 2018 and March 2019. Therefore, the Revenue issued notice twice, despite that, no reply had been

given by the petitioner. Thereafter, final assessment order which is impugned herein was passed, only then the petitioner had come forward to pay the tax wholly in January 2020 for the period relates to August 2018 and March 2019. Therefore, not only the interest but also the penalty, the petitioner is liable to pay, which has in fact been imposed through the impugned order. Therefore, it does not warrant any interference from this Court. He would also submit that, if at all the petitioner is aggrieved over the said order of assessment, he can prefer an appeal before the Appellate Authority, that appeal also since has not been filed, on that ground also, the present writ petition cannot be entertained and can be dismissed, he contended.

6. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

7. As has been rightly pointed out by the learned Government Advocate appearing for respondents, every month return has to be filed, knowing well with that position, the petitioner dealer has not come forward to file the return and pay the tax. Therefore, notice was issued twice, despite that, no reply has been given and thereafter, assessment order has been passed, the tax component as well as the interest and penalty having been quantified was imposed against the petitioner, which the petitioner had paid only in January 2020 except the penalty.

8. Insofar as the penalty component is concerned, the plea raised by the petitioner counsel that, Section 73 of the Act since has been invoked for imposing penalty that is a wrong invocation and if at all the petitioner case is to be considered and it should be considered only under Section 61 of the Act and in that, Section 61(2) enables the Revenue to make only the tax as well as the collection of interest and not for penalty. Therefore, the penalty imposed against the petitioner is not inconsonance with the said provisions of the Act.

9. Even though the said submissions have been made by the learned counsel appearing for the petitioner by quoting the aforesaid provisions, I am not impressed with the said submission because of the reason that, under Section 62(2) of the Act, where, the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of Section 50 or for payment of late fee under Section 47 shall continue.

10. This means that, after the assessment order is made, within thirty days if the petitioner comes forward to file the return, then the order of assessment can be withdrawn. However, the late fee and the interest imposed on the dealer shall be paid by him. Here in the case in hand, even that chance was not utilised by the petitioner, as admittedly, he has not filed the return and paid the tax within thirty days from the date of receipt of the assessment order. Therefore, Section 62(2), as claimed by the petitioner counsel, would not come to the rescue of the petitioner dealer.

11. Insofar as the invocation of Section 73 is concerned, no doubt it is a correct provision which has been invoked by the respondent Revenue as so many components are provided under 73 like determination of tax not paid, short paid, erroneously refunded or no tax credit are utilised etc.

12. Therefore, the determination of tax which has not been paid as one of the factor which can be gone into by the Revenue under the provisions of Section 73, hence such an invocation cannot be found fault with. Therefore, that ground also urged by the learned counsel appearing for the petitioner is untenable, hence, it is liable to be rejected. Therefore, for all these reasons, this Court is not inclined to entertain this writ petition as the impugned orders are tenable. Therefore, this writ petition is liable to be dismissed, accordingly is dismissed.

13. However, the dismissal of this writ petition shall not preclude the right of the petitioner to prefer an appeal against the order impugned if he is advised to do so. It is made clear that, the reasons stated in this order is only for the conclusion to be reached by this Court in deciding this writ petition. Therefore, these reasons may not influence the Appellate Authority in deciding the appeal if it is filed by the assessee independently on its own merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The State Tax Officer (Intelligence)
   Legal and Revision-1, Salem.

2. The Deputy Commissioner (ST) (Int.)
   Commercial Taxes Building
   2nd Floor, Pitchards Road
   Salem – 636 007.

+1cc to M/s.Adithya Reddy, Advocate, S.R.No.17838

+1cc to the Special Government Pleader(Taxes), S.R.No.17905

W.P.No.5852 of 2022

RSV(CO)
RLP(18/05/2022)