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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P. NO.6298 OF 2022

AND

W.M.P.NO.6391 OF 2022

Babu Ramadevi
Sole Proprietor, Balaganapathy Communication
No.72/A, South Vanniyar Street,
Sholinghur, Vellore 631 102.

...Petitioner

Vs.

- 1.Union of India
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.
- 2.Central Board of Indirect Taxes and Customs
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.
- 3.Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.
- 4.Joint Commissioner (Appeals-II)
Newry Towers, 2nd Floor,
II Avenue, Anna Nagar, Chennai 600 040.
- 5.Deputy Commissioner of GST & Central Excise,
Ranipet Division,
Ranipet 632 403.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of Order-in-Appeal No.14/2021 dated 25.01.2021 passed by the fourth respondent herein and quash the same.



For Petitioner : Mr.Adithya Reddy
For R1, 2, 4 & 5 : Mr.A.P.Srinivas
Senior Standing Counsel
For R3 : Mr.V.Prasanth Kiran
Government Advocate

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O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari to call for the records of Order-in-Appeal No.14/2021 dated 25.01.2021 passed by the fourth respondent herein and quash the same.

2. The case of the petitioner is that she is a registered tax payer under the GST enactments. It is alleged that the petitioner had belatedly filed Returns for the period from January 2019 to March 2019 and paid the tax due. Further, the petitioner had duly availed the Input Tax Credit ("in short, ITC") for the said period, after satisfaction of the condition provided under Section 16(2) of the TNGST Act. While so, the fifth respondent herein issued a show cause notice proposing to reverse the ITC. Though the petitioner availed the opportunity of personal hearing and apprised her submissions, however, the fifth respondent passed the assessment order on the ground that ITC claim is time barred as per Section 16(4) of the TNGST Act. However, the fifth respondent/Original Authority passed an order on 21.09.2021 and made a demand against the petitioner to the tune of Rs.10,92,448/- with interest thereon and penalty of Rs.1,09,245/-, against which the petitioner preferred an appeal before the fourth respondent. However, the fourth respondent by order dated 18.11.2021 confirmed the order in original passed by the Original Authority, against which, the petitioner preferred further appeal before the Appellate Tribunal in terms of Section 112(1) of the Central Goods and Services Tax (CGST) Act, 2017, read with Rule 110 of the CGST Rules, 2017. However, till date, the Appellate Tribunal was not constituted and no members were appointed. Therefore, the petitioner was unable to pursue the appeal before the Tribunal. Hence, the petitioner has filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that, as a mandatory requirement, the petitioner has to deposit 20% of the tax demanded while preferring an appeal before the Appellate Tribunal. However, since the Appellate Tribunal was not constituted and no members were appointed, the petitioner has filed the present Writ Petition. Further, he submitted that the petitioner is now ready to pay 20% of the amount before the Original Authority/fifth respondent within a period of four



weeks from the date of receipt of a copy of this order and immediately after the constitution of Appellate Tribunal, the petitioner may be granted liberty to file an appeal before the Appellate Tribunal and thereafter the Appellate Tribunal will pass appropriate orders as expeditiously as possible.

4. Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents 1, 2, 4 & 5 and Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent 3 have no objection to the said order being passed.

5. The facts in the present case are not in dispute. Admittedly, the Original Authority imposed demand of wrongly claimed ITC, which was not admissible and also levied penalty and interest on 21.09.2021 and as against the said order, the petitioner preferred an appeal, in which the order passed by the Original Authority was confirmed. Further appeal was preferred before the Appellate Tribunal, in which there is no member. Hence, in view of the above, this Court directs the petitioner to deposit 20% of the amount demanded by the Original Authority, within a period of four weeks. On receipt of such amount, the respondents are directed not to take any coercive steps. However, in default, liberty is granted to the respondents to proceed with the matter in accordance with law. Immediately thereafter, the petitioner is directed to file an appeal before the Appellate Tribunal, and if such appeal is filed, the Appellate Tribunal may pass order as expeditiously as possible.

6. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

jd/nhs

To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.



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2. Central Board of Indirect Taxes and Customs
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.

3. Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai 600 005.

4. Joint Commissioner (Appeals-II)
Newry Towers, 2nd Floor,
II Avenue, Anna Nagar, Chennai 600 040.

5. Deputy Commissioner of GST & Central Excise,
Ranipet Division,
Ranipet 632 403.

+1cc to Mr. Adithya Reddy, Advocate Sr.No.19312

+1cc to Mr. A.P. Srinivas, Senior Standing Counsel, Sr.No.19578

+1cc to the Special Government Pleader Sr.No.19307

W.P.No.6298 of 2022
and
W.M.P.No.6391 of 2022

SKM(CO)
RVM(10/06/2022)